

**DRAFT RESOLUTION – OPTION A
(APPROVAL)**

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT**

Resolution Number: 22-

Record Number: PLN-11734-SP

Assessor's Parcel Number: 221-111-028

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approves the Merry Whether Farms, LLC, Special Permit request.

WHEREAS, Merry Whether Farms, LLC, submitted an application and evidence in support of approving a Special Permit for 9,950 square feet (SF) of existing outdoor cannabis cultivation and a proposed 995 SF nursery. Irrigation water is sourced from rainwater catchment and there will be a total of 162,900 gallons of onsite water 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; and

WHEREAS, the County Planning Division, the lead agency, prepared an Addendum to the Final Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016. The proposed project does not present substantial changes that would require major revisions to the previous Mitigated Negative Declaration. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines; and

WHEREAS, the Humboldt County Planning Commission held a duly-noticed public hearing on December 15, 2022, and reviewed, considered, and discussed the application for a Special Permit, and reviewed and considered all evidence and testimony presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Planning Commission makes all the following findings:

- 1. FINDING:** **Project Description:** The application is a Special Permit for 9,950 square feet (SF) of existing outdoor cannabis cultivation and a proposed 995 SF nursery. Irrigation water is sourced from rainwater catchment and there will be a total of 162,900 gallons of onsite water 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.

EVIDENCE: Project File: PLN-11734-SP

- 2. FINDING:** **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Planning Commission has considered the Addendum to and the Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016.

- EVIDENCE:**
- a) Addendum prepared for the proposed project.
 - b) The proposed project does not present substantial changes that would require major revisions to the previous MND. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines.
 - c) A Notice of Applicability (WDID: 1_12CC422556) dated December 2019 was submitted by the applicant to show compliance with the State Water Board Cannabis General Order for Waste Discharge. 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, and maintain enrollment in the State Cannabis Cultivation Policy for the life of the project.
 - d) California Department of Fish and Wildlife Resource Maps indicate the site is not mapped within potential habitat area there are no mapped sensitive species onsite. A review of the California Natural Diversity Database (CNDDDB) Spotted Owl Observation Database in July 2022 showed that Northern Spotted Owl habitat exists in the vicinity 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. As previously described, power at the site is currently provided by a 2,500-kWh solar system, with a 15 kVA WhisperWatt diesel generator utilized for backup. Artificial lighting will also be utilized within the proposed ancillary nursery space.

Conditions of approval will require noise to be at below 50 decibels at 100 feet which is below the guidance established by the California Department of Fish and Wildlife for protection of the species. In addition, the applicant will be required to implement light 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. 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.

- e) The cultivation of cannabis will not result in the net conversion of timberland. 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 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. No additional tree removal is proposed or authorized by this permit.
- f) 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.
- g) The applicant submitted Road Evaluation Reports, dated June 2018, that were 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 and will be suitable for safe access to and from the project site. A separate written Roadway Evaluation Report (dated June 2022) was prepared for another cannabis 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.

Per comments received from Caltrans in Department of Public Works, Land Use Division in May 2022, the project is required 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) and improve the access road that serves the project to current commercial driveway standards, which have been included as conditions of approval. 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.

FINDINGS FOR SPECIAL PERMIT

3. FINDING The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

EVIDENCE a) General agriculture is a use type permitted in the Residential Agriculture (RA) land use designation. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes, consistent with the use of Open Space land for managed production of resources. The use of an agricultural parcel for commercial agriculture is consistent with the Open Space Plan and Open Space Action Program. Therefore, the project is consistent with and complimentary to the Open Space Plan and its Open Space Action Program.

4. FINDING The proposed development is consistent with the purposes of the existing Unclassified (U) zone in which the site is located.

EVIDENCE a) The Unclassified or U Zone is intended to be applied to areas of the County in which general agriculture and residential uses are the

desirable predominant uses.

- b) All general agricultural uses are principally permitted in the U zone.
- c) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 10,000 square feet of existing outdoor cannabis and up to 10,000 square feet of existing mixed-light cannabis on a parcel over 1 acre subject to approval of a Special Permit and a determination that the cultivation was in existence prior to January 1, 2016. Additionally, this Code section allows for up to 10,000 square feet of new outdoor or mixed-light cannabis on a parcel over 5 acres that was not previously in existence as of January 1, 2016, subject to approval of a Zoning Clearance Certificate. The application for 6,000 square feet of existing outdoor cannabis and 3,950 square feet of new full-sun outdoor cultivation on a 77-acre parcel is consistent with this and with the cultivation area verification prepared by the County.

5. FINDING

The proposed development is consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.

EVIDENCE

- a) The CMMLUO allows existing and new cannabis cultivation to be permitted in areas zoned U (HCC 314-55.4.8.2.1 and 314-55.4.8.2.2).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, as it was created by an approved and recorded Lot Line Adjustment, as described in the Notice of Lot Line Adjustment and Certificate of Subdivision Compliance (Document No. 1990-27480-3), recorded November 9, 1990.

Water for irrigation is provided by a rainwater catchment system. Rainwater is captured from the roofs of three existing structures located on the subject property (residence, metal shop, and shed), for a potential capture area of 2,268 SF. Based on the impermeable rainwater catchment area of 2,268 SF, and an average rainfall amount of 81.2 inches for the project area, the site's potential capture amount totals 114,181 gallons per year, on average. Rainwater that is captured through the rainwater catchment system will be stored in the existing and proposed water storage tanks totaling 162,900 gallons. When compared to the estimated annual water usage amount (150,000 gallons), Planning staff believes there is not currently sufficient water available from the existing rainwater catchment system to serve the full project. Based on the annual rainwater capture potential of the existing rainwater catchment system (114,181 gallons) and average annual water usage (13.70 gal/SF), the current rainwater catchment system can adequately support 8,334 SF of cultivation. As previously described, 6,000 SF of cultivation is currently onsite, with an additional 3,950 SF proposed in accordance with the amount of cultivation previously verified by the County, as well as 1,000 SF of ancillary propagation. This means that the existing rainwater

catchment can currently support the existing cultivation (6,000 SF), and up to an additional 2,334 SF.

To ensure a sufficient supply of water required for irrigation, a condition of approval is recommended to require rainwater also be captured from at least one of the site's greenhouses, or an area of at least 711.5 SF, which will result in a minimum annual rainwater catchment potential of 35,819 gallons, for a minimum of 150,000 gallons of potential rainwater capture (equivalent to the project's estimated annual water usage). Planning staff assessed the rainwater capture potential from the smallest greenhouse (the proposed nursery greenhouse, which shall be reduced to a maximum of 995 SF, or 10% of the cultivation area), which would be expected to provide an additional 50,092 gallons of rainwater, for a total of 164,275 gallons of rainwater per year, on average, which would be more than required under the project.

In addition, to ensure sufficient water storage is available on the subject site, the applicant shall install a minimum of 20,000 gallons of the addition 32,900 gallons of water storage proposed onsite, which shall be located on a previously disturbed area that is outside of all required Streamside Management Area (SMA) buffers and demonstrate the tanks are filled.

With the recommended expansion of the rainwater catchment system and additional water storage tanks, Planning staff finds there would be sufficient water available to serve the proposed project. Until such time the additional rainwater catchment infrastructure and tanks are added, the amount of onsite cannabis (cultivation and propagation) shall be limited to a maximum of 8,830 SF (with a maximum of 10%, or 833 SF, dedicated for ancillary propagation). Additional conditions of approval require the applicant to monitor water use from the rainwater catchment and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

- d) The applicant submitted Road Evaluation Reports, dated June 2018, that were 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 and is functionally appropriate for the expected traffic. A separate written Roadway Evaluation Report (dated June 2022) was prepared for another

cannabis 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.

Per comments received from Caltrans in Department of Public Works, Land Use Division in May 2022, the project is required 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) and improve the access road that serves the project to current commercial driveway standards, which have been included as conditions of approval. 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.

- e) 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.
- f) The cultivation of cannabis will not result in the net conversion of timberland. 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 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. No additional tree removal is proposed or authorized by this permit.

- g) The location of the existing and proposed cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 from any property line, more than 300 feet from any off-site residence, more than 600 feet from any school, church, public park or Tribal Cultural Resource.

6. FINDING

The cultivation of 6,000 SF of existing outdoor cannabis cultivation utilizing light deprivation techniques and 3,950 SF of new full-sun outdoor cultivation and the conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

EVIDENCE

- a) The site is located on road that has been certified to safely accommodate the amount of traffic generated by the proposed cannabis cultivation. 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), improve the access road that serves the project to current commercial driveway standards, join the "Dutyville Friends of the Road" Road Maintenance Association, and provide fair-share costs associated with maintenance of the road, which have been included as conditions of approval.
- b) The site is in a rural part of the County where the typical parcel size is over 35 acres and many of the land holdings are very large. The proposed cannabis will not be in a location where there is an established neighborhood or other sensitive receptor such as a school, church, park or other use which may be sensitive to cannabis cultivation. Approving cultivation on this site and the other sites which have been approved or are in the application process will not change the character of the area due to the large parcel sized in the area.
- c) The location of the existing and proposed cannabis cultivation is more than 300 feet from the nearest off-site residence.

- d) Irrigation water is provided by rainwater catchment. A condition of approval is recommended to require expansion of the rainwater catchment system and additional water storage tanks are added to the subject site to ensure sufficient a sufficient water supply is available to serve the project. Until such time the additional water catchment infrastructure and tanks are added, the amount of onsite cannabis (cultivation and propagation) shall be limited to a maximum of 8,334 SF (with a maximum of 10%, or 833 SF, dedicated for ancillary propagation).
- e) Provisions have been made in the applicant's proposal to protect water quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.

7. FINDING

The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

EVIDENCE

- a) The parcel was not included in the housing inventory of Humboldt County's 2019 Housing Element, but is currently developed with an existing residence. The approval of cannabis cultivation on this parcel will not conflict with the ability for the existing residence to continue to be utilized on this parcel.

8. FINDING

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.

EVIDENCE

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 79.37 acres of cultivation.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Planning Commission does hereby:

- Adopt the findings set forth in this resolution; and
- Conditionally approves the Special Permit for Merry Whether Farms, LLC, based upon the Findings and Evidence and subject to the conditions of approval attached hereto as Attachment 1 and incorporated herein by reference; and

Adopted after review and consideration of all the evidence on December 15, 2022.

The motion was made by COMMISSIONER _____ and second by COMMISSIONER _____ and the following ROLL CALL vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

John Ford, Director
Planning and Building Department