



# COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

---

File #: 23-1405

---

**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Aloha Top Shelf. Conditional Use Permit  
Assessor's Parcel Numbers: 522-026-007-000  
Record Number: PLN-11167-CUP  
Willow Creek area.

A Conditional Use Permit for 35,000 square feet of outdoor commercial cannabis cultivation, with 3,450 square feet of ancillary propagation. Annual water usage is estimated at 190,000 gallons and sourced from a groundwater well. There is 17,000 gallons of existing water storage on-site with an additional 78,000 gallons of storage recommended by staff. Drying occurs within two 320 square foot storage containers with a proposed 2,400 square foot new building for drying. Trimming will occur off-site at a licensed processing facility. Power is provided by solar, and no generators are used. The proposal includes restoration of previous cultivation areas.

**RECOMMENDATION(S):**

That the Planning Commission:

1. Adopt Resolution (Resolution 23-\_\_) (Attachment 1) which does the following:
  - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Aloha Top Shelf LLC. project; 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 in Humboldt County, in the Willow Creek area, on the east side of Cloud Crossing Road, approximately 3.07 miles north from the intersection of Old Three Creeks Road and Cloud Crossing Road, on the property known as 3077 Cloud Crossing Road.

**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 Watershed

**Executive Summary:**

The applicants are seeking a Conditional Use Permit for 35,000 square feet of outdoor commercial cannabis cultivation, with 3,450 square feet of ancillary propagation. Light-deprived cultivation will occur in eighteen (18) greenhouses totaling 35,000 square feet (SF). The cultivation greenhouses are located on Site 1 as shown in, **Attachment 1C Site Plan and Addendum**, and will consist of metal tubing covered with a woven poly translucent opaque tarp. Light deprivation will be used to produce up to two (2) flowering harvests per year; one in early July, and another in October. The 3448.8 (SF) propagation area consists of three greenhouses located at Site 2. The project includes the proposed construction of a 40' X 60' drying structure that will be permitted with the Humboldt County Building Department. This structure will replace several temporary structures that were used historically to dry and process cannabis. Trimming will be done off-site at a licensed processing facility. Two 8' x 40' storage containers are currently used for storage of equipment, fertilizers, and pesticides. The project uses solar panels to power the pumps, fans and associated electrical equipment. No generators are used in the day-to-day operations of the project. The project included a remediation plan for three areas on the parcel that had the potential to impact surface water quality (**Attachment 4F**). Per the applicant the remediations have been completed, this will be confirmed by site inspection (**Condition A4**). The remediation plan did not require consultation with the California Department of Fish and Wildlife (**Attachment 4E, 4G**).

Security gates are installed along all site access gates. Gates have keyed locks and are kept locked when not in use. Green waste material is composted in a designated area away from surface waters as noted on the site plan. Organic fertilizers and pesticides are stored in an agricultural storage structure that meets all requirements for secondary containment. All fuel and hazardous materials are stored in

secure areas with secondary containment in accordance with applicable regulations. Garbage and recycling are stored in a secure waste storage area. The waste storage area complies with BPTCs to prevent wildlife tampering and transport of waste to waters of the State. Waste is removed from the property every two weeks and transported to an approved waste disposal facility. During the peak harvest season there will be a maximum of six (6) workers on site, typically there will be three workers involved in the operation. Portable toilets will be brought on site and a handwashing station and clean drinking water will be provided. In addition, the project is conditioned that evidence is provided to County staff during annual inspections to confirm the continual use of portable toilets to serve the needs of cultivation staff until the OWTS at processing building/residence is permitted (**Condition of Approval C.27, C28**).

Conditions of approval also 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 the end of 2026, with a generator to be used for emergencies only (**Condition A3**).

### **Water Resources**

Irrigation water is sourced from two permitted groundwater wells on APN 522-026-007. Well locations are at “Site 1” and “Site 2” as shown on Attachment 1C. The well completion reports are found in **Attachment 4B and 4L**. For the south well near the propagation greenhouses, the driller estimated a yield of 20 gallons per minute on 4/16/2013. The well has a total depth of 130 feet and first water was encountered at 91 feet. For the north well near the cultivation greenhouses, the driller estimated a yield of 60 gallons per minute on 7/20/2021.. The well has a total depth of 160 feet and first water was encountered at 58 feet. . The site currently has the capacity to store 17,500 gallons in water tanks. The applicant has received DCC grant funds and will implement an additional 78,000 gallons of water storage. The total storage for the 2024 growing season will be 95,000 gallons of storage in hard sided tanks. **Attachment 1B** details existing and proposed water storage, monthly and annual water usage. The Applicant estimates an annual demand of 190,000 gallons with peak demand July through September. This equates to 5.4 gallons per square foot per year. This number is low, but the applicant justifies this with the use of organic soil building techniques, targeted drip irrigation, mulch, and the use of humidity-controlled greenhouses. Humboldt County’s WebGIS and site plan show no mapped watercourses on the property.

The project is in the Supply Creek watershed, and while not classified as impacted, this watershed requires special consideration. This consideration is due because this watershed provides part of the water source and influences the water quality of the Hoopa Valley Tribe. The applicant has been unable to locate a licensed geologist to perform a hydrologic analysis of the wells and their likelihood to be connected to surface water features, however based on an analysis of the well completion report, topographic information and the distance to nearby surface water features the wells appear to be hydrologically isolated. The north well is located on a saddle of the ridge that runs north to south at a surface elevation of approximately 3,680 feet. The bearing unit of the well, or screened interval, is located between 3,600 and 3,580 feet above sea level. The nearest mapped watercourse to the well is

Supply Creek, located 2,566 feet to the east. The elevation of the creek at the nearest intersecting point is at 2,820 feet of elevation. This means that the deepest point of the well is 710 feet above the nearest perennial surface water which is also 2,566 feet in lateral distance away from the well. Based on the preceding calculations we can make the following conclusions: the potential for significant hydrologic connectivity between surface water and groundwater in the fractured bedrock aquifer appears unlikely, and there are not permitted wells within 1,600 feet of the subject well.

The south well is located near the peak of the ridge that runs north to south at a surface elevation of approximately 4,000 feet. The bearing unit of the well, or screened interval, is located between 3,840 and 3,920 feet above sea level. The nearest mapped watercourse to the well is Supply Creek, located 3,295 feet to the east. The elevation of the creek at the nearest intersecting point of Supply Creek is at 3,200 feet of elevation. This means that the deepest point of the well is 640 feet above the nearest perennial surface water which is also 3,295 feet in lateral distance away from the south well. Based on the preceding calculations we can make the following conclusions: the potential for significant hydrologic connectivity between surface water and groundwater in the fractured bedrock aquifer appears unlikely, and there are not permitted wells within 1,000 feet of the subject wells.

The proposed cultivation area is outside of the SMA buffers. A notice on No Lake or Stream Bed Alteration Agreement (LSAA) requirement was received from the California Department of Fish and Wildlife (CDFW) (**Attachment 4E, 4G**) A Water Resource Protection Plan (WRPP) prepared by Timberland Resource Consultants in August of 2016 (**Attachment 4C**) and the applicant shall implement the corrective or remedial actions listed in the WRPP (**Condition A4**). In addition, those recommendations developed under any future Site Management Plan to be developed for the parcels, pursuant to Tier 2 enrollment under the State Water Resources Control Board (SWRCB) General Order (WDID 1-12CC429237), shall also be followed.

### **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. Pine 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 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 50 percent of the annual water needs. This will substantially reduce the use the use of the groundwater well in the summer months, which will ensure

that impacts to Supply Creek watersheds 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 4H). 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 4I). The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies (Attachment 4I).

### **Biological Resources**

A Biological Assessment Report was prepared for the project by Hohman and Associates Forestry Consultants in September 2023 (**Attachment 4K**). A 90-acre Forest Fire Prevention Exemption 1-21EX-00742-HUM was completed in June 2022 on the parcel. Postharvest the exemption area is stated to meet a QMD of 18" DBH and 60% canopy closure. The biological resources assessed for the adjacent Dayton Prairie THP# 1-22-00010-HUM was reviewed. The common theme for listed species was the plan area is within the range, and habitat exists within the biological assessment area but there was a lack of observations within and adjacent to the project area. The nearest spotted owl activity center is approximately 1.08 miles west of the project site and additional owl activity centers are further from the project site in all directions; the nearest critical NSO habitat is located .73 to the northeast of the cultivation site. The nearest identified Marbled Murrelet habitat is located .78 Miles to the northeast. The Biological Assessment concluded that the exiting cultivation operation poses a less than significant potential impact on threatened and endangered plant and animal species, however if activities are conducted that will disturb native vegetation extensive surveying should be conducted prior to such disturbances. No Generators are used to supply power to the cultivation area/nursery and processing facility, but if they are used for emergency purposes generators will be shielded to not exceed 50 decibels at tree lines or potential habitat areas. Based on the manufacturer's noise ratings for the proposed generators, noise levels are not expected to exceed the thresholds listed above. The project is conditioned to ensure that generator or other operational equipment created noise meets the noise level threshold (**Condition C.2**). Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

On October 3, 2023, the California Department of Fish and Wildlife (CDFW) provided a superseding referral response. The comments from CDFW are addressed with the standard conditions on outdoor cannabis cultivation projects, however CDFW voiced concerns about water storage (**Attachment 5B**).

The applicants' evidence shows that with two wells that yield 20 gallons per minute and 60 gallons per minute. Sufficient well water is on hand in storage and in the wells to water the operation and have a less than significant impact on plants and wildlife.

The project has been conditioned to ensure supplemental lighting associated with 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. Furthermore, 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. 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**

The project was referred to the Northwest Information Center and the Hoopa Valley Tribe. Both responded requesting that a cultural resource survey be conducted for the property's area of potential effect. A Cultural Resources Inventory Report (CRIR) was prepared by Archaeological Research and Supply, RPA (41855166) in May 2018. No cultural resources were observed and recorded because of survey efforts; the report concluded no subsequent investigation were required for the proposed project. It was concluded that there will be no effect to historical, archaeological, or Tribal Cultural Resources, as defined by CEQA with adherence to the recommended conditions of approval. The conditions require that the inadvertent discovery protocol be followed for any ground disturbing activity (**Condition C.1**).

### **Access**

From CA Highway 299 west of Willow Creek, go north on Old Three Creeks Road for approximately 3.75 miles and bear left on Cloud Crossing Road. A Road Evaluation Report (**Attachment 4D**) was prepared for 3 Creeks Road from Highway 299 to the private drive (Cloud Crossing Road) on APN 522-026-007. The Humboldt County Department of Public works requested a supplemental corrected road evaluation on 4-17-2018. The applicant's report erroneously neglected to mention that Old Three Creeks Road is County maintained for approximately 2.8 north of Highway 299. The applicant should have submitted a Road Evaluation report for both the private section and the county-maintained section of Old Three Creeks Road. The applicant states that they contribute to the Supply Creek Landowners Association which oversees the maintenance of the private roads in the area. Staff appended the Supply Creek Landowners Association's Road evaluation report to the applicant's submittal to clarify the distinction between the county and privately maintained portion of Old Three Creeks Road. The applicant's report identified Cloud Crossing Road as developed to the functional equivalent of a road category 4 standard and adequate for the proposed use without further review. 3 Creeks Road is partially county maintained and the transition between the county portion and the private portion is graveled to the standards of the Humboldt County Public Works Department. The project's two cultivation areas have emergency vehicle turn-around areas. The turnarounds are approximately 30 feet long, less than 7% grade, and are regularly rocked and maintained to prevent ruts or rills to the road surface. The hammerhead turn-around areas are approximately 50 feet wide with well over 15 feet of

vertical clearance. In addition, the permittee shall take action to form or join a Road Maintenance Association (RMA) for the maintenance of the private roads that access the project. In the event the applicant is unable to coordinate formation or join an RMA, the permittee shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the roads (**Condition A13**).

**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 River 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 59 cultivation permits and the total approved acres would be 26.61 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 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 4 for more information).

**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 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 Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Less than Three Acre Conversion
  - B. Well Report (South)
  - C. Water Resources Protection Plan
  - D. Road Evaluation
  - E. LSAA Notification
  - F. Remediation Plan
  - G. No LSA Required Letter

- H. Supply Creek Ambient Water Grab Sampling Results
- I. Supply Creek Surface Water Supply Study
- J. Supply Creek Cumulative Impact Assessment
- K. Biological Report
- L. Well Completion Report (North)
- 5. Referral Agency Comments and Recommendations
  - A. Public Works Referral Comments
  - B. CDFW Referral
  - C. Environmental Health Referral
- 6. Watershed Map

Applicant

Aloha Top Shelf LLC  
PO Box 1262  
Willow Creek, CA. 95573

Owner

Sean O'Connor  
PO Box 1262  
Willow Creek, CA. 95573

Agent

Margro Advisors  
117 Wildwood Ave  
Rio Dell, CA 95562

Please contact Andrew Whitney, Associate Planner, at [awhitney2@co.humboldt.ca.us](mailto:awhitney2@co.humboldt.ca.us) or 707-268-3735 if you have any questions about the scheduled item.