



COUNTY OF HUMBOLDT

Legislation Text

File #: 23-1473, Version: 1

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Emerald Mountain Coast LLC, Conditional Use Permit
Assessor Parcel Number (APN) 522-021-009-000
Record No.: PLN-11291-CUP
4054 Cloud Crossing Rd. Blue Lake, CA 95525

A Conditional Use Permit for 18,050 square feet of mixed light commercial cannabis cultivation supported by an 1,805 square foot ancillary nursery. Estimated annual irrigation water usage is 180,500 gallons and is sourced from a groundwater well and proposed rainwater catchment. Water storage consists of 51,400 gallons in tanks and a proposed 500,000-gallon rain catchment pond. Drying and curing will occur onsite and additional processing such as trimming will occur offsite. Power is provided by a generator and applicant proposes transition to renewable. The proposal includes onsite relocation and restoration.

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 Emerald Mountain Coast 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, at the terminus of Cloud Crossing Road, approximately 4.05 miles north from the intersection of Old Three Creeks Road

and Cloud Crossing Road, on the property known as 4054 Cloud Crossing Road.

Present General Plan Land Use Designation: Timberland (T); 2017 General Plan; Density: 40-160 acres per unit; Slope Stability: Moderate Instability (2)

Present Zoning: Timber Production Zone (TPZ)

Environmental Review: An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per Section 15164 of the State CEQA Guidelines.

State Appeal: Project is NOT appealable to the California Coastal Commission.

Major concerns: Supply Creek Watershed

Executive Summary: Emerald Mountain Coast, LLC seeks a Conditional Use Permit to allow the continued operation of an existing 18,050-square-foot (SF) mixed light cannabis cultivation operation 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 and zoned Timber Production Zone (TPZ). The proposed cannabis cultivation operation consists of 18,050 SF of mixed light cultivation with an 1,805 SF ancillary nursery facility. The existing nursery greenhouse shown on the site plan, **Attachment 1-C**, must be reduced in size to 1805 square feet or less and a new site plan must be submitted showing the revised dimensions of the nursery greenhouse (**Condition A4**). The applicant proposes to relocate historic cultivation within the property to an environmentally superior location. The receiving relocation sites are existing logging decks developed as part of prior timber harvest operations. No additional clearing or conversion of timberland is proposed as part of the relocation of existing cultivation. The relocation will allow restoration of approximately 0.5 acres of an existing flat and reduction of 0.17 on-site road for a total of .67-acre restoration area. The relocation also increases the setback of the cultivation area from approximately 380' from the eastern property line abutting national forest land to approximately 870'. The relocation will increase the cultivation area setback from an adjoining drainage from 330' to over 660'.

No on-site trimming is proposed, with drying/curing activities to take place in an existing 30'x46' ag exempt shop building, along with additional drying and processing in 2 proposed 30'x50' agricultural exempt barns. Cultivation will occur in greenhouses in raised beds using amended soil. Project proposes adding two (2) 30'x50' buildings for processing. These buildings will replace temporary structures that have been used in various locations on the property but have been removed. The project proposes the installation of a permitted septic system and the conversion of the 30' x 45' two-story structure to a permitted residence for use as employee housing. Two annual harvests will occur in July and October.

In addition to the Agent in Charge and full time Operations Manager, the applicant intends to employ 1 full time Assistant Cultivator, 1 Seasonal Processing Manager and up to 8 seasonal labor positions for an estimated total of approximately 12 employees maximum at the project site at any given time. Four employees during the cultivation season and up to 12 employees during the harvest and processing

seasons are expected. On-site housing is proposed in the form of a permitted four-bedroom residence. There is a septic system proposed near the 2-story barn and processing building that will become a residence. Portable toilets and handwashing stations will be provided until an ADA bathroom can be constructed.

Power will be provided by (2) two WhisperWatt 25 (Model DCA25USI4CAN), (2) two Honda 3000 and generators on site. Entry gates are located at entrances. The entry gates are always locked and access to the cultivation area is limited exclusively to employees. Motion sensors are located at access points and any buildings holding drying or processed inventory. The drying facility area has low intensity, downcast and shielded exterior lighting to illuminate the entrances, and will include a small number of motion-activated security lights. Security cameras and alarm systems are installed at entrances to the site. The project will be required to transition to 100% renewable energy by January 1, 2026, and use generators for emergency purposes only (**Condition A5**).

Irrigation water is sourced from an existing permitted groundwater well. Existing available water storage includes 51,400-gallons of existing hard plastic tank storage consisting of (3) 1,300-gallon, (1) 3,500-gallon, (3) 2,500-gallon, (1) 1,500-gallon, and (7) 5,000-gallon tanks. The project proposes adding rain catchment off the barns, and a 500,000-gallon rain catchment pond to support the cultivation operation and for use as an emergency fire suppression water source. Estimated annual water usage is 180,500 gallons (10 gal/SF).

The existing, pre- January 1, 2016, cultivation area was verified using November 4, 2015, TerraServer Data. The applicant received a Zoning Clearance Certificate for an Interim Permit to Cultivate on December 26, 2018. A Certificate of Subdivision Compliance, Document Number 2012-029475, recorded on December 4, 2012, confirms the legality of the parcel.

Water Resources: The total annual water usage for irrigation is estimated at 180,500 gallons (10 gal/sf/yr). The primary water irrigation source for the project is from an existing permitted groundwater well (Permit Number 11/12-1064). A well completion report is included dated April 29, 2013, (Attachment 4.B). Existing available water storage includes 51,400-gallons of hard plastic tank storage consisting of (3) 1,300-gallon, (1) 3,500-gallon, (3) 2,500-gallon, (1) 1,500-gallon, and (7) 5,000-gallon tanks. The project proposes adding rain catchment off the barns, additional tank storage and a 500,000-gallon rain catchment pond to support the cultivation operation and for use as an emergency fire suppression water source. Peak water demand occurs in July and August at approximately 33,000 gallons per month. The Applicant entered into a Streambed Alteration Agreement (Notification #1600-2019-0109-R1) with the California Department of Fish and Wildlife (CDFW) on June 15, 2020, that allowed for the applicant to proceed with their described project an encroachment for stream restoration in the headwaters of Pine Creek subject to CDFW's measures to protect fish and wildlife resources (Attachment 4C).

Although Humboldt County's WebGIS shows no mapped streams, the Site Plan shows 3 Class III ephemeral streams and associated 50-foot Streamside Management Area (SMA) buffers. The cultivation areas and associated infrastructure are outside of the SMA buffers. The Water Resource Protection Plan prepared by Timberland Resource Consultants in 2016 (Attachment 4D) noted that the

property met most standard conditions except for site maintenance, erosion control and drainage features, storage of petroleum products and other chemicals, refuse, and human waste. Measures to rectify the remaining standard conditions are underway and are required as Condition A21. In addition, if any restoration, remediation, or existing infrastructure upgrades are anticipated in streams or wetlands identified on the subject property, the applicant is required by the Regional Water Board to submit a Surface Water Correction Workplan at least 60 days prior to the proposed work.

The project is in the Supply Creek watershed, and while not classified as impacted, these watersheds require special consideration. This consideration is due because these watersheds provide part of the water source and influences the water quality of the Hoopa Valley Tribe. As such, departmental policy is to evaluate projects as if they were in an impacted watershed to protect water quality and water supply for the Hoopa Valley Tribe.

The applicant has been unable to locate a licensed geologist to perform a hydrologic analysis of the well and its likelihood to be hydrologically connected to surface water features, however the well is proposed to be utilized for up to 180,500 gallons of cultivation water annually. As a condition of approval for the project the applicant must reduce reliance on well withdrawals. Between May 15th and October 31st no more than 50% of the total water budget for the cannabis operation and shall be drawn from the well, the remainder of the water used for cultivation will be stored water (**Condition A10**). The well is screened at an interval of between 30 to 150 feet and the water bearing unit is a mixture of Tufts Light Brown Schist and Black Basalt. The nearest mapped surface water feature is a seasonal Class II watercourse 2000 feet away from the well head and is at an elevation that is between 30' above to 70' below the infiltration zone for the well. While there is intersecting elevation between the intermittent watercourse and the well infiltration zone, the unnamed intermittent watercourse is 2000' feet away from the well head and the intermittent watercourse slopes away quickly from the well's zone of infiltration within 340 feet. This indicates that the water bearing unit of the well is likely below the extent of any seasonal surface waters from this intermittent watercourse. The site plan (Attachment 1.C) shows the relationship between the surface water features and the well. Pine Creek is the nearest perennial watercourse to the well and at its nearest point is 2,353 feet away from the well head which is likely to be outside of the distance where the well would intersect with any underflow of the watercourse. Additionally, the deepest point of the infiltration zone for the well is 330 feet above the elevation of the nearest point of intersection on Pine Creek. Supply Creek is at its nearest point is 4,380 feet away from the well head which is likely to be outside of the distance where the well would intersect with any underflow of the watercourse. Additionally, the deepest point of the infiltration zone for the well is 970 feet above the elevation of the nearest point of intersection on Supply Creek. For these reasons the well is unlikely to have any direct hydraulic connection to Supply Creek or Pine Creek. To further reduce the potential impact of the proposed project on the Supply Creek and Pine Creek watersheds, the applicant is proposing a rainwater catchment pond which would support all the annual irrigation needs and allow for complete forbearance from the well during the forbearance period required by the CMMLUO.

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 (37% of total), or 1.06 acre-feet (345,402 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the 160-acre parcel would far exceed the amount of irrigation needs for cannabis even in a substantial drought year. Given that the well is proposed to be used for 50% of the planned annual water budget and there is existing and planned water storage capacity for 100% of annual irrigation needs, planning staff believes that the record shows that 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 Supply creek and Pine Creek Watersheds.

All existing and proposed structures related to cultivation activity will be located outside of the required streamside management area (SMA) for the watercourses. The area surrounding the restoration will be confirmed by County inspection personnel within one year of permit issuance.

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 and Pine 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 100% percent of the annual water needs of the project, much of which will be collected through rainwater catchment. This will reduce the use of the groundwater well, 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.

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

Timber Conversion

A Less Than 3 Acre Conversion Exemption was approved by Cal Fire in 2014 prior to the environmental baseline established for the CMMLUO (Attachment 4A). The footprints of the western cultivation areas are within the boundary of the less than 3-acre conversion. The project includes a restoration area of a previous cultivation area that should be restocked with timber. This area, approximately 0.5 acres of the existing flat and 0.17 acres of road access to the cultivation site, total restoration area .67 acres, must be restored using the methods detailed in a restocking plan produced by a registered professional forester (**Condition A2, A3**).

Biological Resources

According to California Department of Fish and Wildlife's (CDFW) 6/28/18 CEQA Referral Checklist, the project is located 1.13 miles away from Northern Spotted Owl (NSO) critical habitat and known activity centers. The project is located 1.7 miles away from the nearest mapped Marbled Murrelet habitat. Per the applicant, the WhisperWatt 25 generator and 2 Honda 3000 generators are used onsite from March to November for supplemental lighting within the mixed light greenhouses and non-commercial nursery and drying and for the processing facilities. At 23 feet the WhisperWatt generates 65 decibels and will be placed in an enclosure to ensure noise generation remains below 50 decibels at 100'. The Honda generators have a peak of 57 decibels in operation and will generate less than 50 decibels of noise at 100' at load. This 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 (Condition C.2).

A Biological Assessment report was prepared for the project by O'Brien Biological Consultants (undated) and received by the County on November 1, 2019. The biological assessment site visit on June 7, 2019, included an inventory of wildlife species observed. No mammals or amphibians were detected; 5 species of birds were observed or heard. The species detected were Dark-Eyed Junco, American Robin, Turkey Vulture, Common Raven, and Mountain Quail. None of these species are considered sensitive under the California Endangered Species Act or by CDFW. The report concluded that the cannabis cultivation at the Jacques property has a low likelihood of having significant impacts to sensitive wildlife or plant species as the process currently operates. The report also includes recommendations which are included as a condition of approval.

The Biological Assessment report concluded that the subject property does not have appropriate forest

habitat for the Northern Spotted Owl (NSO). The nearest critical NSO habitat is .56 miles away from the nearest cultivation site. And the nearest known NSO activity center is approximately 1.1 miles away from the nearest cultivation area.

The project has been conditioned to ensure supplemental lighting associated with mixed light 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.

The project includes a restoration area where tree cutting occurred to as part of a permitted logging operation. The applicant must submit a restocking and restoration plan, produced by a registered professional forester, that will detail the methods and timing used to restore approximately 0.5 acres of an existing flat and 0.17 acres of road access to the retired cultivation site with total restoration area .67 acres. This plan will also specify the method and timing for the removal of a large slash pile that was placed in a streamside management area on the parcel (**Condition A2**).

The project was referred to CDFW on July 21, 2017, and comments received requested that a Bullfrog Management Plan be implemented for the proposed pond (**Condition B9**). CDFW staff conducted a site inspection visit on August 1, 2023. The site inspection documented that the applicant was cultivating cannabis in the .5-acre restoration area. This was a violation of the terms of the interim permit and represented an expansion of 7,000 square feet of outdoor cultivation. The applicant was levied a fine for the excess cultivation, but the fine was excused by the Department Director on the following conditions: the applicant was to remove all cultivation related structures, materials and infrastructure from the restoration area shown in the attached site plan and provide photographic evidence of site with structures removed by September 30, 2023, and Conduct erosion control measures and on the 220 linear feet of roadway to be abandoned and the 20,000 square foot flat shown on the attached site plan. The 20,000 square foot flat is to be revegetated with native vegetation. Provide list of plants used to revegetate and photographic evidence of the completed restoration prior to December 31, 2023 (**Condition A2, A3**).

The project includes a proposed pond. CDFW has required the implementation of a Bullfrog Management Plan for all new ponds associated with cannabis cultivation. Prior to the issuance of a grading permit for the installation of a pond, the project will be re-referred to CDFW for specific details on bullfrog management plan requirements (**Attachment A19**).

Tribal Cultural Resource Coordination

There was Cultural Resources Investigation performed in the project's area of potential effect. The investigation, conducted by Archeological Research and Supply in March of 2019, discovered no known tribal cultural resources on the project site. The project was referred to the Northwest

Information Center (NWIC) and the Hoopa Valley Tribe in 2017. The NWIC responded that their office has no record of any previous cultural resource studies for the project area but that the project area has the possibility of containing unrecorded archaeological site(s), and a study is recommended prior to commencement of project activities. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources and tribal cultural resources.

Access

The project site is approximately 8 miles north of Highway 299. From Highway 299 west of Willow Creek, go north on Old Three Creeks Road, then turn left on Cloud Crossing Road and stay on it until it ends (APN: 522-021-009) (Attachment 3h). As requested by Public Works, a Road Evaluation Report was prepared for Old 3 Creeks Road from Highway 299 and concluded that the road segment is developed to the equivalent of a road category 4 standard. The referral comment from Humboldt County Public Works Land Use (PWLU) requested a corrected road evaluation. PWLU pointed out that there is a 2.8-mile section of Old Three Creek Road that is maintained by the County. Beyond that point the road becomes privately maintained. Staff confirmed the condition of the private road section as equivalent of a road category 4 standard. The permittee shall take action to form or join a Road Maintenance Association (RMA) for the maintenance of the private roads. 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 A18**).

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).

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 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 26.22 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 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. Less than 3-acre conversion
 - B. Well Completion Report - south well
 - C. Final Streambed Alteration Agreement with CDFW
 - D. Water Resources Protection Plan
 - E. Well Completion Report
 - F. Road Evaluation Report Form
 - G. Supply Creek Ambient Water Grab Sampling Results
 - H. Supply Creek Cumulative Impact Assessment
 - I. Supply Creek Surface Water Study
 - J. Biological Assessment
5. Referral Agency Comments and Recommendations
 - A. Humboldt County Public Works
 - B. CDFW CEQA
 - C. Humboldt County Environmental Health
6. Watershed Map

Applicant

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Eureka CA, 95503

Owner

Humboldt Pacific Coast LLC
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Agent

N/A

Please contact Andrew Whitney, Associate Planner, at awhitney2@co.humboldt.ca.us or at (707) 268-3735 if you have any questions about this public hearing item.