



# COUNTY OF HUMBOLDT

For the meeting of: 2/4/2025

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File #: 24-1615

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Departmental - Received Too Late For Review (TLFR)

**Vote Requirement:** Majority

**SUBJECT:**

Appeal of Suspension of a Conditional Use Permit and Revocation of a Conditional Use Permit for Cannabis Cultivation.

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Adopt the resolution (Attachment 1) which does the following:
  - a. Finds the permit has been exercised contrary to the terms and conditions of permit approval; and
  - b. Finds the use for which the permit was granted has been conducted as to be a public nuisance; and
  - c. Revokes the Conditional Use Permit pursuant to Section 312-14 of the Humboldt County Code.
2. Direct the Clerk of the Board to give notice of the decision to the permit holder, the Planning and Building Department, and any other interested party.

**STRATEGIC PLAN:**

This action supports the following areas of your Board's Strategic Plan.

Area of Focus: Sustainable Natural Resources & Infrastructure Stewardship

Strategic Plan Category: 9999 - Core Services/Other

**DISCUSSION:**

**Executive Summary**

This item requests the Board of Supervisors revoke an approved Conditional Use Permit (CUP) for cannabis cultivation because the site has been operated in violation of the conditions of approval, most significantly using a water source that is an illegal diversion of water (Little Larabee Creek.) Other conditions of this permit have not been complied with, including disposal and storage of hazardous materials and refuse and the requirement to do drawdown testing on the permitted well. The water diversion is significant particularly since this was a concern expressed by the California Department of Fish and Wildlife during consideration of the permit.

Additionally, the permit holder is appealing the Planning Director's October 31, 2024, suspension of the permit, which was primarily related to the illegal diversion from Little Larabee Creek.

## Project History

The Conditional Use Permit (CUP) (Application No. 12280) currently held by Mana Farms, LLC, is for 10,000 square feet (SF) of existing outdoor cannabis cultivation approved by the Humboldt County Planning Commission on July 1, 2021. The permit included conditions which must be satisfied to bring the site into compliance with current regulations and conditions imposed for the operational life of the project. The location of this project is east of Bridgeville, within the Little Larabee Creek Watershed, along State Highway 36.

The CUP authorize a 10,000 SF of outdoor cannabis cultivation with an ancillary nursery, drying and curing onsite with further processing offsite. Power is provided mainly by solar, with a backup generator. The approved irrigation water source is a permitted well. The CUP conditions requiring actions to bring the site into compliance were incorporated into a Compliance Agreement executed on October 7, 2021, with items to be completed within a two-year period.

The Department conducted annual compliance inspections in 2022, 2023 and two in 2024 (August 9 and October 24). The 2022 and 2023 Inspection Reports (IR) show non-compliant issues for storage of potentially hazardous materials and for artificial lighting in the light-deprivation greenhouses. The lighting was low wattage lighting normally used to influence the flowering process. The ordinance defines mixed light as any supplemental lighting. An outdoor cannabis permit does not allow use of any lighting in the flowering area. The permit holder later provided time-certain photo evidence that the lighting was removed on November 23, 2023, in compliance with the deadline given.

During the August 9, 2024, inspection, it was noted that the permit holder needed to clean up discarded monofilament netting, record and submit water usage to the California State Water Board and the Humboldt County Planning Department, as well as complete the required Compliance Agreement (CA) items. Several Conditions of Approval had yet to be completed by the permit holder. These conditions included obtaining building and grading permits, completing property surveys to ensure proper setbacks, professionally installing the solar system, and completing all corrective actions detailed within the Water Resources Protection Plan. An extension was provided allowing until October 2025 for all items to be completed. It is not uncommon to allow an extension when efforts are evident that work is underway to comply with the conditions. Market conditions have made it difficult for many farmers to satisfy the conditions.

The October 24, 2024, inspection was not a scheduled inspection but was a warrant inspection served by the California Department of Fish and Wildlife (CDFW), accompanied by Department staff, Humboldt County Sheriff's Office Marijuana Enforcement Team, the California State Water Resources Control Board, and investigators from the California Department of Cannabis Control. The warrant was issued based on evidence of an illegal water diversion from Little Larabee Creek for APN 208-111-028 (the subject site) and a suspected illegal cannabis operation on an adjacent parcel (APN 208-111-022).

The inspection confirmed that water was being diverted from Little Larabee Creek to irrigate cannabis on the subject site. A water pump and fuel tank were located within Little Larabee Creek. The pump had a hose still in the creek channel, water was still in the discharge line, and a pressure of 25 psi registered on the pressure gauge indicating the pump had recently been used. A one-inch polyethylene pipe ran from the pump along a well-worn trail to the cannabis cultivation site. The pipe ran into tanks storing water for cultivation associated with the approved Conditional Use Permit (PLN-12280-CUP). CDFW subsequently issued violations of Fish and Game Codes 1602 (substantial alteration of a state waterway), 5650 (oil discharge into Little Larabee Creek), and 5652 (disposal of trash into a state waterway) in conjunction with cannabis cultivation.

Other issues were noted including structures not represented on the approved site plan (Condition of Approval (COA) #1b), refuse and discarded monofilament netting around the property and not secured in wildlife resistant waste containers (COA #2b), spent soil not properly contained (COA #21b), used oil filters not properly disposed of (COA #23b), and fuels not properly contained (COA #30b).

Finally, Ongoing condition of approval 15 requires that the groundwater well be inspected annually to evaluate drawdown, and the potential for the well to go dry. This required evaluation was never provided. This condition was imposed at CDFW's request due to concern that if the well was not able to sufficiently provide irrigation water, the permittee would likely divert from Little Larabee Creek. In this case the well drawdown monitoring has not been accomplished so there is no evidence to demonstrate the well is adequate to provide water to the site and equipment was found in the creek providing evidence that water was diverted from Little Larabee Creek and pumped to the water tanks on site. A well drawdown test (see Page 3 of Attachment 13) was submitted after the

date of the warrant inspection and after the date of the permit suspension, however this well drawdown test raises more questions than it answers. It was completed during the wet season and was for only two hours, and it shows substantial drawdown of the well with the well pumping being reduced significantly and the water level being undeterminable less than 1 hour after starting the pump test. This pump test does not demonstrate that the well is capable of producing the water necessary for irrigation of the cannabis throughout the season.

#### Notice to Permit Holder

On Thursday October 31<sup>st</sup>, 2024, a Suspension Letter (attachment #5) was drafted and sent via certified mail to the permit holder's address on file. An email was also sent to the permit holder, and to the permit holder's agent of record. Finally, the Suspension letter was posted on the gate to the property in question for PLN-12280-CUP (attachment #8). An official Board of Supervisors Notice of Hearing letter was originally sent on November 13<sup>th</sup>, 2024, informing the permit holder of PLN-12280 of the upcoming revocation hearing before the Humboldt County Board of Supervisors on December 10<sup>th</sup>, 2024. However, due to unforeseen circumstances and scheduling conflicts, the Revocation Hearing was initially rescheduled for January 14<sup>th</sup>, 2025. The permit holder was notified of the re-scheduled hearing of January 14, 2025, via email and certified mail on December 9, 2024. After conversation between the permit holder and the Planning and Building Director, however, the Revocation Hearing was set for February 4<sup>th</sup>, 2025. The permit holder was notified by email on January 2<sup>nd</sup>, 2025, and a notice was sent via certified mail on January 6<sup>th</sup>, 2025.

#### **Mana Farms Appeal of Suspension and Arguments Against Revocation**

On November 4, 2024, and November 15, 2024, Mana Farm submitted responses, through their agent, to the Notice of Suspension and the Notice of Revocation. Mana Farm argues the following:

1. *Mana Farms states all cultivation was irrigated utilizing the approved well onsite (17/18 0977). A meter was noted to have been installed in the 2022 inspection report, with an updated meter being installed on July 18<sup>th</sup>, 2023, per the permit holder. A waterlog was provided to the Planning Department after the fourth inspection occurred (Attachment 9 page 21). The permit holder's agent also states that "all diversion infrastructure in and near Little Larabee Creek was removed by resource protection agents during the 24 October 2024 compliance inspection".*

The issue is not whether the pump has been removed, the issue is that there is evidence that water was being illegally diverted out of Little Larabee Creek in association with this County approved cannabis cultivation site. The inspection found, a gas generator and water pump with residual pressure showing recent use in Little Larabee Creek with wet polyethylene pipe leading directly to the cannabis cultivation area and water storage tanks. This fact is also noted in the North Coast Regional Water Quality Control Board Notice of Violation letter dated November 22, 2024, (page 14). Furthermore, the reason the unapproved pump is no longer being utilized is that it was seized and removed by the Department of Fish and Wildlife Game Wardens.

The waterlogs provided to the Planning Department in response to the Notice of Appeal (Attachment 9) show that 19,000 gallons of water were used to irrigate 10,000 square feet in 2023 and 46,646 in 2024. The applicant's operation plan projected a water use of 95,000 gallons per season. The estimated water use in the operations plan provided by the applicant is consistent with water use projections for other farms. The actual use shown in the waterlog shows a very low water use. Further, the pump test conducted on November 12, 2024, after the date of permit suspension, does not demonstrate that the well is capable of providing the amount of water necessary to sustain irrigation during the season. There is no evidence that this site has been operated in compliance with the permit. In 2022 a Temporary Cultivation Reduction was filed, and the site was not cultivated.

2. *Mana Farms indicated that they are working to update the current site plan as the permit holder has adjusted the sizes of the cultivation hoops. The agent stated that the permit holder will work with appropriate parties to update site map (Attachment 9, Page 19).*

To date, the revised site plan has not been approved. The site plan submitted to date is not consistent with either the approved permit or with development as it exists on the ground. The site plan fails to show the approved drying area and storage shed near the existing well. Furthermore, the site plan does not reflect the current configuration of the drying and vegging building

near greenhouse #2.

3. *Mana Farm states it is currently operating under an approved Lake and Streambed Alteration Agreement 1602 held by the permit holder. The permit was transferred to Kathy Hall on November 15<sup>th</sup>, 2023 (LSAA Notification No. EPIMS-HUM-04338-R1C)*

It is true that the LSAA 1602 was transferred to the current permit holder. The LSAA is to allow replacement of a culvert. It does not allow diversion of water from Little Larabee Creek. The existence of an LSAA does not address the violations being presented to the Board of Supervisors as grounds for revocation.

4. *Mana Farm indicates that Condition of Approval 15b which states that the well shall be evaluated for drawdown utilizing a standard pump test is not required until the October 2025 extension granted during the past 2024 inspection.*

This statement confuses Condition 15b requiring a yearly drawdown evaluation with conditions imposed to correct unpermitted improvements at the time of permit issuance. The ordinance allows a permit holder one year to develop a plan to address the unpermitted improvements and an additional year to complete the work. Condition 1 of the Planning Commission action specifically identifies these corrective conditions as conditions 2-14 (Attachment 2). The requirement for yearly drawdown testing is not a corrective action but an ongoing action to monitor the sufficiency of the well. This is an ongoing condition that should have occurred yearly since the permit was approved. No such testing has occurred since the permit was approved in 2021. Since no testing has occurred, it cannot be proven that the approved well is functioning properly and providing the required irrigation for cannabis cultivation.

#### **Grounds for Revocation PLN-12280-CUP**

Humboldt County Code Section 312-14.1 Grounds for Revocation states a development permit, or variance may be revoked or modified by the Board of Supervisors after a Public Hearing upon finding that:

14.1.2 *The permit or variance granted is being, or recently has been, exercised contrary to the terms and conditions of such approval, or in violation of any statute, Code section, law, or regulation.*

- a. The permit was granted with two types of conditions, those that must be done within a set time frame and those that are ongoing. The conditions with a time frame were enforced through a Compliance Agreement which has been extended to allow the permit holder to complete the actions specified by those conditions. The permit holder has acted in such a way as to violate the on-going conditions as follows:
- Condition 5(b) taken from the CMMLUO requires 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. This requirement refers to the use of the approved well and other water resources on and around the property. As a result of the October 24, 2024, warrant inspection a Notice of Violation was issued by the Water Board due to the illegal diversion of water from Little Larabee Creek.
  - Comply with the terms of any applicable Streambed Alteration (1602) Permit obtained from the California Department of Fish & Wildlife (COA 11b). This permit includes a 5-year timeline from date of submittal for compilation or request an extension. Neither of these options have occurred. The LSAA issued for the property was to allow replacement of an undersized culvert. This is the limit of what the LSAA allows. To divert water from a stream, an LSAA is required. The absence of this provision in the LSAA does not allow the diversion of water.
  - All refuse shall be contained in wildlife proof containers, always, and relocated to an authorized waste management facility, in compliance with State and local laws, on a regular and on-going basis (COA 23b). This requirement is meant to protect wildlife and the environment at large, particularly in regard to discarded

monofilament (wildlife entrapment) and disposal of hazardous chemicals such as used oil. During the inspections, refuse was found to be uncontained.

- b. The permit holder has failed to provide a copy of the reporting form portion of the Mitigation and Reporting Program (MRP) which is required to be submitted annually to the Planning and Building Department concurrent with the submittal to the SWRCB.
- c. Failure to ensure the groundwater well is inspected annually to evaluate drawdown, and the potential for the well to go dry. The yearly drawdown evaluation is a required ongoing condition to determine if the well is functioning properly and providing the necessary water for irrigation. At this time of permit approval CDFW was concerned that the well due to location was not adequate to provide the water needed and the farmer would be tempted to withdraw water from Little Larrabee Creek. No such testing has occurred since the permit was approved in 2021. Since no testing has occurred, it cannot be proven that the approved well is functioning properly and providing the required irrigation for cannabis cultivation. Equipment for a diversion of water leading to the cannabis site was found and confiscated indicating that the well is not adequate to provide the needed water. In the CDFW inspection report is a picture showing the well is was not connected raising the question of whether it was being used.
- d. COA 22b states generators and associated fuels shall be located outside of the floodplain and a minimum of 150 feet from streams (measured horizontally from the outer edge of the riparian or top of bank, whichever is greater. Generators and associated fuels shall be kept in secondary containment for capturing fuel leaks and located in a housing structure for noise attenuation. These items were found within ten feet of Little Larabee Creek.
- e. The permit holder is required to comply with the regulations of the North Coast Regional Water Quality Control Board. On November 22, 2024, the North Coast Regional Water Quality Control Board sent the permit holder a Notice of Violation which included the record of several violations under The State Water Resources Control Board Order No. WQ 2019-0001-DWQ (Attachment 10), including:
  - Improper storage, handling, and containment of spent waste oil, resulting in threats of discharges to land and threats of discharges to surface water and ground water.
  - Improper storage, containment, and disposal of cultivation related plastic refuse.
  - Improper storage and disposal of potting soil.
  - Steep, poorly maintained roads causing concentration of stormwater runoff, erosion, transport, and delivery of sediment to waters of the state with threats to surface water habitat and water quality.
  - Undersized stream crossings that pose a threat of sediment delivery to surface waters.
  - Refuse and disturbance in riparian setbacks.

14.1.3 The use for which the permit or variance was granted is so conducted to be a nuisance. The manner in which the site has been operated is a nuisance in that the operator has illegally used water from an unpermitted source, potentially depriving fish and wildlife of water supplies, the junk and hazardous materials left around the site (particularly in and adjacent to the creek) have the potential to degrade water quality in Little Larabee Creek and to adversely affect wildlife.

- a. A warrant inspection resulted in the discovery of a water diversion from Little Larabee Creek. This was not a permitted diversion and removal of water from the stream in an unauthorized and unmonitored way has the potential to adversely affect aquatic wildlife.

b. The use of the gas-powered generator and pump introduced gasoline and oil into the aquatic environment of the Creek channel. These materials are hazardous to aquatic species and to wildlife.

c. In two previous inspections the permit holder has been made aware of the need to constrain hazardous materials (COA 24b) and solid waste (COA 23b) but has failed to address this. These chemicals included gasoline, fertilizers, and pest control chemicals. Monofilament netting was found to be uncontained on the site, which could lead to animal entrapment. Inspection reports for 2023 and 2024 reminded the permit holder regarding ongoing issues of hazardous materials being stored improperly and solid waste uncontained on the property.

**SOURCE OF FUNDING:**

There is no identified funding source for this action. This is funded by the General Fund Contribution to department operations.

**FINANCIAL IMPACT:**

There are no funds that have been identified to cover the costs of processing this revocation.

**OTHER AGENCY INVOLVEMENT:**

California Department of Fish and Wildlife, Humboldt County Sheriff's Office, California Department of Cannabis Control, California Water Quality Control Board

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

The Board could choose not to revoke the Conditional Use Permit. The Planning and Building Department does not recommend this because the continued environmental and safety concerns on the property as well as the continued cost of future compliance efforts.

**ATTACHMENTS:**

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the egregious nature of the violations related to the illegal diversion of water from Little Larabee Creek and the manner in which the site has been maintained. If the Board of Supervisors does wish to consider not revoking this permit, it is recommended that the Board continue the item with direction to the applicant to demonstrate that they have an adequate water source either by provide an adequate draw down analysis of the well or providing an alternative water source. The applicant should also finish all the other conditions of approval and clean up all the other violations of the site prior to being able to cultivate on the site. In the meantime, the permit should remain suspended.

1. Draft Board Resolution and Findings PLN-12280-CUP
2. Approved Conditional Use Permit
3. Inspection Reports
  - A. August 9, 2022
  - B. September 2, 2023
  - C. July 26, 2024
  - D. October 24, 2024
4. PLN-12280 Mana Farm Agent Response (ETA Management Group)
5. Letter of Suspension and Permit Revocation PLN-12280
6. Notice of Public Hearing to Consider Revocation Letter
7. Photographic Evidence

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8. PLN-12280 CUP Suspension Letter Posting Photos
9. PLN-12280 Notice of Appeal [11.15.24] (ETA Management Group)
10. Kathy Hall, Rockaway Investments - Notice of Violation, North Coast Regional Water Quality Control Board, Nov 22, 2024
11. Streambed Alteration Agreement - EMPIMS HUM-04338-R1 (1602)
12. State of California Department of Fish and Wildlife Finding Report Nov. 19, 2024
13. Additional information by permit holder dated January 29, 2025 (Well Drawdown Test on page 3 of Attachment)

**PREVIOUS ACTION/REFERRAL:**

Meeting of: July 1, 2021, Planning Commission

File No.: 21-902