



COUNTY OF HUMBOLDT

Legislation Details (With Text)

File #: 23-752 **Version:** 1 **Name:**
Type: Resolution **Status:** Consent Agenda
File created: 5/25/2023 **In control:** Planning Commission
On agenda: 6/1/2023 **Final action:**
Title: Enchanted Forest, LLC, Conditional Use Permit
Assessor Parcel Numbers (APN) 524-114-011
Record No.: PLN-13107-CUP
Willow Creek area

A Conditional Use Permit for 28,348 square feet (SF) of pre-existing outdoor cannabis cultivation with 2,840 SF of ancillary propagation. Irrigation water will be provided from a permitted well on an adjacent parcel, which is under deeded rights. Estimated annual water usage is approximately 399,369 gallons (13 gal/SF/year). The operation will utilize up to three (3) employees for operations. Trimming will occur off-site at a licensed processing facility. A 2000 watt Honda EU low decibel gasoline generator will be operated intermittently, and the applicant is proposing an Ag drop with PG&E through existing power poles. The project will be conditioned to obtain 100% of power from PG&E or other renewable source by 2026, and will utilize the generator for emergency backup purposes only.

Sponsors: Planning and Building, Laura McClenagan

Indexes:

Code sections:

Attachments: 1. 13107 Enchanted Forest Staff Report 6.1.2023, 2. Attachment 1 - Resolution, 3. Attachment 1A - Conditions of Approval, 4. Attachment 1B - Cultivation & Operations Plan, 5. Attachment 1C - Water Usage, 6. Attachment 1D - Site Plan, 7. Attachment 2. - Location Maps, 8. Attachment 2A - Watershed Map, 9. Attachment 3 - CEQA Addendum, 10. Attachment 4 - Applicant's Evidence in Support of Required Findings, 11. Attachment 4A - Notice of Applicability, 12. Attachment 4B - Site Management Plan, 13. Attachment 4C - Water & River Access Agreement, 14. Attachment 4D - Well Assessment Report, 15. Attachment 4E - Draft Streambed Alteration Agreement, 16. Attachment 4F - Restocking Plan, 17. Attachment 4G - Property Survey, 18. Attachment 4H - Road Evaluation, 19. Attachment 4I - Evidence of Pre-Existing Cultivation Area, 20. Attachment 5 - Referral Agency Comments and Recommendations, 21. Attachment 5A - Building Referral, 22. Attachment 5B - Environmental Health Referral, 23. Attachment 5C - Public Works Land Use Division Referral, 24. Attachment 5D - CALFIRE Referral, 25. Attachment 6A - Cultivation Area Verification, 26. Attachment 6B - Post-2016 Timber Conversion Exhibit

Date	Ver.	Action By	Action	Result
6/1/2023	1	Planning Commission	approved	Pass

To: Planning Commission

From: Planning and Building Department

Agenda Section: Consent

SUBJECT:

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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 Enchanted Forest, 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 located in the Willow Creek area, on the south side of State Highway 299, approximately 7 miles from the intersection of Friday Ridge and State Highway 299, on the property known to be in Section 36 of Township 06 N, Range 05 E, Humboldt Base & Meridian.

Access: The site is accessed from Forest Route 5N03/S. Fork Road, from S. Fork Road, from Hwy 299.

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

Present Zoning: Unclassified (U).

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: None

Executive Summary: A Conditional Use Permit for 28,348 SF of pre-existing outdoor cannabis cultivation with 2,840 SF of ancillary propagation. Irrigation water will be provided from a permitted

well on an adjacent parcel, which is under deeded rights. Estimated annual water usage is approximately 399,369 gallons (13 gal/SF/year).

The County Planning Division verified the pre-existing cultivation area with a Cultivation Area Verification (CAV) form utilizing pre-2016 aerial imagery. The original CAV utilized imagery from TerraServer dated 6/29/2015, which found approximately 7,397 SF of potential cultivation area based on the satellite imagery, and an Interim Permit was issued to the applicant for 7,397 SF of outdoor cultivation. The applicant submitted additional evidence of pre-existing cultivation area, which included pictures of water lines, and indents in the soil where pots had previously existed. The documents submitted for evidence of pre-existing cultivation area were assessed by the Planning Division, and it was determined that the submitted information in association with the applicant's verbal testimony was plausible that there was approximately 28,850 SF of pre-existing cultivation area. The documents and assessment from the Planning Division utilized Google Earth Pro aerial imagery from 2014, along with the photos submitted by the applicant. Potential plants were circled and counted and given a measurement of 50 SF each, and the Interim Permit was amended and reissued for 28,850 SF of outdoor cultivation. The Cultivation Area Verification information is included as Attachment 6A.

The project will utilize up to three (3) employees for operations on-site. The applicant is proposing to utilize portable toilets at the cultivation areas. The applicant shall provide receipts, or other equivalent documentation, annually to the Planning Division for proof of portable toilet service (**Condition B.1**). Drying will occur on-site, 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.2**). The project proposal is to utilize light-deprivation techniques without the use of supplemental lights, and includes the proposal for eleven (11) light-deprivation greenhouses totaling 28,348 SF, and two (2) ancillary propagation greenhouses totaling 3,840 SF. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: eleven (11) light-deprivation greenhouses, two (2) ancillary propagation greenhouse, one (1) storage container for drying, one (1) metal drying building, and one (1) generator shed (**Condition A.6**).

Energy

A 2000 watt Honda EU low decibel gasoline generator will be operated intermittently to power lights within the ancillary nursery greenhouses, and fans for drying. The applicant is proposing an Ag drop with PG&E through the existing power poles on the property. The project is conditioned to obtain 100% of power from PG&E or other renewable source by 2026, and shall be allowed one generator for emergency backup purposes only (**Condition A.7**). In the event that the applicant cannot receive an Ag power drop from PG&E by 2026, the applicant shall submit an Energy Plan to the Planning Division to describe how they will achieve 100% renewable energy on-site, and will be required to obtain any necessary permits (**Condition A.8**).

Fire Hazard

The parcel is located in an area designated to have a Very High Fire Hazard Severity, and is 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.13**). The project is

located within the State Responsibility Area (SRA) for CalFire. The Site Plan shows a firetruck turnaround, and one (1) 2,500 gallon water storage tank designated for fire suppression needs only. The designated fire suppression tank shall also have the appropriate fire hose that meets CalFire SRA requirements (**Condition A.9**).

Timber Conversion

The project was referred to CalFire on August 25, 2017, and comments were received by the agency on September 11, 2017. Comments stated that the proposal could not be adequately reviewed because the site plan map did not appear to match the parcel boundaries, and that it appeared that a conversion would be necessary to accomplish the applicant's proposal. The Humboldt Web GIS shows the property mostly located within Trinity County, and the applicant obtained a Property Survey from Points West Surveying Company, dated February 2021. The Property Survey shows that the parcel is in fact located in Humboldt County, and the eastern parcel line is the Humboldt-Trinity County line. The Property Survey was sent to CalFire on December 21, 2020, and no additional comments were received. The applicant's Restocking Plan was sent to CalFire for review on March 10, 2023, and no comments were received.

There was vegetation removal of brush and trees after 2016, and it appears that approximately 1.09 acres of unauthorized timber conversion took place for cannabis cultivation post-2016 (measurements shown in Attachment 6B). A Code Enforcement action was taken on the site (Case #CE20-0718), and the applicant has cleared the violation with Code Enforcement. A Restocking Plan was prepared by RPF Thomas Blair with Blair Forestry Consulting, dated December 13, 2021, which recommends the replanting of 2.4 acres of area on-site, and shows one (1) site recommended for restocking. The recommended restocking area is where the proposed cultivation site is, and it has been determined to be the most environmentally superior location for cannabis due to the flat slopes, and proximity from nearby watercourses. A timber conversion evaluation report was never prepared for the site, and where the 2.4 acres of restocking area came from in the Restocking Plan is unknown. From measurements utilizing aerial imagery, approximately 1.09 acres of timber conversion occurred on the site post-2016, and the applicant shall restock 1.09 acres in total on the site. The applicant shall adhere to the restocking recommendations within the Restocking Plan as follows, for 1.09 acres (**Condition A.10**):

- Employ mechanical ripping or tilling of the planting surface as necessary if soils are compacted and could potentially limit root growth or tree survival. Mechanical site preparation involving soil disturbance should occur during rainless periods of the year and should be conducted to minimize delivery of sediment to waters of the State. In the case that rain causes overland flow across or along the disturbed surface that could deliver sediment into a watercourse or lake in quantities deleterious to the beneficial uses of water, soil stabilization measures should be employed and may include straw wattles and/or drift fencing. Retain all existing conifer stocking, snags and residual hardwood trees with basal cavities, hollows, and other complex crown iterations valuable to wildlife during mechanical site preparation activities.
- The landowner shall plant Douglas-fir (best suited for Seed Zone 303 at 660-foot elevation) at a uniform spacing no less than 16-feet by 16-feet, or 170 trees per acre. Given the conditions of the site and the higher survival rate associated with containerized stock, use containerized seedlings if available.
- For long-term storage (more than 3 days), store seedlings at 33 to 36 degrees Fahrenheit. For short-term storage (several hours to less than 3 days), store below 42 degrees Fahrenheit. At the

planting site, do not allow the roots to dry out and store trees in the shade to avoid exposure to the sun or warmer temperatures.

- Planting Instructions: When planting seedlings, the landowner or tree planter shall operate under the following guidelines:
 1. Tree planting shall only occur in winter or early spring. Tree planting should not occur if the ground is frozen or during unusually warm periods.
 2. Using a Hodad or Dibble, dig a hole at least one inch deeper and wider than the seedling roots. If planting from a container, dig the hole an inch deeper and wider than the container.
 3. Place the seedling into the hole taking care not to bend the taproot, or main vertical root, and cover with soil.
 4. Pack the soil down firmly around the seedling to remove any air pockets.
 5. See Appendices A-D for illustrations for correct planting techniques.
- The RPF recommends acquiring conifer seedlings from either Jessica Huang at CalFire, or inquire with Trent Jonsteen Company in McKinleyville. It is recommended that seedlings acquired be of the appropriate stock based on geographic area and site conditions.
- Monitor the growth and success of planted trees one year after planting. Conduct a point count stocking sampling survey (protocol described in CFPRs 14CCR 1072). If less than 55% of the planted area meets the 125-point count minimum stocking level, repeat the planting process the following winter.
- Within 5 years of planting, but no sooner than 3 years, a report of stocking shall be submitted to the County by an RPF, that certifies that the area of 1.09 acres meets the minimum stocking standards of 14CCR 912.7.

Water Resources

Estimated annual water needed for irrigation is approximately 399,369 gallons of water (13 gal/SF/yr). The project will source water from a permitted well (Permit #WP2005-007) that is located on the adjacent parcel north in Trinity County (APN 008-080-033-000). There is an existing Water & River Access Agreement between the applicant and three neighbors, which includes the right to access all groundwater from four (4) existing wells. The Water & River Access Agreement states that “each grantee shall have the personal right to access and develop groundwater through wells existing on any of the four parcels, in an amount equal of no more than 25% of the production of all current groundwater wells.” There is one existing well on each of the four parcels, and the well that is on the applicant's parcel in Trinity County (adjacent parcel east) produces very little water. The well TW-#3 (Permit #WP2005-007) that is located on the northern parcel has the most productivity. It has been agreed upon with the owner of APN 008-080-033-000 that that well be shared evenly, and a solar well pump was installed that divides the water evenly for both parcels.

There is one (1) 2,500-gallon water tank located on the applicant's subject, and there are three (3) 2,500-gallon water tanks that are located on the adjacent parcel north in Trinity County. The Water & River Access Agreement states that “water systems previously built and existing on adjacent parcels at the time of transfer of ownership by sale of each parcel by one of the named landowners may remain after the sale, and shall be granted a legal appurtenant easement by the affected landowner for said water right and access for maintenance.” The Water & River Access Agreement also states that “said rights shall remain in effect for each grantee only while in possession of one of the parcels described

herein. Said personal rights shall not be construed as easements appurtenant to the lands described herein, but shall be extended to spouses, heirs and legatees of grantee, only while in possession of one of the parcels described herein, upon death of grantee.” In the event that the subject parcel is conveyed to another owner not the applicant’s spouse heir or legatee of grantee, the permit may not be transferred without evidence of access to the shared well TW-#3 (Permit #WP2005-007), water storage and infrastructure, or shall submit a modification to include another water source and remove the water storage and infrastructure on the adjacent parcel (APN 008-080-033-000) located in Trinity County (**Ongoing Condition B.3**).

The applicant has obtained a Well Assessment Report (WAR) for the shared well TW-#3 (Permit #WP2005-007), prepared by licensed hydrogeologist Bonnie Lampley with Lawrence & Associates Engineers & Geologists, dated April 27, 2023. The WAR states that the assessment was prepared utilizing previous site-specific studies that were conducted by Lawrence & Associates. Several wells and test borings were installed at the Site as part of the studies, and all wells were completed with a 20-foot surface seal. The hydrologic setting for the Site is based on the results from six wells that were installed in 2005 to investigate groundwater occurrence and evaluate well yields. The WAR states that the subject well is not hydraulically connected to the river, and estimates an annual recharge rate of 352 acre-feet (114.7 million gallons).

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 July 28, 2020, showing enrollment in the General Order under WDID 1_12CC422700 as a Tier 1 Low Risk site. The applicant has a Site Management Plan (SMP) prepared for the project site, which states that there is one culvert maintained by the applicant and one culvert that is maintained by Trinity County on the Trinity County maintained road. The applicant shall adhere to the ongoing maintenance activities listed in the SMP (**Ongoing Condition B.4**).

The applicant has obtained a drafted Streambed Alteration Agreement with the California Department of Fish & Wildlife (CDFW) for the in-stream work needed to upgrade one (1) culvert on-site, and one point of diversion for domestic uses (SAA No. EPIMS-TRI-03632-R1). Through communications with CDFW, the SAA has not been signed by CDFW and is awaiting this permit approval. The applicant shall submit the final signed SAA to the Planning Division when available, and shall adhere to the project description and work outlined within the final signed agreement (**Condition A.11 & Ongoing Condition B.5**).

Biological Resources

The project is located approximately 0.9 miles to the nearest known Northern Spotted Owl (NSO) activity center. According to the California Natural Diversity Database (CNDDB) for rare and endangered species, the project site contains potential habitat areas near the Trinity River for any rare or endangered species, the western pond turtle and the foothill yellow-legged frog. As the potential habitat is located away from any proposed project activities, 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 August 25, 2017, and no comments were received. The County reached out to CDFW again on May 10, 2023, to request any comments, and no final comments on the project have

been received. The applicant is required to comply with International Dark Sky Standards for lighting within the propagation greenhouse, 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.6 & B.7**).

Tribal Cultural Resource Coordination

The project is located within the Hoopa Tribe and Tsnungwe Tribes ancestral aboriginal territories. The applicant has submitted a Cultural Resource Investigation Report (CRIR) prepared by James Roscoe, M.A., with Roscoe and Associates, dated July 2017. An investigation of the subject parcel was conducted during the spring and summer of 2017. Tsnungwe Council-member Bob Benson was present for the field survey on May 9, 2017. The field survey found artifacts located on the site, but outside of the project area, and a recommendation was made that no new substantial ground-disturbance or heavy equipment-use occur within the boundaries where artifacts were found. From review of aerial imagery it appeared that the area with artifacts may have been disturbed, and a site visit was conducted with Tsnungwe Council-member Bob Benson on May 15, 2023, which confirmed that the artifacts had not been disturbed. The applicant shall adhere to the recommendation in the CRIR that no new substantial ground-disturbance or heavy equipment-use occur within the boundaries where artifacts were found, and should future ground-disturbing work be proposed within the boundaries of the Site found to have artifacts, a professional archaeologist shall review the proposed actions and, in cooperation with the Tsnungwe Tribe, develop mitigation measures that would avoid a substantial adverse change to the Site (**Condition A.12**). The applicant shall also 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

The site is accessed from Forest Route 5N03/S. Fork Road, from S. Fork Road, from Hwy 299. The project was referred to the Department of Public Works on August 25, 2017, and comments were received by the agency on February 7, 2018. Comments from Public Works stated that the access to the site is from Trinity County, and requests a road evaluation report for the access road. The applicant has submitted a Road Evaluation Report form for the access road S. Fork Road, showing that it is maintained by Trinity County, and designating the road as being developed to the equivalent of a road category 4 standard. As the site is accessed from a US Forest Service road that goes through Trinity County, the project was referred to the Trinity County Planning Department and the US Forest Service on February 13, 2019. No comments were received by either agency. The site will be operated by the applicant and up to three (3) employees, and a maximum of ten (10) vehicle trips are anticipated per day. As the site is for pre-existing operations, 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 Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 86 permits and 29 acres of cultivation. With the approval of this project the total approved permits in this Planning

Watershed would be 26 cultivation permits and the total approved acres would be 12 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. Water Use Estimates
 - D. Site Plan
2. Location Maps
 - A. Watershed map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Notice of Applicability Letter
 - B. Site Management Plan
 - C. Water & River Access Agreement
 - D. Well Assessment Report
 - E. Final Streambed Alteration Agreement with CDFW
 - F. Restocking Plan
 - G. Property Survey
 - H. Road Evaluation Report
 - I. Applicant's Evidence of Pre-Existing Cultivation
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
- 6. County Supplied Evidence
 - A. County Cultivation Area Verification (CAV)
 - B. Post-2016 Timber Conversion Measurements

Applicant

Enchanted Forest, LLC
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Owner

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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.