



COUNTY OF HUMBOLDT

Legislation Text

File #: 24-958, **Version:** 1

To: Planning Commission

From: Planning and Building Department

Agenda Section: Consent

SUBJECT:

Scott Roberts; Conditional Use Permit
Assessor Parcel Numbers (APN) 107-054-014
Record No.: PLN-11653-CUP
Honeydew area

A Conditional Use Permit for 18,462 square feet existing mixed light commercial cannabis cultivation and 1,840 square feet of ancillary nursery. Estimated annual water usage is 392,260 gallons sourced from rainwater catchment and an existing well. Existing irrigation water storage totals 93,300 gallons. Drying will occur onsite, all other processing activities will be performed offsite by a licensed processor. Electricity is provided by solar panels with a proposed emergency backup generator.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolution (Resolution 24-__). (Attachment 1) which does the following:
 - a. Finds the Planning Commission has considered the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Roberts project; and
 - b. Finds the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location: This project is in the Honeydew area, on the north side of Heidi Lane, approximately 3,593 feet southwest from the intersection of Heidi Lane and Doreen Drive, on the property known as

1051 Heidi Lane.

Present General Plan Land Use Designation:

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

Present Zoning:

Agriculture Exclusive (AE), Building site area as shown on subdivision maps of record, front, side, and rear yards to be not less than B-4 requirements, unless otherwise indicated on the subdivision map of record (B-6)

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 located outside the Coastal Zone and is therefore NOT appealable to the California Coastal Commission.

Major Concerns:

None.

Executive Summary:

Scott Roberts seeks a Conditional Use Permit for 18,462 square feet (SF) of pre-existing mixed light cannabis cultivation and 1,840 SF of ancillary nursery and propagation area, in accordance with Humboldt County Code Section 314-55.4, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). Water for irrigation is sourced from rainwater catchment and an existing permitted groundwater well. Peak annual water usage has been roughly 392,260 gallons, but lower quantities have been used in many years. Existing water storage totals 93,300 gallons of water storage for irrigation. One additional 2,500 gallon tank is designated for emergency fire protection. Drying will occur on-site in existing structures, all other processing activities will be performed off-site by a licensed processor. Electricity is provided by eight solar panels, which is stored in batteries, and by one emergency backup generator. The applicant harvests twice per year.

Water Resources:

Peak annual water usage has been roughly 392,260 gallons, or 21.2 gallons per square foot per year, but lower quantities have been used in many years. Maximum water use is 2,200 gallons per day. Existing water storage totals 93,300 gallons of water storage tanks available for irrigation. CDFW has requested the installation of additional water storage, such that total stored water from both well water and rainwater catchment sources equals at least 150,000 gallons in case the well does not produce sufficient water for a full cultivation season (**Condition of Approval B.3**). As noted in the

Cultivation and Operations Plan (**Attachment 1B**), irrigation is provided through gravity-fed pipes and performed by hand. Water for irrigation is sourced by rainwater catchment and a permitted well. Lindberg Geologic Consulting prepared a hydrologic study of the well on April 4, 2023 which found that there is a low likelihood of the well being connected to surface waters or neighboring wells in a manner that may have a significant impact on surface waters or wells. According to the Operations Plan, all buildings are guttered for rainwater catchment. The project's conditions require the applicant to monitor water use from the rainwater catchment system, the well, and the storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Conditions of Approval A.2 & C.6**).

Based on the well completion report the well could potentially produce 72,000 gallons per day based on the estimated yield of 50 gallons per minute, but this may not be representative of the well's long-term yield. The average rainfall for the project area is 50.22 inches, based on averaging the three lowest rainfall values from 1992 through 2022 as recorded by PRISM Climate Group. The conversion rate for gallons per square foot of collection per inch of rainfall is estimated at 0.623. The total square footage of the residences and drying building is roughly 3,930 SF, so the site's potential capture amount totals roughly 122,950 gallons per year, on average. The site's potential capture amount would be greater if the existing and proposed greenhouses also are equipped with rainwater catchment gutters. Given these estimates, the proposed rainwater catchment system can provide water for more than one third of the cultivation site's irrigation needs. The remaining water needs of the cultivation site could be supported by as little as four days of pumping from the well at the estimated maximum yield.

The applicant has provided the Notice of Applicability for the Waste Discharge Requirements of North Coast Regional Water Quality Control Board's Water Quality Order WQ 2019-0001-DWQ, which requires a site management plan (SMP). The Waste Discharger Identification (WDID) on the Notice is WDID:1_12CC476988. The applicant has prepared and submitted a site management plan utilizing a form from the Eastern California Regional Water Quality Control Board. The applicant shall adhere to the measures and ongoing recommendations within the final SMP (**Conditions of Approval C.15**).

Public Trust Resources:

The common law Public Trust Doctrine protects sovereign lands, such as tide and submerged lands and the beds of navigable waterways, for the benefit, use and enjoyment of the public. These lands are held in trust by the State of California for the statewide public and for uses that further the purposes of the trust. The hallmark of the Public Trust Doctrine is that trust lands belong to the public and are to be used to promote publicly beneficial uses that connect the public to the water. The Class II stream onsite is tributary to an unnamed stream, which itself is a tributary to Upper North Fork Mattole River, a tributary to Mattole River. These streams provide water to support the health of this River. Upper North Fork Mattole River provides habitat for sensitive aquatic species including Coastal Rainbow Trout. Class II streams, however, have limited value as fisheries and generally occur upstream of migration barriers, or have other habitat features that prevent their use by migratory fish. The

Mattole River is used for recreation and supplies water for agricultural, public, and industrial uses. Mattole River consists of a combination of navigable sections and whitewater rapids.

As identified in the hydrologic study, the well is unlikely to have any connection to these surface water features that could contribute significant adverse impacts. In addition, the project will add water storage to a total of roughly 40 percent of the annual water needs of the project. This will reduce the use of the groundwater well in the summer months. Based on this evidence, the project will have a less than significant impact to the local watersheds or to any of the Public Trust resources associated with the watersheds.

Site Operation and Structures:

The farm is owner-operated and no employees are proposed, so the project will require modification if any additional laborers, such as seasonal staff, relatives living offsite, or farm labor contractors, are required in the future (**Condition of Approval B.5**). Drying and curing will occur in the drying and processing building, and further processing activities, such as trimming and packaging will be performed offsite by a third-party licensed processor. The project was referred to the Department of Environmental Health (DEH) on November 21st, 2017, and comments were received on August 7th, 2018. Comments from DEH included a recommendation of conditional approval based on the conditions that an invoice or equivalent documentation is provided to DEH to confirm the continual use of portable toilets to serve the needs of cultivation staff and that no processing can be approved until an acceptable site suitability report establishes potential for an onsite waste treatment system. The project no longer proposes employees or processing activities, so neither requested condition is still applicable.

The project was referred to the Building Division on November 21st, 2017. The Building Division recommended conditional approval on December 18th, 2017. The applicant is conditioned to obtain building permits with a complete set of construction plans for all existing and proposed structures with a nexus to cannabis, including but not limited to nine mixed light greenhouses and one drying building, as-built grading permits for all four clearings, and demolition permits for all structures being removed, including but not limited to five greenhouses (**Conditions of Approval A.6 & A.7**).

Biological Resources:

Per review of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) in January 2024, there are no mapped special status species onsite, and the nearest Northern Spotted Owl (NSO) activity center is located approximately 1.3 miles from the nearest cultivation area. The site is existing and measures are in place to reduce any potential impacts beyond CEQA baseline impacts. The generator, which is used for backup purposes only, emits 50 to 57 decibels but, per the Operations Plan, is not audible at the nearest parcel boundary. Use of the generator is subject to the standard condition limiting noise to 50dB at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer (**Condition of Approval C.2**).

Prior to any vegetation removal or ground disturbing activities, the applicant must contact a qualified biologist to survey the area for the presence of special status species. If any special status species are identified onsite, the applicant must adhere to the biologist's recommendations. If any special status species are identified in the work area, the applicant must work with CDFW and the Planning Division and modify the project as necessary prior to continuing development (**Condition of Approval A.17**).

. On March 15, 2024, CDFW inspected the site and provided comments to the Planning Division on March 20, 2024. CDFW staff observed a substantial quantity of cannabis cultivation related waste, including plastic bags, tarps, uncontained and unused waterlines, and improperly stored or abandoned fertilizer containers. These conditions are unsanitary and potentially hazardous to wildlife, so CDFW has requested that all cannabis cultivation associated waste be removed from the site and properly disposed of prior to the authorization to cultivate cannabis (**Condition of Approval A.14**). CDFW also observed uncontained compost and discarded soil associated with cannabis cultivation, so CDFW has requested that the applicant fully contain all compost piles and all imported soil (**Condition of Approval B.4**). Lastly, CDFW has requested that synthetic netting, such as plastic or nylon, be prohibited for the purposes of cultivation and/or erosion control (**Condition of Approval C.5**).

Onsite Relocation:

The project includes continuing cultivation within some of the pre-existing footprints as well as relocation of other cultivation footprints to an environmentally superior location. One of the greenhouses proposed for relocation is presently within the Streamside Management Area. The relocation area is an existing clearing onsite which, per the Cultural Resource Inventory, has already been disturbed by multiple episodes of ground disturbance, including recent grading and the use of tracked vehicles and, according to a caretaker of the property, the construction of a small motorcycle racetrack built approximately 20 years ago. Based on Google Earth imagery, the clearing has existed as a meadow since at least 1985. No tree removal or habitat modification is proposed as a result of project activities. The proposed location is superior because the area is already disturbed, will require minimal grading, and is outside of the Streamside Management Area.

According to correspondence from CDFW regarding a site visit, the head of a Class II stream is present onsite. That stream is a tributary to an unnamed stream, which itself is a tributary to Upper North Fork Mattole River. The stream bank is roughly 25 feet from a greenhouse which is proposed to be removed and relocated. All other existing and proposed structures are outside of the Streamside Management Area. A Lake and Streambed Alteration Agreement (LSAA) was issued by the California Department of Fish and Wildlife (CDFW) on October 23, 2019 for the continued operation of the onsite well, to upgrade a failing and undersized stream crossing, and for removal of a greenhouse from the riparian area of a stream corridor. Per CDFW, the LSAA had a work completion date of October 15, 2022 and as of March 19, 2024, the applicant had not completed any of the required work and has not submitted any of the required reporting measures, and therefore is out of compliance with the LSAA. CDFW has requested submission of a minor amendment to the LSAA revising the work completion date, a revegetation plan, a water management plan, and an

environmental management plan within two weeks of project approval (**Condition of Approval A.10**). The environmental management plan must also include an erosion control plan to deconcentrate surface flow off roads and away from streams, because CDFW observed sediment discharge to Waters of the State via erosion of the hydrologically connected road. CDFW requested removal of the existing greenhouse from within the riparian area of the Class II drainage, revegetation of the disturbed area with native vegetation, replacement of the failing rocked crossing, and hydrologically disconnecting the road from the stream by October 15, 2024 (**Condition of Approval A.11**). All work associated with the LSAA must be completed by September 1, 2026, otherwise the permit will be scheduled for revocation (**Condition of Approval A.12**). The project is conditioned to comply with the issued LSAA and CDFW's requested modifications (**Condition of Approval C.17**). The project will restore the areas of the existing greenhouses to be relocated (**Condition of Approval A.16**). The current location of the greenhouses is inferior because they are on slopes greater than 15%, are nearer the Class II stream and partially within the Streamside Management Area and are contributing to erosion.

Energy:

Power is currently provided by eight solar panels which supply power to the greenhouse lighting and fans. Backup emergency power is provided by a Honda 3000 generator, which is not stored onsite and only brought onsite when needed. The applicant shall comply with International Dark Sky standards by utilizing blackout tarps, ensuring that no light shall escape from 30 minutes before sunset to 30 minutes after sunrise.

Access:

The project is accessed via a private driveway off of Heidi Lane, a privately maintained road, approximately 1,700 feet from the intersection. According to the Road Evaluation submitted by the applicant, dated July 27, 2019, the 0.75 mile segment of Heidi Lane from Doreen Drive to the private driveway is developed to the equivalent of a Category 4 road standard. Doreen Drive intersects with Mattole Road, a County maintained road, roughly 250 feet from its intersection with Heidi Lane. The farm is owner-operated with no employees, so no increase in vehicle traffic is anticipated as part of the proposed project.

The project was referred to the Department of Public Works on November 21, 2017, and per comments received from the Department of Public Works on May 7, 2018, the project is conditioned such that all driveways and private road intersections onto the County road be maintained in accordance with County Code Section 41-1 (Sight Visibility Ordinance) and paved in accordance with current standards for commercial driveways (**Condition of Approval A.9**).

Geologic Suitability:

The project parcel is mapped in the County GIS as moderate instability. The existing cultivation is mostly located in areas mapped as 15% to 30% slope and will be partially relocated to an existing clearing consisting of slopes that are mostly less than 15%. Based on the 40 foot topographic contours in the WebGIS, the location of the proposed greenhouses will be on slopes of roughly 13.2% or less.

The relocation site should require minimal grading to be established. After the fact grading permits are required for historic grading that was done previously without permits (**Condition of Approval A.6**).

Timber Conversion:

The applicant provided a timberland conversion evaluation dated December 18, 2019, prepared by Mark Distefano, Registered Professional Forester. The Forester concluded that no timberland conversion has occurred and observed .22 acres of historic vegetation removal. The Forester states that the area of vegetation removal is still capable of producing timber products. The forester also identified woody debris onsite and recommends that the landowner treats all slash and woody debris onsite in order to be compliant with the Forest Practice Rules 14CCR 1104.1(a)(2)(D) (**Condition of Approval A.15**).

Security and Safety:

The project utilizes gates at all access points on the property, which are locked at all times. At least one person will be present on the property at all times, and dogs are present for additional security. In addition to the existing 93,000 gallons of water tanks, one separate 2,500 gallon tank is designated for emergency fire protection.

The project site is within the State Responsibility Area and is mapped as the Honeydew Volunteer Fire Company response area. Planning staff referred the project to CalFire on November 21, 2017 and received their response on November 30, 2017, containing standard comments regarding Fire Safety, Resource Management, and Cannabis. Project conditions require the applicant to obtain a will serve letter from Honeydew Volunteer Fire Company or record an Acknowledgement of No Available Emergency Response and Fire Suppression Services form for the parcel (**Condition of Approval A.4**).

Tribal Consultation:

The project site is within the Bear River Band of the Rohnerville Rancheria and Intertribal Sinkyone Wilderness Council aboriginal ancestral territories. The project was referred to both tribes and the Northwest Information Center (NWIC) on November 21, 2017. The NWIC responded February 15, 2018, recommending that the local Native American tribes be contacted regarding traditional, cultural, and religious heritage values. The Bear River Band responded July 11, 2019, requesting a Cultural Resource Survey. No response was received from the Sinkyone Wilderness Council.

A cultural resource inventory report was prepared by Dimitra Zalarvis-Chase and Cydney Steele of DZC Archaeology & Cultural Resource Management and received August 3, 2021. A field survey conducted by staff archaeologists on November 12, 2020 identified one historic resource containing lithic tools, small glass fragments, and lithic scatter. The site (DZC-SR-01) was described as “highly disturbed” due to impacts from grading and tracked vehicle use. The report concluded that implementation of appropriate management and mitigation measures will result in no adverse effects to historic, archaeological, or tribal cultural resources. Mitigation measures recommended within the report

include the following: (1) All surface and subsurface cultivation and related activities are prohibited within the recorded boundaries of DZC-SR-01; (2) The entire area within the recorded boundary of DZC-SR-01 shall be capped using No. 2 base rock to a depth of 4 inches.; (3) The resource boundary shall be flagged with survey whiskers, maintained, and replaced as needed around the resource boundary to denote entrance to a resource protection area; (4) Road maintenance and blading shall not occur outside the existing road prism or within DZC-SR-01; and (5) If any major road repairs or grading are required within the site boundary, an archaeological monitor shall be present. (**Conditions of Approval A.13 & B.2**). The historic resource site was not disturbed for cannabis purposes and no cannabis is proposed on the historic resource site. The report also recommended implementation of the inadvertent discovery protocol if cultural resources or human remains are discovered during construction or project work (**Condition of Approval C.1**). The report was sent to the Bear River Band Tribal Historic Preservation Office on January 4, 2024 and April 18, 2024. Planning staff received response on April 24th, 2024, requesting to inspect the site and confirmed that the inspection occurred on May 15th, 2024. The Bear River Band Historic Preservation Office notified Planning staff on May 21, 2024 that they concurred with the archaeologist's recommendations from the cultural resource inventory report, determining that the proposed relocation site will not impact the historic resource.

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 cultivation permits and acres which may be approved in each of the County's Planning Watersheds. The project is 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 233 cultivation permits and the total approved acres would be 90.55 acres of cultivation.

Environmental Review:

Environmental review for this project was conducted and based on that analysis, staff concludes that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration (MND) that was adopted for the CMMLUO. Staff has prepared an addendum (Attachment 3) to the MND for consideration by the Planning Commission.

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.
2. The Planning Commission could deny approval of the requested permits if you are unable to

make all of the required findings.

Planning Division staff is confident that the required findings can be made based on the submitted evidence and subject to the recommended conditions of approval. Consequently, planning 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 Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Notice of Applicability
 - B. Site Management Plan
 - C. Well Permit
 - D. Road Evaluation
5. Referral Agency Comments and Recommendations
 - A. Building Inspection Referral
 - B. Public Works Referral
 - C. Department of Environmental Health Referral
 - D. CALFIRE Referral
 - E. Mattole Union School District Referral
 - F. CDFW Referral
6. Watershed Map

Applicant

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Owner

Same as Applicant

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Please contact Augustus Grochau, Associate Planner, at agrochau@co.humboldt.ca.us or 707-268-3749 if you have questions about this item.