



COUNTY OF HUMBOLDT

For the meeting of: 1/5/2023

File #: 22-1791

To: Planning Commission
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Dave Thomas Conditional Use Permit and Special Permits
Assessor Parcel Number: 221-121-001
Record No.: PLN-12179-CUP
9850 Upper Mattole Canyon Road, Honeydew area

A Conditional Use Permit for 12,440 square feet (SF) of existing outdoor cannabis cultivation and 1,231 SF of ancillary propagation. Irrigation water is sourced from a 280,000-gallon rainwater catchment pond. Existing available water storage is 520,000 gallons consisting of the pond and a series of hard-sided tanks. Estimated annual water usage is 102,650 gallons. The water supply is shared with PLN-11751-SP (previously approved) on a contiguous parcel, Assessor's Parcel Number (APN): 221-121-013, located immediately south of the subject site. Drying and curing occurs onsite and on the adjacent property (APN: 221-121-013) within two (2) structures totaling 1,380 SF, with all other processing occurring offsite at a licensed processing or manufacturing facility or at one of the applicant's other properties (APN: 221-201-021), located southwest of the site. A maximum of three (3) people will be onsite during peak operations. Power is currently provided by a generator; however, the project is conditioned for conversion to renewable energy. The proposed project also includes Special Permits for reduction of the required 600-foot buffer from public lands and for relocation of existing infrastructure outside of the required Streamside Management Area (SMA) buffer and associated restoration.

RECOMMENDATION(S):

That the Planning Commission:

Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:

- a. Finds that the Planning Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CCMLUO) that was prepared for the Dave Thomas project (Attachment 3); and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Conditional Use Permit and Special Permits subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location:

The project is located in the Honeydew area, on the east and west side of Upper Mattole Canyon Road, approximately 4.6 miles north from the intersection of Crooked Prairie Road and East Fork Road, on the property known as 9850 Upper Mattole Canyon Road.

Present General Plan Land Use Designation:

Residential Agriculture (RA40), 2017 General Plan. Density: 40 acres per dwelling unit, Slope Stability: Moderate Instability (2).

Present Zoning:

Forestry Recreation with 40-acre Minimum Special Building Site (FR-B-5(40)).

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:

Dave Thomas seeks a Conditional Use Permit to allow the continued cultivation of 12,440 square feet (SF) of outdoor cannabis (full-sun outdoor and outdoor utilizing light deprivation techniques) and 1,231 SF of ancillary propagation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with 40-acre Minimum Special Building combining zone (FR-B-5(40)). The proposed project also includes Special Permits for a reduction in the 600-foot setback required from public lands and for relocation of existing infrastructure outside of the required Streamside Management Area (SMA) buffer and associated restoration.

Cultivation takes place in the southern portion of the subject site in seven (7) hoop houses utilizing light deprivation techniques, ranging in size from 1,400 to 1,600 SF (11,000 SF total), as well as full-sun outdoor areas totaling 1,631 SF (for a total of 12,631 SF of onsite cultivation). Under the project, the westernmost full-sun area will be reduced by 192 SF to ensure the cultivation amount is consistent with the amount of cultivation authorized by the County under the Interim Permit. Ancillary propagation occurs in two (2) separate hoop houses (891 SF), in addition to a 340 SF temporary holding space, for a total of 1,231 SF of on-site ancillary propagation space. Two (2) harvests for the outdoor cultivation utilizing light deprivation techniques and one (1) harvest for the full-sun outdoor area are anticipated annually, for a growing season that extends from May through October.

Drying and curing occurs onsite and on the adjacent property (APN: 221-121-013) within two (2) structures totaling 1,380 SF, with all other processing occurring offsite at a licensed processing or manufacturing facility or at one of the applicant's other properties (APN: 221-201-021), located southwest of the site, where a separate cannabis permit has been obtained under PLN-11832-CUP. Up to three (3) people may be onsite during peak operations, and there would be 5-8 employees on the adjacent parcel, as approved by the Humboldt County Planning Commission on May 17, 2018, under APPS #11832.

Water Resources:

Estimated annual water usage is 102,650 gallons (7.59 gal/SF) with peak demand occurring in August at approximately 19,400 gallons, per the table below.

Table 1. Estimated Average Monthly Water Usage

	<i>Plant Stage</i>	<i>Total Gallons</i>
<i>May</i>	<i>veg</i>	<i>14,500</i>
<i>June</i>	<i>veg</i>	<i>16,750</i>
<i>July</i>	<i>veg</i>	<i>18,500</i>
<i>August</i>	<i>veg</i>	<i>19,400</i>
<i>September</i>	<i>Veg/flwr</i>	<i>18,500</i>
<i>October</i>	<i>flwr</i>	<i>15,000</i>

TOTAL: 102,650 gallons

Water for irrigation is sourced from an existing 280,000-gallon rainwater catchment pond (approximately 78’x54’) located within the southern portion of the subject property. Existing available onsite water storage is 520,000 gallons consisting of the pond and a series of hard-sided tanks. The water supply is shared with PLN-11751-SP (previously approved by the Zoning Administrator on May 6, 2021) that is located on contiguous parcel, APN: 221-121-013, located immediately south of the subject site. The estimated annual water required for the project (102,650 gallons), in addition to the water required for APPS #11751 (66,500 gallons), equates to approximately 169,150 gallons. The rainwater catchment pond is filled via runoff from the natural landscape and rain (Attachment 1D). A Water Distribution Diagram, included as Attachment 4G, shows all water sources, storage, and flow between them.

An assessment of the capture potential of the existing rainwater catchment pond was completed to determine if adequate water supply is and would continue to be available to serve the project. The average rainfall for the project area is 56.97 inches, based on averaging rainfall values from 2010 through 2020 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every inch of rainfall or 0.62 gallons per 1 SF. For a conservative assessment, this general rule was utilized, based on the approximate surface area of the pond, and did not account for run-off from the surrounding topography. Based on the pond sizing information provided on the Site Plan, the pond is approximately 78 feet by 54 feet, for a surface area of approximately 4,212 SF. Based on the pond’s surface area of 4,212 SF, and an average rainfall amount of 56.97 inches, the pond’s potential capture amount totals approximately 148,774 gallons per year, on average, which equates to approximately 88% of the annual water amount utilized by the project and the operation on the adjacent property (169,150 gallons). As such, additional water supply (a minimum of 20,376 gallons) is needed to serve the projects. Planning staff recommends that prior to the 2023 cultivation season, rainwater catchment infrastructure be added to existing structure(s) located on the subject site in order to capture the additional rainwater needed to meet the needs of the project. Planning staff calculated that, at a minimum, rainwater catchment infrastructure would need to be added to structure(s) totaling a minimum of 577 SF in order to capture the additional water needed for the project, which has been included as a condition of approval (**Condition of Approval A.8**). With the addition of the additional rainwater catchment infrastructure to the subject site, Planning staff believes there will be sufficient water from rainwater and in storage to meet the needs of the project. Conditions of approval require the applicant to monitor water use from the rainwater catchment pond, additional rainwater catchment infrastructure (to be added under the project), and water tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.26**). In addition, the applicant shall record a contingent easement between APNs: 221-121-001 (subject site) and 221-121-013 (adjacent parcel) to allow for continued use of water from the rainwater catchment pond and rainwater catchment infrastructure (to be added under Condition of Approval A.8) by the adjacent property (APN: 221-121-013) for the life of the project (**Condition of Approval A.7**).

A Final Streambed Alteration Agreement (FSAA) with the California Department of Fish and Wildlife (CDFW) was issued in May 2019 (Notification No. 1600-2019-0013-R1; Attachment 4C) for four (4), including use and maintenance of infrastructure for a point of diversion from a Class II spring (domestic use only, per the Water Distribution Diagram) and three (3) encroachments to conduct instream work to replace an existing culvert and remove debris from the channel, decommission an existing stream crossing, and install a culvert at a dirt ford road/stream crossing. A *Project Inspection Report* was prepared by Timberland Resource Consultants in December 2020 (Attachment 4F) for the three (3) stream crossing upgrades or decommissioning identified in the FSAA. Per the Report, the upgrades have been completed and photographic evidence is included. Additionally, it is noted that erosion control measures (hand-placed slash and straw) were recommended in several locations of disturbed area, which the Report confirms were installed by the applicant, with additional photos provided. Conditions of approval require continued compliance with the terms and conditions of the FSAA (**Condition of Approval A.18**), including but not limited to preparing and implementing an invasive species and bullfrog management plan and installing an overflow spillway (**Condition of Approval A.20**). Additionally, no stocking of the pond is allowed without written permission from CDFW pursuant to Section 6400 of the Fish and Game Code, which has been included as an ongoing condition of approval (**Ongoing Condition of Approval A.24**).

Although not shown on Humboldt County Web GIS, several Class III streams traverse the southwestern, southern, and southeastern portions of the site and are depicted on the Site Plan with respective Streamside Management Area (SMA) buffers. Based on the Site Plan, all cultivation activities and most respective infrastructure are located outside of the respective SMA buffers; however, six (6) existing water storage tanks (two 550-gallon, two 2,500-gallon, and two 5,000-gallon tanks) are shown within the required SMA buffers. A separate Special Permit is required for relocation of the existing water storage tanks outside of the required SMA buffers and associated restoration. A condition of approval is recommended to require the existing water storage tanks currently located within required SMA buffers to be relocated outside of all required SMA buffers to a previously disturbed area without the use of heavy machinery (**Condition of Approval A.10**), which will ensure impacts to the SMAs are minimized. Additionally, the applicant shall submit a restoration plan or similar communication describing how the area will be restored and submit evidence demonstrating the area has been restored (**Condition of Approval A.10**). As such, Planning staff is supportive of the requested Special Permit.

A Water Resource Protection Plan (WRPP; WDID 1B171605CHUM) was prepared for the site and adjacent property (APN: 221-121-013), located immediately south of the subject property, by Timberland Resource Consultants in May 2018 (Attachment 4A). The WRPP details existing site conditions, how the properties are or will meet the provisions and requirements of the North Coast Regional Water Quality Control Board (NCRWQCB) Order R1-2015-0023, how the applicant is implementing the standard conditions listed in Order R1-2015-0023, and remediation efforts needed to bring the operations into compliance. Per the WRPP, four (4) of the six (6) cultivation areas (Cultivation Areas A-D) are located on the subject property, with a portion of Cultivation Area E located on both properties. Additionally, portions of Cultivation Area E were found to contain unstable areas and also contain a Class II watercourse, which is noted to begin within the southern portion of the cultivation area (on the adjacent property to the south) and flow to the east to a confluence with a Class III watercourse, approximately 165 feet downslope. Please note Cultivation Area E (as identified in the WRPP) has since been decommissioned and is no longer shown on the Site Plan. All other onsite cultivation areas are reported to be more than 70 feet from the nearest watercourse, which is a Class III seasonal watercourse subject to a minimum 50-foot buffer per the Streamside Management Area and Wetlands Ordinance (SMAWO). Slopes of the onsite cultivation areas are noted to be 5%, except for Cultivation Area E, where slopes are noted to be 28%. In the WRPP, twenty-seven (27) items were identified as requiring treatment to bring the two sites into compliance with NCRWQCB's Order R1-2015-0023, sixteen (16) of which are on

the subject site. Such recommended improvements included road improvements, installation of rolling dips, culvert improvements, gathering and proper disposal of refuse and cultivation-related wastes. The project is conditioned to implement all remaining corrective actions detailed in the WRPP (**Condition of Approval A.19**).

Additional conditions of approval require the applicant to submit copies of all documents filed with the State Water Resources Control Board, including, but not limited to, a Site Management Plan (**Condition of Approval A.17**). Furthermore, conditions require the applicant adhere to and implement the requirements contained in the SWRCB's Cannabis Cultivation Policy, the General Order, the Site Management Plan, and the Notice of Applicability (**Condition of Approval A.17**), which will minimize any potential impacts associated with the project and minimize runoff into nearby SMAs.

Biological Resources:

Per review of CDFW's CNDDDB in April 2022, there are no mapped sensitive species onsite and the nearest NSO positive observation is located approximately 1.51 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 1.97 miles away. Additionally, the onsite cultivation is located near Final Critical Habitat for NSO (approximately 0.3 miles away), which appears to be located on the adjacent BLM lands (APN: 221-111-012) and not on the subject site.

As previously described, power is currently provided by a generator; however, the applicant has long-term plans for installation of a solar system. As described in the Cultivation and Operations Plan Addendum (Attachment 1C), a small generator may continue to be used as backup and to maintain the solar system, as needed. (**Conditions of Approval A.22-25 and Ongoing Conditions of Approval B.1-7**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

Energy:

Power is currently provided by a generator; however, the applicant has long-term plans for installation of a solar system. Conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.6**).

Access:

Access to the site is via a driveway off Upper Mattole Canyon Creek Road (which traverses the subject property) via Doody Ridge Road to Dutyville Road to Ettersburg-Honeydew Road to Briceland Thorne Road. Ettersburg-Honeydew Road and Briceland Thorne Road have been identified as County-maintained roadways that meet (or are equivalent to) Category 4 road standards for cannabis projects. Upper Mattole Canyon Creek Road, Doody Ridge Road, and Dutyville Road are privately maintained. A Road Evaluation Report for an approximately 9.1-mile segment of Dutyville Road, from Ettersburg Road to the termination of Dutyville Road, was prepared by the applicant's agent in June 2022 (Attachment 4E). Additionally, Road Evaluation Reports for an approximately 7.9-mile segment of Doody Ridge Road, from Wilder Ridge Road to Upper Mattole Canyon Creek Road, and an approximately 0.7-mile segment of Upper Mattole Canyon Creek Road, from Doody Ridge Road, to the subject parcel, were prepared by the applicant in June 2018 (Attachment 4D). The Road

Evaluation Reports indicate that the roadways meet a Category 4 road equivalent standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight.

Per referral comments received from the Department of Public Works, Land Use Division, dated May 2021, any existing or proposed non-County maintained road to serve as access for the proposed project that connects to a County-maintained road shall be improved to current standards for a commercial driveway, and, as a result, the access road (Dutyville Road) shall be paved for a minimum width of 20 feet and a length of 50 feet where it intersects the County road (Ettersburg-Honeydew Road) (**Condition of Approval A.13**). Additionally, all driveways and private road intersections onto the County road shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance) (**Condition of Approval A.14**). Further, the applicant is required to maintain continued enrollment in the “Dutyville Friends of the Road” Road Maintenance Association (RMA) and shall pay fair-share cost for maintenance of the road (**Condition of Approval A.15**).

Additionally, since multiple road evaluation reports have been prepared for the road, all the recommendations of the various road evaluations shall be combined into one action plan. If the RMA will not be responsible for constructing all of the improvements in the action plan, proportioning of the improvements shall be clearly documented so that each applicant is aware of what portion of the action plan they are responsible for constructing (**Condition of Approval A.16**).

As previously noted, there will be a maximum of three (3) people onsite during peak operations. Therefore, a significant increase in traffic is not expected under the project.

Geologic Suitability:

The project parcel is mapped in the County GIS as “moderate instability” (2). The slope of the land where cannabis will be cultivated is 5%, as per the Water Resource Protection Plan (WRPP; WDID 1B171605CHUM) prepared by Timberland Resource Consultants in May 2018.

Timber Conversion:

Based on review of historic aerial imagery dating back to 2004, it appears that the subject property contained a large open area within the central and western portion of the site; however, it appears that a small amount of timber conversion has occurred onsite in order to accommodate the existing outdoor cultivation areas and hoop houses, and appears to have occurred between 2005 and 2009, 2010 and 2012, 2012 and 2014, 2014 and 2016, and 2016 and 2018. Based on preliminary review, it appears that approximately 10 trees may have been removed post-2016.

The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and submit a Timber Conversion Report prepared by a RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within 90 days of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and

reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection (**Condition of Approval A.12**). No additional tree removal is proposed or authorized by this permit.

Security and Safety:

The operation is secured behind locking metal gates at each private drive, and someone is usually present onsite throughout the cultivation season.

Tribal Consultation:

The project is within the historic aboriginal territory of the Bear River Band of the Rohnerville Rancheria and the Intertribal Sinkyone Wilderness Council. The project was referred to the Northwest Information Center at Sonoma State, the Bear River Band of the Rohnerville Rancheria, and the Intertribal Sinkyone Wilderness Council in April 2021. A Cultural Resources Investigation (dated March 17, 2020; on file and confidential) was performed by Arsenault and Associates, in which no cultural resources were identified and included the standard inadvertent discovery protocol, which has been incorporated into the project as an informational note (**Informational Note C.3**). The Report was reviewed by the Bear River Tribal Historic Preservation Office in April 2022, in which the Tribe noted they were in agreement with the recommendations outlined in the Report.

Setback to Bureau of Land Management Lands:

A parcel directly to the southwest of the site (APN: 221-111-012) is owned and managed by the Bureau of Land Management (BLM). The cultivation area located within the southwestern corner of the subject site is located approximately 198 feet northeast from the public land at the nearest point, as measured on Humboldt County WebGIS. Under the CMMLUO, cultivation operations require a setback of 600 feet from publicly owned lands that are managed for wildlife, open space, and recreational facilities. This setback may be reduced with a Special Permit. A Special Permit for the allowance of a setback reduction of the 600-foot buffer from BLM lands is included as a part of the applicant's request. No developed or designated recreational facilities are within 600 feet of the cultivation and propagation areas.

The project is not anticipated to impact the adjacent lands or their use because the cultivation activities will minimize impacts to biological resources and wildlife through measures to reduce potential light and noise impacts. The project will not require substantial road improvements or the removal of trees. The project will minimize impacts on nearby watercourses by maintaining buffers from streams and by placing controls on the storage and use of pesticides and fertilizers, and will minimize risk from wildfire by adhering to the County's Fire Safe Regulations and requiring adequate road access. Additionally, a Water Resources Protection Plan (WRPP), prepared by Timberland Resource Consultants in May 2018 (Attachment 4A), was developed for the project to prevent and/or address poor water quality conditions and adverse impacts to water resources associated with cannabis cultivation on private land. Finally, the project is consistent with recreational use on public lands by maintaining a minimum 600 buffer separation from developed campgrounds and/or trails. As a result, there will not be any new erosion, wind damage, elimination of wildlife corridors, loss of scenic beauty, or reduction of quality habitat for plants and animals.

The project was referred to BLM for comment in April 2022. Planning staff provided additional project information in October 2022. In referral comments received from BLM in October 2022 (Attachment 5C), BLM noted the contiguous BLM land is designated as Critical Habitat for NSO and "contains one of the last remaining old growth Douglas fir stands in the area". BLM expressed concerns for the project to impact BLM land and sensitive wildlife species and for the "close proximity of this proposed cannabis operation to NSO critical habitat and a historic NSO activity center." As described in further detail under the "Biological Resources" subsection, review of CDFW's CNDDDB in April 2022 indicates the nearest NSO positive sighting

is located approximately 1.51 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 1.97 miles away. The project involves outdoor cultivation, although artificial lighting is utilized to support the ancillary propagation areas (1,231 SF total). Several conditions of approval are recommended for the project in order to minimize potential impacts on sensitive wildlife species, including but not limited to noise and light attenuation. As described in more detail below, Planning staff finds the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species, as proposed and conditioned.

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 located in the Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 227 permits and the total approved acres would be 79.36 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 to add or delete 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. Resolution
 - A. Conditions of Approval
 - B. Cultivation & Operations Plan & Addendum
 - C. Additional Project Information
 - D. Site Plan
2. Location Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Water Resource Protection Plan
 - B. Notice of Applicability
 - C. Lake or Streambed Alteration Agreement
 - D. Public Works Road Evaluation Report Form (Upper Mattole Canyon Creek Road and Doody Ridge Road)
 - E. Public Works Road Evaluation Report Form (Dutyville Road)
 - F. Project Inspection Report
 - G. Water Distribution Diagram
5. Referral Agency Comments and Recommendations
 - A. Public Works, Land Use Division
 - B. CAL FIRE
 - C. Bureau of Land Management

File #: 22-1791

Applicant

Dave Thomas
P.O. Box 1791
Redway, CA 95560

Owner

Same as Applicant

Agent

Oxalis
Holly Carter
901A Redwood Drive
Garberville, CA 95542

Please contact Megan Marruffo, Assigned Planner, at marruffm@lacoassociates.com or 707-443-5054, if you have any questions about the scheduled item.