



COUNTY OF HUMBOLDT

Legislation Text

File #: 22-1322, Version: 1

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Krystal Kings Farms, LLC, Conditional Use Permit and Special Permits

Record Number: PLN-11066-CUP

Assessor's Parcel Number (APN): 221-011-021

8200 Salmon Creek Road, Miranda area

A Conditional Use Permit for 18,300 square feet (SF) of existing mixed-light cultivation. Ancillary propagation totals 1,830 SF. Water sourced for cultivation occurs from a point of diversion on an unnamed Tributary of Salmon Creek and from rainwater catchment. Total proposed irrigation water storage is 205,000 gallons. Drying and curing occurs on-site while other processing will occur off-site. Power is provided by a generator. The Planning Commission will consider an addendum to a previously adopted Mitigated Negative Declaration.

RECOMMENDATION(S):

That the Planning Commission:

1. Describe the application as a Public Hearing
2. Survey the audience for any person who would like to discuss the application.
3. Open the public hearing, receive, and consider the staff report, and accept public comments; and
4. Close the public hearing; and
5. Adopt the resolution (Resolution 22-__). (Attachment 1) which does the following:
 - a. Finds that the Planning Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CCMLUO) as described by Section §15164 of the State CEQA Guidelines; and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Conditional Use Permit and Special Permits subject to the recommended conditions of approval (Exhibit A); and
 - d. Approves the Cultivations Operations Plan (Exhibit B) and Site Plan (Exhibit C).

DISCUSSION:

Executive Summary: Krystal Kings Farms, LLC, seeks a Conditional Use Permit for 18,300 square feet (SF) of existing mixed-light cultivation and 1,830 SF of ancillary propagation 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 proposed project also includes Special Permits for development within the Streamside Management Area (SMA) for the continued use and maintenance of one (1) point of diversion and

for removal of portions of existing greenhouses located within the SMA and associated restoration. The site is designated as Agriculture General (AG) in the Humboldt County 2017 General Plan Update and zoned Timberland Production Zone (TPZ) and Agriculture Exclusive (AE); however, the portion of the site where cultivation occurs is within the area zoned AE. Cultivation currently occurs in five (5) mixed-light raised bed greenhouses. Under the project and as described in the Cultivation and Operations Plan (Attachment 3), portions of the existing greenhouses will be partially demolished to meet required SMA buffers and two (2) additional greenhouses will be added, for a total flowering canopy of 18,300 SF. Ancillary propagation occurs in a 1,000 SF accessory nursery greenhouse and an 830 SF area within the barn (1,830 SF total). One (1) harvest is anticipated annually for a growing season that extends from March through November. The mixed-light greenhouses will meet all international Dark Sky Standards. The operation will be secured by a locked entry gate and access to the cultivation area is limited exclusively to employees. Additional lighting for the parcel will have direct rays that are confined to the property. Additionally, security cameras are utilized, and an alarm system will be installed.

Drying and curing occurs onsite within one (1) 2,000 SF storage barn structure. No onsite processing or trimming is proposed for the project and cannabis will be sold for sale to a distributor or transported to a licensed processor. Power is provided by one (1) 35 kilowatt (kW) Whisperwatt generator. The generator and fuel will be placed into a 168 SF storage shed. A maximum of six (6) employees will onsite during peak operations.

March 17, 2022, Planning Commission Hearing: This project was previously heard by the Planning Commission on March 17, 2022. The project was continued to a date uncertain to allow the applicant additional time to obtain the appropriate water right from the State Water Resources Control Board (SWRCB). The application for the water right was submitted in February 2021 and has not been issued by the SWRCB. Staff contacted the SWRCB in April 2022 and was told their focus was related to drought matters (see Attachment 3). The agent contacted the SWRCB several times since the last hearing; however, no water right has been issued as of the date of this staff report.

Due to lack of timely response by the SWRCB, staff is recommending the applicant be authorized to cultivate a reduced cultivation area that is supported by rainwater catchment until such time the SWRCB issues the water right. Please see the “Water Resources” section below for further discussion.

Cultivation and Nursery Space: As noted above, the application is for 18,300 SF of existing mixed light cannabis cultivation and 1,830 SF of existing ancillary propagation. The onsite nursery equates to 10% of the total current cultivation area, which complies with what planning division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). The parcel is over 5 acres in size, the cultivation and propagation areas occur on slopes less than 15%, and the portion of the subject parcel where cultivation occurs is zoned AE, and irrigation water will be sourced from a proposed rainwater catchment system. Therefore, Planning staff supports the use of an ancillary propagation area on-site. Additionally, the cultivation area is in conformance with the cultivation amount previously verified by the County.

Water Resources: Estimated annual water usage is 200,000 gallons (11.11 gal/SF) with peak demand occurring in August and September at approximately 35,000 gallons, respectively, per the table below.

Table 1: Estimated Annual Water Usage (in gallons)

Estimated Annual Irrigation Water Usage by Month (in gallons)
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JAN	FEB	MAR	APR	MAY	JUN	AUG	SEP	OCT	NOV	DEC
---	---	2,500	12,500	20,000	30,000	35,000	35,000	20,000	10,000	---
Total Annual Water Usage								200,000 gallons		

Irrigation water is currently stored in four (4) hard plastic tanks, including two (2) 5,000-gallon tanks and two (2) 2,500-gallons, totaling 15,000 gallons. An additional thirty-eight (38) 5,000-gallon water tanks totaling 190,000 gallons are proposed. One (1) 2,500 gallon for fire storage tank is also present on the cultivation site. Once the additional tanks are added, there will be a total of 205,000 gallons of onsite water storage.

Water for irrigation is currently provided by a point of diversion from an unnamed Class II tributary of Salmon Creek. The applicant seeks a Special Use Permit for the development within the Streamside Management Area (SMA) for continued use and maintenance of the point of diversion. Please note a water right has not yet been issued for use of the point of diversion. However, per the Cultivation and Operations Plan (Attachment 3), the applicant has applied for a Cannabis Small Irrigation Use Registration (SIUR; Application H510517) with the State Water Resources Control Board (SWRCB). Conditions of approval require the applicant to finalize the Cannabis SIUR and comply with all terms and conditions of the appropriate water right (**Condition of Approval A.6**). Projected water diversion for irrigation for cultivation will occur from November to March with the most amount of water being diverted during the months of December and January, outside of the required forbearance period of May 15 -October 31.

In addition, per the Site Plan, a gutter rainwater catchment system is proposed and will be utilized to reduce the reliance on the point of diversion water usage. The roof of the 40'x50' (2,000 SF) barn structure (used for the drying, nursery, and AG storage) will act as the rainwater catchment system. The average rainfall for the project area is 56.95 inches (4.74 feet), based on averaging rainfall values from 2011 through 2020 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every 1-inch of rainfall, or 0.62 gallons/SF. With a total impermeable rainwater catchment area of 2,000 SF and an average rainfall amount of 56.95 inches, the potential capture amount totals 70,618 gallons per year on average. The 70,618 gallons captured through the rainwater catchment system will be stored in hard-sided water storage tanks. Once the rainwater catchment system is operational, the reliance of the water diversion for irrigation will lessen by approximately 35.3 percent, which includes supporting the ancillary nursery space.

As a current water right is not currently in place for the project, Planning staff is recommending the applicant be authorized to cultivate a reduced cultivation area that is supported by rainwater catchment until such time the SWRCB issues the water right. As noted above, there is a potential to capture 70,618 gallons per year on average. This represents 35% of the annual water demand for 18,300 SF of cultivation. Therefore, Planning staff recommends the applicant be authorized to cultivate 5,490 SF of cannabis until such time the water right is issued. A similar reduction in the propagation area would be required as well, to 549 SF (which equates to 10% of the cultivation area). The applicant will be required to adhere to and implement requirements of the SWRCB, including the seasonally appropriate time to divert water. Meaning, if the water right were to be issued after April 1, 2023, the applicant would not be allowed to divert water until the following fall/winter and may have a reduced cultivation area for two (2) cultivation seasons or more. Conditions of approval require the applicant to obtain building permits (as applicable), install a minimum of 55,618 gallons to bring the site's water storage amount up to the potential rainwater catchment amount (70,618 gallons), and demonstrate the water storage tanks are full prior to the beginning of the 2023 cultivation season. In addition, the tanks shall be located in a previously disturbed area outside of all required SMA buffers (**Condition of Approval A.7**).

A Final Streambed Alteration Agreement (FSAA) with the California Department of Fish and Wildlife (CDFW) was issued (Notification No. EPIMS-HUM-20027-R1C) in August 2021 for six (6) encroachments on the project parcel. One (1) encroachment is for water diversion from an unnamed tributary to Salmon Creek, which is diverted for irrigation use. The project work for the water diversion will include installation, use, and maintenance of the water diversion infrastructure compliant with the terms of the FSAA and SWRCB permitting requirements. One (1) encroachment is for an SMA buffer zone encroachment, which will include reducing the length of two (2) greenhouses and cultivation area, and seeding and mulching the exposed native soil. The four (4) other proposed encroachments are to upgrade failing or undersized stream crossings. Work for these encroachments will include excavation, removal of the failing crossings, replacement with new properly sized crossings, backfilling and compaction of fill, and rock armoring as necessary to minimize erosion. A condition of approval is recommended to require the applicant adhere to and implement the FSAA and comply with all applicable terms (**Condition of Approval A.17**). By adhering to the terms and conditions of the appropriate right (once finalized), which limits the amount of water that can be diverted and the FSAA, which limits the diversion amount and duration in addition to the specifying the use of intake structures that will not impact aquatic species, Planning staff determined that impacts to the watershed are minimized allowing the use of the point diversion pursuant to a Special Permit.

A Water Resource Protection Plan ((WRPP); WDID 1B16553CHUM) was prepared for the site by Pacific Watershed Associates in February 2017 (Attachment 3), which details existing site conditions, how the property is or will meet the elements and compliance with the twelve (12) standard conditions established by the North Coast Regional Water Quality Control Board's (NCRWQCB) Order No. 2015-0023, how the applicant is implementing the Best Management Practices (BMPs) measures listed in the NCRWQCB's Order, and remediation efforts needed to bring the operation into compliance. As detailed on the WRPP map, one (1) Class II watercourse that is an unnamed tributary of Salmon Creek traverses the northwest portion of the subject site. Several corrective actions were identified in the WRPP needed in order to bring the site into compliance with the NCRWQCB Order, including but not limited to road drainage improvements; relocation of greenhouses outside of the required SMA buffers and associated restoration; spoils management; water use monitoring and recording; registration of the water diversion with the SWRCB; recording timing and use of fertilizers, soil amendments, pesticides, and herbicides utilized; proper fuel storage; and installation of an onsite wastewater treatment system. The project is conditioned to implement all remaining corrective actions detailed in the WRPP (**Condition of Approval A.15**).

Additional conditions of approval require the applicant to submit copies of all documents filed with the State Water Resources Control Board, including, but not limited to, a Site Management Plan (SMP) and Notice of Applicability, and adhere to and implement the requirements contained in the SWRCB's Cannabis Cultivation Policy, the General Order, the Site Management Plan (SMP), and the Notice of Applicability (**Condition of Approval A.20**), which will minimize any potential impacts associated with the project and minimize runoff into nearby SMAs.

Proposed Removal of Greenhouses Outside of SMA Buffers: As described in the Cultivation and Operations Plan (Attachment 3), the project also includes removal of portions of five (5) existing greenhouses (two 40'x135' and three 20'x120') currently located within the required Streamside Management Area (SMA) buffers. It is noted that a 10-foot portion from the two (2) 40'x135' greenhouses and a 35-foot portion from the three (3) 20'x120' greenhouses will be removed to meet the SMA setback. Under the project, additional 20'x55' and 20'x60' greenhouses will then be added for a total flowering canopy of 18,300 SF. Conditions of approval require the removal to occur without the use of heavy equipment and to provide evidence to the Planning Department that the removal has occurred (**Condition of Approval A.9**). Additionally, the two (2) additional greenhouses described in the Cultivation and Operations Plan shall also be placed on a previously

disturbed area without the use of heavy machinery (**Condition of Approval A.10**).

Restoration of the disturbed SMA areas is recommended in the WRPP prepared by Pacific Watershed Associates in February 2017 (Attachment 3), including the following:

“Plant the riparian buffer disturbed by the greenhouse pad/s with native tree seedlings and maintain until they are self-sufficient.”

As previously discussed, a condition has been included to require implementation with all remaining corrective actions detailed in the WRPP, which will require verification from a qualified professional that all remaining corrective actions have been addressed to their satisfaction (see **Condition of Approval A.15**).

Biological Resources: A *Biological Resource Assessment*, prepared by Corrina Kamroff on May 20, 2021, assessed the habitats and potentially occurring special-status species, as well as identified potential impacts of previous and proposed cultivation related activities on biological resources on the subject property. The Biological Assessment Area (BAA) included a 1.3-mile buffer area around the property. The Assessment considered off-site impacts to habitats and species that may be in the BAA. An inventory of special-status animal and plant species to consider was obtained from the CDFW’s California Natural Diversity database (CNNDDB) Biogeographic Information and Observation System (BIOS) for the project area. As noted in the Assessment, the subject property is located approximately 0.15 miles north of Salmon Creek, and there are multiple Class II and Class III tributaries that flow through the parcel. The site was evaluated for potential habitat value to protected, endangered, threatened, rare, and sensitive species by surveying the project area to observe species, habitat types, and habitat quality. Results of the Assessment found that no rare threatened or endangered animals or plants are present within 1,000 feet of the Cultivation Area as per the 2021 CNDDDB web search. Additionally, per the Assessment, there are no documented Northern Spotted Owl (NSO) activity centers within the 1.3-mile BAA of the cultivation site. However, there is the potential for numerous special status wildlife species to occur within the BAA, including thirteen (13) birds, fifteen (15) mammals, six (6) reptiles and mammals, six (6) fish, and two (2) invertebrates. Mitigation measures are recommended to reduce potential impacts to sensitive species and wildlife movement associated with current and planned operations on the property, including seasonally-appropriate botanical surveys, reducing noise and light pollution, and use of low-risk exempt pesticides. The project is conditioned to comply with the recommendations contained in the Biological Resource Assessment (**Condition of Approval A.19**).

CDFW provided comments on the project in February 2019, which requested additional information regarding the project’s water and power supply, and requested protocol level surveys should any new ground disturbance be proposed, assume NSO presence, and include recommended conditions of approval. Planning staff provided a response to CDFW comments in January 2022 (see Attachment 4).

No additional ground disturbance is proposed under the project. The project proposes mixed-light cultivation and is conditioned to ensure any lighting adheres to Dark Sky Association standards (**Condition of Approval A.23**). The project is conditioned to refrain from using synthetic netting, to ensure refuse is contained in wildlife-proof storage, and to refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval A.24-25 and B.4-5 and B.7**).

Additionally, power will be provided by one (1) 35 kW Whisperwatt generator. Manufacturer's specifications of the Whisperwatt generator model is rated to be 65 dBA at a 23 feet (full load) distance, and the generator is over 600 feet from the property line. The Whisperwatt generator is placed into an enclosure with secondary containment structure that provides further noise attenuation. The Whisperwatt generator model manufacturer’s specifications measured sound level of 65 dBA at one-quarter load. Performance standards for noise are set by

Department Policy Statement No. 16-005 clarifying CMMLUO Section 314-55.4.11(o) Humboldt County Code which states noise levels shall not exceed 50 decibels (dB) at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer. As a result, the project is conditioned to ensure the combination of background, generator, or other operational equipment created noise meets the noise level threshold and use a noise containment structure for the onsite generator (**Conditions of Approval A.21 and B.1**). Conformance will be evaluated using current auditory disturbance guidance prepared by the United State Fish and Wildlife Service (USFWS). Additionally, conditions of approval require the applicant to cease generator use to support operations by 2026. The applicant shall submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.11**).

As proposed and conditioned, the project is consistent with CCLUO performance standards and will not negatively impact NSO or other sensitive species.

Timber Conversion: A Less Than Three Acre Conversion Mitigation Plan was prepared in May 2021 by Hohman and Associates Forestry Consultants for conversion that occurred in the center portion of the parcel to the northern portion of the project site (see Attachment 3). The Conversion Exemption noted that the parcel consisted of a matrix of Douglas fir, Oregon white oak, California bay, incense cedar forest and grassland. Tree species present consists primarily of even-age second growth Douglas fir, white oak, bay, and cedar. Per the Report, a total of 1.53 acres of timber conversion has occurred on the project site: 0.18 acre was converted between 1993 and 2005 for the current building site area, 1.05 acres of timberland was converted between 2010 and 2012 for a proposed cultivation site, 0.23 acre was converted from open grassland since 6/12/1993 for the proposed cultivation site, and 0.09 acre was converted between 2010 and 2012 for a water tank storage the project site. Therefore, all timber conversion occurred before January 1, 2016 (i.e., the established CEQA baseline for CMMLUO). Fourteen (14) recommendations were included in the Report for items identified as being in conflict with the Forest Practice Rules or have the potential to cause environmental damage. The project is conditioned to implement all remaining corrective actions identified in the Less Than Three Acre Conversion Mitigation Plan (**Condition of Approval A.16**). No additional tree removal is proposed or authorized by this permit.

Access: Access to the site is by way of a private driveway via Salmon Creek Road (partially County-maintained and partially privately maintained). The access road extends through the property and terminates in the northeast portion of the parcel. Road Evaluation Reports were prepared by Steven Luu (SL Consulting Services, Inc.) in July 2021 (Attachment 3) for a 2.35-mile segment of Salmon Creek Road (from the transition from asphalt to gravel) to the property line of APN 221-071-043 (at the end of Salmon Creek Road and start of the private driveway) and for a 1.5-mile segment of the private road to the subject property. The Reports indicated the road segments are developed to the equivalent of a road Category 4 standard and are adequate for the proposed use.

A secondary Road Evaluation was conducted by Chapman Engineering in February 2022 (Attachment 3) from the junction with State Highway 101, exit 653 to the project parcel that is accessed from Salmon Creek Road. Comments from the observation maintains that 3.9 miles are paved from Highway 101, exit 653. After the 3.9 miles of paved road, Salmon Creek Road turns into a Category 4 Road with gravel surface to a Category 3 road,

then into a Category 2 Road. Estimated daily traffic for non-cannabis properties was two (2) vehicles trips per day on the project parcel, while estimated daily traffic for a single cannabis property was eight (8) vehicle trips per day. A total of estimate traffic at peak season is sixteen (16) vehicle trips. The Report concludes the existing Category 2 road is adequate for all anticipated traffic at peak operations.

Per referral comments received from the Department of Public Works, Land Use Division in February 2018, it is noted that all driveways and public road intersections onto the County road shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance) and that all existing or proposed non-County maintained access roads that will serve as access for the proposed project be improved to current standards for a commercial driveway, which have been included as conditions of approval (**Conditions of Approval A.13-14**).

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43: Planning staff determined approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43, which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 298 permits and the total approved acres would be 60.43 acres of cultivation.

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).

Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit (CUP) and Special Permits (SP)

Project Description: A Conditional Use Permit for 18,300 square feet (SF) of existing mixed-light cultivation within seven (7) greenhouses and 1,830 SF of ancillary propagation. Estimated annual water usage is 200,000 gallons (11.11 gal/SF). Irrigation water is sourced from one (1) point of diversion on an unnamed Class II tributary of Salmon Creek. A gutter rain catchment system will also be developed to capture rainwater off the 40'x50' (2,000 SF) barn to reduce reliance on the diversion. Existing available water storage is 15,000 gallons in a series of hard-sided tanks, with an additional 190,000 gallons proposed, for a total of 205,000 gallons of onsite water storage. One (1) 2,500-gallon for fire storage tank is also present on the cultivation site. Drying will occur in an existing a 40'x50' barn, with all other processing occurring offsite at a licensed processing or manufacturing facility. Power is provided by a generator. A maximum of six (6) employees will be onsite during peak operations. The proposed project also includes Special Permits for development within the Streamside Management Area (SMA) for the continued use and maintenance of the one (1) point of diversion on the project parcel and for removal of portions of existing greenhouses located within the SMA and associated restoration.

Project Location: The project is located in the Humboldt County, in the Miranda area, on the north side of Salmon Creek Road, approximately 1.7 miles west from the intersection of Rossi Ranch Road and Salmon Creek Road, on the property known as 8200 Salmon Creek Road of Section 1, Township 03 South, Range 02 East, H. B. & M.

Present General Plan Land Use Designation: Agriculture General (AG); Density: 20-160 acres per unit;

Slope Stability: High Instability (3).

Present Zoning: Timberland Production Zone (TPZ) and Agriculture Exclusive (AE)

Environmental Review: An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per §15164 of the State CEQA Guidelines.

State Appeal: Project is NOT appealable to the California Coastal Commission.

Major concerns: None.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either recommended approval or conditional approval.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.
2. The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the MND for the CMMLUO as stated above. However, the Commission may reach a different

ATTACHMENTS:

1. Draft Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Location Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Water Rights Protection Plan
 - B. Lake and Streambed Alteration Agreement
 - C. Timber Conversion Mitigation Plan
 - D. Road Evaluation Report
 - E. Chapman Engineering Road Evaluation
 - F. Biological Resource Assessment
5. Referral Agency Comments and Recommendations
 - A. Building Inspection
 - B. DEH Referral Response
 - C. CDFW Referral Comments
 - D. Staff Response to CDFW Comments

