

**Forever Loving Humboldt, Inc.**

PLN-12436-CUP  
APN: 211-374-014

**Recommended Commission Action:**

1. Describe the application as a public hearing;
2. Request that staff present the project;
3. Open the public hearing and receive testimony; and
4. Close the hearing and adopt the Resolution to do the following:

Find the project exempt from environmental review pursuant to State CEQA Guidelines Section 15270, make the finding that the project site is in violation of Humboldt County Code and that the applicant has not provided the County the information necessary to make the required findings for approval and deny the Forever Loving Humboldt, Inc., project.

**Executive Summary:** For Planning Commission consideration is an application under the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) for a Conditional Use Permit for 32,500 square feet of existing commercial cannabis cultivation of which 10,500 square feet is outdoor cultivation and 22,000 square feet is mixed light commercial cannabis cultivation. The Forever Loving Humboldt, inc., application was submitted on December 23, 2016.

Staff is recommending denial of the project because the applicant has repeatedly violated various provisions of Humboldt County Code and State Law. The submitted application does not include evidence to support making the required findings under Section 312-17.1 of the Humboldt County Code (required findings for all permits). This project is not consistent with section 314-55.4.8.1, which states that permittees and operators shall conduct all commercial cannabis activities in compliance with all applicable state laws and County ordinances.

**California Department of Fish and Wildlife Violations**

On May 17, 2016, a site inspection was conducted by the California Department of Fish and Wildlife (CDFW), Regional Water Quality Control Board (RWQCB), and the State Water Resources Control Board (SWRCB). The inspection identified various violations resulting in the issuance of a Notice of Violation by CDFW and the SWRCB.

On May 20, 2016, a *Notice of Violation* issued by CDFW identified the following violations of Fish and Game Code:

i.	Construction of two onstream ponds on unnamed tributaries to Elk Creek.
ii.	Construction and Maintenance of five road/stream crossings on unnamed tributaries to Elk Creek.
iii.	Filling of a stream channel with sediment from pond failure and/or dam construction.
iv.	Excavation of 250 linear feet of stream channel.

An *Environmental Impact Assessment* was prepared by CDFW for the subject parcel following the observation of nine unpermitted streambed alterations and one sediment discharge to waters of the state. The document analyzes the direct impacts the violations have incurred on Elk Creek, the tributaries of Elk Creek, and the South Fork Eel River. As stated in the report, the violations of Fish and Game Code have resulted in (1) substantial degradation of the Elk Creek and its unnamed tributaries, (2) impairment of natural hydrology and unpermitted impoundment and diversion of Waters of the State for irrigation, (3) delivery of sediment downstream deleterious to

aquatic habitat, and (4) direct discharge of large volumes of water and sediment to Waters of the State.

On December 3, 2021, the assigned planner contacted CDFW and found that *Notice of Violation* issued by CDFW had been resolved. However, CDFW stated that ground disturbance that occurred between June 2021 and October 2021, would require a site visit from CDFW to inspect near stream alterations.

### California State Water Resources Control Board Violations

On October 12, 2016, the RWQCB issued a *Clean Up and Abatement Order* (CAO) for the following violations identified during the site inspection.

i.	Construction of private roads lacking adequate stream crossings, erosion control, or sediment containment features.
ii.	The operation of heavy equipment in the watercourses and the lack of or inadequate stream crossings, represent a direct and unauthorized discharge to tributaries to Elk Creek.
iii.	The failure of one of the reservoirs, which has been subsequently reconstructed, resulted in the placement of a large pile of earthen spoils in a wetland and the discharge of the turbid water to tributaries of the Elk Creek.
iv.	RWQCB staff also estimated 1 million gallons (141,726 cubic feet) of earthen material was deposited in streambeds and wetlands.

The CAO required the applicant to clean up and abate the graded and disturbed areas to prevent further sediment laden discharge, and uncontrolled drainage from private roads, into Elk Creek which is a Class I watercourse. The Order also required the applicant to restore the impacted wetland to its original state and submit the following information by the associated deadline:

<b>By October 15, 2016</b> , the Dischargers shall stabilize the Property to prevent erosion and discharge of sediment to Elk Creek and its tributaries during the 2016-2017 wet weather period. The stabilization shall be based on an Interim Erosion and Sediment Control Plan (hereafter "Interim Plan") prepared by an appropriately licensed Professional.
<b>By November 15, 2016</b> , the Dischargers shall provide a report of completion for approval by the Assistant Executive Officer of the Regional Water Board. This report shall include a summary and photographs of the completed erosion and sediment control measures.
<b>By January 15, 2017</b> , the Dischargers shall propose a Restoration and Monitoring Plan (hereafter "RMP").
<b>No more than 60 days</b> after approval of the RMP by the Regional Water Board Assistant Executive Officer, begin implementation of the RMP.
<b>By August 31, 2017</b> , the Dischargers shall fully implement and complete the RMP.
<b>By September 30, 2017</b> , submit a Completion Report for the RMP for approval by the Assistant Executive Officer of the Regional Water Board.

On January 15, 2017, the applicant submitted a *Restoration and Monitoring Plan* to the SWRCB Office of Enforcement which addressed the need for the following corrective actions and

included a timeline to complete all actions by October 2018, although the deadline to submit the report was September 30, 2017.

- 1) Remove all illegally placed earthen material and woody debris from streams;
- 2) Restore the vegetative and hydrological functions of the damaged streams to ensure the long-term recovery of the affected streams;
- 3) Restore natural slope contours to ensure dispersed surface flows;
- 4) Replant the slopes and streamside areas with native vegetation to reduce the potential for sediment delivery; and,
- 5) Provide streamside protection, replant streamside areas with native species to reduce the potential for sediment delivery.

On July 31, 2019, the applicant was issued a *Notice of Required Action* by SWRCB Office of Enforcement for failure to adhere to the established deadline and submit the Restoration and Monitoring Plan Completion Report (Completion Report) by September 30, 2017. The applicant was granted an extension to submit the requested materials by August 30, 2019.

On August 30, 2019, the applicant's consultant submitted a *Restoration and Monitoring Completion Report* (Completion Report) to the SWRCB Office of Enforcement.

On July 17, 2020, the applicant was issued a *Notice of Violation* by the SWRCB. The Notice documented four violations of the Clean Up and Abatement Order (1) the applicant had not completed the corrective actions outlined in the RMP, (2) the submitted *Completion Report* failed to document the completion of the RMP which constitutes a violation of the CAO, (3) failure to assess impacts to Elk Creek, its unnamed tributaries, and the wetland area from the unauthorized activities on the Property and restoration of all wet meadows and wetlands, and (4) failure to provide compensatory mitigation for any temporal and permanent impacts to wet meadows, wetlands, and to unnamed tributaries to Elk Creek that resulted from unauthorized activities. The applicant was directed to immediately provide an amended RMP to address the four violations and provide a timeline for implementation and completion of the restoration activities and submittal of the final RMP Completion Report.

Email correspondence between SWRCB Office of Enforcement staff and NorthPoint Consulting reflects continued efforts by the SWRCB Office of Enforcement to obtain the requested documentation by October 1, 2021. The applicant did complete a Botanical Survey and Wetland Delineation. As of December 1, 2021, the revised Restoration Plan incorporating the Botanical Survey and Wetland Delineation has not been submitted to the SWRCB Office of Enforcement as required to resolve the Clean Up and Abatement Order.

### **Humboldt County Code Violations**

On January 4, 2018, the applicant received an Interim Permit from the County of Humboldt which authorized the continued cultivation of 10,500 square feet of outdoor cultivation and 22,000 square feet of mixed light cultivation. The *Compliance Agreement* associated with the Interim Permit advised the applicant that any expansion beyond the existing cultivation area would be a violation of the Interim Permit, Humboldt County Code, and State Law and may result in the cancellation or revocation of the permit.

On February 13, 2020, the applicant submitted a Cultivation Declaration reducing their cultivation area to zero square feet. The applicant acknowledges that any expansion or deviation from the declared cultivation may lead to cancellation or revocation of the permit.

On December 28, 2020, the applicant is issued a Violation Letter for the unauthorized cultivation of 36,116 square feet in violation of the Cultivation Declaration. The applicant submits a penalty payment of \$11,232 to resolve the violation.

On May 19, 2021, a search warrant is served by the Sheriff's Office with the Code Enforcement Unit in attendance. Numerous violations of Humboldt County Code are identified, and the applicant is found to be operating out of compliance with the approved *Operations Plan* and *Site Plan*. A Violation Letter is issued to the applicant on July 9, 2021, for the unauthorized mixed light cultivation of 5,287 square feet. At this time the applicant is also issued a Compliance Agreement by the Code Enforcement Unit to resolve the violations identified during the service of the warrant. On July 21, 2021, the applicant submits a penalty payment of \$21,148. Although the Compliance Agreement was issued with the Violation Letter, as of November 24, 2021, the Compliance Agreement remained unreturned, and the violations remained unresolved.

Based on aerial imagery, the applicant began conducting ground disturbing activities in June of 2021 and continued to do so through October of 2021. Five greenhouses were relocated to a newly graded flat on the northeastern section of the parcel. The greenhouses were relocated in proximity to a verified wetland, in violation of Humboldt County Code 314-61.1.12 which states that a preliminary on-site inspection shall be performed prior to any grading, construction, or other development permit issuance to determine if the project area contains SMAs or other wet areas. The applicant did not consult with the Planning Department prior to changing the site configuration. Additionally, by expanding the projects footprint, prior to permit approval, the applicant violated the terms of the executed *Compliance Agreement*.

This project is not consistent with section 314-55.4.8.1, which states that permittees and operators shall conduct all commercial cannabis activities in compliance with all applicable state laws and County ordinances.

**Summary:** The submitted application does not include enough evidence to support making the required findings under Section 312-17.1. Because the applicant has violated Humboldt County Code and various provisions of state law, the project is not consistent with 314-55.4.8.1, which states that permittees and operators shall conduct all commercial cannabis activities in compliance with all applicable state laws and County ordinances.

**ALTERNATIVES:** The Planning Commission could elect to direct staff to continue to work with the applicant to resolve the outstanding issues and continue processing the application in accordance with HCC Section 312-4.1 et seq. However, due to the extended amount of time that the violations have remained unresolved, staff does not recommend this alternative.