



# COUNTY OF HUMBOLDT

For the meeting of: 11/2/2023

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File #: 23-1477

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**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Consent

**SUBJECT:**

Watersong, LLC, Conditional Use Permit  
Assessor Parcel Number: 522-031-007  
Record Number: PLN-12002-CUP  
Willow Creek area

A Conditional Use Permit for 21,469 square feet (SF) of existing outdoor cannabis cultivation, including 1,200 SF of ancillary propagation. Water sourced for cultivation from a permitted, groundwater well. There are three 3,500-gallon hard-sided tanks totaling 10,500 gallons of water storage. Estimated annual water use is 135,000 gallons. Outdoor cultivation occurs in the southeastern portion of the parcel consisting of 2 cultivation areas. Drying and curing occurs on-site in existing shipping containers while other processing is completed off-site. A maximum of 3 employees may be utilized during peak operations. Power is provided by three (3) generators and solar power is used for the well pump. The project is conditioned for transition to 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 Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CCMLUO) that was prepared for the Watersong, LLC project (Attachment 3); 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 Humboldt County, 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 2.2 miles North from the intersection of Old Three Creeks Road and a Private Drive on the property known to be in Section 30 of Township 07 North, Range 04 East, and Section 29 of Township 07 North, Range 04 East, H.B.&M.

**Present General Plan Land Use Designation:**

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

**Present Zoning:**

Timber 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:**

Watersong, LLC, seeks a Conditional Use Permit for 21,469 square feet (SF) of existing outdoor cultivation 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 site is designated as Timberland (T) in the Humboldt County 2017 General Plan Update and zoned Timber Production Zone (TPZ). Currently, there are two (2) existing outdoor cultivation areas located in the central portion of the subject parcel. Cultivation Area #1 consists of 18,893 SF and cultivation Area #2 consists of 2,576 SF as shown on the site plan. Ancillary propagation consists of 1,200 SF (100'x20') and is within an existing greenhouse. Outdoor cannabis cultivation activities anticipate one (1) harvest annually for a growing season that extends from April to October.

Processing, including drying and curing activities, occurs on-site in four 20'x10' existing shipping containers. All other processing is done offsite by a 3<sup>rd</sup> party licensed processing company. A maximum of three employees may be utilized during peak operations. Power is provided by three (3) generators and solar power is used for the well pump (see additional discussion below). Access to the operation is gated and locked, and trail cameras are placed along the gate, various buildings on the parcel, and cultivation areas. Additional security from a 3<sup>rd</sup> party neighborhood patrol service is in use during the months of September to November.

### **Cultivation and Nursery Space:**

As noted above, the application is for 21,469 SF of existing outdoor cannabis and 1,200 SF of ancillary propagation. The cultivation amount (21,469 SF) is consistent with the amount of cultivation verified by the County to be in existence prior to the CMMLUO environmental baseline date of January 1, 2016. The onsite nursery equates to approximately 5.6% of the total current cultivation area, which is consistent with what Planning division staff and the Planning Commission have found allowable in the past. (i.e., a nursery space of 10% or less of the cultivation area). However, although the parcel is over 5 acres in size, irrigation water is sourced from a permitted groundwater well, and slopes of where the cultivation and ancillary propagation is located are less than 18% as per the Water Resources Protection Plan (WRPP), the subject property is zoned TPZ. As such, new cultivation could not be considered on the subject parcel, and therefore additional SF for propagation space is not supported by Planning staff. Conditions of approval are recommended to limit the total amount of cannabis (cultivation and ancillary nursery space) onsite at any given time to a total of 21,469 SF, which is required to be limited to a maximum of 1,200 SF of ancillary propagation, and revise both the Site Plan and Cultivation and Operations Plan accordingly (**Conditions of Approval A. 6-7**).

### **Water Resources:**

Water for irrigation is provided by a permitted groundwater well located in the eastern portion of the parcel to the east of the cultivation areas. Additional water storage onsite includes three (3) existing 3,500-gallon in high-density polyethylene (HDPE) water storage tanks for a total of 10,500 gallons of water storage. Estimated annual water usage is 135,000 gallons (6.3 gal/SF). Per the Well Completion Report (Attachment 4D, discussed below), the well is estimated to yield approximately 4 gallons of water per minute and produce up to 21,600 gallons per day. The water yield from the well is sufficient to support the project. As stated in the Cultivation and Operations Plan (Attachment 1B), cultivation occurs from April to October. From May to October (approximately 180 days) is when flowering occurs. The well yield per day is 21,600 gallons and the 180 days of flowering equates to approximately 3,888,000 gallons that can be yielded. In conclusion there is sufficient water yield to support the project and continually fill the water storage tanks throughout operation use. Irrigation water will be applied by hand watering, but a timed, metered, drip irrigation system is proposed to minimize overwatering and reduce the risk of irrigation runoff.

A Hydrological Report (*Hydrologic Isolation of Well WCR2013-008234 (Legacy well #e0186272) From Surface Waters, Old Three Creeks Road, Berry Summit, APN: 522-031-007*) was prepared by Lindberg Geologic Consulting in October 2022 (Attachment 4I) to assess the well's potential for hydrologic connectivity with any adjacent wetlands and surface waters, and if pumping the well could affect surface waters in nearby watercourse. Per the Report, the findings concluded the existing permitted well on the subject parcel has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent wetlands, surface waters, springs, and/or nearby wells in the vicinity. The report states Humboldt County's WebGIS shows four (4) watercourses within one (1) mile of the well site. Approximately, 1,600 feet to the northwest is one (1) ephemeral tributary of Minor Creek, and approximately 1,750 feet to the southwest is a second ephemeral tributary of Minor Creek. Southeast of the subject well approximately 3,100 feet is an ephemeral tributary of Three Creeks. The head of (perennial) Supply Creek is more than 3,500 feet east of the subject well. According to the Hydrological Report, the well and Site Plan Map is located in the

southwestern corner of the parcel. The well elevation is approximately 3,700 feet. The subject well is only cased and screened to 160 feet below the ground surface (bgs) and only cased and screened to 130 bgs. Therefore, the elevation of the bottom of the borehole is 3,540 feet, and the bottom of the well screen is 3,570 feet bgs. The Well Completion Report (On file), the well is 160 feet deep and drilled through Silty Clay Reddish Brown, Weathered Shist, and Highly Fractured Basalt. The report states the well has a low potential of having any direct connection to surface waters. The first water was encountered at 40 feet. In conclusion, per Well Completion Report, the well is estimated to yield approximately 4 gallons of water per minute and produce up to 21,600 gallons per day, as discussed previously. As such, use of the well does not require additional water rights from the State Water Resources Control Board and is not subject to forbearance or water storage requirements. Conditions of approval also require the applicant to monitor water use from the well and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.12**).

Additionally, a Final Streambed Alteration Agreement (SAA; Notification No. 1600-2019-0420-R1) was signed by the California Department of Fish and Wildlife (CDFW) in September 2019 (Attachment 4C) for a total of one (1) encroachment for the upgrade a failing stream crossing to include: the enhancing a road dip and adding rock and compaction of fill, and rock armoring as necessary to minimize erosion. The proposed rock ford crossing shall only be driven on while dry. If crossing shall be driven when wet, the applicant (permittee) shall submit an Agreement amendment request to install a culvert. The project is conditioned to implement all terms and conditions of the Final LSAA (**Condition of Approval A.20**). Furthermore, a *Focused Engineering Geologic Evaluation of Road Map Points For Supply Creek 2013 Project* (Attachment 4G), Humboldt Co., prepared by Oswald Geologic, dated May 30, 2013, mentions road reconstruction that was first observed in a 1972 aerial photography. From the CDFW, LSAA recommendations of the upgrade it is concluded/recommended from Planning Staff the Condition of Approval will address the issues from the 2013 Geologic Evaluation Report.

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The Water Resource Protection Plan (WRPP; WDID:1\_12CC417126) was prepared for the State Water Resource Control Board (SWRCB, Order No. R1-2015-0023) in January of 2017 by Timberland Resources Consultants (see Attachment 4B) identified seven (7) Class III drainages and two (2) Class II intermittent watercourses, which flows from north to south on the eastern and center portions of the parcel, with associated 100-foot Streamside Management Area (SMA) buffers. All the watercourses on the subject parcel are tributaries to Minor Creek, which is a tributary to Redwood Creek. All current and existing development including the cultivation and associated structures, are located outside the

SMA buffers. that includes recommended best practices for erosion control and water quality protection consistent with the SWRCB Cannabis General Order R1-2015-0023. The WRPP identified compliance mitigation standards with conditions. All mitigation standards shall be conditioned to be continued to be implemented until all requirements of the WRPP are completed (**Condition of Approval A.11**). The project is conditioned to implement all requirements of the WRPP upon issuance of the project permits. The Applicant is enrolled in the SWRCB General Order (Order No. R1-2015-0023) (Attachment 4A).

Furthermore, the applicant is required to provide evidence of enrollment with the SWRCB Cannabis Cultivation General Order (Order No. WQ 2019-0001-DWQ) including but not limited to submitting a copy of the Site Management Plan. Within 60 days of the effective date, the applicant shall submit a Site Management Plan (SMP) developed for the project parcel. The applicant shall submit the SMP to the State Water Resources Control Board (SWRCB) Cannabis Policy and General Order WQ 2019-0001-DWQ General Waste Discharge Requirements for Dischargers of Waste Associated with the Cannabis Cultivation Activities (General Order). The applicant shall submit a letter or similar communication from the SWCRB verifying that all their requirements have been met and will satisfy this condition (**Condition of Approval A.11**).

#### **Biological Resources:**

A *Preliminary Biological Resource Assessment for APN 522-031-007*, prepared by TransTerra Consulting on May 2020 (on file and confidential), analyzed biological resources based from on the field observations and assessed from search of CNDDDB biological resources database. Results from database and field survey showed minimal suitable habitat on-site for plant species with a moderate or high potential to occur and no evidence for rare plant species was detected in the project area. Further results of the CNDDDB database showed no special-status species within a 1-mile radius. CNDDDB database found within a 3-mile a suitable habitat for special status species. No other special-status species have been documented on the project site within a 1-mile radius. The nearest known Northern spotted owl (NSO) activity center greater than 1.16-mile to the west of the cultivation site. The last positive observation was made in 2000 with only negative observations following in the CNDDDB database up to 2001; therefore, the cultivation site may not provide suitable foraging habitat. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

#### **Energy:**

Power will be provided by three (3) generators including a 7kW, 4.5kW, and 3kW, as well as a solar array. Manufacturer's specifications of the Honda generator models are rated to be 65 dBA to 52 dBA at a one-quarter load. The Honda generators are stored in an existing 30'x40' (1,200 SF) structure. Performance standards for noise are set by Department Policy Statement No. 16-005 clarifying CMMLUO Section 314-55.4.11(o) Humboldt County Code which states noise levels shall not exceed 50 decibels (dB) at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer. As a result, the project is conditioned to ensure the combination of background, generator, or other operational equipment created noise meets the noise level threshold (**Condition of Approval A.21**). Additionally, conditions of approval require the applicant to submit an 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) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.8**).

**Access:**

Access to the site is by way of a private access via Unnamed Access Road off of Old Three Creeks Road accessed from State Route 299 (SR 299). A Road Evaluation was prepared by the Applicant in November 2019 for a 2-mile segment of Old Three Creeks Road accessed directly off of SR 299 and the 2.1-mile segment of Old Three Creeks Road to the private access driveway. The Road Evaluation indicated the Old Three Creeks Road, and the Unnamed Access Road is maintained privately. According to referral comments from the Department of Public Works, State Highway 299 to Old Three Creeks Road (P.M. 2.8; End of County maintained) is a County-maintained road. Old Three Creeks Road is included on the Approved List of County Maintained Roads that meet Road Category 4 standards for Cannabis Projects. The access road to the subject parcel is past the county maintained road. The Road Evaluation Report indicated the road segments are developed to the equivalent of a road Category 4 standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight.

Due to the number of cultivation projects along Unnamed Access Road and Old Three Creeks Road, it is recommended by the Planning Department, the applicant shall take steps to form and implement a Road Maintenance Association. The project is located past the County maintained portion of Old Three Creeks Road. The subject project shall take the necessary to steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the event the applicant is unable to coordinate formation a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road and maintain enrollment for the life of the project (**Condition of Approval A.10**)

As previously noted, there will be a maximum of 3 people onsite during peak operations. Therefore, a significant increase in traffic is not expected under the project.

**Geologic Suitability:**

The project parcel is mapped in the County GIS as “moderate instability” (2). The slope of the land where cannabis will be cultivated is less than 18%, as per the Water Resource Protection Plan (WRPP; WDID:1\_12CC417126) prepared by Timberland Resource Consultants in January 2017 (Attachment 4A).

**Timber Conversion:**

Based on review of aerial imagery on the Humboldt WebGIS, dating back to 2004, it appears timber conversion occurred on the subject parcel between 2012 - 2014 for development of the cultivation areas and the pond. Based on a review of satellite imagers, it does not appear that any timber conversion has occurred after 2015.

The applicant received a Notice of Violation from CAL FIRE dated October 27, 2014. Per a settlement and documentation with CAL FIRE found the Applicant to be in violation of converting timber lands without proper authorization from CAL FIRE (e.g., Less Than Three Acre Conversion or Timber Harvest Plan). The CAL FIRE inspection found an area approximately 2 acres in size was observed to have been cleared. The Applicant settled the violation with CAL FIRE in February 2015. Per the CAL FIRE inspection report, the applicant completed the remediation work specified by the settlement. No further obligations exist related to the remediation work agreed between CAL FIRE and the Applicant. The report specifies that an approved valid harvest document is required prior to commencement of any commercial timber operations (Attachment 4F).

**Security and Safety:**

The operation is secured behind locking metal gates at private access to the project. There are trail cameras placed over the gate, building, and cultivation areas. The subject parcel has a 3<sup>rd</sup> party neighborhood security patrol during September through November season.

**Tribal Consultation:**

No known significant archaeological resources are in the project area. A Cultural Resources Investigation was conducted by Archaeological Research and Supply Company in April 2021 (on file and confidential). No artifacts, features, or sites which would be considered a historical resource under CEQA were identified during the survey. Although the Cultural Resources Investigation concludes that it is not anticipated to encounter significant buried archaeological materials at this location during implementation of the permit, it is noted that the potential for inadvertent discovery of such resources exists. Ongoing conditions of approval are incorporated regarding the inadvertent discovery protocol to protect cultural resources (**Informational Note C.3**).

**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 Redwood Creek Planning Watershed, which under Resolution 18-43 is limited to 141 permits and 49 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 13 permits and the total approved acres would be 3.7 acres of cultivation.

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. Notice of Applicability
  - B. Water Resource Protection Plan
  - C. Lake or Streambed Alteration Agreement
  - D. Well Completion Report
  - E. Less Than Three Acre Conversion
  - F. CAL FIRE Settlement
  - G. Engineering Geologic Evaluation
  - H. Public Works Road Evaluation Report Form (Highway 299 to Old Three Creeks Road and Unnamed Access Road (Indian Fields Road))
  - I. Hydrogeologic Well Assessment
5. Referral Agency Comments and Recommendations
  - A. Planning and Building Department - Building Division
  - B. CAL FIRE
  - C. Department of Public Health
  - D. Public Works, Land Use Division
  - E. Klamath-Trinity Joint Unified School District
6. Watershed Map

Applicant

Elizabeth Lux and Dominic Gabriel  
653 15<sup>th</sup> Street  
Arcata, CA 95521

Owner

Same as Applicant

Agent

Same as Applicant

Please contact Cliff Johnson, Planning Manager at [cjohnson@co.humboldt.ca.us](mailto:cjohnson@co.humboldt.ca.us) or 707-445-7541, if



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you have any questions about the scheduled item.