



COUNTY OF HUMBOLDT

For the meeting of: 4/20/2023

File #: 23-540

To: Planning Commission
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Healing Sun, LLC
Assessor Parcel Numbers (APN) 220-082-020
Record No.: PLN-12072-CUP
Ettersburg Area

Healing Sun seeks a Conditional Use Permit for 16,800 square feet (SF) of existing outdoor commercial cannabis cultivation, with 1,900 SF of ancillary propagation. The Planning Division is only recommending approval of 1,680 SF of ancillary propagation. Two harvests are anticipated annually. Water for irrigation is sourced from an existing permitted well (permit# 18/19-1012). The applicant has obtained a Well Assessment Report for the well. The projected annual water usage totals 280,000 gallons (15 gallons/SF/year) and water storage on-site totals 76,800 gallons in hard sided storage tanks. Processing and trimming will occur on-site in an existing building. Power is provided by a 12.5 kW solar array.

RECOMMENDATION(S):

That the Planning Commission:

1. Describe the application as part of the **April 20, 2023**, Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as part of the Consent Agenda; and
4. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Healing Sun, LLC project); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location: The project is located in the Ettersburg area, on the SW side of Eubanks Rd, approximately 4000 feet SW from the intersection of Eubanks Rd and Ettersburg Honeydew Rd, on the property known to be in Township 04S of Range 02E Section 28 Humboldt Base & Meridian.

Access: The site is accessed from Eubanks Road, from Ettersburg Honeydew Road, from Briceland-Thorne Road.

Present General Plan Land Use Designation: Residential Agriculture (RA); 2017 General Plan; Density: 40 acres per unit; Slope Stability: Low Instability (2).

Present Zoning: Unclassified (U).

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: Healing Sun seeks a Conditional Use permit for 16,800 square feet (SF) of existing outdoor commercial cannabis cultivation, with 1,900 SF of ancillary propagation. Two harvests are anticipated annually with the use of light-deprivation techniques. Water for irrigation is sourced from an existing permitted well (permit# 18/19-1012). The applicant has obtained a Well Assessment Report for the well. The projected annual water usage totals 280,000 gallons (15 gallons/SF/year) and water storage on-site totals 76,800 gallons in hard sided storage tanks. Processing and trimming will occur on-site in an existing building. Power is provided by a 12.5 kW solar array, and one emergency backup generator will be on-site. No employees are required for the project, however the applicant will utilize help from family members.

The site is owner-operated with the use of family members, and there is an existing septic system within the Residence on-site. Processing and trimming will occur within the existing processing building on-site. The project was referred to the Department of Environmental Health (DEH) on December 11, 2020, and comments were received on January 26, 2021. Comments from DEH included that processing activities must be supported by an approved onsite wastewater treatment system, or that seasonal/outdoor cultivation sites may be supported by portable toilets, and the applicant must obtain a permit for and install an approved onsite wastewater treatment system to support the processing location. The applicant shall obtain a septic permit for the existing onsite wastewater treatment system, or shall install a new system permitted with DEH (**Condition A.7**).

The project will include nine (9) light-deprivation greenhouses without the use of supplemental lights, and one (1) ancillary propagation greenhouse. The applicant is proposing 1,900 SF ancillary propagation, and the Planning Division is only recommending approval of 1,680 SF of ancillary propagation. The applicant shall reduce the size of the ancillary propagation greenhouse, and shall submit an updated Site Plan within 60 days of approval to show the new dimensions for ancillary propagation (**Condition A.5**). Other buildings used for cultivation activities include: one (1) processing/storage building, one (1) office, one (1) solid waste shed, two (2) shipping containers for storage, and one (1) curing building. The project was referred to the Building Division on December 11, 2020, and a building inspection was conducted on January 5, 2021. Comments from the Building Division included a recommendation of approval based on the condition that all required permits are obtained. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: nine (9) light-deprivation greenhouses, one (1) ancillary propagation greenhouse, one (1) processing/storage building, one (1) office, one (1) solid waste shed, two (2) shipping containers for storage, and one (1) curing building (**Condition A.8**). 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 (**Condition A.9**). Power is sourced by a solar array with the capacity to provide 12.5kW of power to the site. The applicant shall permit the solar system on-site with the Building Division (**Condition A.10**).

The Assessor's Parcel Number (APN) 220-082-020 contains three (3) separate parcels, two (2) of which are legal parcels, and one (1) that was not a legally created parcel which is where most of the cultivation exists. The applicant has gone through a Notice of Merger (under Record Number PLN-14239-DS) to combine two (2) of these parcels which resulted in the cultivation occurring on a legal parcel. The final configuration of the legal parcel is seen as the shaded section on the Site Plan. The merged parcels will receive a new APN.

Fire Hazard

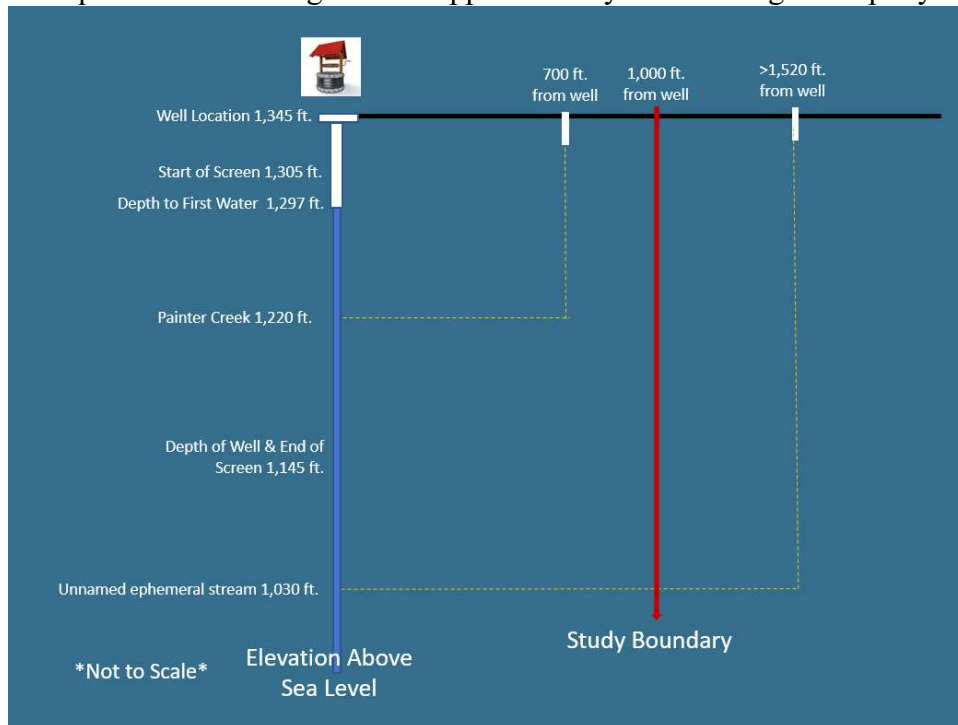
The parcel is located in an area known to have a High Fire Hazard Severity, and is within the Telegraph Ridge Fire Protection District for local fire response. The applicant will obtain a will serve letter from the Telegraph Ridge Fire Protection District, or shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel(s) on a form provided by the Humboldt County Planning Division (**Condition A.14**). The project is located within the State Responsibility Area (SRA) for CalFire, and was referred to the agency on December 11, 2020. Comments were received by CalFire on December 17, 2020, and the agency stated that they had no comments regarding the project at that time. The Site Plan shows a firetruck turnaround, and the applicant is required to have a minimum of 2,500 gallons of water storage designated for fire suppression needs only. The applicant shall designate a minimum of 2,500 gallons of on-site water storage for emergency fire suppression and is conditioned to provide an updated Site Plan to the Planning Division to show the designated fire suppression water storage on-site (**Condition A.5**). The designated fire suppression tank shall also have the appropriate fire hose that meets CalFire SRA requirements (**Condition A.11**).

Water Resources

The project sources water from a permitted well on-site (Permit #18/19-1012). Estimated annual water needed for irrigation is approximately 280,252 gallons of water (15 gal/SF/yr). There are twelve (12) 5,000-gallon hard tanks and six (6) 2,800-gallon hard tanks, for a total of 76,800 gallons of existing water storage on-site for irrigation needs. There is a separate well (Permit #16/17-0837), which is used for domestic purposes only.

The applicant has obtained a Well Assessment Report (WAR) for well Permit #18/19-1012, prepared by licensed geologist David Lindberg with Lindberg Geologic Consulting, dated July 25, 2022. The WAR states that a site visit was conducted on June 13, 2022 to observe the well and local site conditions. It was determined that the well has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent wetlands or other surface water features. The well completion report created by Fisch Drilling, estimated the yield of the well at 6 gallons per minute on October 14, 2020. The well is located approximately 700 feet to the nearest watercourse Painter Creek, which is located east of the well at an elevation of approximately 1,218 feet above sea level. The well is at an elevation of approximately 1,345 feet above sea level, and has a depth to first water at 48 feet below ground surface (see cross section below). The well is sealed through the upper 20 feet of any potential unconfined, near-surface aquifers with which it might communicate hydraulically through the borehole because the bentonite-sealed surface casing isolates the topsoil, brown sandstone, and shale materials from the deeper blue sandstone aquifer. The shale section of the well is on an aquitard with low permeability and transmissivity. The WAR concludes that the well draws water from a confined subsurface aquifer not connected to any unconfined near-surface aquifer(s), and estimates that

the aquifer has a recharge rate of approximately 18 million gallons per year.



The site was historically enrolled in the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R-1-2015-0023, under WDID 1B171395CHUM. The applicant has a Water Resource Protection Plan (WRPP) that was prepared by Dan Mar with Compliant Farms Certified, to address measures needed for the site to meet the standard conditions of the Order. The applicant shall adhere to the monitoring, maintenance and protocols listed in the table of the WRPP (**Ongoing Condition B.1**).

The site is currently enrolled in the State Water Resources Control Board's (SWRCB) General Order (No. WQ

2019-0001-DWQ) for Waste Discharge Requirements and Water Quality. The applicant has submitted a Notice of Applicability letter dated September 6, 2019, showing enrollment in the General Order as a Tier 1 Low Risk site. The applicant is required to have a Site Management Plan (SMP) prepared for the project site to show measures required to meet compliance with the General Order, and a condition of approval for the project is to provide a copy of the final SMP report to the Planning Division, and to adhere to the corrective actions and ongoing monitoring and winterization methods recommended in the final SMP (**Condition A.12 & Ongoing Condition B.2**).

The applicant has obtained a Streambed Alteration Agreement with the California Department of Fish & Wildlife (CDFW) for the in-stream work needed to upgrade five (5) culverts on-site (SAA No. 1600-2019-0160-R1). The applicant shall adhere to the project description and work outlined within the SAA No. 1600-2019-0160-R1 (**Ongoing Condition B.6**).

Biological Resources

The project is located approximately 1.2 miles to the nearest known Northern Spotted Owl (NSO) activity center. According to the California Natural Diversity Database (CNDDDB) for rare and endangered species, the project site does not contain potential habitat areas for any rare or endangered species. As the project is for pre-existing activities, and no new ground disturbance is proposed, no Biological Assessment was required. The project was referred to CDFW on December 11, 2021, and no comments were received. The applicant is required to comply with International Dark Sky Standards for lighting within the propagation greenhouse, and shall ensure that all noise levels do not go above 50 decibels at 100-feet or any tree line when noise generating equipment are in use (**Ongoing Conditions B.3 & B.4**).

Tribal Cultural Resource Coordination

The applicant has submitted a Cultural Resource Investigation prepared by William Rich and Associates dated November 2021. A comprehensive field survey was conducted on October 6, 2021. No tribal cultural resources were identified in the assessment area. The project is not anticipated to impact any tribal cultural resources; however, the applicant will be required to adhere to the inadvertent discovery protocol. The project was referred to the Bear River Band of Rohnerville Rancheria, Intertribal Sinkyone Wilderness Council, and the Northwest Information Center (NWIC). A response was received from the Bear River Band and NWIC, both of which recommended that a survey be completed. The Cultural Resource Investigation was forwarded to the Bear River Band and the Intertribal Sinkyone Wilderness Council. A response was received from the Bear River Band THPO stating that they agreed with the findings in the CRS report. The applicant shall adhere to Inadvertent Discover Protocols, and shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist and the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and the lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided (**Informational Note 3**).

Access

Access to the project site is from 0.7 miles of privately maintained Eubanks Road, from County maintained Ettersburg Honeydew Road, from county maintained Briceland-Thorne Road. The project was referred to the Department of Public Works on December 11, 2020, and comments were received by the agency on December 28, 2020. Comments from Public Works stated that the intersection of Eubanks Road and County maintained Ettersburg Honeydew Road has been improved, and recommends that the applicant contact and join the road maintenance association (**Condition A.13**). The site will be operated by family members who live on the site. The operations are pre-existing, and no increase in traffic is anticipated.

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

Planning staff determined that 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 Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 233 cultivation permits and the total approved acres would be 81.8 acres of cultivation.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and most responding agencies have either responded with no comment or recommended approval or conditional approval. The Sheriff Department responded with the recommendation of denial for a felony case HS11358 for the applicant. However, there is no indication that the felony case would have any impact on the ability of the Planning Commission to make the required findings for approval. (Attachment 5)

While the California Department of Fish and Wildlife (CDFW) has not provided referral comments or other comments 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. The comments indicate that CDFW believes that the project may have expanded beyond the pre-existing footprint, and that CDFW strongly recommends that additional water storage be required as a result of the location within the Mattole watershed which is a flow impaired watershed. Attached to this staff report is the Cultivation Area Verification (CAV) that the County conducted showing that the pre-existing cultivation is consistent with the amount being requested. Of note is that after this CAV was prepared the applicant provided evidence that one of the structures not counted in the CAV was a 900 sf greenhouse bringing the verified cultivation area total to 16,935 SF. Separately the CAV identifies a 2017 expansion, which has since been resolved and remediated. The proposal in front of the Planning Commission is for 16,800 SF, which is slightly less cultivation area than what was found to be in existence prior to 2016. In Attachment 6 is also a CAV supplement prepared by the applicant in response to the previous notification of expansion. Regarding additional water storage, the project utilizes a well which has been demonstrated by a licensed geologist to likely be hydrologically isolated and disconnected from surface waters. Staff does not believe that the evidence supports the requirement for additional water storage.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

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

ATTACHMENTS:

1. Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Addendums to Cultivation & Operations Plan
 - D. Site Plan
2. Location Maps
 - A. Watershed map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Notice of Applicability Letter
 - B. Well Assessment Report
 - C. Final Streambed Alteration Agreement with CDFW
 - D. Water Resource Protection Plan
5. Referral Agency Comments and Recommendations
 - A. Building Division Comments
 - B. Department of Environmental Health Comments
 - C. Department of Public Works Comments
6. April 6, 2023 CDFW email and annotated agenda submitted to Commissioner Landry
7. County Cultivation Area Verification (CAV) and Applicant submitted CAV Supplement

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Please contact Megan Acevedo, Planner II, at macevedo@co.humboldt.ca.us or at (707) 441-2634 if you have any questions about this public hearing item.