

ATTACHMENT 3

**CEQA ADDENDUM TO THE
MITIGATED NEGATIVE DECLARATION FOR THE COMMERCIAL MEDICINAL
MARIJUANA LAND USE ORDINANCE**

**Commercial Medical Marijuana Land Use Ordinance Mitigated Negative Declaration
(MND)
(State Clearinghouse # 2015102005), January 2016**

**APN's 524-114-007;
Willow Creek Area
County of Humboldt**

**Prepared By
Humboldt County Planning and Building Department
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December 2022

Background

Modified Project Description and Project History –

The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) established specific regulations for commercial cannabis operations in Humboldt County. These regulations were developed in concert with the Mitigated Negative Declaration (MND) that was adopted for the ordinance in order to implement the mitigation measures of the MND. The MND addressed the broad environmental impacts that could be expected to occur from the adoption and implementation of the ordinance. The MND specified that the regulations established in the CMMLUO would mitigate the impacts of existing cannabis operations by establishing regulations for an existing unregulated land use to help prevent and reduce environmental impacts that are known to result from unpermitted baseline cultivation operations. Commercial cannabis cultivation in existence as of December 31, 2015 was included in the environmental baseline for the MND and the MND states that “Bringing existing operations into compliance will help to attenuate potential environmental effects from existing cultivation activities, including aesthetic impacts resulting from improper operation or poor siting.” The current project was contemplated by the MND and compliance with the provisions of the CMMLUO will fully mitigate all environmental impacts of the project to a less than significant level.

Project Description: The modified project involves a Conditional Use Permit for 20,000 square feet (sq. ft.) of pre-existing outdoor commercial cannabis cultivation, with 1,902 sq. ft. of ancillary propagation. The project will source water from a permitted well (Permit #11/12-1271), and annual water usage is estimated at 337,364 gallons (15.4 gal/sq.ft./yr.). Power will be sourced by a 2,500-Watt solar array via mobile trailers, and one emergency backup generator will be kept on-site. The project also includes a Special Permit to approve cultivation within 600 feet of Public Lands, the Six Rivers National Forest (SRNF).

The site is equipped with a permitted septic system within the residence on-site (Permit #14/15-0479). The project was referred to the Department of Environmental Health (DEH) on September 20, 2017, and DEH submitted a recommendation of approval on June 8, 2018. Up to four (4) workers will be utilized for operations on-site during peak season during planting and harvesting weeks.

The applicant is proposing to have ten (10) light-deprivation hoop houses for the 20,000 square feet of outdoor cannabis cultivation. The applicant will dry harvested product within the dry shed on-site, and trimming will occur at a licensed third-party processing facility. The applicant shall have documentation kept on-site to show the use of a licensed processing facility, to be furnished during an annual inspection. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: ten (10) outdoor hoop houses, two (2) nursery hoop houses, one (1) storage shed, one (1) dry barn, and one (1) generator shed. Generator sheds must have a concrete floor designed to incorporate containment for fuel leaks and spills which must be located on a stable surface with a minimum 200-foot buffer from Class I and Class II streams. Historic grading has occurred on the site in association with the cannabis cultivation. The applicant is conditioned to permit the historic grading that occurred in association to cannabis activities on-site, with the Building Division.

Setbacks

The project area is located within 600 feet of Public Lands, the Six Rivers National Forest (SRNF). The nearest proposed cultivation area to the SRNF lands is located in the southeast corner of the property. The applicant is requesting a Special Permit to approve a setback reduction from the SRNF parcel boundary to approximately 100 feet to the nearest cultivation area. The project was referred to the SRNF on March 4, 2019, and comments were received on March 6, 2019. Comments from the SRNF included a general letter with the recommendation of denial due to the use of US Forest Service roads, and a parcel survey was requested to ensure that the operations are not trespassing upon or causing impacts to federal lands. There is a Record of Survey on file for the U.S. Department of Agriculture Forest Service, which shows that there is a survey marker located at the southeast corner of the property. A request was made to the applicant to provide data verifying that the proposed cultivation area in the southeast corner of the property is not encroaching onto Federal Lands. Photos were taken of the property survey marker and a tape measure verifying that the southeast cultivation area is approximately 110 feet to the survey marker.

The adjacent public land is subject to the Land and Resource Management Plan - Six Rivers National Forest 1995 (L&RMP). The project is consistent with the L&RMP because the cultivation activities will minimize impacts to biological resources and wildlife through measures to reduce potential light and noise impacts. The applicant obtains power from an on-site solar array, and all cultivation is outdoor and no lights are used. The project is consistent with recreational use on public lands as the proposed project is not located near developed campgrounds, trails, or other related facilities. The project site is more than 600 feet from any school, school bus stop, church or other place of religious worship, or Tribal Cultural Resource.

Fire Safety

The project is located in an area that is designated to have a Very High Fire Hazard Severity. The project is located outside of any local response area, and is within the State Responsibility Area for CalFire. The project was referred to CalFire on September 20, 2019, and no comments were received. The applicant is proposing to have two (2) 2,500-gallon tanks designated for fire suppression, and there is room on-site for a firetruck turnaround. The designated fire suppression tanks shall have the appropriate fire hose that meets CalFire SRA requirements. The applicant shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel on a form provided by the Humboldt County Planning Division. Document review fees as set forth in the schedule of fees and charges as adopted by the Board of Supervisors will be required.

Timber Conversion

It appears that some unauthorized timber conversion occurred on the site between 2009 and 2016. The project was referred to CalFire and no response was received. The applicant had a Timber Conversion Evaluation Report (TCER) prepared by RPF Chris Carroll with Timberland Resource Consulting, dated December 4, 2019. The TCER was sent to CalFire for review on December 1, 2022, and no comments have been received. The TCER states that 1.6 acres of conversion area was converted under Conversion Exemption 1-12EX-226-HUM through historic timber operations that occurred on-site. There are a total of three conversion areas that were evaluated on the site, and there was approximately 0.44 acres of timberland converted post-2016 at Cultivation

Site 1. The applicant is required to restock the 0.44 acres of post-2016 timber converted area on a 1-1-basis. The applicant shall provide a Restocking Plan to the Planning Division, prepared by an RPF for the restocking of 0.44 acres of timberland on the site, and shall adhere to the recommendations in the report.

Energy

Cultivation on-site will be outdoor without the use of supplemental lighting. The applicant will utilize lights within the propagation greenhouses, which will be powered by a 2,500-Watt solar array on mobile trailers. The applicant shall permit the solar array with the Building Division. There will be one emergency backup generator used on-site in the case of emergency only. Drying will occur within the dry shed, which will also utilize the solar array mobile trailer. The applicant shall ensure that the emergency backup generator will not exceed 50 decibels at either 100 feet or the nearest canopy when in use.

Water Resources

The project will source water from a permitted well (Permit #11/12-1271). Annual water usage is estimated at approximately 337,364 gallons (15.4 gal/sq.ft./yr.). There is a total of 12,500 gallons of existing water storage on-site in five (5) 2,500-gallon hard sided tanks, and an additional three (3) 2,500-gallon tanks are proposed for a total of 20,000 gallons of water storage on-site. Two (2) of the proposed tanks (5,000 gallons) will be designated for fire suppression needs, and 15,000 gallons will be designated for irrigation purposes.

The applicant has obtained a Well Assessment Report (WAR) for the well prepared by David Lindberg, dated October 13, 2022. The WAR states that the well has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent springs, wetlands and or surface waters in the vicinity of 1,000 feet of the subject well. The nearest waterway is Mahala Creek which is more than 1,450 feet northwest of the well. The elevation of the well site is 1,800 feet and the well is 200 feet deep. The elevation of Mahala Creek is 1,000 feet, which is 600 feet lower than the total depth of the well. (See the cross section to the right for a visual of the depth of the well compared to nearby water sources.) Per County requirements, a bentonite surface sanitary seal was installed from the surface to 20 feet, which is sealed through any potential shallow subsurface aquifers in the uppermost 20 feet. Depth to first water and static water was reported at 98 feet below the surface in the Well Completion Report, and it was determined that the water source from which the well draws appears to be a confined subsurface aquifer not demonstrably connected to any surface waters or unconfined, near-surface aquifer. The anticipated annual recharge rate for the local aquifer is 19.5 million gallons of water per year. The longevity and sustainability of the well is unknown, but with the anticipated recharge rate of 19.5 million gallons per year for the confined subsurface aquifer, it has been determined that the well meets the needs for the proposed project.

The site contains several Class III streams, and one known Class II stream named Mahala Creek which is tributary to the South Fork Eel River. All cultivation areas are shown to be outside of the streamside management areas. The applicant has enrolled in the State Water Resources Control Board's (SWRCB) General Order for Water Quality No. WQ 2019-001-DWQ. A Notice of Applicability letter was received by the applicant, dated March 5, 2020, showing proof of enrollment under WDID 1_12CC419487. The applicant is required to have a Site Management

Plan (SMP) prepared for the site to show compliance with and mitigation measures required for the site to meet the General Orders standard conditions. The applicant shall submit the SWRCB approved SMP to the Planning Division, and shall implement all corrective actions and adhere to the ongoing recommendations detailed in the SMP.

The Cultivation & Operations Plan states that there are no culverts or stream crossings on the site. The applicant is not required to obtain a Lake or Streambed Alteration (LSA) Agreement with the California Department of Fish & Wildlife (CDFW), but the applicant is required to submit a letter or other verification from CDFW, to the Planning Division, stating that no LSA Agreement is required for the project.

Biological Resources

There is no designated habitat on-site for rare threatened or endangered plant or animal species according to the California Natural Diversity Database (CNDDDB). There is a Northern Spotted Owl (NSO) activity center on the subject parcel, which is approximately 0.44 miles to the nearest cultivation area. The applicant has obtained a Northern Spotted Owl Scoping Report (NSOSR) prepared by Wildlife Biologist Jack Henry with Pacific Watershed Associates, dated December 13, 2021. The NSOSR states that no NSO detections have occurred within the owl territory since 2017 with barred owls being detected the last four years. As the project does not propose any new construction, ground disturbance, or vegetation removal, power will mainly be provided a solar array, and with the applied recommended mitigation measures for covering the lighted nursery, it has been determined that the project would not result in the take of NSO. The applicant shall adhere to the International Dark Sky Standards for the nursery greenhouse, and shall cover with a black-out cover that prevents any light escape if lit during night time hours (30 min prior to sunset and 30 minutes post sunrise).

The project was referred to CDFW on September 20, 2017, and comments were received on March 31, 2019. Comments from CDFW included concerns regarding grading and tree removal that occurred for cannabis cultivation, potential impacts to NSO and other sensitive species, and requested conditions to be added to the project to address these concerns. Conditions have been added to the project in order to address these concerns from CDFW.

Tribal Cultural Resource Coordination

The project site is located within the Tsnungwe and Hoopa Aboriginal Ancestral Territories. The project was referred to the Hoopa Valley Tribe and the Northwest Information Center (NWIC) on September 20, 2017, and to the Tsnungwe Council on March 12, 2019. Comments were received from the NWIC on January 25, 2018, recommending that the local Native American tribes be contacted regarding traditional, cultural, and religious heritage values. Comments were received from the Tsnungwe Council on March 27, 2019, requesting a Cultural Resource Investigation (CRI). The applicant obtained a CRI prepared by William Rich with William Rich and Associated, dated July 2021, which found that no tribal cultural resources were found within the project area. The CRI was submitted to the Tsnugwe Council, and comments were received on September 3, 2021, stating that they had no concerns regarding the proposed project. The applicant shall adhere to Inadvertent Discovery Protocols for the life of the project.

Access

Access to the project site is from Forest Service Route 6N06, from county maintained Friday Ridge Road. The project was referred to the Department of Public Works on September 20, 2017, and comments were received by the agency on April 26, 2018 recommending that the project be referred to the US Forest Service due to the use of Forest Service roads. The project was referred to the SRNF on March 4, 2019, and comments were received on March 6, 2019. The SRNF recommended denial for the project as transportation of cannabis product across National Forest lands is illegal. As the access road is partially County maintained, and partially US Forest Service road, the applicant is not required to upgrade sections of the road that are US Forest Service road. The applicant shall be aware that the Federal Government considers the cultivation of cannabis to be an illegal activity.

The site will mainly be owner operated, but the applicant plans to have a maximum of four (4) workers on-site, which will be used during planting and harvesting activities for up to two (2) weeks out of the year. The applicant anticipates a maximum of fourteen (14) vehicle trips per week during the two weeks that additional workers are on the site. As the site is pre-existing, no increase in traffic is anticipated, and it has been determined that the road meets the functional capacity needs for the project's needs.

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 cultivation permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the South Fork Trinity Planning Watershed, which under Resolution 18-43 is limited to 86 permits and 29 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 24 cultivation permits and the total approved acres would be 10.9 acres of cultivation.

The modified project is consistent with the adopted MND for the CMMLUO because it complies with all standards of the CMMLUO which were intended to mitigate impacts of existing cultivation. These include having a Site Management Plan prepared for the site in line with the State Water Board General Order, restocking post-2016 timberland converted, ensuring project related noise does not harass nearby wildlife, and adhering to International Dark Sky Standards.

Purpose - Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously certified Mitigated Negative Declaration (MND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent EIR or Negative Declaration have occurred. Section 15162 states that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was certified as complete, shows any of the following: A) the project will have one or more significant effects not discussed in the previous MND; B) significant effect previously examined will be substantially more severe than shown in the previous MND; C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Summary of Significant Project Effects and Mitigation Recommended

No changes are proposed for the original MND recommended mitigations. The proposal to authorize the project is fully consistent with the impacts identified and adequately mitigated in the original MND. The project as conditioned to implement responsible agency recommendations, results in no significantly adverse environmental effects beyond those identified in the MND. Compliance with the CMMLUO ensures consistency with the adopted MND and provides for mitigation of all project related impacts to a less than significant level.

In reviewing the application for consistency with the adopted MND, the County considered the following information and studies, among other documents:

- Cultivation & Operations Plan received August 28, 2017.
- Addendum to Cultivation & Operations Plan received December 31, 2021.
- Monthly Water Usage Chart received November 21, 2022.
- Site Plan received November 21, 2022.
- Notice of Applicability letter from the Water Board, dated March 5, 2020.
- Timber Conversion Evaluation Report (TCER) that was prepared by RPF Chris Carroll with Timberland Resource Consultants, dated December 5, 2019.
- Well Assessment Report prepared by licensed geologist David Lindberg, with Lindberg Geologic Consulting, dated October 13, 2022.
- Northern Spotted Owl Scoping Report prepared by Jack Henry with Timberland Resource Consultants, dated December 13, 2021.
- Cultural Resources Investigation prepared by William Rich with William Rich and Associates, dated July, 2021.
- Sewage Disposal System Permit Application #14/15-0479, dated April 3, 2015.
- Road Evaluation Report form prepared by the applicant for Friday Ridge Road and Forest Service Route 6N06, dated December 24, 2021.
- Property Survey Marker Photos and Measurements received January 3, 2023.

Other CEQA Considerations

Staff suggests no changes for the revised project.

EXPLANATION OF DECISION NOT TO PREPARE A SUPPLEMENTAL MITIGATED NEGATIVE DECLARATION OR ENVIRONMENTAL IMPACT REPORT

See **Purpose** statement above.

In every impact category analyzed in this review, the projected consequences of the current project proposal are either the same or less than significantly increased than the initial project for which the MND was adopted. Based upon this review, the following findings are supported:

FINDINGS

1. The proposed project will permit an existing cannabis operation and bring the operation into compliance with county and state requirements intended to adequately mitigate environmental impacts.
2. The circumstances under which the project was approved have not changed substantially. There are no new significant environmental effects and no substantial increases in the severity of previously identified effects.
3. For the current proposed project, there has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted as complete.

CONCLUSION

Based on these findings it is concluded that an Addendum to the certified MND is appropriate to address the requirements under CEQA for the current project proposal. All of the findings, mitigation requirements, and mitigation and monitoring program of the MND, remain in full force and effect on the original project.