



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1409

To: Planning Commission
From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Mojo Mountain, LLC Conditional Use Permit
Assessor's Parcel Number: 522-024-001
Record Number: PLN-12460-CUP
Willow Creek area

A Conditional Use Permit for 35,025 square feet (SF) of existing outdoor cannabis cultivation with a 3,500 SF nursery. Irrigation water is sourced from a permitted groundwater well (11/12-0971) and a point of diversion. Existing available water storage is 19,000 gallons in 7 hard tanks distributed throughout the site and is proposed to be increased to 519,000 gallons through the addition of a 500,000-gallon rainwater catchment tank. Estimated annual water usage was reported as 525,000 gallons (14.9 gallons/SF). Drying will occur in the existing 768 SF drying building. Processing will occur offsite at a licensed processing facility. In addition to the three operators up to six seasonal employees may be utilized during peak operations for a total of 9 people on-site. Power is provided by 2 Honda 6,500-watt and 2,000-watt generators for water pumps, lighting, general farm use, and drying cannabis. A Special Permit is also requested for development within the Streamside Management Area (SMA) for the continued use and maintenance of the point of diversion infrastructure. The project is proposed to be conditioned to transition to on-site renewable energy by January 1, 2026.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration that was 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 Mojo Mountain, LLC project (Attachment 3); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and

- c. Approves the Mojo Mountain, LLC Conditional Use Permit and Special Permit subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location:

The project is located in the Willow Creek area, on the North side of State Highway 299, approximately 3 miles north from the intersection of State Highway 299 and Old Three Creeks Road, and approximately 3 miles from the intersection of Old three Creeks Road and a Private Drive on the property known to be in Section 21 of Township 07 North, Range 04 East, Humboldt Base & Meridian.

Present General Plan Land Use Designation:

Timberland (T), 2017 General Plan. 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:

Supply Creek Watershed

Executive Summary:

A Conditional Use Permit to allow the continued operation of an existing 35,025 square foot (SF) outdoor cannabis cultivation operation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The 318-acre parcel is designated as Timberland (T) in the Humboldt County 2017 General Plan and zoned Timber Production Zone (TPZ). The 35,025 square feet of outdoor cultivation will occur in greenhouses. The nursery is currently 200 sf (10' x 20') and is proposed to be expanded to 3,500 sf. Juvenile plants are irrigated using hand watering methods. After 3-5 weeks, the plants are transplanted to the raised garden beds within the hoop houses. Black out tarps will be used to achieve both light deprivation and Dark Sky standards. Three harvests are anticipated annually for a growing season that extends from March through October. There is no existing residence onsite. All full-time and seasonal employees live offsite and commute daily to the cultivation site. No new residential structures are proposed as a part of the project.

Drying will occur in the existing 768 SF drying building. Processing will occur offsite at a licensed

processing facility. Trimming will also be done at an offsite licensed processing facility. The restroom will include a working flush toilet as well as a sink with cold and hot running water provided by an on demand electric water heater. Power is provided by 2 Honda 6,500-watt and 2,000-watt generators from for water pumps, lighting, general farm use, and drying cannabis. Generators will be stored inside the existing storage building. Secondary containment for spill prevention will be implemented. **Condition of Approval #15** requires the operation to transition to 100% renewable energy by January 1, 2026 with generators for emergency backup purposes only.

Propagation has historically occurred in a 200 SF area on the property and the applicant is proposing a new 3,500 SF nursery. While 3,500 SF is within 10% of the total cultivation area, no expansion or new cultivation is authorized in TPZ zones and accordingly staff is not recommending approval of the proposed 3,500 SF nursery. **Condition of Approval #17** requires the applicant to submit a revised site plan eliminating the proposed 3,500 SF nursery.

Water Resources

Water for cultivation is provided by the permitted well (11/12-0971) (Attachment 3d) and a point of diversion from an unnamed spring (Registration H510788) and rainwater catchment tanks. The diversion is limited to 1.65 acre-feet per year that can be diverted to storage between November 1st and March 31st of each year, and the applicant must forbear from the use of the diversion between April 1st and October 31st of each year. The permitted well is screened from 60 to 180 feet below the well head in a mix of sandstone and shale. The well is approximately 700 feet from the nearest perennial watercourse and approximately 50 feet from an intermittent watercourse, both of which are tributaries to Supply Creek. The point of diversion is a spring that is located in a perennial watercourse that is a tributary to Supply Creek. While the groundwater well appears unlikely have a direct hydrologic connection to Supply Creek given the depth of the well and the distance to the nearest perennial watercourse, the spring is likely directly connected to Supply Creek due to its location in a perennial watercourse.

The well is identified in the Well Completion Report of having an estimated yield of 2 gallons per minute, which indicates that the well is relatively unproductive and likely could not be relied on as a year-round water source for the irrigation needs of the project (525,000 gallons annually.)

Given the limited productivity of the well and the need to forbear from the use of the spring diversion, the applicant is proposing to add a rainwater capture tank of 500,000 gallons. This will increase the water storage on the property to 519,000 gallons, nearly all of which will be filled through rainwater. **Condition of Approval #18** requires the applicant to install a minimum of 500,000 gallons of water storage on the site and demonstrate that it has been filled to capacity before cultivating.

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 36.30 inches in 2013, meaning that even in a substantial drought year like 2013 a total of 12.34 inches (34% of total), or 1.02 acre-feet (332,368 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available

recharge on the 320-acre parcel would far exceed the amount of rainfall that would be collected for cannabis even in a substantial drought year. Given that the planned water storage capacity is nearly 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.

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. 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 provides a portion of water for domestic, agricultural, public and commercial/industrial uses on the Hoopa Reservation. Both the Trinity River and the Klamath River re navigable rivers that provide water-related recreation and public access, and all three of these watercourses (Klamath River, Trinity River, Supply Creek) support active fisheries. Historically the Trinity River and Klamath River have also provided opportunities for waterbourne commerce. Based on the above, the use of water that is directly connected to any tributaries of Supply Creek could impact these public trust resources.

The project will add water storage that is over 98% percent of the annual water needs of the project, most of which will be collected through rainwater catchment. This will completely or nearly completely eliminate the use of the diversion and will substantial reduce the use of the groundwater well, both of which will ensure that there will be no impact to the Supply Creek watershed or to any of the Public Trust resources associated with the watershed.

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 the majority 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 F.) 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 G.) The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment H.)

Biological Resources

The nearest Northern Spotted Owl (NSO) activity center is located slightly over 1 mile from the site. Lands surrounding the site are heavily forested; thus, there is high potential for NSO habitat as well as other raptor species. A Biological Assessment was not prepared for the project and no development or tree clearing is proposed. Although there is the potential for some sensitive and protected species to be present onsite, the proposed project is to continue use of existing developed sites and the potential indirect impacts are minimized through implementation of best management practices, mitigation through site remediation and avoidance of riparian and wet areas, and the implementation of BPTC measures in the SMP. The cannabis operation is outdoor, and any supplemental lighting utilized in the nursery will be required to be shielded. Noise levels of existing generators will remain below 50 decibels (dB) to 100 FT or the nearest forested habitat through noise attenuation shielding as a condition of approval and by January 1, 2026 the project is conditioned to transition to on-site renewable energy with generators utilized only in emergencies.

Tribal Cultural Resources Coordination

The project was referred to the Northwest Information Center and the Hoopa Valley Tribe. The Hoopa Valley Tribe communicated the request for a cultural resources survey for several applications in the project area. A cultural resources investigation was prepared for the project in May 2018 by Archaeological Research and Supply Company. The study did not find any archaeological resources and concluded that the project would not affect significant historic resources and recommended that no further archaeological studies be conducted for the property. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources.

Access

The project is located in the Willow Creek area and accessed from the North side of State Highway 299, approximately 3 miles north from the intersection of State Highway 299 and Old Three Creeks Road, and approximately 3 miles from the intersection of Old three Creeks Road and a Private Drive on the property identified as 9396 Old Three Creeks Road. A Road Evaluation Report for Old Three Creeks Road from Highway 299 to an unnamed road, and the unnamed road to the subject parcel was prepared by NorthPoint Consulting Group, Inc. (Attachment 4e) that concluded that the 7.9 -mile route leading to the subject parcel is developed to the equivalent of a category 4 road standard, is in good condition, and does not have any evidence of a site-specific safety problem. The report estimated that during peak operations, the proposed project, in addition to all other traffic on the roadways, average daily traffic on the 7.9-mile route would be 124. The increase in traffic is minimal and is not expected to negatively impact the surrounding area. Access to the site is shown and described in the Road Evaluation Report.

CDFW comments (Attachment 5) indicate that the access road appeared to include spots that were unstable including an active rockslide that cuts off access to the northwestern portion of the parcel and asked that a qualified professional assess the road prior to project approval. A Road Evaluation Report and Site Management Plan have been prepared by Northpoint Consulting Group which identifies that the road access to the site is adequate and stable, and identifies improvements to the on-site roads that

will increase stability. The Site Management Plan (Attachment 4) identifies the rockslide area that CDFW mentioned in their comments, and indicates that the road past the rockslide area is not in use for the cultivation or other operational aspects of the project. In addition, CDFW has asked for access to be provided to the properties through the locked access road gate, and this is already a requirement of County Ordinance that access be allowed with no less than 24 hours notice.

Revocation of State License and Settlement Agreement with DCC

The applicant was issued a Notice of Violation on June 21, 2021 by CDFW for unpermitted stream diversions and the Department of Cannabis Control (DCC) revoked the provisional cannabis licenses. The applicant objected to the allegations that led to the NOV and revocation of state licenses and petitioned the court to re-instate the licenses. In late 2022 a Settlement Agreement was entered into between DCC and the applicant and property owner, in which the applicant did not admit to any of the alleged violations and all parties agreed that licenses could be changed from revoked to suspended but would not re-instated and no cultivation could occur until CDFW confirmed that the site was in full compliance with the issued LSAA. This has been included as a condition of approval (**COA #16**). The Settlement Agreement and Court Order to Dismiss the Case is attached to this staff report as Attachment 4I.

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 this project 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 agenda were to be approved there would be a total of 73 permits and 34 acres of cultivation.

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 3 for more information).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

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. Resolution
 - A. Conditions of Approval
 - B. Cultivation and Operations Plan
 - C. Site Plan
2. Location Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Right to Divert and Use Water Certificate
 - B. Site Management Plan
 - C. Streambed Alteration Agreement
 - D. Well Completion Report
 - E. Road Evaluation Report
 - F. Supply Creek Ambient Water Supply Results
 - G. Supply Creek Water Supply Study
 - H. Supply Creek Cumulative Impact Assessment
 - I. Order to Dismiss Case and Final Settlement Agreement Regarding DCC License
5. Referral Agency Comments and Recommendations
 - A. CDFW Comments and NOV
6. Watershed Map

Applicant

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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.