



# COUNTY OF HUMBOLDT

For the meeting of: 4/20/2023

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File #: 23-542

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**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Consent

**SUBJECT:**

Humboldt Kingz, LLC  
Assessor Parcel Number(s) (APN) 216-135-008 & 216-136-004  
Record No.: PLN-12125-CUP  
New Harris area

The applicant is seeking a Conditional Use Permit for 37,250 square feet of outdoor cannabis cultivation. The project also involves a Special Permit for proposed restoration work within Streamside Management Area (SMA) setbacks. Outdoor cannabis cultivation will occur in light deprivation greenhouses and full sun. There will be maximum of two cultivation cycles occurring annually. Water for irrigation is currently provided by a well and rainwater catchment in hard sided tanks totaling 15,000 gallons. Water for irrigation will be provided by a 6-million-gallon on-stream reservoir after approval by the State Water Board and CDFW, or rainwater catchment utilizing the rooftops of the cultivation structures and 400,000 gallons of rainwater catchment tanks (15,000 gallons existing and 385,000 gallons proposed). If approved the pond will also provide water for a proposed cannabis project on a separate legal parcel (PLN-12124-CUP). The applicant anticipates 400,000 gallons of water will be required annually for irrigation. Water storage onsite totals 6,015,000 gallons whereas 6 million gallons is from a 6-million-gallon onstream pond, and 15,000 gallons is sourced from hard tanks. Proposed water storage is 400,000 gallons in hard tanks if the on-stream pond cannot be permitted. Processing such as drying and curing are proposed onsite within an existing 1,440-square-foot dry shed. Further processing such as trimming is proposed offsite at a licensed processing facility. The applicant anticipates two (2) full-time employees, and six (6) seasonal employees will be required for a total of eight (8) employees at peak operations annually. Power for the project is currently provided by solar power and a generator. The applicant has been approved for DCC water and energy grants and is proposing to install a 15kw solar array to reduce generator and fuel use by 88%. The applicant is proposing to transition generator use to PG&E power if available within five years.

**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 Humboldt Kingz, LLC project (Attachment 3); and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Conditional Use Permit and Special Permit subject to the recommended conditions

of approval (Attachment 1A)

**DISCUSSION:**

**Project Location:** The project is located in Humboldt County, in the New Harris area, on both sides of Harris Road, approximately 2.1 miles north from the intersection of Bell Springs Road and Harris Road, on the property known to be in the east half of the northeast quarter of Section 19 and the west half of the northwest quarter of Section 20, Township 04 South, Range 05 East.

**Present General Plan Land Use Designation:** Agriculture Grazing (AG), 2017 General Plan, Density: 40 acres per unit, Slope Stability: High Instability (3)

**Present Zoning:** Agriculture Exclusive (AE), Special Building Site 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:** Humboldt Kingz, LLC seeks a Conditional Use Permit to allow the continued operation of 37,250 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). The project also involves a Special Permit for proposed restoration work within the Streamside Management Area (SMA). Outdoor cannabis cultivation will occur in light deprivation greenhouses and full sun. There will be maximum of two cultivation cycles occurring annually. Propagation will take place within a proposed 3,700-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 within an existing 1,440-square-foot dry shed. Further processing such as trimming is proposed offsite at a licensed processing facility. The applicant anticipates two (2) full-time employees, and six (6) seasonal employees will be required for a total of eight (8) employees at peak operations annually. Power for the project is currently provided by solar power and a generator. The applicant has been approved for DCC water and energy grants and is proposing to install a 15kw solar array to reduce generator and fuel use by 88%. The applicant is proposing to transition generator use to PG&E power if available within five years. If PG&E is not available the applicant has proposed to continue developing solar power onsite. Noise levels shall not exceed 60 decibels at the property line.

Previous iterations of the project proposal included the construction of a rainwater catchment pond, however after relevant referral responses the applicant has abandoned the proposal of constructing an additional on-site pond. As a result, some recommendations included in Attachment 1A will only include pertinent recommendations from technical reports (conditions referencing technical reports will exclude recommendations regarding pond construction).

**Water Resources:** Water for irrigation will be provided by an existing on-stream pond and rainwater catchment utilizing the rooftops of the existing structures. The on-stream pond is associated with a wetland restoration plan that will reduce the surface area of the pond by an estimated 10,000 square feet. After restoration work is completed the pond capacity is expected to be 6 million gallons. The applicant anticipates 400,000 gallons of water will be required annually for irrigation. Water storage onsite totals 6,015,000 gallons whereas 6 million gallons is from a 6-million-gallon onstream pond, and 15,000 gallons is sourced from hard tanks. The applicant submitted an Initial Statement of Water Diversion and Use for the use of the 6-million-gallon onstream pond for cannabis irrigation. The applicant is working with CDFW and the State Water Board to register the pond as an onstream reservoir to be utilized for water storage. If approved as an on-stream reservoir by the State Water Board and CDFW the applicant will be required to bypass all inflow to the pond during the annual forbearance period.

In the event that the pond cannot be utilized as an onstream reservoir, the applicant is conditioned to obtain appropriate water storage and utilize rainwater catchment as the sole source of irrigation water for cannabis cultivation. Rainwater catchment calculations submitted by the applicant demonstrate appropriate amounts of irrigation water can be collected during both years of average precipitation and drought years.

**Biological Resources:** According to the California Natural Diversity Database (CNDDB), the foothill yellow-legged frog is the only specie of concern mapped on the parcel. The nearest Northern Spotted Owl (NSO) activity center (HUM0223) is located approximately 2.82-miles southeast from the project site and the nearest mapped NSO observation is located approximately 2.43-miles southeast. Marbled murrelet habitat is mapped approximately 2.47-miles southeast from the project site. Power for the project will be sourced from solar with an emergency backup generator that will be contained and the combined decibel level for all noise sources, including generators, measured at the property line shall be no more than 60 decibels. Light for propagation activities shall adhere to the International Dark-Sky Association standards.

The applicant submitted a Botanical Survey Report prepared by Hohman & Associates Forestry Consultants dated October 16, 2019. The survey concluded there were no protected rare or endangered plants identified within the proposed disturbance areas or elsewhere on the Journey Aquarian property. The area consists of grasslands, oak woodlands, and Douglas fir forest. The survey also identified wetlands, including an artificial pond.

The applicant submitted a Wetland Restoration Plan prepared by James Regan (Botanist/Wetland Delineator) dated August 2019. According to the survey, an approximate 40-acre area surrounding the pond was surveyed to map the watercourses that could affect the pond and would have been part of the historic hydrologic system. The survey states all mapped watercourses in the subject areas showed at least two of the three primary indicators of Ordinary High Water Mark (OHWM), which include a break in slope, a change in sediment profile, or a change in sediment from fines and organics outside the OHWM and loose gravels and small cobble within (some larger rocks were present when creeks were down-cut or deeply incised). The assessment of historic wetlands and waters impacted by the pond creation was conducted by interpretation of historic aerial imagery and assessment of images in contrast with the current hydrologic regime (wetland and watercourse locations). The results of the assessment concluded 12,454 square feet of wetlands were impacted due to the construction of the pond. The proposed restoration activities will take place in two areas: Restoration Area 1 and Restoration Area 2. Restoration Area 1 is currently composed of a portion of the current pond, access road, and the portions of the area outside of the access road, that are not currently classified as wetland areas. The area covers approximately 18,140 square feet and partially overlays the historic wetland areas. Restoration Area 2 is currently composed of a mix of native and non-native range grasses with small perennial watercourse running down the length. Restoration Area 2 is approximately 6,770 square feet and will extend on both sides

of the watercourse between two existing wetland areas. The proposed restoration activities within Restoration Area 1 include altering the current pond outlet to reduce the size of the pond. This action will expose a portion of the ponded area (approximately 10,000 square feet). The road that makes up the current bank of the pond shall be decommissioned and spoils either incorporated into the wetland design or moved offsite. Restoration Area 1 shall also be shaped and graded necessary and potentially ripped and prepped for planting. The final site shape will be shallowly concaved and will allow for water inputs to be retained before moving on to fill the new pond. The site will be planted with a mix of appropriate native plants suited for wetland habitats in the region. The proposed restoration areas within Restoration Area 2 will include the grading off of current grassland vegetation, shaping the site to a shallow concave topography while allowing the current stream channel to persist, and planting the area with a mix appropriate native plants suited for wetland habitats in the region. The area may be ripped to facilitate planting. Additionally, the restoration plan states there are additional areas planned for restoration planting include the confluences of mapped creeks entering Restoration Area 1 and the berm along the northern and western boundaries of the site. Within this area the applicant will be planting willow (*Salix sp.*), Oregon ash (*Fraxinus latifolia*), and California bay laurel (*Umbellularia californica*) may be planted in strategic locations to provide bank stability, aid in erosion control, and provide additional habitat structure and diversity. The applicant submitted a finalized Streambed Alteration Agreement (Notification no. 1600-2018-0422-R1) for the proposed instream activities. The project is conditioned for the applicant to adhere and implement all recommendations found within the Wetland Restoration Plan.

**Cannabis Restoration Plan:** The applicant submitted a Restoration Plan prepared by NorthPoint Consulting Group, Inc. dated September 2018. According to the Restoration Plan, there are seven (7) cultivation sites identified as “Areas A-G” located on the parcel, however there are four areas (C, E, F, and G) that need to be altered or removed entirely to comply with riparian setbacks. Lastly, Area A needs to be altered due to the proximity to the property line. Area A historically had approximately 7,000 square feet of outdoor cannabis cultivation and light deprivation cultivation in a 30’x50’ greenhouse. The plan proposes to relocate the 30’x50’ greenhouse to Area H or I do to the proximity to the property boundary. Area C historically had approximately 6,000-square-feet of outdoor cannabis cultivation. The plan proposes to reduce the 6,000-square-feet to 2,700-square-feet to comply with a 50 foot riparian buffer off a Class III watercourse near the north side of the cultivation area. Area E historically had approximately 2,800 square feet of outdoor cultivation but is located within a riparian setback from a Class III watercourse. All cultivation-related equipment will be completely removed from this area and the area will be restored with natural vegetation. The applicant is proposing to relocate a total of 12,000 square feet of cannabis cultivation to two environmentally superior areas: Area H and Area I. According to the relocation justification, cultivation Area H is located 200 feet from the nearest watercourse (Class II drainage) and cultivation Area I is located over 100 feet from the nearest watercourse (Class II drainage). Both sites are also located on slopes of less than 10%.

The applicant submitted an Engineering Geologic Evaluation and Soils Report that evaluates the existing pond and the proposed cannabis relocation area H. The report found that the parcels are low-risk sites not subject to substantial geologic hazards. Existing and proposed improvements were found to be unlikely to have a deleterious impact on the surrounding geologic environment. Specific recommendations and generic recommendations for site preparation and earthwork are included. The report also included recommendations regarding pond construction, however the applicant has abandoned the proposal to construct a new pond.

**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 February 2020. As a result of the field survey, two Native American archaeological sites and an isolated artifact were identified. According to the investigation WRA-01 (Aquarian Site 1) is located adjacent to the existing cultivation area “Area C” in APN 216-136-004. The roadway within the site should not be graded further and the imported road base should be maintained to avoid erosion of underlying strata. At this location, the direct cultivation area contains a three-foot-deep grade in the hillslope on the north edge of the garden, west of the archaeological site, no artifacts were found within the cultivation area. The road shall not be widened, expanded or otherwise changed within the archeological site boundary. The project has an ongoing condition to include inadvertent archaeological discovery language. Area F historically had approximately 7,500 square feet of cultivation. The area is located entirely within the 100-foot setback from a Class II watercourse and 50 feet from a Class III drainage. All cultivation-related equipment will be completely removed from this area and the area will be restored with natural vegetation. Area G historically had approximately 11,660 square feet of cannabis cultivation and will be reduced to approximately 8,650 square feet of cultivation, whereas 6,400 square feet will be cultivated utilizing light deprivation techniques. Cannabis is being reduced due to the proximity of a Class III drainage.

**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 additional input has been requested if appropriate. 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 and inconsistency between the proposed use of the pond and the LSAA requirements for the pond.

The CDFW comments indicate that the total area in 2015 was 30,000 square feet as opposed to the 37,250 that is presented in the staff report. CDFW also states that there is no Cultivation Area Verification. It is unclear what evidence CDFW is referring to, and the statement that there is no CAV is false. It is not unusual for CDFW staff to ask the County for the CAV information while reviewing an application, and it is therefore concerning that a statement of a CAV not being available would be made without simply reaching out to

Planning staff first. A Cultivation Area Verification (CAV) was completed in March of 2018, and documents 37,232 square feet of cannabis cultivation on the property as of November 2015. This CAV is attached to the staff report as Attachment 7. Aerial measurements and application amounts display an approximate difference of one-twentieth of a percent (0.05%). This is an acceptable margin of error, and as such an Interim Permit for the 37,250 square feet applied for was issued. 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, refer 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 is conditioned purchase hard water tank storage sufficient for adhering to forbearance requirements, and irrigation water for the project will be supplied via rainwater catchment.

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. Site Management Plan
  - B. Notice of Applicability
  - C. Streambed Alteration Agreement
  - D. Road Evaluation

- E. Wetland Restoration Plan
- F. Restoration Plan
- G. Botanical Survey
- H. Geologic Evaluation
- 5. Referral Agency Comments and Recommendations
  - A. DEH
  - B. Sheriff
- 6. April 6, 2023 CDFW email and annotated agenda submitted to Commissioner Landry
- 7. County Cultivation Area Verification (CAV)

Applicant

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Owner

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