



COUNTY OF HUMBOLDT

For the meeting of: 11/30/2023

File #: 23-1557

To: Planning Commission
From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

John Piccirilli
Assessor's Parcel Numbers: 522-024-004
Record Numbers: PLN-12750-CUP
Willow Creek Area

A Conditional Use Permit for 8,475 square feet of existing mixed light and 7,000 square feet of existing outdoor commercial cannabis cultivation supported by a 1,500 square foot ancillary nursery. The estimated annual irrigation water budget is 64,200 gallons and is sourced from a groundwater well. There is 8,500 gallons of existing tank storage and 24,000 gallons of tank storage proposed for a total of 32,500 gallons. Drying occurs onsite and all other processing occurs offsite. Power to be provided by a proposed solar system. The project includes restoration of former cultivation areas.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt resolutions (Resolution 23-__) (Attachments 1) which does the following:
 - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance and the Addendum to the Mitigated Negative Declaration that was prepared for the Three Creeks Holdings, LLC project (Attachment 3); and
 - b. Finds that the proposed projects comply with the General Plan and Zoning Ordinance; and
 - c. Approves the John Piccirilli Conditional Use Permit subject to the recommended conditions of approval (Attachments 1A).

DISCUSSION:

Project Location:

The project is in Humboldt County, in the Willow Creek area, on the North side of Brannan Mountain Road, approximately 4 miles West from the intersection of China Gulch Road and Brannan Mountain Road and approximately 2.5 miles North from the intersection of Brennan Mountain Road and a Private Road on the property know to be in Section 21 of Township 07 North, Range 04 East, Humboldt Base & Meridian.

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:

Supply Creek

Executive Summary:

A Conditional Use Permit for 8,475 square feet of existing mixed light and 7,000 square feet of existing outdoor commercial cannabis cultivation supported by a 1,500 square foot ancillary nursery. The estimated annual irrigation water budget is 64,200 gallons and is sourced from a groundwater well. There is 8,500 gallons of existing tank storage and 24,000 gallons of tank storage proposed for a total of 32,500 gallons. Drying occurs onsite and all other processing occurs offsite. Power to be provided by a proposed solar system. The project includes restoration of former cultivation areas.

Staff is recommending approval of a different proportion of mixed light and outdoor cultivation. The parcel is zoned TPZ and the construction of new structures or expanding existing structures for mixed light cultivation represents an intensification of use over baseline. Staff is recommending 7,704 square feet of mixed light, consistent with the known dimensions of existing greenhouses. This reduction in mixed light is 771 square feet smaller than what is requested by the applicant. Staff is also recommending increasing the total amount of outdoor cultivation by 771 square feet to 7,771 square feet. Therefore, the total amount of cultivation of 15,475 square feet remains the same, just with a slightly different proportion.

The Operations Plan is more recent than the Site Plan and does not match the Site Plan and the Operations Plan proposes uses that are inconsistent with the CMMLUO. The applicant will need to revise the Operations Plan and Site Plan accordingly (**Condition of Approval A2**). In the Operations Plan, the applicant proposes construction of a new greenhouse on the area labeled OD #3 on the Site Plan for purposes of an accessory nursery. This is not authorized under the CMMLUO because it would be an intensification of use above baseline on lands zoned TPZ. The applicant may utilize existing greenhouse space for nursery purposes but may not construct new greenhouses. The Operations Plan proposes replacing a travel trailer used for storage with a barn. Travel trailers may not be used in lieu of storage structures. The applicant may construct a structure of equivalent size and for the same purpose as the travel trailer on the main flat if the travel trailer is removed from the property

and the structure is placed at least 100 feet from the existing tree line (**Condition of Approval A6**).

The groundwater well is permitted and unlikely to have a direct hydrologic connection to Cambell Creek or Three Creeks given its depth and distance to nearby surface waters. As recommended, the project will add water storage to a total of 100 percent of the annual water needs. This will substantially reduce the use of the groundwater well in the summer months and result in less than significant impacts to the local watersheds or to any of the Public Trust resources associated with the watersheds. Wastewater will be provided by a portable toilet and the pit toilet will be decommissioned. If the well ceases to produce enough water to supply the irrigation needs, as supplemented by water storage, the CMMLUO already allows for the County to reduce cultivation area or compel additional water storage to be developed.

As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect the northern spotted owl or other sensitive species. Timberland conversion is associated with this project and was evaluated by a Registered Professional Forester which recommended treatment of slash. Staff is also recommending restoration and restocking of one conversion area. The CalFire referral replied with no comment. The project uses existing and proposed solar power and no generator usage is proposed. Up to two employees are expected during peak operation. No archaeological or historic period cultural resources, which would be considered an historical resource for the purposes of CEQA (15064.5 (a)), were identified during the field survey. The conditions of approval included the standard inadvertent discovery protocol. A road evaluation concluded that the access road functions equivalent to category 4 and can accommodate the continuation of up to two employees during peak season.

Water Resources:

The estimated annual water budget of 64,200 is sourced from a permitted groundwater well (Permit #16/17-0261). Water usage translates to approximately 4.15 gallons per square foot. The well is identified in the Well Completion Report (Attachment 4A) as having an estimated yield of 3 gallons per minute, which indicates that the well is not very productive and likely could not be relied upon as an irrigation source throughout the growing season. The well is screened from 60 to 200 feet below surface in a mix of Brown Sandstone, Serpentine, and Chirt. The well is located approximately 1,200 feet from Campbell Creek and approximately 900 feet from Three Creeks. The groundwater well appears unlikely to have a direct hydrologic connection to surface waters given the depth and the distance to the nearest surface waters.

There is 8,500 gallons of existing tank storage and the applicant proposes 24,000 gallons of additional tank storage for a total of 32,500 gallons. However, due to the low productivity of the well, staff is recommending 55,700 gallons of additional water storage so total water storage is 100% of annual water usage or 64,200 gallons (**Condition of Approval A14**). The increase in water storage will reduce demand on the well during the summer months providing additional assurance and mitigation there will be less than significant impact to the Supply Creek watersheds or any Public Trust resources such as fisheries and recreation. Comments from CDFW requested a total 100,000 gallons of water storage which 155% of estimated annual water usage. Staff review concluded that this is not necessary and that 100% storage of 64,200 gallons is sufficient. Staff recommendation is consistent with

previous decisions for water storage by the Planning Commission in this area.

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 140-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 100 percent of the total annual irrigation needs, staff believes the evidence in the record shows 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 Streambed Alteration Agreement (LSAA) notification was submitted to the California Department of Fish and Wildlife (CDFW) on December 31, 2021. The applicant must provide a copy of the final LSAA (**Condition of Approval A5**). As a condition of approval, the applicant shall implement the LSAA issued by CDFW (**Condition of Approval C16**).

Humboldt County's WebGIS shows headwaters to two mapped streams from the project parcel. The Site Plan, shows one of the mapped streams and depicts a third, unmapped perennial unnamed tributary. The Site Plan depicts appropriate streamside management areas for the surface waters and cultivation operations are a safe distance from streamside management areas. The Site Plan update will require depiction of all mapped and unmapped surface waters (**Condition of Approval A2**). A Site Management Plan dated December 2021 was prepared by Pacific Watershed Associates (Attachment 4D). As a condition of approval, the applicant shall implement the best management practices or remedial actions listed in the site management plan (**Condition of Approval C14 and C15**).

The project was referred to the Division of Environmental Health which responded with recommendations relating to onsite processing and the use of portable toilets. Onsite wastewater for cultivation activities will be supported by rented portable toilets (**Condition of Approval B5**) and the pit toilet will be decommissioned (**Condition of Approval A10**). Processing will occur offsite at a licensed facility (**Condition of Approval B3**).

Per the Operations Plan, irrigation methods include drip emitters. The Site Plan depicts an existing pond and a proposed pond. Per the Operations Plan the existing pond will not be used in any way with cannabis irrigation (**Condition of Approval B2**). The proposed pond cannot be approved for cannabis irrigation because it will result in timber conversion and must be removed from the revised Site Plan (**Condition of Approval A2**). The Site Plan depicts a proposed well that is not discussed in the Operations Plan. The proposed well location must be removed from the revised Site Plan (**Condition of Approval A2**).

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 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 100 percent of the annual water needs of the project. This will substantially reduce the use of the groundwater well in the summer months and helps to ensure that there are less than significant impacts to the local watersheds or to any of the Public Trust resources associated with the watersheds.

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 4E). HMC Engineering, Inc. completed a Surface Water Study in 2020 that concluded that runoff from the watershed that would potentially be intercepted for all the cannabis projects in the watershed would be a maximum of 0.200% in the driest year on record (Attachment 4F). The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment 4G).

Biological Resources:

No Biological Assessment Report was prepared for the project. The project is for pre-existing cultivation and there are no mapped sensitive plant or animal species on the site per the California Natural Diversity Database (CNDDDB). The nearest spotted owl activity center is approximately 1.0 miles to the east and additional owl activity centers are further from the site. The applicant's request and staff recommendation to eliminate artificial light from cultivation areas will reduce any potential ongoing impacts below what existed under baseline conditions prior to 2016. Use of the generator is subject to the standard condition limiting noise to 50dB at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer (**Condition of Approval C2**).

The Site Plan depicts an outdoor cultivation area of 3,000 square feet labeled OD #7. This area was

cleared and graded after May of 2016 and is ineligible as a cultivation area. This area must be restocked consistent with the Forest Practice Rules. Since the Site Plan depicts 12,930 square feet of outdoor cultivation and the staff recommendation is for 7,771 square feet of outdoor cultivation, the elimination of OD #7 from eligibility still leaves adequate area to cultivate the outdoor cultivation entitlement. Prior to resuming cultivation, the project is conditioned to require a qualified professional to evaluate and make recommendations, if any, regarding revegetation of former cultivation areas not planned to be utilized for the approved amount. **(Condition of Approval A7).**

The project has been conditioned to ensure supplemental lighting associated with the mixed light cultivation adheres to Dark Sky Association standards including security lighting **(Condition of Approval C3)**. Permit conditions of approval also prohibit using synthetic netting **(Condition of Approval C5)**, ensure refuse is contained in wildlife-proof storage **(Condition of Approval C6)**, and prohibit use of anticoagulant rodenticides to further protect wildlife **(Condition of Approval C8)**. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect the 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 Investigation dated August 2022 prepared by DZC Archaeology & Cultural Resources, LLC concluded that no archaeological or historic period cultural resources, which would be considered an historical resource for the purposes of CEQA (15064.5 (a)), were identified during the field survey. The conditions of approval included the standard inadvertent discovery protocol **(Condition of Approval C1)**.

Energy

Power is provided by existing and proposed solar panels. No generator usage is proposed. **(Condition of Approval B1)**.

Access:

From CA Highway 299 west of Willow Creek, go north on Old Three Creeks Road for approximately 6 miles. A Road Evaluation Report (Attachment 4H) was prepared for Three Creeks from Highway 299 to the project site. The evaluation concluded that Three Creeks Road is developed to the functional equivalent of a road category 4 standard and adequate for the proposed use without further review. Three Creeks Road is partially county maintained. The project was referred to Public Works which recommended that the intersection of the county-maintained road and private road be rocked to a minimum width of 20 feet and a length of 50 feet **(Condition of Approval A12)**. Up to two employees are possible during peak operations and the Site Plan revision needs to depict parking areas **(Condition of Approval A2)**.

Geologic Suitability:

The project parcel is mapped in the County GIS as moderate instability. The existing cultivation is located mostly in areas of 15% to 30% slope. No new grading is proposed to implement the project. After the fact grading permits are required for grading that was done previously without permits

(Condition of Approval A8). During a November 6, 2023 site visit by CDFW, sediment discharge was observed. The project is conditioned to require an interim erosion control plan **(Condition of Approval A16).**

Timber Conversion:

Timberland conversion is associated with this project. The applicant provided a timberland conversion evaluation dated December 17, 2021, prepared by Blair Forestry Consulting. The Forester concluded that conversion sites three and four as designated on the map on page 12 of the evaluation do not meet the standards in the Forest Practice Rules. The recommendation is for the landowner to cut slash and sawlogs to a minimum of 2 feet in length **(Condition of Approval A11).** Because conversion site four occurred after 2016 staff is also recommending the area be restored and restocked to its original condition **(Condition of Approval A7).**

Security and Safety:

Per the project Operations Plan, access to the parcel is gated and locked and security cameras and lighting are used. The Site Plan depicts does not depict any water tanks dedicated to fire suppression or emergency vehicle turnaround. The revised site plan must show at least one 2,500 gallons water tank dedicated to fire suppression and an area suitable for an emergency vehicle turnaround **(Condition of Approval A2).**

The project site is not within any mapped fire district or fire response area other than the State Responsibility Area. Project conditions require the applicant to record an Acknowledgement of No Available Emergency Response and Fire Suppression Services form for the parcel **(Condition of Approval A4).**

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 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 project the total approved permits in this Planning Watershed would be 62 permits and the total approved acres would be approximately 26.87 acres of cultivation. If all 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:

Environmental review for this project was conducted and based on that analysis, staff concludes that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration (MND) that was adopted for the CMMLUO. Staff has prepared an addendum (Attachment 3) to the MND for consideration by the Planning Commission.

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 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete other 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
 - A. Conditions of Approval
 - B. Operations Plan
 - C. Site Plan
2. Location Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Well Completion Report
 - B. Well Permit
 - C. Timberland Conversion Evaluation
 - D. Site Management Plan
 - E. Supply Creek Ambient Water Supply Results
 - F. Supply Creek Water Supply Study
 - G. Supply Creek Cumulative Impact Assessment
 - H. Road Evaluation
5. Referral Agency Comments and Recommendations
 - A. Division of Environmental Health
 - B. Public Works
 - C. CalFire

Applicant

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Please contact Steven A. Santos, Senior Planner, at santos@co.humboldt.ca.us or 707-445-7541 for questions about the scheduled item.