



# COUNTY OF HUMBOLDT

For the meeting of: 3/2/2023

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File #: 23-259

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

**SUBJECT:**

Merry Whether Farms, LLC, Special Permits  
Assessor's Parcel Number: 221-111-028  
Record Number: PLN-11734-SP  
Whitethorn area

A Special Permit for 9,950 square feet (SF) of existing outdoor cannabis cultivation (3,950 SF of full sun outdoor and 6,000 SF grown within four (4) greenhouses utilizing light deprivation techniques), in addition to 1,000 SF of proposed ancillary propagation space. Staff is not recommending that the additional propagation space be approved. Irrigation water is sourced from rainwater catchment and an existing point of diversion. Existing available water storage for irrigation is 130,000 gallons in a series of hard-sided tanks, with an additional 32,900 gallons proposed, for a total of 162,900 gallons of onsite storage. Estimated annual water usage is 150,000 gallons. Drying and curing occurs onsite, with all other processing occurring offsite at a licensed processing or manufacturing facility. A maximum of three (3) people may be onsite during peak operations. Power is provided by a 2,500 kilowatt-hour (kWh) solar system, with a 15 kVA WhisperWatt diesel generator utilized for backup. The project also includes a Special Permit for continued use and maintenance of a point of diversion.

**RECOMMENDATION(S):**

That the Planning Commission:

Adopt the resolutions (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 (CMMLUO) and the Addendum that was prepared for the Merry Whether Farms, LLC, project; and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Special Permits subject to the recommended conditions of approval (Attachment 1A).

**DISCUSSION:**

**Project Location:**

East side of Doody Ridge Road, approximately 0.4 miles north from the intersection of Hardwood Lane and Doody Ridge Road, on the property known as 6757 Doody Ridge Road.

**Present General Plan Land Use Designation:**

Residential Agriculture (RA40), Density: forty acres per dwelling unit, Slope Stability: High Instability (3).

**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:**

Merry Whether Farms, LLC, seeks a Special Permit to allow the continued cultivation of 9,950 square feet (SF) of existing outdoor cultivation, in addition to 1,000 SF of proposed 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 General Plan and zoned Unclassified (U). Cultivation currently takes place within the central portion of the property within four (4) greenhouses utilizing light deprivation techniques, totaling 6,000 SF. Two (2) full-sun outdoor areas (totaling 3,950 SF) are proposed to be located to the west and east of the greenhouses, in accordance with evidence previously submitted to demonstrate this additional cultivation area was in existence prior to the CMMLUO environmental baseline date of January 1, 2016, for a total of 9,950 SF of onsite cultivation. An ancillary propagation greenhouse (1,000 SF) is proposed directly south of the western full-sun outdoor area and southwest of the light deprivation greenhouses. Two (2) harvests are anticipated annually for the light deprivation greenhouses and one (1) harvest for the full-sun outdoor cultivation for a growing season that extends from March through October.

This project was previously heard by the Planning Commission on January 3, 2023. The project was continued to allow additional time for staff to work with the applicant regarding the water source and condition of approval requiring the evaluation of timber conversion. Planning staff revised the project description and findings to include the use of an existing point of diversion as a backup water source to the primary water source of rain catchment. Additionally, Conditional of Approval #11 was revised to allow for 1 year for the timber conversion report to be submitted to the Planning Department (as opposed to 90 days as originally proposed by staff) as requested by the applicant. Planning staff believes this addresses the concerns of the applicant. These revisions are reflected in the following summary.

Drying and curing occurs onsite in a 1,200 SF metal shop building, with all other processing occurring offsite at a licensed processing or manufacturing facility. A maximum of three (3) people may be onsite during peak operations; these are proposed to be family members and no additional employees are required for the operation.

While the property is located adjacent to public lands (APN: 221-111-012) owned and maintained by the Bureau of Land Management (BLM), cultivation, including the proposed full-sun outdoor areas, is and will continue to be located more than 600 feet away (approximately 900 feet) from the public lands. As such, a reduced setback is not required or requested for the project. See additional discussion below under the *Public Comments* section.

**Cultivation and Nursery Space:**

The application is for 9,950 SF of existing outdoor cultivation which the county has verified was in existence prior to the January 1, 2016 baseline for existing cultivation, in addition to 1,000 SF of additional ancillary propagation which is proposed. Planning staff does not recommend approval of the proposed ancillary nursery due to the project sites location within the Upper Mattole River subwatershed, which is an impacted watershed where no new cultivation is permitted pursuant to Board of Supervisors Resolution 18-43. Alternatively, the applicant may reduce the existing 9,950 square feet of cultivation area by up to 10% and utilize that cultivation space as a nursery, thereby ensuring that no additional cultivation area occurs on the property. A recommended condition of approval has been included to require the applicant to revise both the Site Plan and Operations Plan to reflect their preferred option (**Condition of Approval A.6**)

**Water Resources:**

Estimated annual water usage including the proposed 1000 SF nursery is 150,000 gallons (13.70 gal/SF) with peak demand occurring during July and August at approximately 40,000 gallons per month, respectively, per the table. As noted in the Cultivation and Operations Plan (Attachment 1B), the amount of water used for cultivation varies throughout the year, from 400 gallons per day up to 1,000 gallons per day in the summer months. Without the proposed nursery the average annual water use would be closer to 136,300 gallons per year.

*Table 1. Current Monthly Water Usage Estimates (in gallons)*

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
0	0	1,000	2,000	2,000	25,000	40,000	40,000	25,000	15,000	0	0

*Total: 150,000 gallons*

Existing available water storage for irrigation is 130,000 gallons in a series of hard-sided tanks, with an additional 32,900 gallons proposed, for a total of 162,900 gallons. The site also contains an approximately 179,000-gallon pond for domestic use and a 3,000-gallon storage tank for fire suppression and domestic use; these additional water sources are not utilized for the irrigation of cannabis. Water for irrigation is primarily sourced from rainwater catchment utilizing existing structures onsite and an existing point of diversion (POD) would serve as supplemental or back-up water source. Per the Cultivation and Operations Plan (Attachment 1B), a water pump directs water to irrigation lines and distributes water flow from the irrigation tanks to the cultivation site. All irrigation is timed drip irrigation.

As noted above, the project is primarily served from rainwater catchment. The average rainfall for the project area is approximately 97.6 inches, based on averaging rainfall values from 2012 through 2022 as recorded by PRISM Climate Group, with the lowest annual rainfall year being 32.83 inches in 2013 with the second lowest amount being 49.68 in 2020. 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 square foot. The applicant utilizes the roofs of several onsite structures, including the residence (868 SF), the metal shop (1,200 SF), and the shed (200 SF), for a potential capture area of 2,268 SF. Based on the impermeable rainwater catchment area of 2,268 SF, and using a more substantial drought year of 49.68 inches, the site’s potential capture amount totals 69,858 gallons per year. A detailed breakdown of proposed rainwater capture infrastructure and capture potential are provided below in Table 2. Rainwater that is captured through the rainwater catchment system will be stored in the existing and proposed water storage tanks totaling 162,900 gallons.

*Table 1. Proposed Rainwater Capture Analysis*

Infrastructure Description	Potential Capture Area (ft <sup>2</sup> )	Potential Average (2012-2022) Rainfall Capture Amount (gallons)	Potential 2020 Drought Year Rainfall Capture Amount (gallons)
Residence	868	52,524	26,735
Metal shop	1,200	72,614	36,961
Shed	200	12,102	6,160
<b>Totals:</b>	2,268	137,241	69,858

Rainwater catchment will support 137,241 gallons which is over 100% of the necessary annual use during an average year however only 69,858 gallons or 51% during a more substantial drought year (using 2020 as a drought indicator). The applicant has applied for applicable water rights from the State Water Resources Control Board (SWRCB) (See SWRCB Receipt, Attachment 4F) which will supplement the rainwater collection, however this water right does not currently exist. As described and evaluated, planning staff believes there is not currently sufficient water available from the existing rainwater catchment system to serve the full project when accounting for drought conditions.

Based on the available rainwater capture potential of the existing rainwater catchment system and average annual water usage (13.70 gal/SF), the current rainwater catchment system can adequately support 5,000 SF of cultivation when accounting for a more substantial drought condition such as in 2020. Accordingly, until such time as the applicant is able to furnish applicable water rights including but not limited to a cannabis Small Irrigation Use Registration (SIUR) from the SWRCB, to ensure a sufficient supply of water required for irrigation, a condition of approval is recommended to keep the cultivation size to no more than 5,000 SF until water rights are secured and reviewed by Planning staff. Alternatively, the applicant may include additional rainwater capture infrastructure to include the site’s greenhouses. For instance, using the two existing 80 x 20 greenhouses would result in an additional 98,406 gallons of rainwater available to be collected when using the 2020 drought year as a basis, which results in substantially more than sufficient rainwater collection to serve the project needs. This analysis is captured through a recommended condition of approval to ensure adequate water supplies are available for irrigation for the project (**Condition of Approval A.8**).

According to Humboldt County Web GIS and the Site Plan, no watercourses are known to traverse the subject site. The Site Plan indicates an approximately 179,000-gallon pond and a groundwater well are located on the property, and are noted to historically be utilized solely for domestic use and are not utilized for cannabis irrigation. A Final Streambed Alteration Agreement (FSAA) was issued by the California Department of Fish and Wildlife (CDFW; Notification No. 1600-2016-0455-R1) for these two encroachments [a shallow well (POD-1) and a Class II spring (POD-2)] in June 2017. A five-year extension to the FSAA was submitted to CDFW on December 09, 2022 (see LSAA Extension, Attachment 4C).

A Special Permit is required for the continued use and maintenance of the point of diversion associated with this proposed project as a source of irrigation for back up use in years of low rain fall. Conditions of approval require the applicant to implement any remaining projects and comply with the requirements established under the FSAA (**Condition of Approval A.19**).

Conditions of approval require the applicant to monitor water use from the rainwater catchment system, the point of diversion (upon receipt of required water rights for irrigation use), and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.22**). Additional conditions of approval require the applicant to comply with the State Water Resources

Control Board Cannabis Cultivation Policy, which includes development and implementation of a Site Management Plan (**Condition of Approval A.15**).

**Timber Conversion:**

Review of aerial imagery dating back to 2004 indicates the site contained a small existing open area in the central portion of the property as of 2004, which appears to have been expanded between 2005 and 2009, 2010 and 2012, 2012 and 2014, 2014 and 2016, and 2018 and 2020. 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 one year 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.11**). No additional tree removal is proposed or authorized by this permit.

**Biological Resources:**

Per review of CDFW's California Natural Diversity Database (CNDDDB) in July 2022, there are no mapped sensitive species onsite and the nearest NSO positive sighting is located approximately 0.90 miles from the cultivation area, with the nearest NSO activity center located approximately 1.47 miles away. Additionally, the cultivation area is located approximately 1,000 feet (0.19 miles) from NSO Final Critical Habitat. As previously described, power at the site is provided by a 2,500-kWh solar system, with a 15 kVA WhisperWatt diesel generator utilized for backup. As the project is primarily served by solar, with a generator utilized only for backup, potential impacts to NSO are minimized.

Conditions of approval require the applicant to implement light and noise attenuation measures, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval A.17, A.18, A.20, and A.21 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 2,500 kilowatt-hour (kWh) solar system, with a 15 kVA WhisperWatt diesel generator utilized for backup.

**Access:**

Access to the site is via a driveway off Doody Ridge Road (which traverses the western portion of the property), to Dutyville Road to Ettersburg-Honeydew Road to Briceland Thorne Road to Redwood Drive to Highway 101. Doody Ridge Road and Dutyville Road are privately-maintained, while Ettersburg-Honeydew Road, Briceland Thorne Road, and Redwood Drive are County-maintained. Highway 101 is a State-maintained

highway, managed by the California Department of Transportation (Caltrans).

The applicant submitted a Road Evaluation Report, dated June 2018 (Attachment 4D), that was prepared for a separate cannabis permit application (APPS #12179) in the vicinity, that is also accessed via Dutyville Road and Doody Ridge Road. The Road Evaluation Report for a 7.9-mile segment of Doody Ridge Road (assumed to also be for Dutyville Road), from Wilder Ridge Road to Upper Mattole Canyon Road (which appears to include the majority of the roadway portion utilized under the project, except for the approximately 0.9-mile segment of Dutyville Road from Mattole Canyon Creek Road to Ettersburg-Honeydew Road) indicates the road segment is developed to the equivalent of a road Category 4 standard. A separate written Roadway Evaluation Report (dated June 2022; Attachment 4E) was prepared for another cannabis permit application (APPS #12196) and includes an evaluation of Dutyville Road from the intersection with Ettersburg-Honeydew Road (which assesses the remaining portion of Dutyville Road utilized by the project), and included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight. This Report notes the roadway is “graded and well cared for the entire length”. Pinch points are noted along the roadway; however, the Report notes there is turnout space on one or both side of the narrow stretches, which have visibility on approach by either direction. The Report concludes “the road is passable by two vehicles for the entire distance, with minimal need for pullout for these short distances.” No recommendations are provided in the Report. There is an active road association for the access roads, “Dutyville Friends of the Road”. Furthermore, to ensure access to the site is adequately maintained, as a condition of approval, the applicant shall join the “Dutyville Friends of the Road” Road Maintenance Association, provide evidence of enrollment, and pay fair share costs associated with maintaining Dutyville Road (**Condition of Approval A.14**).

Per comments received from the Department of Public Works, Land Use Division in May 2022, the project is conditioned to maintain all driveways and private road intersections onto the County road in accordance with the County’s Sight Visibility Ordinance (County Code §341-1) (**Condition of Approval A.12**) and improve the access road that serves the project to current commercial driveway standards, specifically by paving the access road (Dutyville Road) for a minimum width of 20 feet and a length of feet (or break in slope) where it intersects the County road (Ettersburg-Honeydew Road; **Condition of Approval A.13**).

### **Geologic Suitability:**

The project parcel is mapped in the County GIS as high instability. The slope of the land where cannabis will be cultivated is less than 30%. The Humboldt WebGIS shows the natural slopes range from 15% to 30% in the vicinity of the cultivation area. Conditions of approval require all structures associated with cannabis operations be permitted through the Building Inspection Division according to the California Building Code to ensure structures are constructed in a safe manner (**Condition of Approval A.6**).

### **Response to Public Comments:**

The Bureau of Land Management (BLM) submitted comments in October 2022 as the BLM is a neighboring property owner (Attachment 6). A referral was not sent to the BLM as a setback from the public lands is not required for this project. In their comments concerns were expressed “about the close proximity of this cannabis operation to NSO critical habitat” and noted that any activity or resource damage related to cannabis operations on public land may be subject to federal criminal and/or civil action. As previously discussed, the subject site is located adjacent to property owned and maintained by BLM (APN: 221-111-012); however, onsite cultivation is located approximately 900 feet from public lands and outside of the required 600-foot setback. Additionally, review of the access way to the subject site indicates that no public or BLM-lands are traversed to access the site.

Regarding potential impacts to NSO, as described under the “Biological Resources” section above, the nearest

NSO sighting is approximately 0.90 miles away with the nearest activity center located approximately 1.47 miles away. Additionally, NSO Final Critical Habitat was measured to be approximately 1,000 feet (or 0.19 miles) from the cultivation area. The project involves outdoor cultivation utilizing light deprivation and full-sun outdoor techniques. Use of artificial light is authorized for the nursery space only. Power is also provided by solar, with a generator utilized for backup. Conditions of approval require light and noise light attenuation, including generator containment (**Conditions of Approval A.17-18 and Ongoing Conditions of Approval B.1-3**). Conditions of approval are similar in nature to conditions typically applied to projects with the potential to impact NSO and due to the low amount of generator noise and light that will be utilized for this outdoor cultivation, staff finds that the impacts to NSO are substantially minimized. Planning staff contacted BLM with a response to comments on October 28, 2022. No new comments were received. With the respective conditions of approval, Planning staff finds the project will not negatively impact NSO, therefore, is recommending approval of the project.

**Security and Safety:**

The operation is secured behind a locked gate at entrance of property and guard dogs; fencing is also proposed.

**Tribal Consultation:**

The Cultural Resources referral process carried out by staff concluded that the proposed project will not result in any adverse changes to historical or archaeological resources and recommended Inadvertent Discoveries Protocol, which was also recommended by the Bear River Band of the Rohnerville Rancheria in May 2022, which has been incorporated into the project as a condition of approval (**Informational Note C.3**).

**Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:**

Planning staff determined 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 234 permits and the total approved acres would be 82.2 acres of cultivation.

**OTHER AGENCY INVOLVEMENT:**

The project was referred to responsible agencies and most responding agencies have either responded with no comment or recommended approval or conditional approval.

**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. Draft Resolution
  - A. Conditions of Approval
  - B. Cultivation Operations Plan
  - C. Site Plan
2. Location Map

3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Notice of Intent
  - B. Final Streambed Alteration Agreement
  - C. LSAA Extension Receipt
  - D. Road Evaluation (App # 12179)
  - E. Road Evaluation (App # 12196)
  - F. State Water Resources Control Board Water Right Receipt
  - G. Rainwater Catchment Photos
5. Referral Agency Comments and Recommendations
  - A. Public Works, Land Use Division Response
  - B. CAL FIRE Comments and Response
6. Public Comment from Bureau of Land Management (BLM)
7. Board of Supervisors Resolution 18-43

Applicant

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Please contact Cliff Johnson, Supervising Planner, at [cjohnson@co.humboldt.ca.us](mailto:cjohnson@co.humboldt.ca.us) or (707) 445-7451, if you have any questions about the scheduled item.