



## Legislation Details (With Text)

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**Title:** 9:30 AM - UPC18-0001 Misty Mountain Services, LLC

**Sponsors:** Permit and Resource Management

**Indexes:**

**Attachments:** 1. UPC18-0001-Misty-Mountain-Services-Summary-Report.pdf, 2. UPC18-0001 ATT 1 Conditions of Approval.pdf, 3. UPC18-0001 ATT 2 Vicinity Map.pdf, 4. UPC18-0001 ATT 3 Aerial Map.pdf, 5. UPC18-0001 ATT 4 General Plan Land Use Map.pdf, 6. UPC18-0001 ATT 5 Zoning Map.pdf, 7. UPC18-0001 ATT 6 Project Proposal Statement and Operating Plan.pdf, 8. UPC18-0001 ATT 7 Site Plan.pdf, 9. UPC18-0001 ATT 8 Net Zero Water Site Plan.pdf, 10. UPC18-0001 ATT 9 Public Comments.pdf, 11. UPC18-0001 ATT 10 Board of Supervisors Resolution.pdf, 12. UPC18-0001 ATT 11 U.S. Dept. of Ag. Natural Resources Conservation Service 2007.pdf, 13. UPC18-0001 ATT 12 U.S. Dept. of Ag. National Center for Appropriate Technology 2014.pdf, 14. UPC18-0001 ATT 13 Draft Odor Hedgerow Plan.pdf

Date	Ver.	Action By	Action	Result
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**To:** Sonoma County Board of Supervisors  
**Department or Agency Name(s):** Permit Sonoma  
**Staff Name and Phone Number:** Everett Louie, Project Planner, 510-845-7549  
**Vote Requirement:** Majority  
**Supervisory District(s):** Fifth

**Title:**  
**9:30 AM - UPC18-0001 Misty Mountain Services, LLC**

### Recommended Action:

Exercise original jurisdiction over the application and adopt a Resolution adopting a Mitigated Negative Declaration and approving a commercial cannabis operation of 38,484 square feet of outdoor cultivation, 1,547 square feet of indoor cultivation, 1,414 square feet of indoor propagation, and 504 square feet of associated processing of site-grown cannabis at 885 Montgomery Rd. in Sebastopol.

### Executive Summary:

The project proposes commercial cannabis cultivation consisting of 38,484 square feet of outdoor cultivation, 1,547 square feet of indoor cultivation, 1,414 square feet of indoor propagation, and 504 square feet of on-site processing of site-grown plants, including trimming, drying, and packaging. The project would also install two water storage tanks for rainwater catchment and plant a windbreak/hedgerow to assist in odor dissipation. The operation would occur on a 10-acre parcel zoned Diverse Agriculture located at 885 Montgomery Rd., Sebastopol, CA 95472 APN 077-130-095. The project is included in the list of cannabis applications authorized for consideration under original jurisdiction following Board's decision of December 17, 2019.

Staff recommends approval of the project because it is consistent with the General Plan policies to support ongoing agricultural activities, the use would be an agricultural product and would conserve the majority of the site for future agriculture use. The project is an allowed use in the Diverse Agriculture zoning District. The project complies with all development criteria of the Sonoma County Cannabis Ordinance and would meet all operating standards as conditioned. The design, location, size, and operating characteristics of the outdoor aspects of the proposed project would be compatible with the agricultural zoning and surrounding land uses because all outdoor and indoor operations are screened and would not be detectable from the public view (Montgomery Road). The cannabis cultivation sites would meet the required setbacks from residential neighbors. Access to and from the site would be controlled through a locked, private gated driveway that extends to/from Montgomery Road. The applicant/operator is currently participating in the Sonoma County Cannabis Penalty Relief Program and is currently cultivating 38,484 square feet of outdoor cannabis and 1,547 square feet of indoor cannabis. The applicant is also currently propagating 1,414 square feet of indoor propagation and conducting processing activities in an existing 504-square foot facility under the program.

## **Discussion:**

### **BACKGROUND**

#### Regulations

In October 2015, the Governor signed three bills into law collectively known as the Medical Cannabis Regulations and Safety Act establishing the State's first licensing system for commercial medical cannabis activity.

In November 2016, California voters approved Proposition 64, legalizing the adult use and possession of cannabis.

On December 20, 2016, the Sonoma County Board of Supervisors adopted the Cannabis Ordinance (No. 6189) to establish a comprehensive local program to permit and regulate medical cannabis to align with State Regulations. The ordinance was intended to preserve environmental resources, protect the health and safety of communities, and ensure the industry contributes positively to the economic vitality of the County.

In June 2017, the Governor signed a bill creating a single regulatory scheme for both medical and adult use cannabis businesses

On October 16, 2018, the Sonoma County Board of Supervisors adopted an amendment to the Cannabis Ordinance (No. 6245), extending the maximum term of cannabis use permit from one year to five years, authorizing adult use in addition to medical with a use permit, increasing minimum parcel size to 10 acres in agricultural and resource zones for new permit applications, allowing non-flowering propagation up to 25% of the permitted cultivation area with a use permit, and clarifying a number of additional items, such as setbacks and definitions.

On December 17, 2019, the Board approved the Cannabis Ad Hoc Committee's request for the Board of Supervisors to exercise original jurisdiction over nineteen permit applications, including the proposed project.

#### Penalty Relief Program (PRP)

At the time PRP status was granted for UPC18-0001, the applicant provided adequate evidence to satisfy the PRP requirements (in addition to aerial photos, adequate evidence may include incorporation documents, tax receipts, energy bills, or invoice sales.) On the Sonoma County Cannabis Business Tax-Quarterly Return, which was submitted and dated November 17, 2017, the cultivation square footage coincides with the PRP application square footage indicating that the applicant has not cultivated more than what was reported on the PRP application. As the project currently stands, the project is in compliance with the Temporary Code Enforcement Penalty Relief Program deadlines. Additionally, Penalty Relief Program status has no bearing on the processing of a Use Permit.

### Application Processing

On January 5, 2018, a Use Permit application was submitted for 2,961 square feet of specialty indoor, 1,547 square feet of mature plants, 1,414 square feet of indoor propagation, and 26,845 square feet of medium outdoor and 504 square feet of processing. The application enrolled in the penalty relief program; commercial cannabis is currently grown on site.

On January 17, 2018 the referral for the application was sent to all interested agencies.

On May 31, 2018 the application was deemed complete for processing.

On December 3, 2018, the application was amended to request a 5-year permit term and adult use.

On June, 19 2020, Permit Sonoma sent notification of the tentative August, 4 2020 hearing date and availability of the Mitigated Negative Declaration to neighboring properties within 1,000 feet of the parcel boundaries, and to all members of the public who had previously requested notice as an “interested party.”

On June, 19 2020, a draft Initial Study/Mitigated Negative Declaration was published for public review and submitted to the State Clearinghouse for State Agency review (SCH Number 2020029060). The public review period is 30 days from publication.

On July 13, 2020, Permit Sonoma sent notification of the August 12, 2020 hearing date to neighboring properties within 1,000 feet of the parcel boundaries, and to all members of the public who had previously requested notice as an “interested party.” Notification included information on how to connect to the meeting virtually.

## **PROJECT DESCRIPTION**

### Site Characteristics

The parcel is 10 acres in size and located in an unincorporated rural residential/agricultural area near Sebastopol, approximately 8.9 miles west of the City of Santa Rosa, and 10.1 miles northeast of Bodega Bay. (See Attachment C: Vicinity Map). The parcel is accessed from Montgomery Road, which is a County maintained road. Montgomery Road is accessed from the south by Bodega Hwy and from the north by Cherry Ridge Road (See Attachment D: Aerial Map). The entrance to the property is a paved driveway that connects to Montgomery Road. The parcel is not under a Land Conservation Act Contract (Williamson Act).

Existing development is located in the northern portion of the parcel and includes one primary residence with

six accessory buildings including an accessory dwelling unit, three garages, a studio, and an agricultural barn. There is an existing domestic water well and two existing septic systems that serve the main house and accessory dwelling unit.

Property elevations range from 412 feet above sea level at the northern property line near the existing residences, to a minimum of 263 feet above mean sea level (MSL) in the southwest corner of the parcel where the driveway intersects with Montgomery Road. The slope of the parcel ranges from a minimum of approximately 5% near the proposed cultivation area and increases to approximately 20% at the steepest portion of the hill to the south of the residences and driveway. There is a Riparian Corridor at the western edge of the property, approximately 500 feet southwest of the cultivation sites and the residence. The Riparian Corridor is located on the opposite side of Montgomery Road to which it runs parallel. The site is located in a Groundwater Availability Class 2 - Major Natural Recharge Area.

#### General Plan Land Use and Zoning

The General Plan Land Use Designation on the parcel is Diverse Agriculture, 20-acre density. The site is zoned Diverse Agriculture (DA), 20-acre density (B6 20), and Riparian Corridor 100-foot development setback (RC 100/50).

#### Surrounding Land Use and Zoning

This area is largely rural and located within unincorporated Sonoma County. Surrounding parcels to the subject site are zoned Diverse Agriculture (DA), Agriculture and Residential (AR), and Rural Residential (RR). Surrounding land uses are composed primarily of low-density single family residential and small-scale agricultural uses. The proposed project abuts seven properties within 550 feet of either the outdoor or indoor cultivation operations. Nearby commercial agricultural operations include Freeman Vineyard and Winery (2,710 feet northwest), Lennox Vineyards (3,100 feet east), and Wallin Farm and Christmas Tree Farm (440 feet east).

There is one approved cannabis project within a one-mile radius. This cannabis operation is located on a property approximately 2,600 feet to the south of the project and is currently operating legally. Because there is only one other cannabis application in the vicinity, potential over concentration of cannabis operations is not a concern for this proposal.

#### Project Description Summary

Misty Mountain Services, LLC, request a limited-term Use Permit for a commercial cannabis cultivation operation, propagation and on-site processing of site-grown plants. The total permitted cultivation area (where plants grow to maturity) amounts to 40,031 square feet. The total permitted cultivation area, on-site propagation and on-site processing of site-grown plants is described below.

- 38,484 square feet of outdoor cultivation (Type 3 state license)
- 1,547 square feet of indoor canopy (Type 1A state license)
- 1,414 square feet indoor propagation
- On-site processing: 504 square feet (Processing of site-grown plants, including trimming, drying, curing, weighing, and packaging)

Existing agricultural uses on the site would continue to operate independently from the cannabis operation. The site currently has two fruit orchards and two food production gardens that would not be altered by the

proposed project.

Outdoor Cultivation: Outdoor cultivation would continue to include a 38,484 square-foot area during an outdoor growing season (typically May to October) with one harvest at the end of the season. Plants would be cultivated using either an above-ground technique, with cultivation pots placed on the ground surface or placed at the subsurface soil level.

Indoor Cultivation: Indoor cultivation would continue to include cultivation of mature and immature plants. Mature flowering plants would be cultivated in two garages, consisting of a 763-square-foot labeled Building 2A on Attachment H site map and a 784-square-foot garage labeled Building 4.

Indoor Propagation: Indoor propagation would continue to involve the applicant removing the tops of on-site plants prior to the flowering stage and propagating new plant material from the removed portion. Propagation will be in Buildings 2B which is 763 square feet and Building 5 which is 651 square feet. Once the immature plants are ready to flower, they would be moved to the on-site indoor cultivation Buildings 2A and 4. The code allows an applicant to have propagation with a use permit not to exceed 25% of the permitted cultivation area. The applicant is proposing to have approximately 3.5% of the permitted cultivation area as propagation, well below the allowed code amount.

Processing: Processing would continue to take place in a 504-square-foot garage labeled 1B on the applicant's site plan and would be used to support trimming, drying, curing, weighing, and packaging. More specifically, the flowering portion of the plants would be cut from the main branch and hung upside down in the cultivation room for drying. Plant material would be stored for seven to ten days in a curing process before trimming.

Hours of Operation: The hours of operation for cultivation activities would be 6:00 am to 8:00 pm, seven days a week. Shipping and delivery activities would be limited to 8:00 am to 5:00 pm. The project would have a maximum of three full-time employees on-site for all indoor and outdoor cultivation activities.

Site Improvements:

All buildings that would be used for cannabis cultivation and processing exist and were established with permits, and include carbon filters onto the ventilation system for all indoor cultivation facilities and processing facilities. The applicant proposes to install a hedgerow buffer/windbreak that would serve to disperse and deflect the odor molecules released by the outdoor mature plants upwards where they will more readily dissipate and be carried into the atmosphere rather than linger at the ground level. Plants included in the proposed hedgerow would include aromatic smelling plants, intertwined with native trees and shrubs. The hedgerow would be planted along the southern boundary of the outdoor cultivation site to interrupt prevailing winds. A more detailed analysis of the proposed hedgerow is located in the odor section below. The site contains large, mature trees along the perimeter of the parcel that screen the facility from the public right-of-way and public view.

The project also proposes the installation of two rainwater collection and storage tanks with a total capacity of 183,700 gallons of water. The upper tank would have a capacity of 67,900 gallons and would be located directly south of Building 5, as shown on Attachment I. The upper tank would capture rainwater runoff from building 5. The lower tank is proposed to have a capacity of 115,800 gallons and will be located directly east of Building 7, as shown on Attachment I. The lower tank would capture rainwater runoff from the agricultural

barn labeled building 7. The upper tank would have a footprint of 604 square feet and the lower tank would have a footprint of 1,018 square feet. Both tanks would be 15 feet tall. Solar powered pumps would pump water from the lower storage tank to the upper tank.

The project also proposes retention and infiltration infrastructure to assist with groundwater recharge. The retention infrastructure includes vegetated recharge swales. The recharge swales are discussed in further detail in issue #4, Hydrology and Water Usage.

The swales, storage tanks, and odor reducing hedgerows will be located within the fenced parcel. Significant wastewater from irrigation is not anticipated because all plants would be drip irrigated.

The parcel has a fully fenced perimeter with an automatic security gate to secure the 10-acre site. The applicant will install a Knox-box on the gate for improved emergency access.

The current operation that is under the penalty relief program consists of 38,484 square feet of outdoor cultivation, 1,547 square feet of indoor cultivation, 1,414 square feet of indoor propagation and 504 square feet of indoor processing. The use permit would be a continuation of existing operations and would not change any cultivation square footages. The use permit also includes new water storage tanks, recharge swales, and a vegetated hedgerow.

#### Discussion of Issues

##### **Issue #1: General Plan Consistency**

The subject property has a General Plan Land Use designation of Diverse Agriculture (DA). The General Plan Purpose and Definition for Diverse Agriculture Areas is:

*“Purpose: to enhance and protect those land areas where soil, climate, and water conditions support farming but where small acreage intensive farming and part time farming activities are predominant. In these areas, farming may not be the principal occupation of the farmer. The primary purpose of this category is to protect a full range of agricultural uses and to limit further residential intrusion consistent with the policies of the Agricultural Resources Element.”* DA lands are intended to accommodate low density residential development and limited agricultural production/development of lands.

Additionally, the General Plan Policy AR-4a describes the primary uses in the Diverse Agriculture zone which are agricultural production and visitor serving uses and acknowledges that surrounding uses may be exposed to agricultural nuisance:

*“The primary use of any parcel within the three agricultural land use categories shall be agricultural production and related processing, support services, and visitor serving uses. Residential uses in these areas shall recognize that the primary use of the land may create traffic and agricultural nuisance situations, such as flies, noise, odors, and spraying of chemicals.”*

This policy generally prescribes that lands with a DA land use designation be primarily used agriculturally and that residences in this area may be subject to environmental conditions tied to those agricultural uses.

In adopting Ordinance No. 6189, the Board of Supervisors determined in their 2016 decision approving the current cannabis ordinance that cannabis uses may be consistent with the overall goals, objectives, policies, and programs of the General Plan, and that cultivation and processing operations are an allowed use in an agricultural land use designations with a Conditional Use Permit.

#### Staff Analysis:

The General Plan Land Use Element does not specifically identify cannabis cultivation as an intended use within the established designation of Diverse Agriculture. However, Sonoma County has previously determined that cannabis uses (including cultivation) are consistent with the overall goals, objectives, policies, and programs of the Sonoma County General Plan. In addition, the project would involve limited development of land, as the total operations would be limited to 9% of the 10-acre parcel, would not create increased residential density and would create space for small-scale agricultural products.

The development density (20-acre density) and the parcel size (10 acres) will remain unchanged under the project proposal. In order to comply with the Diverse Agriculture (DA) Zoning District which seeks to support small farming activities, the DA zone does this by requiring that the parcel have an established agricultural use that is maintained. However, neither the General Plan nor the Zoning Code includes a clear and concise definition for “primary agricultural use.” To determine whether agriculture is the primary use on the parcel, staff evaluates multiple factors, including:

- Existing agricultural uses on the property; and
- Compatibility of non-agricultural land uses with agricultural uses.

#### Existing Agricultural Acreage.

The cannabis operation would be limited to 9% (41,949 square feet) of the 10 acre property, including the outdoor grow site and existing buildings. The remaining 90% of the parcel would remain available for future agricultural uses and operations.

The parcel contains existing agriculture uses that are described within the purpose of the DA zone. The applicant would not remove existing agriculture uses (13,090 square feet) which are:

- One (1), 10,890 square foot vegetable garden located south of the existing residence;
- Apple orchard, 1,200 square feet located southeast of the existing residence; and
- Lime orchard, 1,000 square feet located southeast of the existing residence.

As mentioned above, the applicant would retain all existing agricultural uses and would concurrently utilized the orchards and vegetable garden while cultivating cannabis. Parcels zoned DA are intended to protect lands where small acreage farming or part time farming is the dominant activity. The existing agricultural operation would be a part time farming activity to the applicant while they cultivate cannabis concurrently.

#### Character of the Land Remains Agricultural

The project is set back from Montgomery Road by more than 700 feet and would be screened from public viewpoints on the road by existing trees, and a privacy fence. The proposed project would use approximately 9% of the parcel for commercial cannabis including activities that are similar to agricultural land uses. These agricultural-oriented operations would include farming such as planting and harvesting plants. Additionally, the land does and would continue to look agricultural in nature because the project would contain a primary

residence, barns, outbuildings, water tanks, and farming equipment that would appear similar to other agricultural uses.

Cannabis is not defined as an agricultural crop under County Code due to its classification as an agricultural product under State law. . However, the cultivation and processing of cannabis as an agricultural product is very similar to other farming activities; therefore, it is classified as an “agricultural product”. Farming equipment and infrastructure (e.g., irrigation systems, water tanks) proposed for the cannabis operation would be compatible with other surrounding agricultural development in the area, and could also support future non-cannabis agricultural uses on-site.

The project does not propose any expansion of utility services or promote the need for more residences to be built. The project would not promote development that could conflict with existing agricultural uses.

Therefore, staff finds that the project is consistent with the Sonoma County General Plan Diverse Agriculture Land Use designation.

## **Issue #2: Zoning Consistency**

Commercial cannabis cultivation is an allowed use in the Diverse Agriculture zoning district, pursuant to Sonoma County Code 26-88-250 through 26-88-254, which was adopted on December 20, 2016 and amended on November 15, 2018. The applicant/owner requests a conditional use permit for a medium outdoor and indoor processing and cannabis cultivation operation.

- a) The minimum parcel size cannot be less than 10 acres (except by pipeline provision);
- b) The combined total of all cannabis cultivation areas cannot exceed 43,560 square feet (1 acre) per parcel;
- c) Propagation area cannot exceed 25 percent of the permitted cultivation area and must be located in a separate area from flowering plants;
- d) Associated processing is limited to on-site cultivation only;
- e) The total combined cultivation area within the County cannot exceed 43,560 square feet (1 acre) for any cannabis business owner;
- f) The minimum property setbacks for outdoor cultivation must be:
  - a. 100 feet from property lines.
  - b. 300 feet from residences on surrounding properties; and
  - c. 1,000 feet from sensitive uses, such as schools, parks, and treatment facilities.

### Staff Analysis:

The project complies with development standards as follows:

- a) Operation on a 10-acre parcel;
- b) Total cultivation is 40,031 square feet;
- c) 1,414 square feet of non-flowering propagation or 3.5% of the total cultivation area;
- d) Processing of only site-grown plants;
- e) Eric Bell does not hold and has not applied for permits for other commercial cannabis operations in the County; and
- f) Project maintains adequate setbacks:



- a. More than 100 feet from all property boundaries;
- b. 300 feet to 500 feet from closest 7 residences. There are 3 residences at the 300 foot setback; and
- c. 4,000 feet from the nearest sensitive use, Spring Hill School.

The proposed use shall be constructed, maintained, and operated in conformance with all applicable County and State statutes, ordinances, rules, and regulations, including the above development standards and all operating standards from Sonoma County Code Sections 26-88-250 through 26-88-254. Operating standards include but are not limited to: fully contained lighting; implementation of a Site Security Plan; installation and operation of odor control filtration systems; utilization of renewable energy sources; and groundwater monitoring.

### **Issue #3: Hydrology and Water Usage**

The project site is located in a Class 2 groundwater area as defined by the California Department of Water Resources. Therefore, staff did not require a no groundwater study. However, because the project is near Jonive Creek, a high habitat value fish-bearing stream providing critical habitat for Steelhead and Coho Salmon, the Natural Resources Geologist at Permit Sonoma determined that the project would either need to prepare a hydrogeologic report addressing the cumulative impacts of groundwater pumping or design the project so that it would result in zero net increase in groundwater use. The applicant submitted a net zero plan to demonstrate that the operation will not:

- 1) Result in or exacerbate an overdraft condition in basin or aquifer;
- 2) Result in reduction of Critical flow in nearby streams; or
- 3) Result in well interference at offsite wells.

#### Staff Analysis:

The Net Zero Water Use Plan proposes a combination of rainwater catchment, storage, and enhanced groundwater recharge features that would reduce groundwater pumping for the project and offset the proposed groundwater withdrawal at a rate of 2 to 1.

The project is estimated to use 528,000 gallons of water for annual irrigation. Captured rainwater will supply 183,700 gallons and groundwater from the site and groundwater from the upper well will supply the remaining 344,300 gallons. Groundwater recharge features in the form of vegetated swales are expected to enhance groundwater recharge by 610,000 gallons in a typical drought year.

The Natural Resources Geologist concluded that the Net Zero Report demonstrated the project will ensure zero net use increase in groundwater use is unlikely to have any significant impacts on groundwater resources or interconnected surface waters.

Recommended conditions of approval require well monitoring on a monthly basis to verify performance. In the event that average water use over a 3-year period exceeds the estimated water use of the approved Water Conservation Plan by more than 10%, Permit Sonoma has the ability to administratively review the water usage and identify additional measures to reduce groundwater use through authorization in the condition of approval.

## Issue #4: Neighborhood Compatibility

To date, staff has received over 50 communications from neighbors asserting that: 1) the project creates odors which lead to unsafe conditions for neighboring residences and non-compliance with Section 26-88-250(f), Health and Safety; 2) the project would increase traffic on Montgomery Road; 3) the project would contribute to an increase in crime in the area; and 4) the project violated the Penalty Relief Program. Staff presents the following discussion below.

### ***I) Odor***

In adopting the Cannabis Ordinance, the Board of Supervisors found that air quality and odor issues could be addressed through compliance with the operating standards described in Section 26-88-254(g)(2):

- (1) Air Quality and Odor. All indoor and mixed light cultivation operations and any drying, aging, trimming and packing facilities shall be equipped with odor control filtration and ventilation system(s) to control odors, humidity, and mold.*

And through compliance with 26-88-254(f)(6):

- (2) Outdoor cultivation areas and all structures associated with the cultivation shall not be located in the front yard setback area and shall be screened from public view. Outdoor cultivation areas shall not be visible from a public right of way. Outdoor cultivation areas shall be setback a minimum of one hundred feet (100') from property lines and a minimum of three hundred feet (300') from residences and business structures on surrounding properties. Outdoor cultivation sites shall be setback a minimum of one thousand feet (1,000') from a school providing education to K-12 grades, a public park, childcare centers, or an alcohol or drug treatment facility.*

All Cannabis cultivation operations for commercial use must comply with the above Operating and Development standard.

### Staff Analysis:

#### **Indoor Cultivation and Indoor Processing Odors:**

Cannabis cultivation operations for commercial use must comply with section 26-88-254(g)(2), listed above. The applicant is proposing to have all indoor cultivation and processing structures include self-contained, closed-loop climate control systems, including carbon filtration to clean the air and control odor, which complies with the Operating Standard. Daily Inspections and reporting would be required by Condition of Approval No. 23 to ensure that the system is working adequately to control off-site odors from the cultivation building and inspections to verify that all filtration equipment is functioning properly and that they have been replaced on schedule.

#### **Outdoor Cultivation Odors:**

Outdoor cannabis cultivation will typically start to emit odors about 3-5 weeks into the flowering period, generally starting in August or September and continuing until harvest in October.

The Cannabis Ordinance does not require an odor control system for outdoor cultivation. To address odor issues from outdoor cultivation, the County adopted setback and separation criteria between cannabis operations and adjacent uses. A minimum parcel size of 10 acres is required for all outdoor cultivation. Minimum setback distances of 300 foot between outdoor cultivation and adjacent homes and businesses, and 1,000 feet from schools, parks, and other sensitive uses are also enforced by the County to facilitate odor dissipation by distance. In addition, cannabis cultivation operations must comply with the following Health and Safety requirement, set forth in Section 26-88-250(f):

*“Commercial cannabis activity shall not create a public nuisance or adversely affect the health or safety of the nearby residents or businesses by creating dust, light, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes.”*

There are seven residences within 550 feet of the proposed cultivation area (either indoor or outdoor). The table below indicates that the proposed project meets all required indoor and outdoor setbacks.

Address	Location from Proposed Project	Residential Distance from Indoor Cultivation (Setback)	Residential Distance from Outdoor Cultivation (Setback)
1055 Montgomery Road	West, Southwest from the project	619 Feet	308 Feet
877 Montgomery Road	South, Southeast from the project	580 Feet	300 Feet
699 Montgomery Road	South from the project	554 Feet	300 Feet
840 Ferguson Road	East from the project	332 Feet	300 Feet
1088 Ferguson Road	North, Northwest from the project	548 Feet	570 Feet
1087 Anita Lane	North from the project	150 Feet	430 Feet
1085 Anita Lane	North from the project	290 Feet	500 Feet

As stated in Sec. 26-88-250(f) above, an outdoor cannabis operation is not required to be odor free at all times to remain operating lawfully; rather, the odor must be contained in such a manner that it does not result in a public nuisance. Some degree and duration of odor is to be expected from this agricultural product, particularly during the flowering period when terpenes are present; this impact was taken into consideration when cannabis zoning, minimal parcel sizes and setbacks were established. Public nuisance considerations include the strength, frequency, and duration of the odor to nearby residences and businesses. The project would not contribute to a public nuisance because:

- Strength - The County setback and separation criteria between cannabis operations and adjacent uses

is required to reduce the strength of odor. The project complies with the 10-acre minimum parcel size and 300-foot minimum setback distances. The project site also has existing vegetation and intervening topography and proposes vegetated windbreaks to reduce odor strength. (see below analysis).

- Frequency - Outdoor cannabis would be conducted approximately during the May to October outdoor growing season, with only one occurrence per year.
- Duration - Cannabis plants start to emit odors generally starting in early September and continuing until harvest in October. Duration of smell would range from approximately 4-6 weeks (8-11%) of the year.

As stated above, the applicant also proposes a vegetated windbreak to assist in preventing odor from reaching neighboring residences. Surrounding an odor-generating land use with a natural buffer or windbreak has been a successful strategy to reduce odor impacts for poultry and swine operations. The buffer/windbreak strategy is most effective when parcels are large (at least 10 acres), maximizing odor dissipation with distance between uses. Odor plumes generally travel along the ground in the direction of the prevailing winds. However, trees and shrub buffers have been found to deflect the odor plume above the vegetation layer where it is diffused into the atmosphere (USDA NRCS 2007). Additional benefits of natural buffer/windbreaks include visual screening, noise reduction, and providing food, shelter and overwintering habitat for birds, and beneficial invertebrates, such as insect predators and native pollinators. (USDA NRCS 2007 and 2014). Additionally, odor-generating land uses that are in depressions experience odor deflection by natural topography.

The applicant proposes to plant a vegetated windbreak along the southern border of the outdoor cultivation site (Attachment M) to help deflect odors from reaching residences located to the south. There is currently an existing green cloth fence surrounding the outdoor cultivation site that would remain there. The vegetated windbreak would consist of a row of bushes planted in front of the fence and taller trees and shrubs planted in clusters around the bushes. Western Weather has an industrial grade meteorological monitoring system located approximately 1 mile north of the proposed project at Poplar Way and Mill Station Road. The monitoring system calculated average wind direction between the months of June 1, 2019 and November 1, 2019. Wind came from the southwest direction 16.4% of the time, south-southwest 15.6% of the time, south 8.9% of the time, southeast 10.2% of the time and east-southeast 18.9% of the time. Residences located south of the project would have reduced odor due to the combination of fencing, vegetated windbreak, and the prevailing wind helping to push odor away from their residences.

As noted above, the prevailing average wind direction comes from the southwest and south-southwest (approximately 32% of the time between June 1 and November 1), which would blow the odor to the northeast direction, away from all residences located to the south of the proposed project. However, there are also three residences within 550 feet located to the north and northwest. The residences to the north and northwest are protected by an existing windbreak due to existing vegetation, topography, and structures. The proposed outdoor cultivation area is located approximately 50 feet lower in elevation than neighboring residences to the north. Additionally, the northern portion of the parcel is densely covered with mature trees and structures. Odor plumes from the outdoor cannabis would generally travel along the ground in the direction of the prevailing winds (southwest to northeast). However, the presence of raised elevation, mature trees and structures would all help deflect the cannabis odor plumes upward to diffuse into the atmosphere, above the residences. Lastly, the prevailing wind direction which is majority from the southwest to the northeast direction at an average of 13.7 mph, would be away from most of the closest residences located either north or northwest.

Additionally, cannabis odors will be present during the hottest months of the year, when natural air convection is highest, further enhancing the odor management potential of planted windbreaks to deflect air and odors upwards, above residences, to be mixed with prevailing winds and diluted further away.

Project operational conditions of approval will require Permit Sonoma staff to perform a site inspection to verify any odor complaint received and evaluation of all odor complaint history to determine whether the outdoor cultivation operation is creating objectionable odors affecting a substantial number of people, and may require that the project be reviewed for additional measures to reduce outdoor odor generation.

The Diverse Agriculture zone is designed to protect uses that support agricultural production and related processing and that residents located in or around DA zones should recognize that agricultural nuisance situations such as odors may be present. While cannabis is not defined as an agricultural crop, cultivation and processing of cannabis products is similar to other farming activities, and therefore, it is classified as an “agricultural product.”

Due to a combination of multiple contributing factors: limited time of year that outdoor cannabis plants would be producing odors; existing fencing and proposed landscaping around the outdoor cannabis cultivation area to deflect odors upwards to the atmosphere; prevailing wind direction carrying atmospheric odors further northeast; project exceeds all odor-requirements; meets the minimum 10-acre parcel size requirement; meets the 300-foot setback from off-site residences requirement, the project is determined to be compatible with surrounding agricultural and residential land uses.

## **II) Traffic**

The project would utilize up to three employees for commercial cannabis activities. The Cannabis Trip Generation Form lists that the project would have 14 average daily trips associated with the outdoor cultivation.

### Staff Analysis:

Montgomery Road is a County Maintained Road with an average traffic value of 242 trips per day. The proposed project would increase traffic by 14 trips per day. This represents a 3% increase in traffic. Due to the scope of the operation and anticipated number of trips generated, staff does not anticipate that the project would be detrimental to public roads or traffic. A more detailed traffic analysis is available in the Mitigated Negative Declaration, Section 17, *Transportation*, pages 68-71.

## **III) Security**

In adopting the Cannabis Ordinance, the Board of Supervisors found that security issues could be addressed through compliance with security and fencing requirements and with compliance with section 26-88-254(f) (21).

### Staff Analysis:

The submitted Site Security Plan has been reviewed by staff as part of the project. Security measures have been adequately outlined through the Cannabis operation plan which is required to comply with the above excerpt from the Cannabis Ordinance. To maintain effectiveness of the security measures, part of the security protocol requires security plans to be held in a confidential file, although a generalized description of the plan

can be provided to the public and decision-makers.

A Site Security Plan must meet all the minimum requirements of the ordinance, tailored to address site-specific project activities and site constraints. A Site Security Plan was reviewed by County staff and found to meet ordinance requirements, including security fencing and screening, cameras, lighting, and alarms. An additional non-required security measures has been proposed by the applicant which includes dedicated security personnel on-site 24/7 during harvest activities.

The operation shall maintain all aspects of the approved site security plan including security cameras, lighting, and alarms. The site is screened from public view due to the topography and mature perimeter vegetation facing the street. The entire property perimeter is fenced, and a locked gate prohibits unauthorized vehicular/pedestrian access. All lighting would either be fully contained within existing structures or will be downward-casting and would not project on to neighboring properties or the night sky. All structures used for the cannabis operation would have locking doors for security. The intent of the security plan requirement is to facilitate public safety of the surrounding neighborhood by limiting potential for opportunistic crime at the site (e.g., controlling site access with a locked gate, implementing alarms and security cameras to discourage break-ins, having on-site security personal).

With implementation of the Site Security Plan, the project is not anticipated to attract opportunistic crime or result in any undue impacts to public safety, and therefore, is determined to be compatible with the surrounding neighborhood.

### **Environmental Determination**

The proposed project has been analyzed under the California Environmental Quality Act (CEQA) and the CEQA Guidelines, California Code of Regulations. Staff prepared an Initial Study and Mitigated Negative Declaration that concludes potential environmental impacts can be mitigated to a less than significant level by incorporating mitigation measures into the proposed project. Mitigation measures for these impacts are detailed in the Mitigated Negative Declaration and have been incorporated into the conditions of approval (Refer to Attachment A for more detail). The environmental factors that would be potentially affected by this project and have been determined to be "Less than Significant with Mitigation," as indicated in the Initial Study for the project are Biological Resources. The draft Mitigated Negative Declaration was circulated through the State Clearinghouse for public and agency review and comments from June 19, 2020 through July 20, 2020.

#### *Staff Analysis:*

For more detailed discussion of the topic areas, including those that may have impacts that are "Potentially Significant" or "less than Significant with Mitigation", please refer to the corresponding sections of the CEQA Initial Study (Mitigated Negative Declaration) for the project (Related Items "On File" with the Clerk of the Board):

- a. Section 4. Biological Resources: pages 21-33

### **Staff Recommendation**

Staff recommends adoption of the Mitigated Negative Declaration and approval of the Use Permit, subject to

the attached Conditions of Approval.

**Prior Board Actions:**

December 17, 2019, Board of Supervisors action approving request for original jurisdiction over multiple applications, including UPC18-0001.

**FISCAL SUMMARY**

N/A

**Narrative Explanation of Fiscal Impacts:**

N/A

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

- ATT 1: Conditions of Approval
- ATT 2: Vicinity Map
- ATT 3: Aerial Map
- ATT 4: General Plan Land Use Map
- ATT 5: Zoning Map
- ATT 6: Project Proposal Statement and Operating Plan
- ATT 7: Site Plan
- ATT 8: Net Zero Water Site Plan
- ATT 9: Public Comments
- ATT 10: Board of Supervisors Resolution
- ATT 11: U.S. Dept. of Ag. Natural Resources Conservation Service 2007
- ATT 12: U.S. Dept. of Ag. National Center for Appropriate Technology 2014
- ATT 13: Draft Odor Hedgerow Plan

**Related Items “On File” with the Clerk of the Board:**

Mitigated Negative Declaration