



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1411

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

4 Ponds, LLC Special Permits
Assessor's Parcel Number: 522-033-010
Record Number: PLN-12848-SP
5995 Old Three Creeks Road, Willow Creek area

A Special Permit for 10,000 square feet of existing outdoor cannabis cultivation and a 275 square-foot nursery. Water for irrigation is sourced from an existing onsite well. Water for irrigation is stored in seven tanks, totaling 18,200 gallons, and one 2,800-gallon tank reserved for fire protection. An additional 60,000 gallons of tank storage is proposed to support irrigation needs. An estimated 116,800 gallons of water is used per growing season for irrigation. Processing, including drying and bucking, occurs onsite in an existing outbuilding, and trimming will take place off site at a licensed processing facility. Electricity is sourced from solar and generator power and the project is recommended to be conditioned to require transition to on-site renewable energy by January 1, 2026. No employees are proposed. A Special Permit is also requested for work within the Streamside Management Area (SMA) to remove two water tanks, associated tank infrastructure, and to allow for associated remediation activities within the SMA.

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 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 4 Ponds, LLC project (Attachment 3); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the 4 Ponds, LLC Special Permits 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 2.8 miles north from the intersection of Old Three Creeks Road and State Highway 299, and approximately 3.3 miles north from the intersection of Old Three Creeks Road and a Private Drive on the property known as 5995 Old Three Creeks Road.

Present General Plan Land Use Designation:

Residential Agriculture (RA40), Density: 40 acres per dwelling unit, Slope Stability: Moderate 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:

Supply Creek Watershed

Executive Summary:

4 Ponds, LLC seeks a Special Permit to allow the continued operation of an existing 10,000-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, CMMLUO. The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan and zoned Unclassified (U). Cultivation takes place in four separate areas with slopes less than 5 percent. Cultivation Areas 1-3 are located near the northwest corner of the property and Cultivation Area 4 is in the southeast corner. Clones are purchased from a licensed source and are initially held in a 275-SF hoop house near the northwest corner of the property. Supplemental lighting is used in this area only from approximately May 1 through June 15 between 8 pm and 12 am. One harvest is anticipated annually for a growing season that extends from March through November.

Crops are harvested then dried and bucked in an existing 1,500-SF barn, and trimming will take place off site at a licensed processing facility. The facilities are operated by the applicant with no additional employees. A solar power system has been installed near Cultivation Area 1. This system is primarily used for pumping water and lighting in the designated nursery area. One MQ 25 WhisperWatt generator, with secondary containment, is located near the center of the property. The generator usage

is limited to evening and early night from May through November. A Honda EU2200i generator is located onsite for backup, if needed. The Honda EU2200i emits 62 decibels (dB) at the maximum rated load and 53 dB at the ¼ rate load. It is expected that the generator will never be used at the maximum rate load. Generator noise is expected to be less than 50 dB at the property line, located over 50 feet away. The WhisperWatt generator emits 65 dB at the maximum rated load at 23 feet. The operation will be secured behind a locked gate. All cannabis and cannabis-associated materials are secured in locked locations.

Green waste material is composted onsite within a small area equipped with perimeter containment. Trash and recycling are stored in contractor bags in an outbuilding prior to removal, then hauled to an approved transfer station/disposal facility, as needed. Toilet, handwashing, and shower hot water facilities are located inside of the bathhouse structure. Wastewater is treated onsite with a septic system. The septic system is not yet permitted. In the interim the applicant purposes to use a regularly serviced portable toilet and hand washing unit. The project is conditioned that the applicant provides written assessment from a qualified septic consultant to the Department of Environmental Health confirming a minimum of Tier 0 status for the existing onsite waste treatment system serving the bath house (**Condition of Approval A.11**).

Timber Conversion

A Less Than Three Acre Conversion Exemption (1-15EX-133HUM) was issued by CAL FIRE in 2015, prior to the environmental baseline established for the CMMLUO. A Timber Operations Work Completion and/or Stocking Report (Attachment 4E) was prepared by the California Department of Forestry and Fire Protection (Cal Fire) and concluded that on April 28, 2016 “all work on this Less-Than-3-Acre Conversion Exemption was completed. No Stocking Report is required.” Cal Fire provided a Final Completion Inspection Report for the project on November 28, 2016, and concluded that all timber operations including slash treatment appear to have been completed. No violations were observed in the logging area.

Water Resources

Water for cultivation is provided by the permitted well (11/12-1154). Water for irrigation is stored in seven tanks, totaling 18,200 gallons, and one 2,800-gallon tank reserved for fire protection. An additional 60,000 gallons of tank storage is proposed to support irrigation needs. An estimated 116,800 gallons of water is used per growing season for irrigation. The permitted well is screened from 100 to 260 feet below the well head in a mix of brown chert, sandstone, and shale. Though a portion of the project is within the Supply Creek watershed, the well is within the Three Creeks watershed and approximately 2,000 feet from the nearest perennial watercourse and approximately 300 feet from an intermittent watercourse, both within the Three Creeks watershed. The groundwater well appears unlikely to have a direct hydrologic connection to surface waters given the depth of the well and the distance to the nearest perennial watercourse.

The well is identified in the Well Completion Report (Attachment 4D) of having an estimated yield of 2 gallons per minute, which indicates that the well is relatively unproductive; however, the applicant claims that the well produces 3 gallons per minute, has consistently been reliable, and has never run dry.

Given the limited productivity of the well, the applicant is proposing to add an additional 60,000 gallons of tank storage. This will increase the water storage on the property to 78,200 gallons, approximately 67 percent of the annual water demand of the project. By reducing the use of the groundwater well in the summer months, the proposed project will ensure that there will be a negligible impact to the Three Creeks watershed or to any of the Public Trust resources associated with the watershed, such as fisheries and recreation.

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 42.02 inches in 2013, meaning that even in a substantial drought year like 2013 a total of 14.29 inches (34% of total), or 1.19 acre-feet (387,713 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the 61-acre parcel 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 67 percent 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.

A Lake or Streambed Alteration Agreement (LSAA) was submitted to the California Department of Fish and Wildlife (CDFW) in July 2020. CDFW issued Notification No. 1600-2020-0350-R1 on April 6, 2021, (Attachment 4C) for a crossing upgrade, onstream reservoir remediation, and streambank alteration remediation. An accompanying Hydrologic Analysis prepared by Mother Earth Engineering evaluated the existing stream crossing peak flow in order to properly size the crossing for a 100-year flood event. As a condition of approval, the applicant shall execute the LSAA issued by CDFW in compliance with the agreement or any amendment to the agreement (**Condition of Approval A.14**).

Although Humboldt County's WebGIS shows no mapped streams, the Site Management Plan (SMP) prepared by Mother Earth Engineering (Attachment 4A) identifies three watercourses running through the site: an intermittent Class II stream, an ephemeral Class III stream, and an intermittent Class III stream. All four cultivation areas are outside of the Streamside Management Area (SMA) buffers, but two HDPE hard tanks are shown within the Class II 100-foot SMA buffer. The SMP (Attachment 4A) includes corrective actions to remediate the streambank per the CDFW LSAA, remove all unused cultivation area materials, and reestablish vegetation on the disturbed areas and relocate the two HDPE tanks outside the riparian area. As a result, the project is conditioned that these tanks and associated infrastructure be removed, and that the area be restored to its natural state (**Condition of Approval A.13**). The additional Special Permit that is being requested will allow for this work within the SMA to be completed.

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. Three Creeks is a tributary to Willow Creek, which is itself a tributary to the Trinity River, then the Klamath River. Three Creeks not only provides water to support the health of these rivers but provides habitat for sensitive aquatic species including Coho Salmon. Both the Trinity River and the Klamath River are navigable rivers that provide water-related recreation and public access, and both of these 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 67 percent of the annual water needs of the project. This will substantially reduce the use the use of the groundwater well in the summer months, which will ensure that impacts to the Three Creeks watershed or to any of the Public Trust resources associated with the watershed will be negligible.

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 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

There are no mapped sensitive species onsite; however, the nearest Northern Spotted Owl (NSO) habitat located within the Six Rivers National Forest is within 1 mile of the site. A Biological Assessment was not prepared for the project and while 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 mitigated through implementation of best management practices, the SMP required by the State Water Resources Control Board, and LSAA with CDFW. According to the specifications, the Honda generator has a sound level of 62 dB and the WhisperWatt has a sound level of 65 dB(A) at 23 feet. A generator shed is being planned to house the WhisperWatt generator to minimize noise. Therefore, expected daily activities will not produce noise levels great enough to affect NSO. Per the applicant, the generators are used in the evenings between May and November. The project is conditioned to ensure that generator or other operational equipment created noise meets the noise level threshold (**Condition of Approval B.1**). Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

Conditions of approval require the applicant to submit a revised 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), how the size of the generators are reasonable based on the power demand, and how the operation will transition to use of 100% renewable energy (e.g., solar, wind, and/or hydropower) sources by January 1, 2026, with a generator to be used for emergencies only (**Condition of Approval A.5**).

The project is conditioned to adhere to Dark Sky Association standards for greenhouse lighting and security lighting, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval B.2, B.5, B.6, and B.8**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect NSO or other sensitive species.

Tribal Cultural Resources Coordination

The project is in the Hoopa Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center and Hoopa Valley Tribe in January 2018. A Cultural Resources Investigation was not required for the project. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources.

Access

From Arcata, the site is 27.7 miles east on Highway 299 to Old 3 Creeks Road, then left. Proceed 5.5 miles and turn right on an unnamed access road. The property is 1 mile ahead. Old 3 Creeks Road is not a Category 4 County-maintained roadway; however, road evaluation reports were prepared for Old 3 Creeks Road and the unnamed access road by the applicant (Attachment 4F), which indicate that both roads are maintained by a road association and that both roads are developed to the functional equivalent of a road Category 4 standard and were found to be functionally appropriate for the expected traffic.

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 approximately 26.9 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.

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 comments 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. Draft Resolution
 - A. Conditions of Approval
 - B. Operations Plan
 - C. Operations Plan Addendum
 - D. Site Plan
2. Location Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Site Management Plan
 - B. Notice of Applicability
 - C. Streambed Alteration Agreement
 - D. Well Completion Report
 - E. Timber Operations Work Completion and/or Stocking Report
 - F. Road Evaluation Reports
 - G. Supply Creek Ambient Water Grab Sampling Results
 - H. Supply Creek Surface Water Supply Study
 - I. Supply Creek Cumulative Impact Assessment
5. Referral Agency Comments and Recommendations
6. Watershed Map

Applicant

4 Ponds, LLC
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Owner

Same as applicant

Agent

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File #: 23-1411

Please contact Rodney Yandell, Senior Planner, at ryandell@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.