



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1407

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

707 Cultivation Company, LLC, Conditional Use Permit and Special Permit
Assessor's Parcel Number: 522-023-001
Record Number: PLN-11607-CUP
Willow Creek area

A request for a Conditional Use Permit for 43,560 square feet of existing outdoor commercial cannabis cultivation. Propagation occurs in an approximately 1,620 square foot nursery. Water for irrigation is sourced from a 200-foot deep well and two springs registered with the State Water Resources Control Board to be used as back up water sources. Annual water use is estimated at 700,000 gallons. Water is stored in hard tanks and bladders for a total of 124,550 gallons of available storage. Drying of mature plants occurs onsite in existing outbuildings. All other processing occurs offsite at a licensed third-party facility. Electricity is sourced from generator power. Four full time employees are used and six additional part time employees are utilized during harvest activities. A Special Permit is also requested for development within the Streamside Management Area (SMA) for the continued use and maintenance of the points of diversion infrastructure and for relocation of water tanks and other infrastructure located within the SMA areas. Staff is recommending denial of the application due to the lack of available water to support cultivation activities.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Finds that there is no evidence of sufficient water to support the proposed cultivation and therefore the findings for approval cannot be made;
 - b. Find the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines;
 - c. Denies the Conditional Use Permit and Special Permit application for 707 Cultivation Company, LLC.

DISCUSSION:

Project Location:

The project is located in the Willow Creek area at the terminus of Old Three Creeks Road, approximately 2.2 miles north-northeast from the intersection of Old Three Creeks Road and Supply Creek Road.

Present General Plan Land Use Designation:

Timberland (T), 2017 General Plan. Density: 40-160 acres per dwelling unit, Slope Stability: Moderate to High Instability (2,3).

Present Zoning:

Timberland Production Zone (TPZ).

Environmental Review:

The project is exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (projects which are disapproved).

State Appeal:

Project is NOT appealable to the California Coastal Commission.

Major Concerns:

Lack of water to support irrigation. Notice of Violation issued by CDFW.

Executive Summary:

43,560 square feet of existing outdoor commercial cannabis cultivation. Water for irrigation is sourced from a 200-foot deep well and two springs registered with the State Water Resources Control Board to be used as back up water sources. Annual water use is for 43,560 square feet is estimated at 700,000 gallons. Water is stored in hard tanks and bladders for a total of 124,550 gallons of available storage, however CDFW notes that while on-site in 2020 the bladders were in disrepair and not capable of holding water. Drying of mature plants occurs onsite in existing outbuildings. All other processing occurs offsite at a licensed third-party facility. Electricity is sourced from generator power. A Special Permit is also requested for development within the Streamside Management Area (SMA) for the continued use and maintenance of the points of diversion infrastructure and for relocation of water tanks and other infrastructure located within the SMA areas. Notes elsewhere, the applicant does not have an LSAA for the points of diversion nor have they applied to CDFW for an LSAA that would include these points of diversion.

Cultivation occurs generally from April to October of every year with drying activities that extend into November. The site is then winterized for the remainder of the year until the following April.

Two Honda generators are used, with a maximum decibel rating of 62 dbA. Four full time employees are used and six additional part time employees are utilized during harvest activities. A permitted

restroom facility with on-site wastewater treatment is proposed, and until developed the property will utilize portable toilets.

Staff is recommended denial of the application due primarily to the lack of available water and the steep topography which renders development of additional water storage difficult.

Timber Conversion

A Timber Conversion Evaluation Report was prepared by Timberland Resource Consultants (TRC) in April 2020. TRC observed approximately 2.8 acres of potential timberland conversion for cultivation-related purposes within APN 522-023-001. Approximately 1.04 acres of timber conversion appears to have occurred after the environmental baseline of the CMMLUO, January 1, 2016. This total does not exceed the three-acre conversion exemption maximum. The past conversion activities conducted on the property do not comply with the California Forest Practice Act and the California Forest Practice Rules and remedial measures are recommended to bring the site into compliance with the Forest practice Rules and with County ordinance. Restocking of the approximately 1.04 acres of post baseline timber conversion will occur at Cultivation areas 4, 5 and 8 (Sites 1, 4 and 6 on the Restocking Plan). At Cultivation Site 8 (Site 1 on the restocking map), which is proposed to be completely remediated as it is within an SMA area, the RPF recommends inter-planting the Class III buffer zone with Douglas-fir/white fir/incense cedar seedlings per the Restocking Plan.

Water Resources

Water for cultivation is provided by the permitted groundwater well and diversions from two springs on the property. The total amount permitted to be diverted is limited to 0.9 acre-feet per year that can be diverted to storage. This amount is 293,267 gallons, which is far below the 700,000 gallons necessary to support the cultivation. The applicant does not have a Lake or Streambed Alteration Agreement from CDFW for the diversions and notably the notification submitted to CDFW does not include the request for these diversions. The permitted well is screened from 180 to 190 feet below the well head in what is labelled in the Well Completion Report as hard bedrock. The well is approximately 2000 feet in distance and nearly 800 feet in elevation above the nearest perennial watercourse and approximately 150 feet from an intermittent watercourse, both of which are tributaries to Supply Creek. The point of diversions are springs that are located in an intermittent watercourse that is a tributary to Supply Creek. Supply Creek is a tributary to the Trinity River, which is itself a tributary to the Klamath River. Supply Creek not only provides water to support the health of these rivers but itself provides habitat for sensitive aquatic species including Coho Salmon. Supply Creek is also one of the main sources of water for domestic, agricultural, public and commercial/industrial uses on the Hoopa Reservation. While the groundwater well appears unlikely have a direct hydrologic connection to Supply Creek or any surface water features given the depth of the well and the distance to the nearest perennial watercourse, the springs are likely directly connected to Supply Creek.

The well was constructed in June of 2020 is identified in the Well Completion Report of having an estimated yield of 7 gallons per minute, however a Notice of Violation was issued by CDFW to the property owner (at the time) in August 2020 for two unpermitted points of diversion which indicates that the well was not producing enough to meet all of the irrigation needs of the project. Per CDFW comments (Attachment 5) the well may not have been producing water at all, and according to CDFW

the applicant admitted that the well was not capable of producing water. In August of 2020 CDFW issued the applicant a notice of violation for these two unpermitted diversions, which were also being utilized during the required forbearance period.

Given the questionable productivity of the well and the fact that the spring diversions are not permitted through CDFW and have also not been included in the notification to CDFW, and further the fact that the state water right limits the diversion to far below the amount needed to support the cannabis operation, staff is recommending denial of the application as there does not appear to be an adequate source of water to support irrigation of cannabis.

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. As indicated above, in the Water Resources section of this staff report, Supply Creek provides a substantial amount 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 4G.) 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 4H.) The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment 4I.)

Biological Resources

According to the California Natural Diversity Database (CNDDDB), known special status animal or plant species, or habitat that could support such species, known to be present on or near the project site include White-flowered rein orchid (*Piperia candida*) and Southern torrent salamander (*Rhyacotriton variegatus*). Southern torrent salamander is found in springs and other wet areas and could be impacted by the unpermitted spring diversions. Given that the well does not appear to produce sufficient water to support the irrigation and the spring diversions are not permitted by CDFW, it is possible that the project could adversely impact Southern torrent salamander.



Topography and Timberland

The site is heavily timbered and has very limited areas where slope does not exceed 15-30%. The only non-timbered and relatively flat open areas are the areas developed with historic cannabis cultivation. The image to the left shows the site currently, which includes approximately 1.04 acres of post-2016 timber conversion that also must be restocked to bring the site back to pre-baseline environmental condition. Given the irrigation needs of the project (700,000 gallons per year) and the lack of productivity of the well, substantial water storage would be necessary to be developed on the site even if the applicant had a permitted surface water diversion, which they do not. Accordingly, all of the water needs should be developed through rainwater catchment, and there are no substantial hard surfaces to collect water from, indicating that a pond or self-capture tanks would be required to be developed. It is unclear how additional rainwater infrastructure could be developed without substantial grading and additional timber conversion, neither of which would be permissible in TPZ zoned land under the CMMLUO or the CCLUO.

Tribal Cultural Resources Coordination

The project was referred to the Northwest Information Center and Hoopa Valley Tribe in December 2017. A Cultural Resources Investigation prepared for the project by Archaeological Research and Supply Company which identified that there were no archaeological or cultural resources on the project site. Nonetheless, the site is located immediately adjacent to the Hoopa reservation, and the violation history of the site indicates that the continued use of the site for cultivation could impact tribal resources.

Access

To get to the site from Willow Creek, head west on Highway 299 for 10.9 miles and turn right onto Old 3 Creeks Road for 8.1 miles to the property. Old 3 Creeks Road is a Category 4 County-maintained roadway. Road Evaluation Reports were prepared for Old 3 Creeks Road and the unnamed access road by the applicant (Attachment 3), which indicate that both roads are developed to the equivalent of a

road Category 4 standard.

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. Although staff is not recommending approval, if this project were approved the total approved permits in this Planning Watershed would be 62 permits and the total approved acres would be 28 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.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies. CDFW has recommended that the project not be approved. (Attachment 4)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to approve the project with conditions. Given the lack of evidence of sufficient water for cultivation activities staff does not recommend further consideration of this alternatives. Should the Planning Commission decide to pursue this alternative staff recommends continuing the project to a future meeting in order to prepare appropriate findings.

ATTACHMENTS:

1. Resolution
2. Location Maps
3. Applicant's Evidence in Support of the Required Findings
 - A. Site Plan
 - B. Cultivation and Operations Plan
 - C. Right to Divert and Use Water Certificate
 - D. Site Management Plan
 - E. Timber Conversion Report
 - F. Timber Restocking Plan
 - G. Hydrologic Analysis
 - H. Supply Creek Ambient Water Grab Sampling Results
 - I. Supply Creek Surface Water Supply Study
 - J. Supply Creek Cumulative Impact Assessment
 - K. Road Evaluation
 - L. Well Completion Report
4. Referral Agency Comments and Recommendations

A. CDFW Comments and Notice of Violation

5. Watershed Map

Applicant

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Owner

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Agent

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Please contact Cliff Johnson, Planning Manager, at cjohnson@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.