



COUNTY OF HUMBOLDT

For the meeting of: 10/19/2023

File #: 23-1410

To: Planning Commission
From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Three Creek Holdings, LLC
Assessor's Parcel Numbers: 522-032-011
Record Numbers: PLN-13160-CUP
Willow Creek area

A Conditional Use Permit for 10,000 square feet of existing mixed light and 10,000 square feet of existing outdoor commercial cannabis cultivation supported by a 1,650 square foot nursery. Estimated annual irrigation water usage is 189,000 gallons and is sourced from a groundwater well. There is 7,500 gallons of existing water storage and staff is recommending an additional 87,000 gallons of water storage for a total of 94,500 gallons of irrigation water storage. Processing occurs offsite at a licensed facility and power is provided by generators supplemented by solar. The proposal includes onsite relocation and restoration of historic cultivation areas.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt resolutions (Resolution 23-__) (Attachments 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 and the Addendum to the Mitigated Negative Declaration that was prepared for the Three Creeks Holdings, LLC project (Attachment 3); and
 - b. Finds that the proposed projects comply with the General Plan and Zoning Ordinance; and
 - c. Approves the Three Creek Holdings, LLC Conditional Use Permit subject to the recommended conditions of approval (Attachments 1A).

DISCUSSION:

Project Location:

The project is located in Humboldt County, in the Willow Creek area, on the North side of State Highway 299, approximately 2.7 miles North from the intersection of Old Three Creeks Road and State Highway 299, and approximately 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, Section 29 of Township 07 North, Range 04 East, Humboldt Base & Meridian.

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

Executive Summary:

A Conditional Use Permit for 10,000 square feet of existing mixed light and 10,000 square feet of existing outdoor commercial cannabis cultivation supported by a 1,650 square foot nursery. Estimated annual irrigation water usage is 189,000 gallons and is sourced from a groundwater well. There is 7,500 gallons of existing water storage and staff is recommending an additional 87,000 gallons of water storage for a total of 94,500 gallons of irrigation water storage. Processing occurs offsite at a licensed facility and power is provided by generators supplemented by solar. The proposal includes onsite relocation and restoration of historic cultivation areas.

On October 4, 2023, the applicant provided a letter (Attachment 4A) requesting the entitlement be for 20,000 square feet of outdoor cultivation instead of 10,000 square feet of mixed light and 10,000 square feet of outdoor. Staff concludes that the request to eliminate the use of artificial light for cultivation will decrease the potential impact of the existing operation and the staff recommendation and the resolution have been updated accordingly. The applicant will need to revise the Operations Plan and Site Plan accordingly (**Condition of Approval A2**).

The groundwater well is permitted and unlikely to have a direct hydrologic connection to Supply Creek given its depth and distance to nearby surface waters. CDFW requested a total of 150,000 gallons of water storage, however, given the estimated yield of the Well Completion Report and the fact that there is no indication that the applicant has been unable to supply the annual needs from the well, staff has concluded that 94,500 gallons of storage is likely sufficient to provide a buffer and

reduce pressure on the groundwater resource. As recommended, the project will add water storage to a total of 50 percent of the annual water needs. This will substantially reduce the use of the groundwater well in the summer months and result in less than significant impacts to the local watersheds or to any of the Public Trust resources associated with the watersheds. Wastewater will be provided by a portable toilet and the outhouse will be decommissioned. In the event that the well ceases to produce enough water to supply the irrigation needs, as supplemented by water storage, the CMMLUO already allows for the County to reduce cultivation area or compel additional water storage to be developed.

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. No timberland conversion is associated with this project. The CalFire referral replied with no comment. The project is conditioned to migrate electricity sourcing for the cannabis operation to all renewable sources by January 1, 2026, reserving generator usage for emergencies only. Up to three employees are expected during peak operation. No archaeological or historic period cultural resources, which would be considered an historical resource for the purposes of CEQA (15064.5 (a)), were identified during the field survey. The conditions of approval included the standard inadvertent discovery protocol. A road evaluation concluded that the access functions equivalent to category 4 and can accommodate the continuation of up to three employees during peak season.

Water Resources:

The estimated annual water budget of 189,000 is sourced from a permitted groundwater well (Permit #11/12-0777). Including the nursery, water usage translates to approximately 8.73 gallons per square foot. The well is identified in the Well Completion Report (Attachment 4C) as having an estimated yield of 20 gallons per minute, which indicates that the well is relatively productive and likely could be relied upon as an irrigation source throughout the growing season. The well is screened from 100 to 240 feet below surface in a mix of Blue Sandstone and Blue Basalt. The well is located approximately 900 feet from an unnamed tributary that flows into Supply Creek. The groundwater well appears unlikely to have a direct hydrologic connection to Supply Creek given the depth and the distance to the nearest surface waters.

There is 7,500 gallons of existing water storage and while there is no indication that the well has not been able to support the annual irrigation needs, staff recommends an additional 87,000 gallons of water storage for a total of 94,500 gallons, which is 50% of the annual water usage. CDFW is requesting a total of 150,000 gallons of storage, which is 79% of the annual water usage. As noted above, the Well Completion Report indicates a productive groundwater source. Staff concludes that additional water storage is prudent and 50%, or 94,500 gallons, is sufficient (**Condition of Approval A11**). The increase in water storage will reduce demand on the well during the summer months providing additional assurance and mitigation there will be less than significant impact to the Supply Creek watersheds or any Public Trust resources 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 37.65 inches in 2013, meaning that even in a

substantial drought year like 2013 a total of 12.8 inches (34% of total), or 1.07 acre-feet (347,391 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the 200-acre property 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 50 percent of the total annual irrigation needs, staff believes the evidence in the record shows 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) notification was submitted to the California Department of Fish and Wildlife (CDFW) on April 9, 2021, and revised on May 19, 2021. CDFW issued Notification No. EPIMS-HUM-18572-R1C on August 12, 2021, to upgrade and replace three culverts (Attachment 4B). As a condition of approval, the applicant shall implement the LSAA issued by CDFW (**Condition of Approval C16**).

Humboldt County's WebGIS shows no mapped streams through the project parcel. The Site Plan, however, shows two perennial unnamed tributaries and one intermittent tributary. The Site Plan depicts appropriate streamside management areas for the surface waters and cultivation operations are a safe distance from streamside management areas. A Site Management Plan dated August 31, 2021, was prepared by Natural Resources Management (Attachment 4D). As a condition of approval, the applicant shall implement the best management practices or remedial actions listed in the site management plan (**Condition of Approval C14 and C15**). The project was referred to the US Army Corps of Engineers which provided a standard response requesting wetland delineations. Staff review of mapping resources and project materials concluded that no wetlands were likely within 250 feet of the existing cultivation areas so no delineations were required.

The project was referred to the Division of Environmental Health which responded with recommendations relating to onsite processing and requested additional research into the status of the well. Processing will occur offsite and the well is permitted (Permit #11/12-0777). Onsite wastewater for cultivation activities will be supported by rented portable toilets (**Condition of Approval B3**) and the outhouse will be decommissioned (**Condition of Approval A9**).

Per the Operations Plan, irrigation methods include hand-watering and application of compost teas from gravity-fed tanks.

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. Campbell Creek and Supply Creek also provide water for domestic, agricultural, public and commercial/industrial uses on the

Hoopla 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 of the project. This will substantially reduce the use of the groundwater well in the summer months and helps to ensure that there are less than significant impacts to the local watersheds or to any of the Public Trust resources associated with the watersheds.

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

Biological Resources:

No Biological Assessment Report was prepared for the project. The project is for pre-existing cultivation and there are no mapped sensitive plant or animal species on the site per the California Natural Diversity Database (CNDDDB). The nearest spotted owl activity center is approximately 1.6 miles to the west and additional owl activity centers are further from the site. The applicant's request and staff recommendation to eliminate artificial light from cultivation areas will reduce any potential ongoing impacts below what existed under baseline conditions prior to 2016. Use of the generator is subject to the standard condition limiting noise to 50dB at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer (**Condition of Approval C2**).

The applicant's proposal to consolidate from three historic cultivation areas down to two will further reduce impacts below what existed prior to 2016. The relocated cultivation will be moved to a previously developed flat described as "Site A" on the Site Plan. The Operations Plan proposes taking no action beyond removing man-made materials and slash piles. The project is conditioned to require a qualified professional to evaluate and make recommendations, if any, regarding revegetation of the former cultivation area (**Condition of Approval A6**).

The project has been conditioned to ensure supplemental lighting associated with the onsite nursery adheres to Dark Sky Association standards including security lighting (**Condition of Approval C3**).

Permit conditions of approval also prohibit using synthetic netting (**Condition of Approval C5**), ensure refuse is contained in wildlife-proof storage (**Condition of Approval C6**), and prohibit use of anticoagulant rodenticides to further protect wildlife (**Condition of Approval C8**). 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:

Both projects were referred to the Northwest Information Center and the Hoopa Valley Tribe. Both responded requesting that a cultural resource survey be conducted for the properties. A Cultural Resources Investigation dated September 2021 prepared by William Rich and Associates concluded that no archaeological or historic period cultural resources, which would be considered an historical resource for the purposes of CEQA (15064.5 (a)), were identified during the field survey. The conditions of approval included the standard inadvertent discovery protocol (**Condition of Approval C1**).

Energy

Two generators are described in the project Operations Plan. Per the plan, the generators will be fully enclosed with proper containment. The project is conditioned to migrate electricity sourcing for the cannabis operation to all renewable sources by January 1, 2026, reserving generator usage for emergencies only (**Condition of Approval A5**).

Access:

From CA Highway 299 west of Willow Creek, go north on Old Three Creeks Road for approximately 4.2 miles, turn left on Cloud Crossing Road for approximately 1 mile until reaching the project site. A Road Evaluation Report (Attachment 4H) was prepared for Three Creeks and Cloud Crossing Roads from Highway 299 to the project site. The evaluation concluded that Three Creeks and Cloud Crossing Roads are developed to the functional equivalent of a road category 4 standard and adequate for the proposed use without further review. Three Creeks Road is partially county maintained. The project was referred to Public Works which recommended that the intersection of the county-maintained road and private road be widened to a minimum width of 20 feet and a length of 50 feet (**Condition of Approval A10**). Up to three employees are possible during peak operations and the Site Plan depicts three parking spaces. The project was referred to the Six Rivers National Forest which responded with a request for denial. Staff review concluded that the project site is not adjacent to USFS lands nor does it take access through USFS lands.

Geologic Suitability:

The project parcel is mapped in the County GIS as moderate instability. The existing cultivation is located mostly in areas of 15% slope or less. No new grading is proposed to implement the project. After the fact grading permits are required for grading that was done previously without permits (**Condition of Approval A7**).

Timber Conversion:

No timberland conversion is associated with this project. The southern cultivation area was logged prior to 2010 and the northern area is located within an approved less than three-acre conversion (Attachment 4I). The CalFire referral replied with no comment.

Security and Safety:

Per the project Operations Plan, access to the parcel is gated and locked and security cameras and lighting are used. The Site Plan depicts one 2,500 gallons tank dedicated to fire suppression as well as emergency vehicle turnaround. CDFW has requested a condition of approval requiring the applicant provide security gate access prior to the scheduling of inspections. The CMMLUO already requires permittees to provide inspection access to sites once notified. Therefore, staff concluded a condition of approval regarding inspection access to CDFW would be redundant and not necessary.

The project site is not within any mapped fire district or fire response area other than the State Responsibility Area. Project conditions require the applicant to record an Acknowledgement of No Available Emergency Response and Fire Suppression Services form for the parcel (**Condition of Approval A4**).

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 Planning Watershed, which under Resolution 18-43 is limited to 169 permits and 58 acres of cultivation. With the approval of the project the total approved permits in this Planning Watershed would be 62 permits and the total approved acres would be approximately 26.87 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:

Environmental review for this project was conducted and based on that analysis, staff concludes that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration (MND) that was adopted for the CMMLUO. Staff has prepared an addendum (Attachment 3) to the MND for consideration by the Planning Commission.

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. CDFW is requesting 150,000 gallons of storage (79.3%) while staff is recommending 94,500 gallons of storage (50%). The Planning Commission could elect to increase the amount of water storage.
2. The Planning Commission could elect to add or delete other 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 Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Applicant Letter Requesting Outdoor Only
 - B. LSAA
 - C. Well Completion Report
 - D. Site Management Plan
 - E. Supply Creek Ambient Water Supply Results
 - F. Supply Creek Water Supply Study
 - G. Supply Creek Cumulative Impact Assessment
 - H. Road Evaluation
 - I. Less Than Three-Acre Conversion
5. Referral Agency Comments and Recommendations
 - A. Division of Environmental Health
 - B. Public Works
 - C. Six Rivers National Forestt
 - D. US Army Corps of Engineers
 - E. CDFW
 - F. CalFire
6. Watershed Map

Applicant

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File #: 23-1410

Please contact Steven A. Santos, Senior Planner, at sasantos@co.humboldt.ca.us or 707-445-7541 for questions about the scheduled item.