



# COUNTY OF HUMBOLDT

For the meeting of: 12/15/2022

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File #: 22-1669

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**To:** Planning Commission  
**From:** Planning and Building Department  
**Agenda Section:** Public Hearing

**SUBJECT:**

**Merry Whether Farms, LLC, Special Permit**

Record Number: PLN-11734-SP (filed 12/09/2016)

Assessor's Parcel Number (APN): 221-111-028

Whitethorn area

A Special Permit for 9,950 square feet (SF) of existing outdoor cannabis cultivation and 1,000 SF of ancillary propagation. Irrigation water is sourced from rainwater catchment. 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. Power is provided by solar, with a generator utilized for backup.

**RECOMMENDATION(S):**

That the Planning Commission:

1. Adopt the resolution (Attachment 1) which does the following:
  - a. Finds that the Planning Commission has considered the Addendum to the Mitigated Negative Declaration for the Commercial Cannabis Land Use Ordinance that was prepared for the Merry Whether Farms, LLC, Special Permit); and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the Merry Whether Farms, LLC, Special Permit subject to the recommended conditions of approval (Attachment 1A)

**DISCUSSION:**

**Project Location:** The project is located in the Whitethorn area, on the 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.

**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 3), 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 3) 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).

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 2017 General Plan Update 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.

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 (family members) may be onsite during peak operations; no employees are required for the operation. The operation is secured behind a locked gate at entrance of property and guard dogs; fencing is also proposed. Power is currently provided by a 2,500 kilowatt-hour (kWh) solar system, with a 15 kVA WhisperWatt diesel generator utilized for backup.

Cultivation and Nursery Space: As noted above, the application is for 9,950 SF of existing outdoor cultivation, in addition to 1,000 SF of proposed ancillary propagation. The onsite nursery equates to approximately 10.1% of the total current cultivation area, which slightly exceeds what Planning division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). Based on the County's cultivation area verification, 9,950 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Because the parcel is over 5 acres in size, irrigation water is sourced from a non-diversionary source, the subject property is zoned U, and the proposed propagation space appears to be proposed to occur on an existing open area with slopes less than 15% (based on review of the Humboldt County WebGIS), new cultivation could be considered on the subject parcel. Therefore, Planning staff supports the proposed ancillary propagation area. However, since the proposed nursery area would exceed 10% of the cultivation area, recommended conditions of approval have been included to require the applicant to revise both the Site Plan and Operations Plan to reflect a maximum ancillary propagation space of 995 SF, rather than 1,000 SF, which would equate to 10% of the cultivation area, consistent with what Planning division staff and the Planning Commission have found allowable in the past (**Conditions of Approval A.6-7**).

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 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.11**). No additional tree removal is proposed or authorized by this permit.

Water Resources: Estimated annual water usage 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 3), 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.

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 of onsite water storage. 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 sourced exclusively from rainwater catchment captured in rainwater catchment tanks from the roofs of existing structures located on the subject property. Per the Cultivation and Operations Plan (Attachment 3), 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 served from rainwater catchment. The average rainfall for the project area is 81.2 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 square foot. Based on information provided by the applicant’s agent in September 2022 (Attachment 3), 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 an average rainfall amount of 81.2 inches, the site’s potential capture amount totals 114,181 gallons per year, on average. 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 2. Proposed Rainwater Capture Analysis

Infrastructure Description	Potential Capture Area (ft <sup>2</sup> )	Potential Average (2010-2020) Rainfall Capture Amount (gallons)
Residence	868	43,699
Metal shop	1,200	60,413
Shed	200	10,069
<b>Totals:</b>	2,268	114,181

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, which is expected to result in approximately 114,181 gallons per year, on average. 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, to ensure adequate water supplies (a minimum of 150,000 gallons) are available for irrigation for the project (**Condition of Approval A.8**).

Planning staff assessed the rainwater capture potential from the smallest greenhouse (the proposed nursery greenhouse, to 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 164,273 gallons of rainwater per year, on average, which would be more than required under the project.

In addition, the applicant shall install a minimum of 20,000 gallons of the additional 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. Until such time the additional rainwater catchment infrastructure and tanks are added, the amount of onsite cannabis (including cultivation and ancillary propagation) shall be limited to a maximum of 8,334 SF (with a maximum of 10%, or 833 SF, dedicated for ancillary propagation) (**Condition of Approval A.8**). With the recommended expansion of the rainwater catchment system and installation of additional water storage, Planning staff finds there would be sufficient water available to serve the proposed project.

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, but are noted to be utilized solely for domestic use and are not utilized for cannabis irrigation. A Final Streambed Alteration Agreement 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.

Conditions of approval require the applicant to monitor water use from the rainwater catchment system and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.21**). 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**).

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.17-20 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.

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. The Bureau of Land Management (BLM) submitted comments in October 2022 (Attachment 5), in which 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.

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, with 1,000 SF of propagation. 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. 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.

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 227 permits and the total approved acres would be 79.37 acres of cultivation.

Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Special Permit (SP). However, should the Planning Commission find that the project does not adequately address concerns raised by the public and minimize impacts to Northern Spotted Owl (NSO), a second resolution for denial of the Special Permit is included.

#### 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 determined that as the project is designed and conditioned, NSO impacts are minimized. As the lead agency, the Department has determined that the project is consistent with the Mitigated Negative Declaration 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 date uncertain for further environmental review to be completed.

ATTACHMENTS:

1. Resolution
  - A. Conditions of Approval
  - B. Cultivation Operations Plan
  - C. Site Plan
2. Location Maps
  - A. Watershed Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Road Evaluation Report for Doody Ridge Road
  - B. Road Evaluation Report for Dutyville Road
  - C. Rainwater Catchment System
5. Referral Agency Comments and Recommendations
  - A. Public Works, Land Use Division Response
  - B. CAL FIRE Response
  - C. Bureau of Land Management Response

Owner/ Applicant

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