



COUNTY OF HUMBOLDT

Legislation Text

File #: 23-541, **Version:** 1

To: Planning Commission
From: Planning and Building Department
Agenda Section: Public Hearing

SUBJECT:

Myers and Aquarian, LLC
Assessor Parcel Number (APN) 216-135-015
Record No.: PLN-12124-CUP
New Harris area

A Conditional Use Permit for 24,000 square feet (SF) of existing light deprivation and outdoor cannabis cultivation that includes 20,800 SF of light deprivation cultivation in twenty-four (24) greenhouses and 3,200 SF of outdoor cultivation that occurs in pots. Propagation will take place in one (1) nursery area (2,400 SF). Irrigation water is currently sourced from well and a surface water diversion. Existing water storage includes onsite water tanks of various capacities that total 31,000 gallons. The applicant is proposing to utilize water for irrigation from a 6-million-gallon on-stream reservoir on a separate legal parcel after approval by the State Water Board and CDFW. The on-stream reservoir proposed for irrigation use will also serve a cannabis operation on a separate legal parcel (PLN-12125-CUP). If approval of the on-stream reservoir is not feasible, the applicant has proposed to source at a minimum half of the water for irrigation needs from rainwater catchment, and the remainder from the existing surface water diversion, with an appropriate increase in water storage to ensure adherence to the required forbearance period. Estimated onsite water use is 270,000 gallons per year (approximately 11.25 gallons/sf/year). Drying and processing occur onsite within an existing metal building (1,500 SF). The project requires up to four (4) seasonal employees. Power is provided by one (1) 36-kw Whisper Watt Super Silent mobile generator, that is used to power the metal drying building, and solar panels. The applicant proposes to transition to PG&E with only backup generator use within five years or continue to build out solar capabilities on site to meet power needs if PG&E power is unavailable.

RECOMMENDATION(S):

That the Planning Commission:

Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:

- a. Finds that the Planning Commission has considered the adopted Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance, and considered the Addendum to the MND that was prepared for the Myers and Aquarian, LLC project; and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location: The project is located in Humboldt County, at 1200 Harris Road, on the west side of Harris Road approximately 1.2 miles north from the Harris Road/Bell Springs Road intersection, in the unincorporated

New Harris area in southern Humboldt County.

Present General Plan Land Use Designation: Agricultural Grazing (AG) 2017 General Plan; Density: 20-160 acres per unit; Slope Stability: High Instability (3).

Present Zoning: Agricultural Exclusive (AE), minimum building site area 160 acres (AE-B-5-160); Timberland Production Zone (TPZ).

Environmental Review: An Addendum to a previously adopted MND has been prepared for consideration per §15164 of CEQA Guidelines.

State Appeal: Project is located outside the Coastal Zone and is therefore NOT appealable to the California Coastal Commission.

Major concerns: None.

Executive Summary: Myers and Aquarian, LLC seeks a Conditional Use Permit to allow the continued operation of 24,000 square feet of outdoor cannabis cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The site is designated as Agricultural Grazing (AG) in the Humboldt County 2017 General Plan Update and zoned Agriculture Exclusive (AE) and Timberland Production Zone (TPZ) with Special Building Site B-5(160). Outdoor cannabis cultivation will occur in light deprivation greenhouses and full sun. Propagation will take place within a proposed 2,400-square-foot greenhouse, or alternatively plants will be propagated on another parcel in the vicinity (APN 216-081-013) through a permitted commercial nursery. Artificial lighting used for ancillary propagation and processing will adhere to shielding and International Dark Sky Association standards as set forth in the CMMLUO. Processing such as drying and curing is proposed onsite. Further processing such as trimming is proposed offsite at a licensed processing facility. The applicant anticipates two (2) full-time employees, and at peak operations four (4) employees will be required for operations annually. Power for the project is provided by a solar power and a generator. The applicant is proposing a transition to PG&E power within the next five years, and to further develop solar power if PG&E is unavailable. The generator will be stored in a shed and kept in secondary containment. Recommended conditions include a transition from generator use to 80% renewable energy by the end of 2026 (**Condition A15**). Noise levels shall not exceed no more than 60 decibels at the property line.

Water Resources: The property is located within the Jewett Creek watershed, which is within the greater Eel River watershed. Irrigation water has been historically sourced from a surface water diversion (Registration # H502326) and a permitted well (No. 20/21-0163). The well has an estimated yield of 10 gallons/minute, and the depth to first water is 160 feet below the surface. The appropriate water right (Registration # H502326) has been obtained for one (1) surface water diversion on the subject parcel, and two (2) diversions on the adjacent property under the same ownership (APN 216-081-013). The water right allows up to 4 acre-feet per year to be used on both the subject parcel (APN 216-135-015) and as the adjacent parcel (APN 216-081-013). Although the water right does not include the specific allotment of water for this parcel, the irrigation needs of cannabis activities on the adjacent parcel (216-081-013) are supplied by rainwater catchment and a groundwater well. The allotment of 4.011 acre feet exceeds projected irrigation needs by approximately 1.03 million gallons.

Projected annual water use is 270,000 gallons as shown in Table 1 below. The applicant has proposed to utilize a 6 million gallon on stream pond from a neighboring property (APN 216-135-008) under the same ownership to supply irrigation needs. The use of the pond is contingent upon approval from CDFW and the State Water

Resources Control Board, and if approved the applicant will be required to bypass all inflow to the pond during the annual surface water diversion forbearance period. If the applicant is unable to obtain approval for use of the pond, the applicant has proposed to install hard water tank storage to meet the projected 270,000 gallon irrigation need. To implement that alternative the applicant has proposed to fill the 270,000 gallons of water storage with 50% rainwater catchment and the remainder will be sourced from the existing irrigation water right. The applicant has submitted rainwater catchment calculations demonstrating over 50% of the projected irrigation needs can be collected during drought years.

Table 1: Estimated Annual Irrigation Water Usage (Gallons)

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
0	0	0	15,000	25,000	33,000	38,000	45,000	54,000	48,000	12,000	0	270,000

Biological Resources: A Biological Scoping Report was prepared by Kelsey McDonald of Hohman & Associates, a California Native Plant Society (CNPS) Certified Consulting Botanist. The Report identifies the habitats and potentially occurring special-status wildlife species within the project area, potential impacts of cultivation activities on biological resources, and measures to reduce any potential impacts. Recommended mitigation measures have been included as recommended conditions of approval. The measures include conducting pre-construction raptor & bird surveys, restoring the cultivation areas, and minimizing noise disturbance. The Report also recommends that a site survey be conducted by a qualified biologist to further evaluate potential habitat value to the protected species within the project area and finalize recommended measures.

The Biological Assessment Area (BAA) includes a 1.3 mile buffer area surrounding the property. A list of special status species that could potentially occur in the project area was generated in 2019 using the CDFW California Natural Diversity Database (CNDDDB), which includes the California Native Plant Society (CNPS) and the Northern Spotted Owl (NSO) databases. A complete list of species that could occur within the BAA are listed on pages 3-4 of the Report.

A NSO habitat assessment was conducted by Kelsey McDonald of Hohman & Associates in 2019, and there were no NSO database activity centers recorded within 1.3 miles of the cultivation area. However, there is potential nesting/roosting and foraging habitat within the 1.3 mile buffer. The US Fish and Wildlife Service Protocol (2021) recommends NSO surveys for activities that may impact owls by modifying their habitat or disrupting breeding activities. However, the cultivation area within the parcel consists of open grasslands classified as ‘non-habitat’, so construction activities are not expected to modify NSO habitat. Cultivation activities propose no supplemental lighting, so the disturbance from light pollution is expected to be minimal. The applicant is conditioned to restrict noise to adhere to Humboldt County Performance Standards. The biologist recommends that additional assessments and/or surveys are conducted for any plans that may modify habitat, remove nest trees, or disturb potential breeding habitat. Therefore, project activities would have less than a significant impact on NSO activities and habitat.

Cannabis Restoration Plan: A Restoration and Monitoring Plan was prepared for the project area by NorthPoint Consulting Group for relocating the cultivation activities of the Northern cultivation area and the Western cultivation area to the new central cultivation area. The Plan includes:

- 1) Removal of all cannabis plants, irrigation systems, fencing, posts, water tanks, waste and all other cultivation-related materials from the Northern and Western cultivation areas;
- 2) Replanting both the Northern and Western areas with appropriate native species (as detailed on pages 5-

- 6 in the Restoration Plan); and
- 3) Revegetating and restoring the Western cultivation area to pre-cultivation conditions in accordance with the Oak Woodland Restoration and Enhancement plan included as attachment 4F (**Condition A10**).

The Oak Woodland Restoration and Enhancement Plan was prepared by Botanist & Wetland Delineator James Regan (August 2019). Mr. Regan conducted two site visits (June 15 and August 17, 2019) to determine onsite conditions and appropriate restoration activities. He concluded that approximately 0.7 acres of Oregon White Oak was removed and converted to agricultural use. The Plan identifies actions to be implemented by the landowner to restore the converted oak woodland and enhance additional oak woodland areas including but not limited to:

- 1) Between 225 - 375 Oregon white oak trees shall be replanted in the 0.7 acre clearing;
- 2) The enhancement area shall be evaluated by a Registered Professional Forester (RPF) and a timber harvest plan shall be prepared. Pursuant to Forest Practice Rules any encroaching Douglas fir trees under 26 inches dbh shall be removed. Any additional fir saplings will be removed to prevent recolonization of the area, removing competition for identified oak saplings and seedlings; and
- 3) Monitoring and reporting shall be conducted for a minimum of five (5) years. Restoration is subject to specific restoration goals and requires verification by qualified individuals for the respective activities as outlined in Section 4 (pages 9-11) of the Oak Woodland Restoration Plan. (**Condition 10**).

Access: The project is located in the New Harris area. The property is accessed via private driveway from Harris Road. The applicant submitted a Road Evaluation prepared by NorthPoint Consulting Group dated December 7, 2018. The first 2.1 miles of Harris Road was evaluated, leading off from Bell Springs Road, which is a paved County maintained road. The current average daily traffic (ADT) of the 2.1-mile section of Harris Road is estimated to be 64 vehicles. The evaluation concludes Harris Road complies with all SRA Fire Safe Regulations including roadway surfaces and appropriate turnouts provided no further than 1,320 feet apart. The Road Evaluation did not provide any recommendations.

Tribal Consultation: The project is located in the Bear River Band Rancheria Aboriginal Ancestral Territory. The project was referred to the Northwest Information Center and the Bear River Band. The applicant submitted a Cultural Resource Study prepared by William Rich and Associates dated September 2019. No archaeological, historical, or tribal resources were identified within the proposed cultivation areas or elsewhere on the parcel during the field survey. Standard Inadvertent Discovery Protocol has been included as a recommended condition of approval.

Environmental Review: Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies. The Humboldt County Sheriff's Office rejected the project proposal, citing the applicant as a suspect in a PC 187 case pending with the DA Office. Charges have not been filed to date. The Sheriff's Office has been contacted and invited to attend the hearing should they desire, however there is no evidence that this has any relevance to the findings that the Planning Commission is required to make in order to approve or to deny the project. All other responding agencies have either

recommended approval or conditional approval. (Attachment 5)

CDFW Comments from April 6, 2023

While the California Department of Fish and Wildlife (CDFW) has not provided referral comments or other comments on this project to the Planning Department directly, they did provide comments on this project to a member of the Planning Commission shortly before the April 6, 2023 meeting. Subsequent to that meeting the Planning Department has received a copy of those comments, which are now included in the public record and are attached to this staff report as Attachment 6. These comments indicate several concerns regarding this project. Concerns include a potential expansion, inconsistency between the proposed use of the pond and the LSAA requirements for the pond, inconsistency between the proposed project and the resolution, a transition from full sun outdoor cultivation to cultivation in light deprivation greenhouses, and inconsistent water use estimates. These concerns are addressed below.

The comments from CDFW assert that the cultivation has been expanded by 8,000 square feet. This concern has never been raised by CDFW in communication with staff and it is unclear what information is being utilized as the basis for the expansion allegation. A Cultivation Area Verification (CAV) has been completed and is included as Attachment 7. The CAV documents 22,950 square feet of cannabis cultivation on the property as of November 2015. The CAV notes the aerial measurements and the application information submitted by the applicant have an approximate difference of four (4) percent. This appears to be within an acceptable margin of error, as the CAV approves the Interim Permit for the 24,000 square feet applied for. The applicant has cultivated less than the verified amount for the last few years, primarily as the northern pre-existing cultivation area has remained fallow. There appears to be no evidence of an expansion.

The Final 1600 Agreement (also referred to as Lake or Streambed Alteration Agreement, LSAA, Streambed Alteration Agreement, or Agreement) is included as attachment 4C. Table 1 of the Agreement, found on pages 2-3, refers to the existing 6-million-gallon pond and associated diversionary infrastructure as Pond 1 and POD-1, respectively. The Agreement requires the applicant to cease use of the point of diversion and decommission the existing pond by October 15 of 2024 (for deadline see section 3.2 under reporting measures). The referenced sections in Table 1 also note that “the Permittee may choose to amend the Agreement pending CDFW review and approval of a biological effects analysis of Pond 1 and any necessary restoration or mitigation”. The applicant had expressed interest in pursuing this option, and explicitly stated in the application materials the intent for securing CDFW signoff for use of the pond and approval of the wetland restoration plan. Materials on file with the Planning Department indicate the applicant intends to pursue State Water Board and CDFW approval of the existing 6-million-gallon onstream pond, and prior to publication of the Staff Report for the April 6th hearing Staff received no indication from relevant State Agencies that the pond could not be permitted, nor did any materials on file from the State Water Board or CDFW preclude approval of the pond for irrigation use. The project is conditioned to allow the applicant to pursue CDFW and State Water Board approval for use of the pond during the two-year period outlined in the Compliance Agreement. If the applicant is unsuccessful in obtaining signoff from the relevant agencies within that timeframe the project will purchase hard water tank storage sufficient for adhering to forbearance requirements, and irrigation water for the project will be supplied via an alternate existing water right, and rainwater catchment.

The Resolution attached at the April 6th hearing listed the cultivation as mixed light in a description of the project. Mixed light cultivation is inconsistent with application materials on file, and the remainder of the resolution. All findings in the resolution described the project as outdoor cultivation and associated application materials similarly describe the cultivation as outdoor. The references to mixed light cultivation in the initial project description of the Resolution have been corrected.

Correspondence from CDFW indicates concern that the transition of a portion of the existing cannabis from full sun outdoor cultivation to light deprivation cultivation will result in higher impacts, although the basis for that concern is not indicated. County Ordinance does not make a distinction between full-sun outdoor cultivation and outdoor cultivation in greenhouses and therefore operations have been allowed to convert between the two as appropriate. The application includes restoration work for the existing cannabis cultivation areas, as well as tree restocking and woodland enhancement activities. The proposed location of the relocated cannabis has been reviewed by a qualified biologist who evaluated the site for site conditions and potential geologic hazards. This report concluded the site is low-risk and is not subject to substantial geologic hazards, and existing or proposed improvements are unlikely to have a deleterious impact on the surrounding geologic environment. A Biological Scoping Report was completed, which acknowledged the relocation of cannabis sites, and recommended relevant surveys and mitigation measures to address any potential impacts to wildlife. A seasonally appropriate Botanical Survey Report was also completed for the project, which found no rare or endangered plants within the proposed disturbance areas or elsewhere on the property. Conditions of Approval have been recommended to address any light or noise disturbance (**Conditions B1 and B2**), as well as a condition requiring that 80% of the project power needs be supplied by renewable energy prior to January 1, 2027. Existing cultivation areas are both partly within Streamside Management Area setbacks, and the proposed relocation area meets required setbacks. The proposed relocation has been analyzed for impacts to sensitive plant and wildlife species, geologic hazards, and conformance with required setbacks, and conditions have been recommended to reduce greenhouse gas emissions and mitigate any potential light or noise impacts. There is no indication that the relocation as proposed will result in increased environmental impacts.

Water use estimates in the Restoration Plan are 360,000 gallons annually, and in the Cultivation Operations Plan water use estimates are 270,000 gallons annually. The Restoration Plan was last updated in September of 2019. Project materials received in January 2023 updated the estimated water needs based on actual water usage from recent years. Water use estimates from the Restoration Plan are outdated and should be disregarded. Water use estimates in the Cultivation Operations Plan and Staff Report more accurately reflect actual water use.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete conditions of approval.
2. The Planning Commission could deny approval of the requested permits if unable to make all of the required findings. Planning Division staff is confident that the required findings can be made based on the submitted evidence and subject to the recommended conditions of approval. Consequently, planning staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Draft Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Location Maps
 - A. Watershed Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Water Right
 - B. Site Management Plan

- C. 1600 Agreement
 - D. Geologic and Soils Report
 - E. Restoration Plan
 - F. Oak and Woodland Restoration Plan
 - G. Road Evaluation
 - H. Irrigation Line Diagram
 - I. Biological Report
 - J. Botanical Survey
5. Referral Agency Comments and Recommendations
 6. April 6, 2023 CDFW email and annotated agenda submitted to Commissioner Landry
 7. County Cultivation Area Verification (CAV)

Applicant

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Please contact Michael Holtermann, Planner, at mholtermann@co.humboldt.ca.us or 707-268-3737 if you have any questions about the scheduled item.