

**SUPPLEMENTAL INFORMATION
No. 1**

For Planning Commission Agenda of:
January 23, 2020
Item No. E-4

Re:	Applicant:	BV Gardens, Inc.
	Record Number:	PLN-11324-CUP
	Assessor Parcel Number:	223-124-005

The following items are included in this supplemental:

1. Revised Resolution.
2. Revised Conditions of Approval.
3. Attachment: Field Survey Boundary Exhibit performed by Kolstad Land Surveyors, dated Monday, January 13, 2020.
4. Humboldt County Planning Department (HCPD) response to project comments made by David Manthorne, California Department of Fish and Wildlife (CDFW), dated Tuesday, January 14, 2020.
5. HCPD response to project comments made by David Manthorne, CDFW, dated Wednesday, January 15, 2020.
6. Email from David Manthorne, CDFW, response to HCPD comments, dated Tuesday, January 21, 2020.
7. Email from David Manthorne, CDFW, response to HCPD comments, dated Wednesday, January 22, 2020.
8. HCPD response to project comments made by David Manthorne, CDFW, dated Wednesday, January 22, 2020.

RESOLUTION OF THE PLANNING COMMISSION

OF THE COUNTY OF HUMBOLDT

Resolution Number 20-

Record Number: PLN-11324-CUP

Assessor Parcel Number: 223-124-005

Makes the required findings for certifying compliance with the California Environmental Quality Act and conditionally approves the BV Gardens, Inc., Conditional Use Permit and Special Permit request.

WHEREAS, BV Gardens, Inc., submitted an application and evidence in support of approving a Conditional Use Permit (CUP) for 22,215 square feet of existing cannabis cultivation consisting of 14,420 square feet of outdoor of which 14,220 will be grown in four (4) light deprivation greenhouses with the remaining 200 square feet outdoor full sun, and 7,795 square feet of mixed light cultivation areas within three (3) greenhouse structures. The application includes a Special Permit for a point of diversion and for restoration within an SMA. Ancillary propagation will occur in a 2,464 SF greenhouse. Irrigation water is sourced from a 250,000-gallon rainwater catchment pond located on an adjacent parcel identified as APN: 223-124-007 with supplemental water sourced from an onsite spring diversion. Existing available water storage is 364,000-gallons in eight (8) hard tanks, four (4) 20,000-gallon water bladders, and one (1) 250,000-gallon pond. Estimated annual water usage is 139,840-gallons (6.3 gal/SF). Processing activities including drying and trimming will occur within two (2) 900 SF buildings onsite. Up to five (8) employees may be utilized during peak operations. Power is provided by PG and E with two (2) Honda generators utilized solely for emergency use; and

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, The County Planning Division, the lead agency, prepared an Addendum to the Final Mitigated Negative Declaration prepared for the Commercial Medical Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016. The proposed project does not present substantial changes that would require major revisions to the previous mitigated negative declaration. No new information of substantial importance that was not known and could not be known at the time was presented as described by § 15162(c) of CEQA Guidelines; and

WHEREAS, Attachment 2 in the Planning Division staff report includes evidence in support of making all of the required findings for approving the proposed Conditional Use Permit (Record Number: PLN-11324-SP); and

WHEREAS, a public hearing was held on the matter before the Humboldt County Planning Commission on January 23, 2020.

NOW, THEREFORE, be it resolved, determined, and ordered by the Humboldt County Planning Commission that:

1. The Planning Commission considered the Addendum to the MND adopted for the Commercial Medical Marijuana Land Use Ordinance; and

NOW, THEREFORE, be it resolved, determined, and ordered by the Humboldt County Planning

Commission that:

2. The Planning Commission has considered the addendum to the Mitigated Negative Declaration adopted for the Commercial Medical Marijuana Land Use Ordinance; and
2. The Planning Commission makes all of the findings for approval specified in Attachment 2 of the Planning Commission staff report for ~~Case Numbers CUP16-111~~ **Record Number PLN-11324-CUP** based on the submitted substantial evidence; and
3. ~~CUP16-229~~ **PLN-11324-CUP** is approved as recommended and conditioned in Attachment 1 for Case Number ~~CUP16-229~~ **PLN-11324-CUP**.

Adopted after review and consideration of all the evidence on January 23, 2020.

The motion was made by Commissioner ____ and seconded by Commissioner ____.

AYES: Commissioners:

NOES: Commissioners:

ABSTAIN: Commissioners:

ABSENT: Commissioners:

DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

John Ford, Director
Planning and Building Department

ATTACHMENT 1

***Revised RECOMMENDED CONDITIONS OF APPROVAL**

APPROVAL OF THE CONDITIONAL USE PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE THE PROVISIONAL CANNABIS CULTIVATION PERMIT CAN BE FINALIZED.

1. Within 60 days of the effective date of project approval, the applicant shall execute a Compliance Agreement with the Humboldt County Planning Department detailing all necessary permits and infrastructure improvements described under Conditions of Approval #3 –14 **15**. The agreement shall provide a timeline for completing all outstanding items. All activities detailed under the agreement must be completed to the satisfaction of the Planning and Building Department before the permit may be finalized and no longer considered provisional.
2. Within 60 days the applicant shall submit a Remediation and Relocation Plan for four (4) identified water storage tanks and parking areas associated with this proposed project, to be relocated outside of the Streamside Management Areas. Submission of this plan to the Planning and Building Department must include verification the plan has been reviewed and approved by the Bear River Band of Rohnerville Rancheria.
3. The applicant shall secure permits for all unpermitted grading (including flats, cultivation area, pond) and structures (including greenhouses, processing facilities, storage buildings, water tanks and water tank foundations), related to the cannabis cultivation and other commercial cannabis activity. The plans submitted for building permit approval shall be consistent with the project description and approved project site plan. A letter or similar communication from the Building Division verifying that all structures related to the cannabis cultivation are permitted will satisfy this condition.
4. The applicant shall secure the approval from the Department of Environmental Health for the design and installation of the existing onsite sewage disposal system near the residence to be used for the processing facility. A letter or similar communication from the Department of Environmental Health indicating approval has been issued will satisfy this condition.
5. The applicant shall be compliant with the County of Humboldt's Certified Unified Program Agency (CUPA) requirements regarding any hazardous materials. A written verification of compliance shall be required before any provisional permits may be finalized. Ongoing proof of compliance with this condition shall be required at each annual inspection in order to keep the permit valid.
6. Any existing non-County maintained access road that will serve as access for the proposed project and connects to the county maintained road shall be improved to current standards for a commercial driveway. An encroachment permit shall be issued by the Department of Public Works prior to commencement of any work in the County maintained right of way. The access road shall be paved for a minimum width of 20 feet and a length of 50 feet where it intersects the County road.
7. The applicant shall provide an invoice, or equivalent documentation, to the Department of Environmental Health to confirm the use of portable toilets to serve the needs of cultivation staff prior to annual renewal of the permit.

8. All fences and gates shall be relocated out of the County right of way. All gates shall be setback sufficiently from the County road so that vehicles will not block traffic when stating to open/close the gate. In addition, no materials shall be stored or placed in the County right of way. This condition shall be completed to the satisfaction of the Department of Public Works prior to commencing operations, final sign-off for a building permit, or public works approval for a business license.
9. The applicant shall implement all corrective actions detailed within the Water Resource Protection Plan developed for the parcel, prepared pursuant to Tier 2 enrollment under the North Coast Regional Water Quality Control Board Cannabis Waste Discharge Regulatory Program, including those measures later determined necessary during annual and periodic site inspections in accordance with the monitoring element. A copy of the reporting form portion of the Mitigation and Reporting Program (MRP) shall be submitted annually to the Planning and Building Department concurrent with the submittal to the RWQCB. A letter or similar communication from the RWQCB verifying that all their requirements have been met by the listed dates or the applicant has proven to the satisfaction of RWQCB or the Third Party Consultant verifying that all the requirements in the MRP have been met will satisfy this condition. [After July 31, 2019, plans and reporting shall conform to the Cannabis Cultivation Policy and Cannabis General Order adopted October 17, 2017 by the State Water Board.]
10. The Applicant shall install and utilize a water meter to demonstrate that there is sufficient water supply to meet the demands of the project without having to rely on surface water diversion during the forbearance period and shall provide results prior to or during the annual inspection. Date verified photos and annual water logs submitted to the Humboldt County Planning Department will satisfy this condition.
11. The applicant shall submit a *Small Irrigation Use Registration* or other application for appropriative rights to the Division of Water Rights, State Water Resources Control Board and obtain an appropriative right for storage of diverted water for irrigation use. A letter or similar communication from the State Water Resources Control Board verifying that this requirement has been met will satisfy this condition.
12. The property owner shall execute and file with the Planning Division the statement titled, "Notice and Acknowledgment regarding Agricultural Activities in Humboldt County," ("Right to Farm" ordinance) as required by the HCC and available at the Planning Division.
13. The applicant shall implement all the requirements of the final Lake and Streambed Alteration Agreement (1600-2017-0673-R1) for the point of diversion, six stream crossings, and two remediation sites as approved by the California Department of Fish and Wildlife (CDFW) and comply with all applicable terms. A written confirmation from CDFW indicating these requirements have been met can be submitted to the Humboldt County Planning Department to satisfy this condition.
14. No processing will occur on-site until an acceptable site suitability report can establish potential for onsite waste treatment system (OWTS) adequate to support proposed staffing and the OWTS is installed with proper permits from the Department of Environmental Health. A letter or similar communication from the Department of Environmental Health that the OWTS was installed to their requirements will satisfy this condition.
- 15. The Applicant shall remedy the parcel boundary setback requirements violation involving the cultivation greenhouses that boarder APN 223-124-006 through lot line adjustment, or relocation of the greenhouses to a location on the property outside of**

the required property line setback, on an area that has experienced previous ground disturbance. Within 90 days of the effective date of the Conditional Use Permit, the Applicant must notify the Planning Department on how they intend to resolve the violation. Within one year of the effective date, the violation must be resolved unless an extension is granted by the Planning Department. A new site plan must also be submitted that exhibits the reconfigured parcel or the relocation site of the greenhouses.

16. All driveways and private road intersections onto the County Road shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance).
17. The area where the archeological site was located shall be avoided by heavy equipment, grading for other soil disturbances during cannabis cultivation activities and future development. No additional grading or other soil disturbances is authorized by this permit in the identified location.
18. All mixed light cultivation, including in the nursery, shall comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, up light, or glare (BUG). International Dark Sky Association standards exceed the requirements of Scenic Resources Standard SR-S4, Light and Glare, that lighting be fully shielded, and designed and installed to minimize off-site lighting and direct light within the property boundaries.
19. Noise generated from generators shall not exceed 60db at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer, as required by Section 314-55.4.11(o) Humboldt County Code.
20. The applicant shall not use any synthetic netting or any erosion control materials that contain synthetic (e.g., plastic or nylon) netting, including photo- or biodegradable plastic netting. To minimize the risk of wildlife entrapment, the applicant shall use geotextiles, fiber rolls, and other erosion control measures made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves.
21. If any wildlife is encountered during the Authorized Activity, Permittee shall not disturb the wildlife and shall allow wildlife to leave the work site unharmed.
22. The applicant shall ensure that all refuse be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
23. The applicant shall ensure that all imported soil located onsite be fully contained and setback a minimum of 150 feet from watercourses and/or wet areas; and that all discarded soil present onsite be removed and properly disposed of at an authorized waste management facility.
24. The applicant is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. The Department will provide a bill to the applicant after the decision. Any and all outstanding Planning fees to cover the processing of the application to decision by the Hearing Officer shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
25. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$750.00)

shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.

26. A Notice of Determination (NOD) will be prepared and filed with the County Clerk for this project in accordance with the State CEQA Guidelines. **Within three days of the effective date of permit approval**, it is requested that the applicant submit a check or money order for the required filing fee in the amount of \$50 payable to the Humboldt County Clerk/Recorder. If this payment is not received within this time period, the Department will file the NOD and will charge this cost to the project.

Ongoing Requirements/Development Restrictions Which Must be Satisfied for the Life of the Project:

1. All components of the project shall be developed, operated, and maintained in conformance with the Project Description, the approved Site Plan, the Plan of Operations, and these conditions of approval. Changes shall require modification of this permit except where consistent with Humboldt County Code Section 312-11.1, Minor Deviations to Approved Plot Plan.
2. Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws and regulations as set forth in the CMMLUO and MAUCRSA, as applicable to the permit type.
3. If operating pursuant to a written approved compliance agreement, permittee shall abate or cure violations at the earliest feasible date, but in no event no more than two (2) years from the date of issuance of a provisional clearance or permit. Permittee shall provide plans for curing such violations to the Planning & Building Department within one (1) year of issuance of the provisional clearance or permit. If good faith effort towards compliance can be shown within the two years following the issuance of the provisional clearance or permit, The Planning Department may, at the discretion of the Director, provide for extensions of the provisional permit to allow for additional time to meet the outstanding requirements.
4. Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MAUCRSA, and regulations promulgated thereunder, as soon as such licenses become available.
5. Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board and the Division of Water Rights, at a minimum to include a statement of diversion of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101, or other applicable permit, license, or registration, as applicable.
6. Confinement of the area of cannabis cultivation, processing, manufacture or distribution to the locations depicted on the approved site plan. The commercial cannabis activity shall be set back at least 30 feet from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, or Tribal Cultural Resources, except where a reduction to this setback has been approved pursuant to Section 55.4.11(d).
7. Maintain enrollment in Tier 1, 2 or 3, certification with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.

8. Comply with the terms of any applicable Streambed Alteration (1600) Permit obtained from the California Department of Fish & Wildlife, if applicable.
9. Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate County officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
10. Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.
11. Pay all applicable application and annual inspection fees.
12. The noise produced by any generator used on an emergency-only basis for cannabis drying, curing, and processing shall not be audible by humans from neighboring residences. The decibel level for generators measured at the property line shall be no more than 60 decibels. Where applicable, sound levels must also show that they will not result in the harassment of Marbled Murrelet or Spotted Owl species. Conformance will be evaluated using current auditory disturbance guidance prepared by the United State Fish and Wildlife Service, and further consultation where necessary. Under these guidelines, generator noise may not exceed 50dB as measured at 100 feet from the generator or at the edge of the nearest Marbled Murrelet or Spotted Owl habitat, whichever is closer.
13. Storage of Fuel - Fuel shall be stored and handled in compliance with applicable state and local laws and regulations, including the County of Humboldt's CUPA program, and in such a way that no spillage occurs.
14. The Master Log Books maintained by the applicant to track production and sales shall be maintained for inspection by the County.
15. Pay all applicable taxes as required by the Humboldt County Commercial Marijuana Cultivation Tax Ordinance (Humboldt County Code Section 719-1 et seq.).
16. The operation shall participate in the Medical Cannabis Track and Trace Program administered by the Humboldt County Agricultural Commissioner, when available.

Performance Standards for Cultivation and Processing Operations

17. Pursuant to the MAUCRSA, Health and Safety Code section 19322(a)(9), an applicant seeking a cultivation license shall "provide a statement declaring the applicant is an 'agricultural employer,' as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law."
18. Cultivators shall comply with all applicable federal, state, and local laws and regulations governing California Agricultural Employers, which may include: federal and state wage and hour laws, CAL/OSHA, OSHA, California Agricultural Labor Relations Act, and the Humboldt County Code (including the Building Code).
19. Cultivators engaged in processing shall comply with the following Processing Practices:
 - i. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment.

- ii. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis.
 - iii. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function.
 - iv. Employees must wash hands sufficiently when handling cannabis or use gloves.
20. All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:
- I. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
 - (a) Emergency action response planning as necessary;
 - (b) Employee accident reporting and investigation policies;
 - (c) Fire prevention;
 - (d) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
 - (e) Materials handling policies;
 - (f) Job hazard analyses; and
 - (g) Personal protective equipment policies, including respiratory protection.
 - II. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
 - (a) Operation manager contacts;
 - (b) Emergency responder contacts;
 - (c) Poison control contacts.
 - III. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
 - IV. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.
21. All cultivators shall comply with the approved Processing Plan as to the following:
- I. Processing Practices.
 - II. Location where processing will occur.
 - III. Number of employees, if any.
 - IV. Employee Safety Practices.
 - V. Toilet and handwashing facilities.
 - VI. Plumbing and/or septic system and whether or not the system is capable of handling increased usage.
 - VII. Drinking water for employees.
 - VIII. Plan to minimize impact from increased road use resulting from processing.
 - IX. On-site housing, if any.
22. Term of Commercial Cannabis Activity Conditional Use Permit. Any Commercial Cannabis Cultivation CUP issued pursuant to the CMMLUO shall expire one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual

compliance inspection has been conducted and the permittee(s) and the permitted site have been found to comply with all conditions of approval.

23. If the inspector or other County official determines that the permittees or site do not comply with the conditions of approval, the inspector shall serve the CUP or permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a reinspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request reinspection or to cure any items of non-compliance shall terminate the CUP, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed pursuant to section 55.4.13.
24. Permit Renewals to comply with Updated Laws and Regulations. Permit renewal per Ongoing Condition of Approval #22 above is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that new standards are met.
25. Acknowledgements to Remain in Full Force and Effect. Permittee Acknowledges that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed in which the cultivation area is located will not support diversions for irrigation.
26. Permittee further acknowledges and declares that:
 - I. All commercial cannabis activity that I, my agents, or employees conduct pursuant to a permit from the County of Humboldt shall be solely for medical purposes and all commercial cannabis products produced by me, my agents, or employees are intended to be consumed solely by qualified patients entitled to the protections of the Compassionate Use Act of 1996 (codified at Health and Safety Code section 11362.5); and
 - II. All cannabis or cannabis products under my control, or the control of my agents or employees, and cultivated or manufactured pursuant to local Ordinance and the California Medical Marijuana Regulation and Safety Act will be distributed within the State of California; and
 - III. All commercial cannabis activity conducted by me, or my agents or employees pursuant to a permit from the County of Humboldt will be conducted in compliance with the California Medical Marijuana Regulation and Safety Act.
27. Transfers. Transfer of any leases or permits approved by this project is subject to the review and approval of the Planning Director for conformance with CMMLUO eligibility requirements, and agreement to permit terms and acknowledgments. The fee for required permit transfer review shall accompany the request. The request shall include the following information:
 - a. Identifying information for the new Owner(s) and management as required in an initial permit application;
 - b. A written acknowledgment by the new Owner in accordance as required for the initial Permit application;
 - c. The specific date on which the transfer is to occur;

- d. Acknowledgement of full responsibility for complying with the existing Permit; and
- e. Execution of an Affidavit of Non-diversion of Medical Cannabis.

28. Inspections. The permit holder and subject property owner are to permit the County or representative(s) or designee(s) to make inspections at any reasonable time deemed necessary to assure that the activities being performed under the authority of this permit are in accordance with the terms and conditions prescribed herein.

Informational Notes:

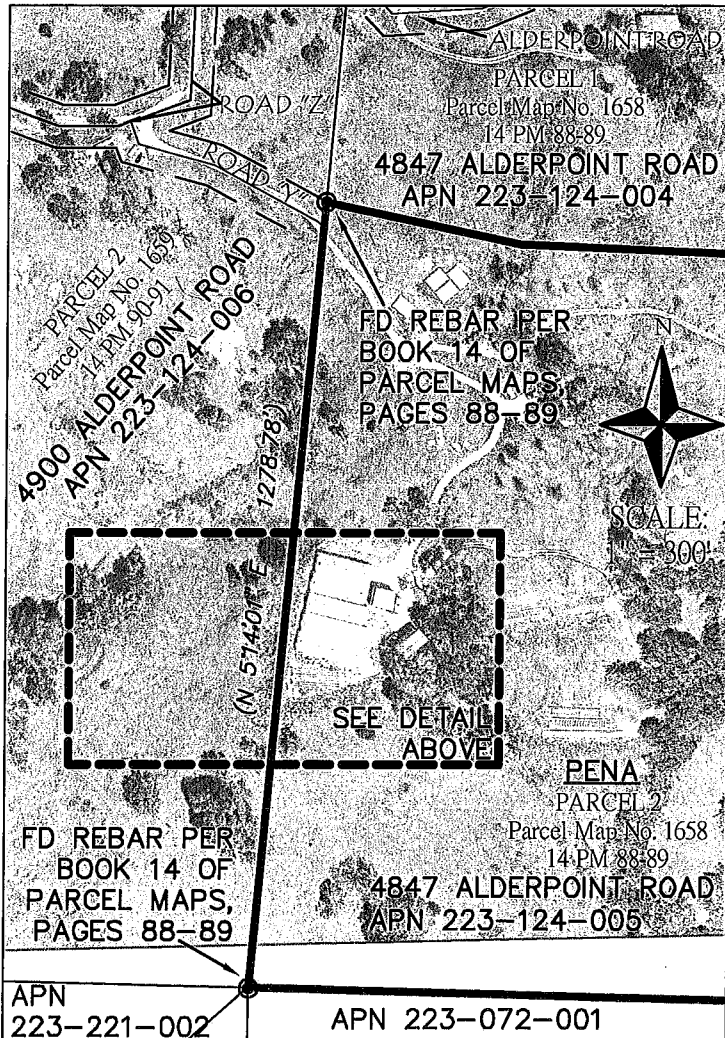
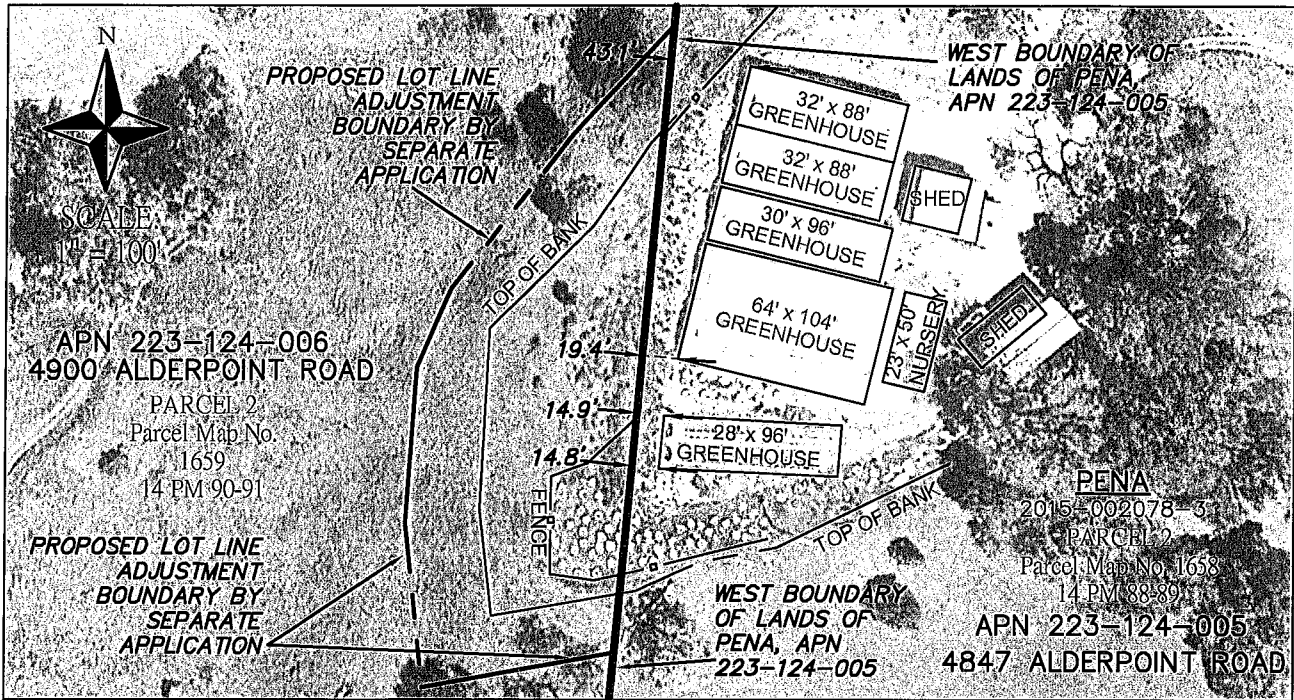
1. Pursuant to Section 314-55.4.11(a) of the CMMLUO, if upon inspection for the initial application, violations of any building or other health, safety, or other state or county statute, ordinance, or regulation are discovered, the Planning and Building Department may issue a provisional clearance or permit with a written approved Compliance Agreement. By signing the agreement, the permittee agrees to abate or cure the violation(s) at the earliest opportunity but in no event more than two (2) years of the date of issuance of the provisional clearance or permit. Plans for curing the violation(s) shall be submitted to the Planning and Building Department by the Permittee within one (1) year of the issuance of the provisional certificate or permit. The terms of the compliance agreement may be appealed pursuant to section 314-55.4.13 of the CMMLUO.
2. This provisional permit approval shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where the Compliance Agreement per Condition of Approval #1 has been executed and the corrective actions pursuant to the agreement are being undertaken. Once building permits have been secured and/or the use initiated pursuant to the terms of the agreement, the use is subject to the Permit Duration and Renewal provisions set forth in Conditions of Approval #22 of the On-Going Requirements /Development Restrictions, above.
3. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code Section 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the Native American Heritage Commission will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to Public Resources Code Section 5097.98. Violators shall be prosecuted in accordance with Public Resources Code Section 5097.99.

4. The applicant is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. The Department will provide a bill to the applicant after the decision. Any and all outstanding Planning fees to cover the processing of the application to decision by the Hearing Officer shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
5. The Applicant is responsible for costs for post-approval review for determining project

conformance with conditions prior to release of building permit or initiation of use and at time of annual inspection. In order to demonstrate that all conditions have been satisfied, applicant is required to pay the conformance review deposit as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$750) within sixty (60) days of the effective date of the permit or upon filing of the Compliance Agreement (where applicable), whichever occurs first. Payment shall be made to the Humboldt County Planning Division, 3015 "H" Street, Eureka.

CULTIVATION DETAIL



NOTES:

THIS MAP PREPARED BY DYLAN KOLSTAD, LS 8152, JANUARY 13, 2020, BASED ON FIELD SURVEY BY THIS OFFICE ON JUNE 19, 2019.

THE PURPOSE OF THIS MAP IS TO SHOW RELATIONSHIP OF CULTIVATION AREA INFRASTRUCTURE WITH WEST BOUNDARY LINE OF LANDS OF PENA, APN 223-124-005, ALONG WITH GOOGLE EARTH IMAGERY, DATED APRIL 19, 2019. IMAGERY HAS BEEN ALIGNED APPROXIMATELY TO SURVEYED FEATURED BY US. APPROXIMATION ERROR OF BOUNDARY LINE TO AERIAL IMAGE IS ESTIMATED AT 10 FEET.

BOUNDARY EXHIBIT PENA PROPERTY

SHEET 1 OF 1

KOLSTAD LAND SURVEYORS

PO BOX 594
BAYSIDE, CA 95524

VOICE (707) 822-2718
FAX (707) 822-5636

From: Vendor LACO 2

Sent: Tuesday, January 14, 2020 12:02 PM

To: Manthorne, David@Wildlife <David.Manthorne@wildlife.ca.gov>

Subject: RE: CDFW Referral Comments: BV Gardens (APPS: 11324), CEQA 2017-0949, APN: 223-124-005

Hello David Manthorne,

This email is a response to comments received on November 1, 2019 in a PDF attachment.

I will attempt to hit every point or request made in your comments for application 11324 BV Gardens, if you have any additional questions or clarifications please feel free to respond in line.

1) No expansion of cultivation has been noted by this office however, onsite relocation has occurred without approval. As such the applicant has created a remediation plan (attached: Water Resource Protection Plan) to describe the relocation as it occurred as well as any additional actions to be taken to remediate historic environmental impacts near and within the Streamside Management Area onsite.

2) Attached please find the Cultivation Area Verification documents we used to verify the amount of cultivation (note the cultivation has changed to: 14,420 SF outdoor and 7,795 SF mixed light cannabis cultivation). Note: the 11x17 image is blown out but it appears areas C, B1, and B2 were cultivated within greenhouse/hoop house structures providing an understanding for the current cultivation amounts as noted above.

3) Relocation did occur (see response to item 1), however after review by myself, and the supervising planner it appears the GIS lines are misrepresenting the actual boundary lines in this location. We found records of a survey done on the adjacent parcel 223-124-006 which included several monument notes on the boundary line in question. We believe the cultivation area to be within the bounds of the property and meet minimum setback requirements.

4) This request indicates a preliminary review of the CNNDDB database to see if additional onsite surveys should be performed. According to the CNNDDB there are no mapped Rare or Endangered species within 1.6 miles of the project site. I do not believe further survey is required.

5) The project does propose additional "re-grading" of historic cultivation areas as part of the remediation plan. Details can be found in the attached WRPP. As noted in item number 4, it does not appear to be indicative for further survey prior to project approval.

6) The Site Plan has included measured buffer distances per the County Streamside Management Ordinance which coincides with the distances spelled out in this request. Sections of the SMA will be remediated to pre-cultivation conditions to ensure protection of these streams and related potential riparian habitat.

7-14) These items will be included as conditions of approval for application 11324. Specifically regarding item 14 (Non-conformance with LSAA) the applicant will be conditioned to come into and maintain conformance.

Thank you,

Max Hilken
Cannabis Services Division
707-441-2623

From: Vendor LACO 2 <vendorlaco2@co.humboldt.ca.us>

Sent: Wednesday, January 15, 2020 10:01 AM

To: Manthorne, David@Wildlife <David.Manthorne@wildlife.ca.gov>

Cc: Johnson, Cliff <CJohnson@co.humboldt.ca.us>

Subject: RE: CDFW Referral Comments: BV Gardens (APPS: 11324), CEQA 2017-0949, APN: 223-124-005

Hello David Manthorne,

Below you will find my response to CDFW comments for application 11324. This email is an update to that response:

Upon further review of the CNDDDB database I believe comment number 9 (request for a Noise and Light Pollution Plan) to no longer be required as a Condition of Approval. Specifically the project location appears to be approximately 1.6-miles away from any known sensitive species as depicted on the CNDDDB data base and over 6-miles away from identified Activity Centers. To ensure noise and light impacts are sufficiently managed, the project contains the following Conditions of Approval:

1. All mixed light cultivation, including in the nursery, shall comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, up light, or glare (BUG). International Dark Sky Association standards exceed the requirements of Scenic Resources Standard SR-S4, Light and Glare, that lighting be fully shielded, and designed and installed to minimize off-site lighting and direct light within the property boundaries.
2. Noise generated from generators shall not exceed 60db at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer, as required by Section 314-55.4.11(o) Humboldt County Code.

If you have any questions regarding the previous response (1/14/2020) or this update, please feel free to reply in-line to this email or call me directly at the number provided below.

Thank you,

Max Hilken
Cannabis Services Division
707-441-2623

Thursday, January 23, 2020 12:52 PM

From: Manthorne, David@Wildlife <David.Manthorne@wildlife.ca.gov>
Sent: Tuesday, January 21, 2020 5:07 PM
To: Vendor LACO 2 <vendorlaco2@co.humboldt.ca.us>
Cc: Johnson, Cliff <CJohnson@co.humboldt.ca.us>; Bauer, Scott@Wildlife <Scott.Bauer@wildlife.ca.gov>
Subject: RE: CDFW Referral Comments: BV Gardens (APPS: 11324), CEQA 2017-0949, APN: 223-124-005

Max,

I recommend that all projects subject to CEQA provide an evaluation of potential impacts to biological resources. It is also important for projects that initially do not appear subject to CEQA to also have some level of biological screening to ensure that laws protecting special status species (e.g. ESA, CESA) and habitats (e.g. waters of the state, US) are not violated. The Scoping process is an important early step in making appropriate choices in an CEQA Initial Study, or sooner. One of the most common ways to begin the scoping process for potential effects on special status species is to do a **9-quad search** of the project area using the California Natural Diversity Database (CNDDDB). **Relying solely on occurrences mapped in the Rare Find database may result in undisclosed significant impacts due to the fact that not all occurrences are mapped in Rarefind and not all areas have been surveyed. It's a positive detection database, and that has limitations.** CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* touches on this topic in the Survey Preparation section. With the results of the 9-quad search, a person knowledgeable about the region and species should evaluate the potential for occurrence of each species based on habitat requirements and habitats present in the whole of the project action. This often necessitates at least one site visit by a biologist. If suitable habitat exists, additional biological surveys may be necessary. Consider the stats below for the region:

- Number of taxa in CNDDDB 9-quad search for Harris Quad (SE Humboldt County): 67
- Number of taxa in CNDDDB Rare Find search for Harris Quad: 34
- Number of taxa in CNDDDB Rare Find search within two miles of the key parcel mentioned below: 2

The 67 taxa in the attached spreadsheet should each be evaluated on the context of CEQA Guidelines § 15125 (c) and/or §15380. Many of them may be ruled out by some level of desktop analysis, but there are likely some taxa that will require at least one site visit by a biologist to determine if suitable habitat may exist.

As you can see, there are subtleties in the content and utilization of CNDDDB, Rare Find, and Bios tools. The 9-quad search is the most appropriate screening level to start with. Other valuable sources of info include:

- The US Fish and Wildlife Service's Information for Planning and Consultation (IPaC) database
- The California Wildlife Habitat Relationships (CWHHR) database
- The National Wetland Inventory database
- NRCS soils database
- The eBird database
- The CNPS Inventory of Rare and Endangered Plants
- The Calflora database
- The iNaturalist database
- And others....

In closing, I believe that your simplistic analysis of project impacts is inadequate. I recommend listening to the Trustee Agency and following the recommendations put forth.
Thank you

Subject	RE: CDFW Referral Comments: BV Gardens (APPS: 11324), CEQA 2017-0949, APN: 223-124-005
From	Manthorne, David@Wildlife
To	Vendor LACO 2
Cc	Johnson, Cliff
Sent	Wednesday, January 22, 2020 12:54 PM

Max,

To follow up on your comments, the area is predicted to be medium to high value predicted habitat for Golden Eagle. Because of that, it would appear that "habitat" is not just in the forest, or at an arbitrary distance away based on the positive detection database (CNDDDB), but could be much closer or even within the project site. As such, CDFW recommends that a Noise and Light Attenuation Plan be submitted and approved in consultation with CDFW prior to the use of lights, fans, or generators on the project site.

Thank you

Subject	RE: CDFW Referral Comments: BV Gardens (APPS: 11324), CEQA 2017-0949, APN: 223-124-005
From	Johnson, Cliff
To	Manthorne, David@Wildlife
Cc	Vendor LACO 2; Bauer, Scott@Wildlife; Ford, John; Ryan, Meghan
Sent	Wednesday, January 22, 2020 3:34 PM

Hello Dave, Your assertion that Max's analysis is simplistic and insufficient is inappropriate and does not align itself with the respectful and professional relationship that we have worked hard to foster with CDFW. Making statements like this conveys to us that you are not interested in fostering a professional working relationship with the County. This is not the first time that CDFW staff have made insulting comments to our staff in the course of what we believed to be professional correspondence between our agencies. We have always interacted with your agency with respect, even when we are in disagreement, and we expect the same from CDFW.

The primary source of disagreement here appears to be that you believe a 9 quad biological screening is necessary to complete the CEQA analysis. I will note that your own referral dated 11/01/2019 references that a botanical field survey is appropriate when *"natural (or naturalized) vegetation occurs in an area that may be directly or indirectly affected by a project, and it is unknown whether special status plants or sensitive natural communities occur in the project area;"*. This project is an existing development, not new development. The project is to bring an existing site into compliance with regulations intended to protect the environment. The areas where the cultivation is being relocated to have been heavily disturbed as far back as 2005. The new ground disturbance is for habitat restoration to restore the SMA. It appears highly unlikely that there is natural vegetation occurring in the area that is already disturbed and developed.

I want you to know that we are well aware that the CNDDDB is only a database of positive occurrences. It is still useful information that demonstrates that no sensitive plant species have been identified within 2 miles of the site. The site itself is an existing cannabis cultivation and relocation is to an already well disturbed site. The only new development associated with this is restoration of SMA areas and minor relocation within an area that has been heavily disturbed as far back as 2005. The environmental setting under CEQA for this project is cultivation which is occurring in a streamside management area. Relocating out of this area to a previously disturbed site and restoring the SMA is a benefit on the environment rather than a potential significant adverse impact.

The CEQA threshold for determining impacts to biological resources is whether the project would have a "substantial adverse effect" on any species identified as a candidate, sensitive, or special status species. In determining whether there is the potential for a significant adverse effect, the courts have been clear that the legal standard is whether there is substantial evidence of a fair argument that the project may result in a significant impact on the environment. Relevant CEQA guidance includes Section 15065 which states that a determination of significance must be made if the project would reduce substantially the habitat of fish or wildlife species, cause a fish or wildlife species to drop below self-sustaining levels, threaten to eliminate a plant community, or reduce substantially the number or restrict the range of an endangered, rare or threatened species. Therefore, even an impact to sensitive resources may not necessarily be significant even were there to be resources on the site, which seems unlikely. In this particular case, there is no evidence that CDFW has presented that there are likely sensitive species on the site and there is very little new disturbance proposed beyond the existing environmental baseline that would even disturb such a species were it to occur on site. Our review of

this project and the facts available to us, including those presented by CDFW, can only lead us to conclude that the proposal to allow an existing agricultural operation to relocate out of a sensitive area and restore it will not have a substantial adverse effect on any species identified as a candidate, sensitive or special status species.

We take our role as responsible agency very seriously in formulating our recommendations to decision-makers. Requiring a costly biological survey when limited ground disturbance contained only to previously disturbed areas is proposed, and where sensitive resources are unlikely to occur is an undue burden on the applicant that we do not believe is supported by available evidence.

Cliff Johnson, Supervising Planner
County of Humboldt Planning and Building Department
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(707) 268-3721