



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1408

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Evergreen Family Farm, LLC Conditional Use Permit and Special Permits
Assessor's Parcel Numbers: 522-024-002, 522-025-003 and 522-024-005 (one separate legal parcel)
Record Numbers: PLN-11978-CUP and PLN-11980-SP
Willow Creek area

A Conditional Use Permit for 21,688 square feet (SF) of existing cannabis cultivation, consisting of 10,288 SF of mixed-light and 11,400 SF of outdoor cannabis cultivation on Assessor Parcel Number (APN) 522-024-002 (PLN-11978-CUP) and a Special Permit for 10,000 SF of existing outdoor cultivation on APN 522-025-003 (PLN-11980-SP). Cultivation occurs within 4 cultivation areas (CAs). CA #1 includes 10,288 SF of mixed light cultivation and a 1,000 SF nursery and 2,000 SF nursery. CA #2 includes 5,400 SF of outdoor cultivation in 2 hoopouses. CA #3 includes 6,000 SF of outdoor cultivation in 3 hoopouses. CA #4 includes 10,000 SF of full-sun outdoor cultivation in 300-gallon smart pots on APN 522-025-003. Irrigation water is sourced from a permitted groundwater well on APN 522-024-002. Total water storage for both parcels is 49,500 gallons and consists of 3 2,500-gallon tanks for fire suppression, 4 5,000-gallon tanks for irrigation, 6 2,500-gallon tanks for irrigation, 3 1,500-gallon tanks for irrigation, and 1 2,500-gallon tank for domestic use. An additional 150,000 gallons of tank storage is proposed to support irrigation needs. Total annual water use for both parcels is 312,000-gallons. The applicant proposes to consolidate all mixed-light greenhouses and nurseries to CA #1 located near Cabin #1. The proposed configuration allows the cultivator to use 1 generator rather than 4 generators spread out across the entire parcel (522-024-002). Product will be dried onsite in an existing shed and further processing will occur offsite at a licensed processing facility until Cabin #3 is upgraded to commercial/Americans with Disabilities Act (ADA) standards. Electricity for cultivation operations is supplied by solar arrays and diesel generators. Solar panels provide power for greenhouse exhaust fans. A diesel generator (Honda 7000) is used to supply power to mixed-light greenhouses and nurseries located at CA # 1. Domestic power is supplied by diesel generators. Domestic wastewater treatment is managed via three septic systems for the existing cabins. The operation is staffed by up to 3 full-time employees and 4 part-time seasonal employees shared between APNs 522-024-002 (PLN-11978-CUP) and APN 522-025-003 (PLN-11980-SP). Special Permits are also requested for work within the Streamside Management Area (SMA) associated with the decommissioning of an onstream pond on APN 522-024-002 and the removal of a tank from the SMA on APN 522-025-003, and to allow for associated remediation activities within the SMA.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolutions (Resolution 23-__) and (Resolution 23-__) (Attachments 1 and 2), which do the following:
 - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance as well as the Addendum to the Mitigated Negative Declaration that was prepared for the Evergreen Family Farm, LLC projects (Attachment 3); and
 - b. Finds that the proposed projects comply with the General Plan and Zoning Ordinance; and
 - c. Approves the Evergreen Family Farm, LLC Conditional Use Permit and Special Permit (PLN-11978-CUP) and Special Permits (PLN-11980-SP) subject to the recommended conditions of approval (Attachments 1A and 2A).

DISCUSSION:

Project Location:

The project is located in the Willow Creek area, on the north side of State Highway 299, approximately 2.8 miles north from the intersection of Old Three Creeks Road and State Highway 299, and approximately 3.5 miles north from the intersection of Old Three Creeks Road and a Private Drive on the property known as APNs 522-024-002 and 522-025-003.

Present General Plan Land Use Designation:

Timberland (T) Density: 40-160 acres per dwelling unit, Slope Stability: Moderate instability (2)

Present Zoning:

Timberland Production Zone (TPZ)

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.

Executive Summary:

A Conditional Use Permit for 21,688 square feet (SF) of existing cannabis cultivation, consisting of 10,288 SF of mixed-light and 11,400 SF of outdoor cannabis cultivation on Assessor Parcel Number (APN) 522-024-002 (PLN-11978-CUP) and a Special Permit for 10,000 SF of existing outdoor cultivation on APN 522-025-003 (PLN-11980-SP) in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, CMMLUO. The 240-acre project site is designated as Timberland (T) in the Humboldt County 2017 General Plan and zoned Timber Production Zone (TPZ). Cultivation occurs on 2 parcels, APNs 522-024-002 and 522-025-003, within 4 cultivation areas (CAs). CA #1 includes 10,288 SF of mixed light cultivation and a 1,000 SF nursery and 2,000 SF nursery. CA #2 includes 5,400 SF of outdoor cultivation in 2 hoopouses. CA #3 includes 6,000 SF of outdoor cultivation in 3 hoopouses. CA #4 includes 10,000 SF of full-sun outdoor cultivation in 300-gallon smart pots. Two annual harvests are expected from the mixed-light cultivation and 1 from the full-sun cultivation for a growing season that extends from May through October. Electricity for cultivation operations is supplied by solar arrays and diesel generators. Solar panels provide power for greenhouse exhaust fans. A diesel generator (Honda 7000) is used to supply power to mixed-light greenhouses and nursery located at CA # 1. Domestic power is supplied by diesel generators. Domestic wastewater treatment is managed via three septic systems for the existing cabins. The operation is staffed by up to 3 full-time employees and 4 part-time seasonal employees shared between APNs 522-024-002 (# 11978) and APN 522-025-003 (# 11980). The project site includes three existing cabins. Cabin # 1 is occupied by the owner and their family. Cabin #2 and Cabin #3 are currently unoccupied. The applicant proposes to convert Cabin #3 into a commercial/ADA compliant processing building. There will be no on-site housing of employees.

CA #4 was originally located in the southeast portion of APN 522-025-003, labeled on the site plan as CA #5. The cannabis was relocated to its current location due to a relatively shallow debris slide near CA #5. A Restoration Plan and Documentation of Environmental Superiority Report was completed by Pacific Watershed Associates in December of 2018 (Attachment 4H). The report detailed how CA #4 was an environmentally superior site compared to CA #5 and proposed corrective actions and restoration activities to be taken at CA #5. Since then, the cultivation area has been relocated to CA #4 and the proposed corrective actions, restoration activities, and monitoring activities at CA #5 have been completed.

The applicant proposes to consolidate all mixed-light greenhouses and nurseries to CA #1 located near Cabin #1. The proposed configuration allows the cultivator to use 1 generator rather than 4 generators spread out across the entire parcel (522-024-002). No generators would be used on APN 522-025-003). Product will be dried onsite in an existing shed and further processing will occur offsite at a licensed processing facility until Cabin #3 is upgraded to commercial/ADA standards. Security gates are installed along all main roads and access gates. Gates have keyed locks and are kept locked when not in use. The applicant proposes to install an alarm system, game cameras, and motion sensor lights near cultivation areas and appurtenant facilities.

Green waste material is composted in a designated area away from surface waters as noted on the site plan. Organic fertilizers and pesticides are stored in an agricultural storage structure that meets all requirements for secondary containment. All fuel and hazardous materials are stored in secure areas

with secondary containment in accordance with applicable regulations. Garbage and recycling are stored in a secure waste storage area located west of Cabin #2. The waste storage area complies with BPTCs to prevent wildlife tampering and transport of waste to waters of the State. Waste is removed from the property every two weeks and transported to an approved waste disposal facility. Domestic wastewater treatment is managed via three septic systems for the existing cabins. The applicant will pursue permitting for the existing septic systems upon project approval. The project is conditioned that no onsite processing (trimming and packaging) can be approved until approval of the unpermitted onsite wastewater treatment system (OWTS) at Cabin #3. **(Condition of Approval A.12)**. In addition, the project is conditioned that evidence is provided to County staff during annual inspections to confirm the continual use of portable toilets to serve the needs of cultivation staff until the OWTS at Cabin #3 is permitted **(Condition of Approval B.9)**.

Water Resources

Irrigation water is sourced from a permitted groundwater well on APN 522-024-002. Total water storage for both parcels is 49,500 gallons and consists of 3 2,500-gallon tanks for fire suppression, 4 5,000-gallon tanks for irrigation, 6 2,500-gallon tanks for irrigation, 3 1,500-gallon tanks for irrigation, and 1 2,500-gallon tank for domestic use. An additional 150,000 gallons of tank storage is proposed to support irrigation needs. Total annual water use for both parcels is 312,000-gallons. The permitted well is screened from 40 to 140 feet below the well head in a mix of serpentine and shale. The well is approximately 1,100 feet from the nearest perennial watercourse and approximately 1,300 feet from an intermittent watercourse, one of which is a tributary to Campbell Creek and the other a tributary to Supply Creek. The groundwater well appears unlikely to have a direct hydrologic connection to Campbell Creek or Supply Creek given the depth of the well and the distance to the nearest perennial watercourse (Campbell Creek).

The well is identified in the Well Completion Report of having an estimated yield of 20 gallons per minute, which indicates that the well is relatively productive and likely could be relied on as a year-round water source for the irrigation needs of the projects (312,000 gallons annually). However, the applicant is proposing to add an additional 150,000 gallons of tank storage is proposed to support irrigation needs. This will increase the water storage on the property to 199,500 gallons. By reducing the use of the groundwater well in the summer months, the proposed project will ensure that there will be a negligible impact to the Campbell Creek or Supply Creek watersheds or to any of the Public Trust resources associated with the watersheds, such as fisheries and recreation.

Additionally, available USGS information (Fine-scale hydrologic modeling for regional landscape applications. Flint 2013) indicates that approximately 34% of precipitation goes to groundwater recharge in Northwest California. According to the Prism Climate Group the lowest rainfall year of the last ten years within the vicinity of the project site was 37.65 inches in 2013, meaning that even in a substantial drought year like 2013 a total of 12.8 inches (34% of total), or 1.07 acre-feet (347,391 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the 260-acre property would far exceed the amount of rainfall that would be used for cannabis even in a substantial drought year. Given that the planned water storage capacity is 61 percent the entirety of the total annual irrigation needs, planning staff believes that the record shows that the use of the well for cannabis would not be detrimental to or otherwise detract from any surface water

features or groundwater resources in the vicinity.

A Lake or Stream Bed Alteration Agreement (LSAA) notification was submitted to the California Department of Fish and Wildlife (CDFW) on November 30, 2020. CDFW issued Notification No. EPIMS-HUM-13648-R1C on July 13, 2021, for one point of diversion for domestic use, one onstream reservoir removal, and replacement of 4 culverts (Attachment 5B). On September 7, 2023, CDFW observed violations of Fish and Game Code (FGC) 1602 that were not in compliance with the LSAA. Notably, CDFW observed unauthorized surface water diversion for irrigation of cannabis cultivation from a tributary to Supply Creek during the forbearance period. Additionally, no water metering was occurring as required, and no monitoring reports have been submitted to CDFW as required, resulting in the applicant being out of compliance with the LSAA. CDFW requests, as a condition of project approval, that all Fish and Game Code violations are cured, and that the applicant becomes in compliance with the LSAA (**Conditions of Approval A.11 and A.14**).

Humboldt County's WebGIS shows only 1 mapped stream through APN 522-025-003. The Plot Plan; however, shows 3 unnamed Class II streams and 4 unnamed Class III streams. A Water Resource Protection Plan (WRPP) prepared by Pacific Watershed Associates Inc. in May 2017 (Attachment 5A) evaluated if the site met the standard conditions of compliance. As a condition of approval, the applicant shall implement the corrective or remedial actions listed in the WRPP. On September 7, 2023, CDFW staff observed activities that were in violation of Fish and Game Code (FGC) section 1602. Notably, CDFW observed substantial sediment discharge to Waters of the State through erosion of hydrologically connected roads. CDFW requests, as a condition of project approval, that the applicant implement a stormwater plan (Site Management Plan) to direct surface flow away from streams to mitigate the existing threats of sediment delivery. (**Condition of Approval A.13**). In addition, those recommendations developed under any future Site Management Plan to be developed for the parcels, pursuant to Tier 2 enrollment under the State Water Resources Control Board (SWRCB) General Order (WDID 1-12CC429237), shall also be followed.

Public Trust Resources

The common law Public Trust Doctrine protects sovereign lands, such as tide and submerged lands and the beds of navigable waterways, for the benefit, use and enjoyment of the public. These lands are held in trust by the State of California for the statewide public and for uses that further the purposes of the trust. The hallmark of the Public Trust Doctrine is that trust lands belong to the public and are to be used to promote publicly beneficial uses that connect the public to the water. Campbell Creek and Supply Creek are tributaries to the Trinity River, which is itself a tributary to the Klamath River. Campbell Creek and Supply Creek not only provide water to support the health of these rivers but provide habitat for sensitive aquatic species including Coho Salmon. Campbell Creek and Supply Creek also provide water for domestic, agricultural, public, and commercial/industrial uses on the Hoopa Reservation. Both the Trinity River and the Klamath River are navigable rivers that provide water-related recreation and public access, and both of these watercourses (Klamath River and Trinity River) support active fisheries. Historically the Trinity River and Klamath River have also provided opportunities for waterborne commerce.

The project will add water storage to a total of 61 percent of the annual water needs of the project. This

will substantially reduce the use of the groundwater well in the summer months, which will ensure that impacts to the Campbell Creek and Supply Creek watersheds or to any of the Public Trust resources associated with the watershed will be negligible.

Tribal Concerns Regarding Supply Creek

In response to the project referrals, the Hoopa Tribe met with County Planning and Building Staff to express their concerns regarding the collection of cannabis applications located within the Supply Creek watershed. Supply Creek provides a portion of the domestic, agricultural, public, and industrial/commercial water needs of the Tribe. Supply Creek also provides habitat for sensitive species such as Coho salmon. In response to these concerns the County collaborated with the project applicants to prepare water quality and water quantity studies. A water sampling study was completed by A.M. Baird Engineering & Surveying in 2020 that concluded that Supply Creek was maintaining healthy river conditions and was not being subjected to substantial concentrations of pollutants that might be associated with runoff from cannabis sites (Attachment 5E). HMC Engineering, Inc. completed a Surface Water Study in 2020 that concluded that runoff from the watershed that would potentially be intercepted for all of the cannabis projects in the watershed would be a maximum of 0.200% in the driest year on record (Attachment 5F). The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment 5G).

Biological Resources

No Biological Assessment Report was prepared for the project. The pond decommissioning on APN 522-024-002 will be permitted by CDFW. If there are any potential impacts to wildlife from this project, CDFW will require mitigation in their Agreement. The grading required to decommission the pond is allowed with the Special Permit that is being requested. There is a water tank within the SMA of the Class II Stream on APN 522-025-003. The WRPP is requiring that this tank be removed, and that the area be restored to its natural state. This activity is allowed with the additional Special Permit that is being requested. The nearest spotted owl activity center is approximately 1.1 miles east of the project site and additional owl activity centers are further from the project site in all directions. Generators are used to supply power to the cabins and mixed-light cultivation areas/nurseries. Generators will be shielded to not exceed 50 decibels at tree lines or potential habitat areas. Based on the manufacturer's noise ratings for the proposed generators, noise levels are not expected to exceed the thresholds listed above. The project is conditioned to ensure that generator or other operational equipment created noise meets the noise level threshold (**Condition of Approval B.1**). Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

Conditions of approval also require the applicant to submit a revised 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), how the size of the generators are reasonable based on the power demand, and how the operation will transition to use of 100% renewable energy (e.g., solar, wind, and/or hydropower) sources by January 1, 2026, with a generator to be used for emergencies only (**Condition of Approval A.5**).

The project has been conditioned to ensure supplemental lighting associated with mixed-light cultivation is fully contained with blackout tarps and have all outside lighting on timers or motion sensors to reduce light exposure to wildlife and their potential habitat. Furthermore, the project is conditioned to adhere to Dark Sky Association standards for greenhouse lighting and security lighting, refrain from using synthetic netting, ensure refuse is contained in wildlife-proof storage and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval B.2, B.5, B.6, and B.8**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect northern spotted owl or other sensitive species.

Tribal Cultural Resources

Both projects were referred to the Northwest Information Center and the Hoopa Valley Tribe. Both responded requesting that a cultural resource survey be conducted for the properties. A Cultural Resources Inventory Report (CRIR) was prepared by Dimitra Zalarvis-Chase M.A., R.P.A. in August of 2022. Two cultural resources were observed and recorded as a result of survey efforts. Both resources were recorded on Department of Parks and Recreation (DPR) 523 forms. As a result, the following conditions are recommended.

1. Cannabis related activities are prohibited within the site boundaries as recorded on the DPR Site Record Location maps, located in Confidential Appendix E of the CRIR.
2. Motor vehicles are prohibited within the site boundaries as recorded on the DPR Site Record Location maps, located in Confidential Appendix E of the CRIR.
3. Ground Disturbance is prohibited within the site boundaries as recorded on the DPR Site Record Location maps, located in Confidential Appendix E of the CRIR.
4. Vegetation removal is prohibited within the site boundaries as recorded on the DPR Site Record Location maps, located in Confidential Appendix E of the CRIR.

It was concluded that there will be No Effect to historical, archaeological, or Tribal Cultural Resources, as defined by CEQA with adherence to the recommended conditions of approval (**Condition of Approval B.11**). It was also recommended that the inadvertent discovery protocol be followed.

Access

From CA Highway 299 west of Willow Creek, go north on Old Three Creeks Road for approximately 7.5 miles then turn right into the project site, APNs 522-024-002 and 522-025-003. A Road Evaluation Report (Attachment 5D) was prepared for 3 Creeks Road from Highway 299 to the private drive on APN 522-025-003. The report identified 3 Creeks Road as developed to the functional equivalent of a road category 4 standard and adequate for the proposed use without further review. 3 Creeks Road is partially county maintained. The emergency vehicle turn-around area is located on the access road leading to CA #4. The turn-around is approximately 30 feet long, less than 7% grade, and is regularly rocked and maintained to prevent ruts or rills to the road surface. The hammerhead turn-around area is approximately 50 feet wide with well over 15 feet of vertical clearance.

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:

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 Lower Trinity Planning Watershed, which under Resolution 18-43 is limited to 169 permits and 58 acres of cultivation. With the approval of the projects the total approved permits in this Planning Watershed would be 63 permits and the total approved acres would be approximately 27.4 acres of cultivation. If all of the Supply Creek projects on the October 19, 2023 Planning Commission agenda are approved there would be a total of 73 permits and 34 acres approved within the Lower Trinity Planning Watershed.

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 MND that was adopted for the CMMLUO and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 4 for more information).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comments, comments, or recommended approval or conditional approval. (Attachment 6)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal can be made. Consequently, Staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Draft Resolution for PLN-11978-CUP
 - A. Conditions of Approval for PLN-11978-CUP
 - B. Operations Plan for PLN-11978-CUP
 - C. Operations Plan Addendum for PLN-11978-CUP
 - D. Site Plan for PLN-11978-CUP
2. Draft Resolution for PLN-11980-SP
 - A. Conditions of Approval for PLN-11980-SP
 - B. Operation Plan for PLN-11980-SP
 - C. Operation Plan Addendum for PLN-11980-SP
 - D. Site Plan for PLN-11980-SP
3. Location Map Sets
4. CEQA Addendum
5. Applicant's Evidence in Support of the Required Findings
 - A. Water Resource Protection Plan
 - B. Streambed Alteration Agreement
 - C. Well Completion Report
 - D. Road Evaluation Report
 - E. Supply Creek Ambient Water Grab Sampling Results

- F. Supply Creek Surface Water Supply Study
- G. Supply Creek Cumulative Impact Assessment
- H. Restoration Plan and Documentation of Environmental Superiority Report
- 6. Referral Agency Comments and Recommendations
- 7. Watershed Map for PLN-11978-CUP
- 8. Watershed Map for PLN-11980-SP

Applicant

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Please contact Rodney Yandell, Senior Planner, at ryandell@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.