



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1404

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Kush Creek Organics, LLC Conditional Use Permit and Special Permit
Assessor's Parcel Number: 522-025-006-000
Record Number: PLN-10558-CUP
Willow Creek area

Conditional Use Permit for 22,276-square-feet (SF) of existing cannabis cultivation consisting of 7,340 SF of mixed-light greenhouse cultivation and 14,936 SF of outdoor cultivation on a 160-acre parcel. 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. Irrigation water is diverted during winter months from an unnamed Class II spring. Additional sources for commercial cannabis irrigation include a proposed 300,000-gallon rainwater catchment pond. Existing available water storage includes 55,500 gallons storage. Estimated annual water usage is 46,650 gallons (1.9 gallons/SF/year), drawn entirely during the month of April. This amount is substantially less than most cannabis operations and is achieved by water-saving trench-cultivation methods designed to only require drip irrigation from storage a few times a week during summer months. Drying is conducted in two buildings with a combined area of 1,400 SF by two permanent employees and up to three (3) additional temporary staff. All processing and packaging will occur off-site at a third-party licensed facility. Continued use of portable toilets are conditioned until a planned onsite wastewater septic system can be constructed. Historically, solar panels provide most electricity (85 percent) and two Honda EU 3000iS generators are used to accommodate the remaining electrical demand. If approved, the project is proposed to be conditioned to transition to 100 percent 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 Kush Creek Organics, LLC project (Attachment 3); and

- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Kush Creek Organics, 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 Three Creeks area west of Willow Creek. The primary access to the site is provided by Old 3 Creeks Road, and the property is approximately 6.83 miles north of the intersection of Highway 299 and Old 3 Creeks Road and 1.39 miles north of the intersection of Old 3 Creeks Road and Supply Creek Road. The approximately 160-acre parcel is found within the northeast quarter of Section 20 in Township 07 North, Range 04 East, Humboldt Base & Meridian.

Present General Plan Land Use Designation:

Timberland (T) Density: 40-60 acres per dwelling unit, and Residential Agriculture (RA40) 5 to 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:

Kush Creek Organics seeks a Conditional Use Permit to allow the continued operation of an existing 22,276-square-foot (SF) cannabis cultivation operation consisting of 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 Timberland (T) in the Humboldt County 2017 General Plan Update and zoned Timber Production Zone (TPZ).

The applicant anticipates up to two (2) cultivation cycles for the mixed-light greenhouses for a growing season that extends from April through October. One (1) cultivation cycle per year will occur for the full-sun outdoor area.

There are two permitted drying buildings with a combined area of 1,400 SF. All processing and packing will occur off-site. Two full-time employees will be present with up to three additional staff during cultivation season.

Power is primarily provided by solar panels (85 percent) and the occasional use of two Honda EU 3000iS generators. Additional solar capacity is planned so that generator use can be discontinued. Security gates are installed at each entry point of the property. If approved, the project is proposed to be conditioned to transition to 100 percent on-site renewable energy by January 1, 2026 (Condition A14 and A19).

Security cameras and/or monitoring devices are installed at each cultivation site and throughout the property. The storage area is deadbolted.

Water Resources

The parcel is located within the Hoopa Valley Tribal Lands. The applicant engaged with the Supply Creek Watershed Working group and a study was prepared and provided to the county to assess localized land-use and water resources protection practices, to reduce their cumulative impacts on the Supply Creek watershed (discussed below under Tribal Cultural Resources Coordination). Water for irrigation is diverted from a hydrologically-connected unnamed Class II spring diversion located in the southern half of the property. A Streambed Alteration Agreement (SAA 1600-2016-0103-R1) with the California Department of Fish and Wildlife (CDFW) was prepared in August 2016 (Attachment 4E) allowing the applicant to proceed with two encroachments: the first to maintain this diversion and the second for construction of an off-stream pond. The pond has not been constructed, however, plans for the construction of the proposed pond are included in Attachment 4D. The spring diversion is authorized as a domestic water right (S025410) and under a Right to Divert and Use Water certificate (H100512) from the State Water Resources Control Board (Attachment 4G). Water diverted from the stream diversion flows into 55,500 gallons of existing storage comprised of six 2,500-gallon tanks and one 25,000-gallon bladder. Per the Cultivation and Operations Plan, water used for irrigation is not expected to exceed 1,200 gallons per day during in the month of April when 35,000 gallons are diverted to storage. As a result, estimated annual water usage for irrigation will be Estimated annual water usage is 46,650 gallons (1.9 gallons/SF/year), drawn entirely during the month of April. The applicant intends to discontinue the spring and utilize the pond for irrigation purposes once built. Secondly, a groundwater well has been proposed for an additional supplemental irrigation water source, and will only be utilized if it can be determined by the Planning Department to be unlikely to be connected to surface water features.

A Site Management Plan (SMP) was prepared in March 2020 by Natural Resources Management Corporation in accordance with the State Water Resources Control Board 2019 Cannabis Policy as a Tier 1, low-risk, site. The SMP provided several Best Practical Treatment and Control measures to bring the site into compliance and implementing these measures are made conditions of approval.

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 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 are 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 waterborne 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 substantially 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.

Timber Conversion

A Less-Than-3-Acre Conversion Exemption (Attachment 4H) was prepared by Timberland Resource Consultants and approved by Cal-Fire in 2015, prior to the environmental baseline established under the CMMLUO. Two areas were converted under this exemption, a larger 2-acre area and a smaller 1-acre area. California Department of Forestry and Fire Protection (Cal Fire) conducted a post-harvest inspection in 2016 recommended removal of woody debris and installation of one water break at an agreed location on the road leading to the smaller conversion area.

Biological Resources

There are no mapped sensitive species onsite and the nearest Northern Spotted Owl (NSO) activity center is located approximately 1.8 miles southeast of the nearest cultivation area on the 160-acre parcel. Six Rivers National Forest borders the parcel to the immediate west in an area heavily forested and with high potential for NSO habitat. A biological resources study was not prepared for the project; however, the 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, the Less-than-3-acre conversion and mitigation report, and the Lake and Streambed Alteration Agreement (LSAA) with CDFW.

The California Department of Fish and Wildlife (CDFW) provided comment on the project after a visit to the site on August 2, 2023. During the site visit CDFW staff walked the property to observe current and historic cultivation activities. CDFW and the following are incorporated:

- As part of the Lake and Streambed Alteration Agreement (LSAA, EPIMS-HUM- 24385-R1), the permittee shall forbear from use of the Point of Diversion (POD) from the hydrologically connected spring for cannabis irrigation (Condition 15)

- The applicant shall remain in compliance with the LSAA at all times (Condition 16)
- The applicant shall fully contain all imported soil onsite and that all discarded soil is removed and properly disposed of at a waste management facility (Condition 17)

Two (2) 7,000-watt Honda EU 3000iS generators are used onsite to supply about 15% of the energy requirements of the site and these will meet the performance standards for noise set by Department Policy Statement No. 16-005 clarifying CMMLUO Section 55.4.11 (o), which requires noise levels be at or below 50 decibels at 100 feet or edge of habitat, whichever is closer. As a result, the project is conditioned to ensure the combination of background, generator, and greenhouse fan or other operational equipment created noise meets the noise level threshold. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service. The project is to transition to 100 percent on-site renewable energy by January 1, 2026 (Condition 14).

The project has been conditioned to ensure supplemental lighting associated with mixed-light and ancillary nursery cultivation is fully contained with blackout tarps and have all outside lighting on timers or motion sensors to reduce light exposure to wildlife and their potential habitat, and avoid heavy equipment operations during the NSO critical period (February 1-July 31) or perform protocol-level surveys prior to initiating that work. Furthermore, the project is conditioned to adhere to Dark Sky 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. 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 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 Resource Report was prepared for the project on July 23, 2021 by William Rich and Associates. 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.

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 4C) 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 4B) The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment 4A.)

Access

The project is located in the Willow Creek area and accessed from Supply Creek Road, Bucks Butte Road, and Old Three Creeks Road, a distance of approximately 7.1 miles from the intersection of State Route 299, on the property known as 7824 Old Three Creeks Road (APN: 522-025-006). From State Route 299, the first 4.1 miles of Old Three Creeks Road is County Maintained. The 1.3 miles of Bucks Butte Road and 1.6 miles of Supply Creek Road leading to the parcel are privately maintained or maintained by the Supply Creek Landowners Association. Road Evaluation Reports for Old 3 Creeks Road, Supply Creek Road, and Bucks Butte Road prepared by Supply Creek Landowners Association, dated 03/13/2020. The report includes photographs of the access road segments, which are developed to the equivalent of a road category 4 standard and are adequate for the proposed use. All road segments evaluated 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 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 2 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. Supply Creek Cumulative Impact Assessment
 - B. Supply Creek Surface Water Supply Study
 - C. Supply Creek Ambient Water Grab Sampling Results
 - D. Pond Engineering Plan
 - E. California Department of Fish and Wildlife Final LSAA
 - F. Site Management Plan
 - G. Right to Divert and Use Water Certificate
 - H. Less Than 3 Acre Conversion Exemption
 - I. Well Application
 - J. Generator Specifications
 - K. Notice of Applicability
- 5. Referral Agency Comments and Recommendations
 - A. CalFire
 - B. California Department of Fish and Wildlife
 - C. Division of Environmental Health
 - D. Public Works Land Use Division
- 6. Watershed Map

Applicant

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Please contact Portia Saucedo, Associate Planner, at psaucedo1@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.