



COUNTY OF HUMBOLDT

For the meeting of: 5/4/2023

File #: 23-603

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Natures Jar, Inc. Special Permits
Assessor Parcel Numbers (APN) 095-201-005 & 095-041-013
Record No.: PLN-11494-SP
Weott area

A Special Permit for 7,914 square feet (sf) of outdoor commercial cannabis cultivation with 790 sf ancillary propagation and a Special Permit to request a setback reduction from public lands due to proximity to Humboldt Redwoods State Park. The applicant will conduct light-deprivation techniques without the use of supplemental lights, and two (2) harvests are anticipated per year. Historic cultivation areas were retired and relocated to a more environmentally suitable location on-site. The estimated annual water use is 72,750 gallons (8.4 gal/sf/yr). Water for irrigation is sourced from a permitted well, a point of diversion, and 7,000 gallons of rain catchment water tanks. Total existing water storage designated for irrigation is 19,700 gallons in hard tanks, and an additional 50,000 gallons is proposed for additional rain catchment storage tanks. Total future water storage would be 69,700 gallons. Drying and curing will take place in storage containers on-site, and trimming will occur off-site at a licensed processing facility. The applicant will utilize up to two (2) full-time employees. One (1) generator is used for the well pump, and the applicant is proposing to transition to 100% solar power.

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 for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Natures Jar, LLC project); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Special Permits subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location: The project is located in the Weott area, on both sides of Sunny Lane, approximately 0.4 miles north from the intersection of Madrone Drive and Sunny Lane, on the property known as 407 Sunny Lane.

Access: The site is accessed from Sunny Ln., from Sewell Dr., from Newton Rd., from State Hwy 101.

Present General Plan Land Use Designation: Residential Agriculture: 5 to 20 acres (RA5-20), Density: Range is 5 to 20 acres per unit; Residential Estates (RE1-5), Density: (Cluster) Range is 1 to 5 acres per unit, Avenues Community Planning Area - Weott, Slope Stability: Moderate Instability (2).

Present Zoning: Timberland Production Zone (TPZ); Rural Residential Agricultural: 1 acre (RA-1).

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: A Timber Conversion Exemption permit was approved for a road and home site on the subject parcel in April of 2016, subsequent to the adoption of the CMMLUO January of 2016. This resulted in post-2016 converted timberland on the site, which is where historic cannabis cultivation and associated activities are being relocated from outside of a streamside management area (SMA). It has been determined that the relocation of the cultivation to the site within the permitted less-than-3-acre conversion area may be found to be environmentally superior to the preservation of the historic cultivation areas, however it raises questions relative to the environmental baseline utilized for the environmental analysis.

Executive Summary: A Special Permit for 7,914 square feet (sf) of outdoor commercial cannabis cultivation with 790 sf of ancillary propagation. The applicant had 8,064 sf of pre-existing cultivation area that was verified by the County through an Evidence of Guerrilla Grow Report submitted by the applicant, and the applicant has chosen to transition some of the pre-existing cultivation area for additional on-site nursery space. Of the 7,914 sf of cultivation area, 614 sf is designated by the applicant and utilized as additional ancillary propagation for a total of 1,404 sf of ancillary propagation on-site, with 7,300 sf to be used as flowering cultivation area. Essentially, the applicant is proposing to utilize some of cultivation area as propagation so that the actual propagation area is over 10%, but the ancillary propagation that is not subject to taxation is only 10%.

The project includes the relocation of historic cultivation areas and the associated activities that occurred within streamside management areas (SMA's) on-site. The pre-existing cultivation areas existed as guerrilla grows scattered around the residence on both subject parcels, and associated drying and propagation activities occurred within the residence which is located within the SMA. The Evidence of Guerilla Grow provided by the applicant and attached to the Cultivation Area Verification (Attachment 4K) documents evidence of 224 plants throughout the parcel existing prior to 2016. The standard practice of the County in determining cultivation area for historic guerilla grows is to credit 36 square feet per plant. This results in a cultivation area plausibly verified to be 8064 square feet.

A Less-Than-3-Acre Conversion Exemption Permit was approved for a home-site on APN 095-201-005 in April of 2016, which 2016. A post-2016 timber conversion occurred on APN 095-201-005, under the approved Less-Than-3-Acre Conversion Exemption Permit (1-16EX-110-HUM). All relocated cannabis activities are proposed to be relocated within the conversion area that was approved and inspected by Cal-Fire and found to be in compliance with the Forest Practice Act. The timber conversion occurred after the date of adoption of the CMMLUO, and the environmental analysis completed for the CMMLUO found that cannabis permitting would be unlikely to result in timber conversion.

The applicable section of the CMMLUO regarding timberland conversions is Section 314-55.4.10(j)

[Application Requirements] which states that *“If the parcel is zoned FR, U, or TPZ, or involves the conversion of timberland, as defined under Section 4526 of the Public Resources Code, a copy of a less-than-3-acre conversion permit, approved by the California Department of Forestry and Fire Protection (CAL-FIRE).”*

The Mitigated Negative Declaration prepared for the CMMLUO made the finding that *“the ordinance is not likely to result in the loss of forest land or in the conversion of forest land to non-forest use due to the permitting process, thus the impact on this area is less than significant.”*

In this instance, the property obtained an approved timber conversion exemption from Cal-Fire for the conversion area to be utilized for residential purposes, and this approved conversion area is more appropriate to site the existing cannabis on the property than the historic areas, primarily as the pre-existing cultivation activities occurred as guerrilla grows within an SMA. Accordingly, the Planning staff believes that the relocation site within the less-than-3-acre conversion area is environmentally superior to the pre-existing cultivation areas.

The site will utilize up to two (2) employees for operations on-site. Drying and curing will take place in proposed storage containers, and trimming will occur off-site at a licensed processing facility. The applicant shall have documentation kept on-site to show the use of a licensed processing facility, to be furnished during an annual inspection (**Ongoing Condition B.1**). The applicant is proposing to provide portable toilets to the cultivation area. The applicant shall provide receipts, or other equivalent documentation, annually to the Planning Division for proof of portable toilet service, unless a permitted onsite wastewater treatment system has been obtained (**Ongoing Condition B.2**).

The project will include three (3) full-sun outdoor cultivation areas totaling 3,050 sf, and six (6) light-deprivation hoop houses totaling 4,250 sf, and two (2) nursery hoop houses. The full-sun outdoor cultivation will have one (1) cycle per year, and the light-deprivation cultivation will have up to two (2) cycles per year. Ancillary propagation areas totaling 1,324 sf will exist in two (2) hoop houses and will not utilize lights. The applicant is proposing to have one (1) 8' x 20' storage container for drying, and an 8' x 10' area within that will be used to keep mother plants during the winter. Two (2) additional storage containers are proposed for additional drying area, and one (1) 10' x 12' shed is proposed for cannabis waste storage area. The total square footage of new structures for the project is 600 sf in line with the recommended amount. The project was referred to the Building Division on September 5, 2017, and a building inspection was conducted on November 20, 2017. Comments from the Building Division included a recommendation of approval based on the condition that all required permits are obtained. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: six (6) light-deprivation hoop houses, two (2) nursery hoop houses, and three (3) storage containers (**Condition A.6**).

Setbacks

The project is located within 600 feet of Public Lands, the Humboldt Redwood State Park, and the applicant is requesting a Special Permit to approve a setback reduction to Public Lands. The project was referred to the California State Parks on April 2, 2021, and no response was received. The nearest cultivation area is approximately 135 feet to the shared parcel boundary with the Humboldt Redwood State Park. The project is consistent with recreational uses on public lands as it is not located near developed campgrounds, trails, or other related facilities. The project site is more than 600 feet from any school, school bus stop, church or other place of religious worship, or Tribal Cultural Resource.

Fire Hazard

The parcel is located in an area designated to have a High Fire Hazard Severity, and is located outside of any

local fire response area. The applicant shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel(s) on a form provided by the Humboldt County Planning Division (**Condition A.17**). Document review fees as set forth in the schedule of fees and charges as adopted by the Board of Supervisors will be required. The project is located within the State Responsibility Area (SRA) for CalFire, and was referred to the agency on April 25, 2019. Comments were received by CalFire on December 17, 2020, and the agency stated that they had no comments regarding the project at that time. The Site Plan shows a firetruck turnaround, and the applicant has designated a 3,000-gallon water tank for fire suppression needs only. The designated fire suppression tank shall have the appropriate fire hose that meets CalFire SRA requirements (**Condition A.7**).

Timber Conversion

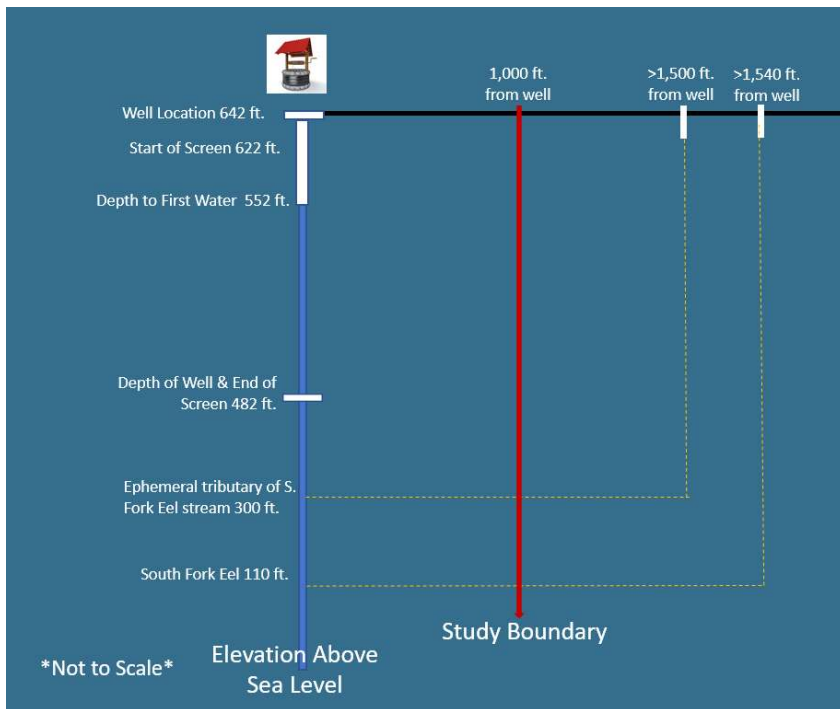
The previous applicant obtained an approved less-than-3-acre conversion exemption permit (1-16EX-110-HUM) which was approved on April 20th of 2016 for a road and home site in the northern section of the parcel. The less-than-3-acre conversion was for approximately 2.9 acres, and the site was converted to its current size between April and August of 2016. A Notice of Inspection Letter dated August 11, 2016, from CalFire states that during an inspection conducted on August 8, 2016, no violations were observed within the conversion area, that erosion control structures and drainage facilities were installed and functioning properly, and that no stocking report is required. The project was referred to CalFire on April 25, 2019, and comments were received on May 2, 2019, stating that the Department had no comments at that time.

Energy

One (1) small generator less than 50 HP is used for the well pump, and will be housed within a storage container. The applicant is proposing to transition to 100% solar power with a proposed solar array. The applicant is required to transition to 100% renewable energy source by 2026, and after transition shall only be allowed to keep one (1) generator on-site for emergency backup purposes only (**Condition A.8**). The applicant shall provide an Energy Plan to the Planning Division to show how all power required by the project will be powered by the proposed solar array (**Condition A.9**). The applicant shall permit the proposed solar array with the Building Division (**Condition A.10**). The proposed solar array will power the water pump, fans for drying harvested product, and the lights within the mother plant nursery space over the winter season. The applicant has been awarded an energy grant from the County, which will fund the proposed solar system.

Water Resources

The total estimated annual water usage for the project is 72,750 gallons (8.4 gal/sf/yr). Water source for irrigation is proposed from a permitted well (Permit #16/17-1/27), a point of diversion, and 7,000 gallons of existing on-site rain catchment water tanks. The applicant shall meter water used for irrigation from the well separately from the point of diversion (**Condition A.11**). The total existing water storage designated for irrigation is 19,700 gallons in hard tanks. An additional 50,000 gallons of rain catchment water storage is proposed in ten (10) 5,000-gallon rain catchment tanks. Total future water storage would be 69,700 gallons, and the applicant will primarily obtain water from rain catchment once all storage tanks are installed on-site



The applicant has obtained a Well Assessment Report (WAR) for well Permit #16/17-1/27, prepared by licensed geologist David Lindberg with Lindberg Geologic Consulting, dated December 6, 2022. The WAR states that a site visit was conducted on November 4, 2022 to observe the well and local site conditions. It was determined that the well has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent wetlands or other surface waters in the vicinity. The well is located approximately 1,500 feet to the nearest watercourse shown on the Humboldt County Web GIS, an ephemeral tributary to the South Fork Eel River, which is located south of the well at an elevation of approximately 300 feet above sea level. The well is at an elevation of approximately 642 feet above sea level, and has a depth to static water at 90 feet below ground surface (see cross section below). The bottom elevation of the well is 482 feet above sea level, making the elevation of the nearest watercourse to the south 182 feet lower than the total depth of the well. The South Fork Eel River to the west is approximately 1,540 feet from the well, and is 372 feet lower than the total depth of the well. The well is apparently cased and sealed through any potential shallow subsurface aquifers. The white rock, and grey black shale below 135 feet of the well appear to be the water-bearing aquifer materials tapped by the well. The WAR concludes that the well draws water from a confined subsurface aquifer not connected to surface waters or unconfined near-surface aquifer(s), and estimates that the aquifer has a recharge rate of approximately 3.8 million gallons per year.

The site was historically enrolled in the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R-1-2015-0023, under WDID 1B171602CHUM. The applicant has a Water Resource Protection Plan (WRPP) that was prepared by Timberland Resource Consultants, dated April 4, 2018, to address measures needed for the site to meet the standard conditions of the Order. The WRPP states that a site inspection was conducted on March 9, 2018, which found that there are two (2) Class III watercourses that run through the subject parcel. As historic cultivation had been relocated outside of the associated SMA's for the streams on-site, it was found that all cultivation was outside of the required stream buffers. Several remedial actions associated to erosion control and stream crossing maintenance necessary for the site to meet the standard conditions of the order were recommended in the table on page 6 of the WRPP. The applicant shall adhere to

the remedial actions, monitoring, maintenance and protocols listed in the table on page 6 of the WRPP (**Condition A.12 & Ongoing Condition B.3**).

The site is currently enrolled in the State Water Resources Control Board's (SWRCB) General Order (No. WQ 2019-0001-DWQ) for Waste Discharge Requirements and Water Quality. The applicant has submitted a Notice of Applicability letter dated December 8, 2020, showing enrollment in the General Order under WDID 1_12CC428914 as a Tier 1 Moderate Risk site. The applicant is required to have a Site Management Plan (SMP) prepared for the project site to show measures required to meet compliance with the General Order, and a condition of approval for the project is to provide a copy of the final SMP report to the Planning Division, and to adhere to the corrective actions and ongoing monitoring and winterization methods recommended in the final SMP (**Condition A.13 & Ongoing Condition B.4**).

The point of diversion from the Class III stream on-site is under a claimed water right S028521. The project was referred to the Division of Water Rights on April 25, 2019. Comments were received on April 30, 2019, with a recommendation of approval due to the proposal to use the well on-site. The WRPP states that in 2018 there were no reporting documents associated to the surface diversion, and that the applicant shall file an Initial Statement of Water Diversion and Use (ISWDU) for the surface diversion. The applicant submitted the ISWDU in October of 2020, and has proof of a submitted Small Irrigation & Use Registration on December 21, 2020, to the Division of Water Rights. There is no Water Right Certificate on file for this diversion, and the applicant shall not utilize the stream diversion for irrigation until a Water Right Certificate has been obtained by the Division of Water Rights (**Condition A.14**). The applicant shall submit the final Water Right Certificate received by the Division of Water Resources to the Planning Division once available (**Condition A.15**). In the event that the applicant receives a Water Right Certificate from the Division of Water Resources, the applicant shall adhere to the terms and conditions set forth in the Certificate (**Ongoing Condition B.5**).

The applicant has obtained a Streambed Alteration Agreement with the California Department of Fish & Wildlife (CDFW) for the in-stream work needed to upgrade three (3) culverts on-site, and for the use and continued maintenance of a surface diversion for domestic and irrigation purposes (SAA No. EPIMS-HUM-13784-R1). The applicant shall complete and adhere to the project description and work outlined within the SAA No. EPIMS-HUM-13784-R1 (**Ongoing Condition B.6**).

Biological Resources

The project is located approximately 0.7 miles to the nearest known Northern Spotted Owl (NSO) activity center. According to the California Natural Diversity Database (CNDDDB) for rare and endangered species, the project site does not contain potential habitat areas for any rare or endangered species. As the project is for pre-existing activities, and no new ground disturbance is proposed, no Biological Assessment was required. The project was referred to CDFW on September 9, 2017, and no comments were received. The applicant is required to comply with International Dark Sky Standards for lighting within the mother propagation area, and shall ensure that all noise levels do not go above 50 decibels at 100-feet or any tree line when noise generating equipment are in use (**Ongoing Conditions B.7 & B.8**).

As the site had historic guerrilla grows around the residence and within the SMA on-site, the applicant is required to restore those areas to pre-cannabis conditions. A Evidence of Guerrilla Grow Report was submitted by the applicant for evidence of pre-existing cultivation areas with map and photo documentation. The photo documentation shows evidence of water lines, soil, cages, grow bags, pots, and cultivation related refuse scattered around the property. The applicant submitted a Restoration Plan that states many truckloads of trash have been hauled to the Eel River Disposal in Fortuna. The applicant shall submit evidence to the Planning Division that all water lines, soil, cages, grow bags, pots, and all cultivation related refuse associated to the

historic guerrilla grow areas on APN's 095-201-005 & 095-041-013 have been removed from the site and taken to an appropriate disposal facility, and to show the restoration of the historic cultivation areas at the satisfaction of the Planning Division (**Condition A.16**).

Tribal Cultural Resource Coordination

The project is located within the Bear River Band and Sinkyone Tribes ancestral aboriginal territories. The project was referred to the Bear River Band of Rohnerville Rancheria, Intertribal Sinkyone Wilderness Council, and the Northwest Information Center (NWIC) on September 5, 2017. A response was received from the Bear River Band on January 3, 2018, requesting that Inadvertent Discovery Protocols be a condition of approval for the project. The applicant shall adhere to Inadvertent Discover Protocols, and shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist and the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and the lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided (**Informational Note 3**).

Access

Access to the project site is from Sunny Lane, from Sewell Drive, from Newton Road, from State Highway 101. The project was referred to the Department of Public Works on September 5, 2017. Comments from Public Works were received on March 2, 2018, stating that Road Evaluation Reports are required for the non-county maintained access roads. The applicant has submitted a Road Evaluation Report form for all three private access roads (Sunny Lane, Sewell Drive, and Newton Road) designating them as being developed to the equivalent of a road category 4 standard. As the site is located from private roads off of a State Highway, the project was referred to CalTrans on April 18, 2023. No comments were received from CalTrans. The site will be operated by the applicant and up to two (2) employees. Up to six vehicle trips are anticipated per day, the operations are pre-existing, and no increase in traffic is anticipated.

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43

Planning staff determined that approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43, which established a limit on the number of cultivation permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 302 cultivation permits and the total approved acres would be 91.8 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 not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

2. The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the MND for the CMMLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.

ATTACHMENTS:

1. Resolution
 - A. Conditions of Approval
 - B. Cultivation 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 Letter
 - B. Well Assessment Report
 - C. Final Streambed Alteration Agreement with CDFW
 - D. Less-Than-3-Acre Conversion Exemption Permit
 - E. CalFire Inspection Report
 - F. Water Resource Protection Plan
 - G. Initial Statement of Water Diversion & Use
 - H. Small Irrigation & Use Registration Application
 - I. Restoration Plan
 - J. Road Evaluation Report Forms
 - K. Evidence of Guerrilla Grow Report
5. Referral Agency Comments and Recommendations
 - A. Building Division Comments
 - B. Department of Environmental Health Comments
 - C. Department of Public Works Comments
 - D. CalFire Comments
 - E. Division of Water Rights Comments
6. Watershed map

Applicant Natures Jar, Inc. 407 N. Sunny Lane #233 Weott, CA 95571
Owner Joseph Persekian 3142 McGraw St San Diego, CA 92117
Agents N/A

Please contact Megan Acevedo, Associate Planner, at macevedo@co.humboldt.ca.us or at (707) 441-2634 if you have any questions about this public hearing item.