



COUNTY OF HUMBOLDT

Legislation Text

File #: 23-1474, Version: 1

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

High Art, LLC Conditional Use Permit
Assessor's Parcel Number: 522-022-015-000
Record Number: PLN-11525-CUP
Old Three Creeks Road, Willow Creek area

Denial of a Conditional Use Permit for an existing 20,180-square-foot (SF) outdoor cannabis cultivation operation.

RECOMMENDATION(S):

That the Planning Commission:

Adopt the resolution (Attachment 1) which does the following:

- a. Find the project exempt from environmental review pursuant to State CEQA Guidelines Section 15270; and
- b. Find the existing cannabis operation has operated in violation of Humboldt County Code and State regulations and has been operated as to be detrimental to the public health, safety and welfare; and
- c. Deny the Conditional Use Permit application for High Art, LLC.

DISCUSSION:

Project Location:

The project is located in Humboldt County, 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 7.64 miles north of the intersection of Highway 299 and Old 3 Creeks Road and 1.66 miles north of the intersection of Old 3 Creeks Road and Supply Creek Road. The approximately 160-acre parcel is found within the portions of Section 17 and 20 Township 07 North, Range 04 East, Humboldt Base & Meridian on the property known as 1125 Supply Creek Rd.

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:

Exempt from environmental review pursuant to State CEQA Guidelines Section 15270

State Appeal:

Project is NOT appealable to the California Coastal Commission.

Major Concerns:

- Supply Creek Watershed; and
- Cultivation without an Interim Permit or a State Cannabis Cultivation License; and
- Violation of Fish and Game code contributing to sedimentation and adverse impacts to water quality

Executive Summary:

DENIAL of a Conditional Use Permit and Special Permit for an existing 20,180-square-foot (SF) outdoor cannabis cultivation operation. This project has been on a path towards a recommendation of approval due to a history of working with Humboldt County to complete the application. A significant amount of technical studies have been completed to support the project; however, a site visit in October of 2023 confirmed unauthorized cultivation occurring on the property and violations of Fish and Game code creating adverse impacts to the Supply Creek Watershed. Subsequent to this site visit the County Sheriff visited the site and destroyed over 2,000 individual cannabis plants.

The applicant has indicated that they were unaware of the problems occurring on the site and has been taking steps to clean up the site (see Attachment 5, emails and photographs from Caleb O' Conner). Since the site visit of October 16, 2023 the applicant has been in contact with County staff and working to address the issues that were identified and is hoping for an opportunity to resolve compliance issues and stay in the permit process. It is important to note that the property is zoned TPZ and if this application is denied, there is no path for any additional cannabis applications on the property.

Summary Timeline of Project Processing:

November 28, 2016, the Department received an application for a Conditional Use Permit. In December of 2017, an Interim Permit was issued. The property and permit was transferred to the current property owner and applicant, High Art LLC. A state license was obtained, and the applicant worked with the County and the Hoopa tribe to relocate cannabis from areas on a ridgetop closer to the Hoopa Square to an area further away and less impactful to the tribe. The relocation was done with the

support of the Hoopa Tribe (See Attachment 4). In November of 2022 the state license expired and on January 1, 2023 the County Interim Permit expired due to unpaid invoices accrued from County permit processing that had been sent to a collections agency. In July of 2023 the account was brought current and County staff began competing the review and staff documentation for the project. The project was noticed on October 2, 2023 for hearing with a staff recommendation of approval. However, efforts by CDFW and County staff to contact the applicant to arrange for a site visit were unsuccessful until an October 11th email indicating that a lack of access to the site would result in a recommendation of denial (Attachment 3D and 3E). The applicant contacted the County on October 12th and agreed to allow a site visit on October 13th, however that was then delayed at the applicant's request until the following Monday, October 16th. For this reason the October 19th Planning Commission agenda was published on October 13th with a request to continue this project to November 2nd.

October 16, 2023, Planning Staff, Code Enforcement Staff, and CDFW conduct a site inspection of the project parcel. There was full cultivation occurring on site with 2021 metric tags, approximately a third of which appeared to be freshly harvested and not on site. The applicant states that this was not a harvest but removal of moldy portions of plants. On October 17th the County Sheriff visited the site and destroyed over 2,000 growing cannabis plants, noting the lack of a state license and the 2021 metric tags. On October 23, 2023, CDFW issued a Notice of Violation to the property owner as a result of the conditions of the site during the October 16, 2023 site visit (Attachment 3).

The evidence from the Department listed above is assembled in Attachment 3. The project analysis below is based on the project as proposed and the technical documents submitted with the application and was primarily prepared prior to the October 16, 2023 site visit.

High Art, LLC seeks a Conditional Use Permit to allow the continued operation of an existing 20,180-square-foot (SF) outdoor cannabis cultivation operation. The 226-acre parcel is designated as Timberland (T) and Residential Agriculture (RA40) in the Humboldt County 2017 General Plan and zoned Timber Production (TPZ). Legacy cultivation consisted of 20,180 SF full-sun outdoor cultivation in five locations that is proposed to be relocated to one central environmentally superior location on the parcel. Moving the existing cultivation to the proposed relocation site and removing all introduced materials from the historic sites in the decommissioning process will ensure that cannabis cultivation is at least 1,600 feet from the adjacent tribal lands. The relocation/conversion receiving area is an environmentally superior site, on stable slopes with less than 15 percent natural grade compared to the pre-existing logging flats and appurtenant road on unstable slopes with areas that may be up to 50 percent grade. Additionally, the relocation and consolidation of the pre-existing sites allows the legacy logging roads to be decommissioned which will reduce any erosion and sediment delivery to Supply Creek. Restoration of the former cultivation areas with native plant species will also promote habitat continuity as detailed in the Cultivation and Operations Plan and the Road Decommissioning Plan. Drying of harvested cannabis will occur in two appurtenant drying facilities and processing will occur at a licensed offsite facility. Harvesting will occur July through October by up to six employees.

Solar power is used for the well pump and generators are used for drying activities such as powering fans, dehumidifiers, and household lighting. The Honda 3000 generator will be housed within constructed, insulated, and ventilated sheds to attenuate noise. Security features include cultivation areas locked behind a 14-foot-wide gate, cultivation areas visually obscured, drying facilities secured

in locked structures, motion sensors and game cameras, and third-party security services provided by Omni Security.

A Lake and Streambed Alteration Agreement (LSAA) notification (No. 1600-2016-0260-R1) was received from the California Department of Fish and Wildlife (CDFW) in 2016 for one encroachment to replace a failing Humboldt crossing (logs and fill) with a minimum 48-inch-diameter culvert. Work for the project will include vegetation removal, excavation, installation of the new culvert, and backfilling, compacting, and armoring as necessary to minimize erosion. A Site Management Plan (SMP) was prepared for the project by Pacific Watershed Associates in 2019. The SMP was prepared to: 1) provide specific best practicable treatment and control measures to be utilized on the site to minimize potential threats to water quality; 2) provide itemized remedial actions to be taken on the site to correct existing or potential water quality threats or impacts and meet the general waste discharge requirements of the Cannabis Cultivation General Order; and 3) provide a revised schedule for the implementation of the itemized remedial actions. The SMP recommends submitting a request to amend the existing LSAA to include slight diameter changes to the existing treatments for stream-crossing point SC#2; specifically, to increase the 48-inch-diameter culvert in an existing Humboldt crossing to a 54-inch-diameter culvert. Additionally, the amendment shall include replacing the culverts at SC#1 and SC#4 with culverts sized for 100-year stream flow and associated debris.

Humboldt County's WebGIS identifies one mapped creek, Supply Creek, which forms the parcel's western boundary. The site plan shows two additional Class III streams with their associated 50-foot Streamside Management Area (SMA) buffers. The relocated cultivation area is outside the SMA buffers. The greatest threat to water quality is the stream crossing at SC#1. Full restoration/removal of this stream crossing will eliminate access to pre-existing cultivation areas CA2 to CA4, which necessitates maintenance-free treatments to permanently remove potential for surface erosion and sediment delivery associated with the road. Large-scale mass movement on this hillslope is outside the sphere of treatment for human-caused erosion. Small-scale, road-related mass movement is limited to small slumps in two places that have settled and appear stable. Moreover, based on these slumps, road related mass movements will not have the volume to travel the distance required to affect a waterway. In the Biological Report prepared for the project, it states that remediation measures for decommissioning pre-existing cultivation sites and roads should include seeding bare soil with a native grass seed mix and mulching with weed free straw

Biological Resources

The pre-existing cultivation sites and the proposed relocation site were assessed by a qualified biologist with Natural Resources Management Corp on October 11, 2019. The Biological Report states that no northern spotted owl (NSO) habitat exists on the parcel and, while habitat for both the special-status species Cooper's hawk (*Accipiter cooperii*) and Sonoma tree vole (*Arborimus porno*) was identified in the vicinity of the project site, no special-status wildlife species were detected during the site visit. Most of the Douglas-fir on the parcel is of moderate size, but most are between 15 and 22 inches in diameter. Suitable habitat likely exists across the parcel where Douglas-fir dominates, particularly in the Supply Creek drainage with a cooler microclimate favored by this species. Structures on the parcel that could provide roosting or breeding habitat for Townsend's big-eared bat (*Corynorhinus townsendii*) were inspected. The report determined that the project and operations would

have no impact on wildlife species within the vicinity of the project area.

Power is provided by a Honda 3000 generator to be housed within a constructed, insulated, and ventilated shed to attenuate noise. The relocation will have a proposed generator structure to provide secondary containment for the generator as well as noise attenuation. The Honda EU3000I is rated at 50-57 A-weighted decibels (dBA) under a normal operating load and the noise attenuation shed will bring this down to well below 50 dBA at 100 feet from the noise source. .

A Cultural Resources Investigation for High Art, LLC was prepared for 23 acres of the project area in March 2021 by William Rich and Associates. This investigation concludes that although no archaeological or historic-period cultural resources appear to be present, the project location may lie within an unrecorded ceremonial district containing trails routes, ceremonial locations, and possibly the associated viewsheds. These locations, if present, would likely qualify as tribal cultural resources pursuant to the County cannabis ordinance and CEQA regulations. Such resources would require additional considerations to determine the area of potential effects, thresholds of impacts, and to identify any measures that would lessen adverse impacts. William Rich, the Registered Professional Archaeologist, communicated with the Hoopa Valley Tribal Heritage Preservation Officer, Keduescha Lara-Colegrove, who indicated the general project vicinity is within or near locations associated with traditional ceremonial activities. Mrs. Lara-Colegrove also indicated that the Tribe is generally in support of the relocation of cultivation onto the 2.4-acre timber conversion because that location is of less concern to the Tribe than the current locations. This correspondence is included as Attachment 4. The applicant then worked with a Registered Professional Forester and obtained approval of a Less Than 3 Acre Conversion Exemption from Cal-Fire. County staff has been prepared to recommend that a restocking plan for an equivalent 2.4 acre area be completed to ensure that there is no net loss of timberland as a result of the relocation of cannabis to a more appropriate site.

Access

The project is located in the Blue Lake/Willow Creek area, on the east side of Supply Creek Road, approximately 1.1 miles north from the intersection of Old Three Creeks Road and Supply Creek Road, then right and due north onto a private road for approximately 1.06 miles, on the property known as 1125 Supply Creek Road. Road Evaluation Reports were prepared by the applicant for Supply Creek Road, Buck Buttes Road, and Old Three Creeks Road, that conclude that each roadway is developed to the equivalent of a road category 4 standard, that each roadway can accommodate the cumulative increased traffic from the project and are therefore functionally appropriate for the proposed project. The haul route to 1125 Supply Creek Road from Highway 299 would be from Highway 299 east toward Old Three Creeks Road and continue on Old Three Creeks Road for approximately 6 miles.

Water Resources

Irrigation water is sourced from a 200-foot-deep permitted (No. 11/12-1099) groundwater well drawing water from 80 to 200 feet at 15 gallons per minute. Estimated annual water usage is 199,000 gallons (10 gallons/SF/year). Two hard-sided storage tanks exist at the well totaling 5,300 gallons. Water is delivered from those tanks to two additional 2,800-gallon holding tanks for a total of 10,900 gallons of holding capacity. The applicant proposes an additional 10 storage tanks water storage tanks

for a total of 60,900-gallons specifically for cultivation.

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 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 The Hoopa Tribe commissioned their own study by Thomas Gast and Associates which concurred with the findings of these studies. The studies concluded that the key threat to water quality in the Supply Creek watershed was sedimentation from unmaintained roads and uncontrolled erosion. Provided that all of the cannabis applications comply with State Water Board and CDFW requirements for the protection of water quality, adverse impacts will be less than significant.

Summary: The submitted application generally contains enough information to support approval with the application of a substantial number of conditions, however the site has been operated in a manner that is inconsistent with County Code and state law and which is detrimental to the public, health safety and welfare. The cultivation of cannabis without a County permit or State license is a violation of Humboldt County Code and contributes to an unregulated cannabis market and adversely impacts the legal cannabis industry; and, the condition of the site as documented by the site visit photos and the Fish and Game Notice of Violation is contributing to adverse water quality in the supply Creek watershed which specifically is detrimental to the public health safety and welfare. For these reasons County staff recommends that the application be denied.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could choose to approve the project with conditions. If the Planning Commission chooses this alternative staff recommends that it be continued to the November 16, 2023 Planning Commission meeting for appropriate findings and conditions to be prepared. Should the Planning Commission choose this alternative staff recommends that the project be conditioned to resolve all outstanding CDFW violations and to complete all on-site restoration prior to any cultivation occurring on the property.

ATTACHMENTS:

1. Resolution
2. A. Location Map
B. Cultivation and Operations Plan

- C. Site Plan
- 3. Planning Department Evidence Supporting Denial
 - A. Satellite Images from 2023
 - B. Violation Letter received from the California Department of Fish and Wildlife (10/23/2023)
 - C. Notice of Interim Permit Expiration on 01/01/2023 and sent 12/21/2022
 - D. Email to applicant to notify of need for site visit (10/06/2023)
 - E. Email to applicant to request site visit for 10/13/2023
 - F. Photograph - active cultivation 1 (10/16/2023)
 - G. Photograph - active cultivation 2 (10/16/2023)
 - H. Photograph - active cultivation 3 (10/16/2023)
 - I. Photograph - freshly harvested cannabis 1 (10/16/2023)
 - J. Photograph - freshly harvested cannabis 2 (10/16/2023)
 - K. Photograph - freshly harvested cannabis 3 (10/16/2023)
 - L. Photograph - heavily eroded road (10/16/2023)
 - M. Photograph - failed culvert (10/16/2023)
 - N. Photograph - 2021 Metric tags on live cannabis plants (10/16/2023)
 - O. Photograph - Perlite soil pile 1 (10/16/2023)
 - P. Photograph - Perlite soil pile 2 (10/16/2023)
 - Q. Photograph - trash and substandard housing (10/16/2023)
 - R. Photograph - batteries (10/16/2023)
 - S. Photograph - synthetic netting piles (10/16/2023)
- 4. Hoopa Valley Tribe letter of support for the relocation of the pre-existing cultivation onto the 3-acre conversion site.
- 5. Applicant Email and photographs of beginning of site clean-up sent 10/25 - 10/26/2023 (video also submitted and on file with Planning)
- 6. Watershed Map

Applicant

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Owner

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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.