

**SUPPLEMENTAL INFORMATION #1**

For Planning Commission of:  
July 1, 2021

- |                                     |                        |                |
|-------------------------------------|------------------------|----------------|
| <input type="checkbox"/>            | Consent Agenda Item    |                |
| <input type="checkbox"/>            | Continued Hearing Item |                |
| <input checked="" type="checkbox"/> | Public Hearing Item    | <b>No. G-3</b> |
| <input type="checkbox"/>            | Department Report      |                |
| <input type="checkbox"/>            | Old Business           |                |

**Re: Humboldt Hempire Farms, LLC, Special Permit**

Record Number: PLN-16602-SP

Assessor Parcel Number: 223-061-011

on the north side of Sprowel Creek Road, approximately 1,300 feet northwest from the intersection of Sprowel Creek Road and West River Lane, on the property known as 1575 Sprowel Creek Road, Phillipsville area.

Attached for the Planning Commission's record and review is the following supplementary information item:

1. A Revised Resolution with an alternative recommendation for denial because the applicant has converted timberland within the areas proposed for cultivation post-2016. First in 2020, and after staff communicated that the applicant would be required to restock these areas with timber species the applicant has continued to convert timberland within areas proposed for cannabis cultivation. Staff is recommending that the project either be continued for staff to work with the applicant to develop a reforestation plan, or that the project be denied.

**RESOLUTION OF THE PLANNING COMMISSION  
OF THE COUNTY OF HUMBOLDT  
Resolution Number 21-  
Record Number PLN-2020-16602  
Assessor's Parcel Number: 223-061-011**

**Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and denying the Humboldt Hempire Farms, LLC, Special Permit.**

**WHEREAS, Humboldt Hempire Farms, LLC,** submitted an application for a Special Permit for 43,560 square feet of new mixed light cannabis cultivation operation with appurtenant propagation and drying activities;

**WHEREAS,** the Applicant has engaged in unlawful timber conversion activities within the areas proposed for cannabis cultivation; and

**WHEREAS,** the project is exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (Projects which are disapproved); and

**WHEREAS,** the Humboldt County Planning Commission held a duly-noticed public hearing on July 1, 2021, and reviewed, considered, and discussed the application for a Special Permit and reviewed and considered all evidence and testimony presented at the hearing.

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

**1. FINDING:** **Project Description:** The application is a Special Permit to allow a new 43,560 square foot (SF) mixed light cannabis cultivation operation with appurtenant propagation and drying activities. Power is provided by PG&E. Water for irrigation will be provided by existing permitted rainwater catchment system with 3,360,000 gallons of water storage (PLN-9635-CUP)

**EVIDENCE:** Project File: PLN-2020-16602

**2. FINDING:** **CEQA.** The project is exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (Projects which are disapproved).

**EVIDENCE:** a) Section 15270 of the CEQA Guidelines.

**FINDINGS FOR SPECIAL PERMIT**

**3. FINDING** The proposed development is not consistent with the requirements of the CCLUO Provisions of the Zoning Ordinance.

**EVIDENCE** a) Section 314-55.4.6.4.2 of the CCLUO Prohibits the Conversion of Timberland. Cultivation Site(s) may only be located within a Non-Forested area that was in existence prior to January 1, 2016. The applicant has converted timberland within the areas proposed for cultivation post-2016. First in 2020, and after staff communicated that the applicant would be required to restock these areas with timber species the applicant has continued to convert timberland within areas proposed for cannabis cultivation.

**DECISION**

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

- Find the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (projects which are disapproved); and
- Find that the required findings for approval under Section 312-17.1.3 of the Humboldt County Code cannot be made because the on-going timber conversions on the property for the proposed development is inconsistent with the Commercial Cannabis Land Use Ordinance; and
- Deny the Humboldt Hempire Farms, LLC Special Permit, Record Number PLN-2020-16602.

Adopted after review and consideration of all the evidence on July 1, 2021.

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

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

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

\_\_\_\_\_  
John Ford, Director  
Planning and Building Department

## SUPPLEMENTAL INFORMATION #2

For Planning Commission Agenda of:  
January 20, 2022

<input type="checkbox"/>	Consent Agenda Item	
<input checked="" type="checkbox"/>	Continued Hearing Item	No. <u>G-11</u>
<input type="checkbox"/>	Public Hearing Item	
<input type="checkbox"/>	Department Report	
<input type="checkbox"/>	Old Business	

**Re: Humboldt Hempire Special Permit**  
Record Number PLN-2020-16602  
Assessor Parcel Number 223-061-011  
Garberville, CA

Attached for the Planning Commission's record and review is (are) the following supplementary information items:

1. Attachment 1 - Revised Recommended Conditions of Approval:
  - clarifying limitations on the use of synthetic netting (COA B-5)
  - clarified to reflect proposed use of off-site processing facility (COA B-10)

## ATTACHMENT 1

### REVISED RECOMMENDED CONDITIONS OF APPROVAL

#### APPROVAL OF THE SPECIAL PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE THE PROJECT MAY BEGIN OPERATING

##### **B. Ongoing Requirements/Development Restrictions Which Must be Satisfied for the Life of the Project:**

5. ~~Prohibition~~ Limitation on use of synthetic netting. To minimize the risk of wildlife entrapment, Permittee shall not use any erosion control and/or cultivation materials that contain synthetic (e.g., plastic or nylon) netting, including photo- or biodegradable plastic netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves. Note: synthetic netting may be used within a greenhouse so long as the structure remains inaccessible to wildlife during all periods of cultivation and use. During periods where not being used, all synthetic netting must be properly stored in a secure location inaccessible to wildlife. Prior to disposal, all netting shall be modified (through cutting or similar measures to eliminate all small voids) to ensure that it no longer poses a risk to wildlife. Disposal shall occur at a secure location designed to be inaccessible by wildlife.
  
10. All components of project shall be developed, operated, and maintained in conformance with the Project Description, the approved Site Plan, the Plan of Operations, and these conditions of approval. Changes shall require modification of this permit except where consistent with Humboldt County Code Section 312-11.1, Minor Deviations to Approved Plot Plan. ~~If off-site~~ on-site processing is chosen to be the preferred method of processing, this permit shall be modified to identify the location of the on-site ~~off-site~~ licensed facility.

## McClenagan, Laura

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**From:** Ann Constantino <annconstantino@gmail.com>  
**Sent:** Monday, June 21, 2021 4:36 PM  
**To:** Planning Clerk  
**Subject:** Public comment on Humboldt Hempire Farms LLC; PLN-2020-16602

Dear Commissioners,

This letter is to state my objection to the planned addition by Humboldt Hempire Farms of 17 greenhouses on the property APN 223-061-011. PLN-2020-16602

I live directly across the South Fork of the Eel river from this proposed project. The morning after the last planning commission meeting on June 3rd at which this permit application was tabled until a later date, someone verbally assaulted me from the property on which the project is to be done. At about 8:50 on the morning of June 4, I suddenly heard a man shouting at me from the project property as I walked alone along the river. I heard the words "Jerry" and "letter" repeatedly yelled among other words I couldn't make out, and then the assault ended with the sentence, "All your neighbors officially hate you now." I immediately realized this was in response to a letter objecting to the project that my partner Jerry Latsko had submitted prior to the June 3 meeting.

This assault left me shaking for the rest of the day. I called the sheriff who said he could not respond because no actual threat was made. He suggested I get a civil restraining order. He also said he was aware of other neighbors unhappy with the practices of Humboldt Hempire Farms. The assault may not have constituted a crime but is an example of the kind of neighbor Humboldt Hempire Farms has been throughout its existence.

I object to this project because my quality of life and property values have deteriorated since this industrial agriculture venture began many years ago. There is loud noise and dust at all hours, often starting at dawn and going until after dark. My view of a formerly pleasant landscape is destroyed by acres of plastic sheeting and huge water bladders which have been a detriment to my property values. I am sure that when this area was zoned it was well before the cannabis boom which has radically changed the nature of agriculture in Humboldt County.

Additionally, as I understand it, any prospective buyer of my property would legally have to be informed of the unpleasant neighborhood conditions as well as the verbal assault. What rights do I have to protect my property values from this kind of degradation?

During this 2020-2021 winter of a drought year it appears that some of the bladders they have did not fill. Will their catchment system even actually be sufficient for all those proposed greenhouses? If drought is to become our norm, the project may be over-estimating its ability to provide enough water.

Furthermore, if drought conditions persist, it behooves the county to consider whether catchment is a sustainable way to water thirsty cannabis plants at all as creeks and rivers are denied the run-off they would normally receive from the scarce rain. Fish and wildlife are adversely affected by inadequate flows.

How much more wealth do these people need? When will quality of life in the neighborhood ever be more important than sky-high profit? Seventeen greenhouses with multiple harvests each per year represent riches beyond my imagination. My partner and I are both semi-retired and wish to live out our years in peace.

Please consider the small neighborhood of this once quiet and beautiful section of the South Fork of the Eel as well as the greater environmental and property issues raised by this type of exploitative "agriculture" when you make your decision.

Respectfully,

Ann Constantino  
215 Leino Lane  
Garberville, California 95542  
707-923-7227

## McClenagan, Laura

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**From:** Jerry Latsko <latsko.jerry@gmail.com>  
**Sent:** Tuesday, June 22, 2021 4:17 PM  
**To:** Planning Clerk  
**Subject:** PLN-2020-16602 APN223-061-011 Hearing date 7/1/2021

I strongly object to the proposed special permit from the property owners at 1575 Sprowel Creek Road in Garberville. These are the same people who were observed several years ago by myself and others and videotaped by the California Department of Fish and Game pumping water out of the river that separates their property from ours. Somehow they managed to avoid any punishment for that egregious offense against nature and fellow citizens but they have proven to be scofflaws who feel entitled to do do anything they want if it makes them money. They have continuously created noise pollution, including playing loud "music" over loudspeakers at all hours of the day and night to the annoyance of neighbors and the detriment of wildlife. I fear retaliation if they discover that I have complained but need to complain anyway. In fact, my partner, Ann Constantino was verbally assaulted as she walked along the river by Mr. Jefferies, who referred to my previous letter and yelled that "...all of your neighbors hate you now.." At a time of very serious drought conditions, the idea of using the amount of water necessary for this project, no matter how it is obtained, is a slap in the face to all residents in the area. There has already been a notable decline in wildlife activity in our area since they obtained this property and it will only get worse if this project is permitted. Thank you.



## McClenagan, Laura

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**From:** Sarah Brooks <sarahbv72@gmail.com>  
**Sent:** Thursday, June 24, 2021 8:22 AM  
**To:** Planning Clerk  
**Subject:** Public comment re: Humboldt hempire

To Humboldt County planners,

I am deeply concerned about the severe drought and the continued consideration and granting of cannabis permits. Humboldt Hempire Farms LLC APN 223-061-011 is not appropriate for Garberville or any part of the South Fork Eel River watershed at this time. Redway water district where I live directly downstream is implementing conservation restrictions in June! This is not normal and absolutely untenable to continue with business as usual. If we don't treat this drought seriously and understand climate change is likely to cause it to continue we will become a ghost town due to lack of water. Please do your jobs and plan accordingly to the resources available. Thank you, Sarah Brooks

## McClenagan, Laura

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**From:** Ann Constantino <annconstantino@gmail.com>  
**Sent:** Tuesday, December 14, 2021 7:55 AM  
**To:** Planning Clerk  
**Subject:** Public comment for PLN-2020-16602

Dear Planning Commissioners,

Regarding the Humboldt Hempire project proposal, record no. PLN-2020-16602; APN 223-061-011: Thank you for accepting my comments on this matter.

Please follow the staff recommendation to deny the Humboldt Hempire project that would bring 20 greenhouses onto property that has already been severely altered beyond recognition from its former state through numerous violations.

While the staff report concludes that the improper logging is the main reason for the recommendation, there are plenty of other strong arguments against approval, stemming mostly from Jeffries' long time callous disregard of environmental protections. All of this within plain sight of the outskirts of Garberville, and directly across the South Fork of the Eel from where I have lived since 1973.

Jesse Jeffries has a long history as a convicted felon and subsequently as a property owner who has no regard for environmental regulations. He has begun every step of development on his once beautiful property without permission. From pumping out of the river for illegal grows, to stream diversion, to altering the landscape for unpermitted water bladders, to cutting trees intended to make room for greenhouses but later claimed to be for firewood, he has been able to get away with all of it by applying for and receiving permission after the fact.

(Is this how we raise our children? You must finish your dinner before you have dessert....oh, you ate dessert first anyway? That's OK, here's another dessert, just eat your dinner some day. Over and over and over again.)

Enough is enough. His water business required a laborious rezoning process and despite it being shown that he was not keeping proper sales records and neighbors were complaining about loud trucks coming and going at all hours, he has retained the right to keep running this business, which provides ample income.

He has a permitted indoor grow, but I have not been able to get an answer to the question of how he waters it, so can only imagine that he might be using water out of his water business to do so. This goes against the CCLUO 2.0 which states that water collected in bladders may not be used for cannabis.

We are experiencing an unprecedented devastating drought in California. If this year continues to be a La Nina year, as predicted, we will have low rainfall totals again, and drought conditions will persist.

The planning department's own task force recommended issuing a moratorium on all new grows while the drought continues, but director John Ford contradicted this recommendation when it came before the supervisors, based on the idea that potential growers might have already invested large amounts of money in projects they were expecting to be permitted.

A better solution would have been to honor the hard work and respect the conclusions of a highly qualified task force taking into consideration the big picture of weed grows in Humboldt County, especially the availability of water for endless marijuana production. Issue the moratorium as suggested and allow growers to apply for exceptions on a case

by case basis, granting permission to growers with violation-free histories whose survival might legitimately be threatened by not being allowed to go forward.

In this scenario, Jeffries would not receive permission for his 20-greenhouse project, based not only on his laundry list of past violations, his pending legal action from the California Department of Fish and Wildlife and his time in prison for money laundering and illegal cultivation, neither would he receive permission based on economic need. His water business and current permitted grow appear to support him adequately, based on what I can see of his lifestyle from across the river.

By the way, how often does the planning department go against the recommendation of the Sheriff, who said no to this project due to pending legal actions against Jeffries.

By continuing to greenlight every single even vaguely compliant project, the county not only contradicts its own task force's recommendation re water use, but it tacitly encourages black market sales. The price of legal weed has tanked to the point that the start-up expense of infrastructure, plus maintenance, processing, etc will never be recouped and is a foolish business proposal. Would a bank loan money for this kind of startup? I doubt it. The direction of prices is not going to change and as big ag gets its tentacles more into cannabis, even the rich grow bros of Humboldt might find themselves out of options.

The issue of using bladders that were originally purposed for water sales (and strictly and specifically was not to be allowed to sell to pot farmers) to water his weed is another example of the county's apparently laissez-faire attitude toward growers. Anything goes if you know you can always just get permission after the fact. Anyone else installing a bladder to, say, water their vegetable garden, will be able to later say, "Oh, by the way, I'm putting a bunch of greenhouses in and will just use the bladders to water my weed, OK?" Based on the Jeffries case, the county will have to say sure, go ahead, it's OK if that was not the intention of the 2.0 ordinance. It won't mean any more than the task force's drought recommendations.

Another answer I have not been able to get from the planners assigned to this project is what is the new capacity of the bladders now that they have been reduced from 16 down to about 10 (I can't quite see how many remain, but there are several gaps where there used to be bladders)? This also reduces the collection amounts stated in the plan. Should he be allowed to repurpose his water selling bladders, now reduced greatly, to water his greenhouses to the extent that his water business is no longer viable? What then? The water business is permitted for another ten years. If it fails before that, is it just OK for him to water his weed with the remaining bladders? Is that good planning or careful stewardship of the land? If the water business ceases to exist, what of the required clean-up stated in the 2016 plan necessitating restoration of the landscape to its former health and status? Will that have to happen sooner if he needs his water for his weed and quits selling it to others?

These are questions I would require answers to if I were a planning commissioner weighing the pros and cons of this project. The conflating of the water business with the weed business is murky at best and based on his history, Jeffries will play whatever hand wins him the most money.

And what about the residential ag designation that was scrapped for the water business, but is now being used to support the new grow proposal? Agriculture that involves (assuming it's to be allowed that he water from the bladders) the compaction of Prime agricultural land under the bladders, the denuding of more prime ag land under the tarp and all the ecological destruction of soil and the life that lives within it is likely not what the original zoners had in mind when creating this designation. Modern pot farming has turned far away from any kind of sustainable, much less natural, form of give and take with the landscape that residential agriculture suggests.

Additionally, it deserves attention that most of this enterprise, including the bladders, is likely within the 100-year flood zone. It is difficult to imagine the potential for damage to the river should the bladders become dislodged in a major flood. Furthermore, high water potential plus 250 feet (100 for SMA buffer and an additional 150 for cannabis distance) has not been adequately shown by the map in the sloppy plan and is doubted by CDFW.

Neighbors have suffered through long periods of noise, destruction of aesthetics and total disregard for community by a greedy landowner. Jeffries has verbally assaulted me, claiming in a threatening and intimidating manner that all my neighbors now hate me for objecting to his plan when in fact almost all of our neighbors have expressed opposition to his project. He has called neighbors asking if they want to sell their property. A drone was seen by a neighbor above my property.

Given the long history of Jeffries' violations, whether eventually corrected or not, as well as a clear no vote from the sheriff and the fact that CDFW and the Water Board still have unresolved issues, including formal charges that agency representatives cannot discuss while pending, it is the right thing to do to deny this application. Please follow the recommendation of staff and vote no on this project.

Thank you.

Ann Constantino  
215 Leino Lane  
Sprowl Creek Road  
PO BOx 337  
Garberville, CA 95542  
707-923-7227

## McClenagan, Laura

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**From:** Ann Constantino <annconstantino@gmail.com>  
**Sent:** Monday, June 21, 2021 4:36 PM  
**To:** Planning Clerk  
**Subject:** Public comment on Humboldt Hempire Farms LLC; PLN-2020-16602

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This assault left me shaking for the rest of the day. I called the sheriff who said he could not respond because no actual threat was made. He suggested I get a civil restraining order. He also said he was aware of other neighbors unhappy with the practices of Humboldt Hempire Farms. The assault may not have constituted a crime but is an example of the kind of neighbor Humboldt Hempire Farms has been throughout its existence.

I object to this project because my quality of life and property values have deteriorated since this industrial agriculture venture began many years ago. There is loud noise and dust at all hours, often starting at dawn and going until after dark. My view of a formerly pleasant landscape is destroyed by acres of plastic sheeting and huge water bladders which have been a detriment to my property values. I am sure that when this area was zoned it was well before the cannabis boom which has radically changed the nature of agriculture in Humboldt County.

Additionally, as I understand it, any prospective buyer of my property would legally have to be informed of the unpleasant neighborhood conditions as well as the verbal assault. What rights do I have to protect my property values from this kind of degradation?

During this 2020-2021 winter of a drought year it appears that some of the bladders they have did not fill. Will their catchment system even actually be sufficient for all those proposed greenhouses? If drought is to become our norm, the project may be over-estimating its ability to provide enough water.

Furthermore, if drought conditions persist, it behooves the county to consider whether catchment is a sustainable way to water thirsty cannabis plants at all as creeks and rivers are denied the run-off they would normally receive from the scarce rain. Fish and wildlife are adversely affected by inadequate flows.

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Please consider the small neighborhood of this once quiet and beautiful section of the South Fork of the Eel as well as the greater environmental and property issues raised by this type of exploitative "agriculture" when you make your decision.

Respectfully,

Ann Constantino  
215 Leino Lane  
Garberville, California 95542  
707-923-7227

**From:** [trout fisher](#)  
**To:** [Planning Clerk](#)  
**Subject:** Hempire farm proposal  
**Date:** Monday, June 28, 2021 2:10:35 AM

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June 28th 2021

To the Humboldt County planning commission regarding  
Pln, 2020 16602,  
apn# 223- 016- 011  
Humboldt Hempire Farms

1. The proposed plan has some serious issues that are of great concern to me. Its very close proximity to the bank of South Fork of the Eel River. The proposed 43,560 sq. foot cannabis grow will create a significant amount of fertilizer runoff. The parcel is situated just a short way up stream from the Redway Community Service District's main water intake which supplies Redway's drinking water. Nitrates, and nitrites, cannot be removed from water by Redway's water treatment facility. Municipal water districts in Central Valley found out the hard way, that nitrates and nitrites cannot be filtered out .
2. Also of concern is the South Fork Eel's low flow, warm summer temperatures, and toxic algae blooms that arise under such conditions. Both nitrogen, nitrates, nitrites, phosphates, or phosphorous from fertilizer runoff feed algae blooms.
3. The communities of Redway and Garberville heavily use the stretch of river below the proposed cannabis grow for recreational purposes during the summer. Redway beach is a popular beach for swimmers, as is the river bar adjoining Bear Creek Bridge behind the Renner station. The river from Benbow to Redway beach is a popular kayak, and inner tubing run. Water quality should be a top priority in this stretch of river.
4. The South Fork Eel's water is already over allocated. We are in the worst drought in a hundred years, where's the water going to come from, if there's not enough rain for water catchment? Many Southern Humboldt residents were not able to fill catchment tanks this year. Should the county even be approving cannabis grows during a severe drought? Pot is a luxury crop.
5. The proposed cannabis grow is located in a neighborhood with family residences. How will this plan mitigate the odor coming from grow? That many square feet of pot will create a stench that will travel far off site. Also the noise pollution from industrial fans can be heard for miles. Garberville is less than a half mile as the crow flies.
6. It is likely that an industrial cannabis grow with its noise pollution, fertilizer pollution, odor pollution and increased traffic will lower property values in the adjacent neighborhood.
7. The plan has a far fetched claim it will be manned by only 4 employees. It will take a lot more than 4 employees to trim the quantity of pot proposed in the plan. Where are the trimmigrants going to be housed? Bathrooms, increased traffic etc?
8. A full EIR (Environmental Impact report) should be required before approving any or part of this plan.

Sincerely  
Georje Holper  
Po box 433

Redway CA.  
95560



## McClenagan, Laura

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**From:** Jerry Latsko <latsko.jerry@gmail.com>  
**Sent:** Tuesday, June 22, 2021 4:17 PM  
**To:** Planning Clerk  
**Subject:** PLN-2020-16602 APN223-061-011 Hearing date 7/1/2021

I strongly object to the proposed special permit from the property owners at 1575 Sprowel Creek Road in Garberville. These are the same people who were observed several years ago by myself and others and videotaped by the California Department of Fish and Game pumping water out of the river that separates their property from ours. Somehow they managed to avoid any punishment for that egregious offense against nature and fellow citizens but they have proven to be scofflaws who feel entitled to do do anything they want if it makes them money. They have continuously created noise pollution, including playing loud "music" over loudspeakers at all hours of the day and night to the annoyance of neighbors and the detriment of wildlife. I fear retaliation if they discover that I have complained but need to complain anyway. In fact, my partner, Ann Constantino was verbally assaulted as she walked along the river by Mr. Jefferies, who referred to my previous letter and yelled that "...all of your neighbors hate you now.." At a time of very serious drought conditions, the idea of using the amount of water necessary for this project, no matter how it is obtained, is a slap in the face to all residents in the area. There has already been a notable decline in wildlife activity in our area since they obtained this property and it will only get worse if this project is permitted. Thank you.

**From:** [Jeff and Marisa St John](#)  
**To:** [Planning Clerk](#)  
**Cc:** [Madrone, Steve](#)  
**Subject:** File No. 21-908  
**Date:** Thursday, July 01, 2021 8:49:49 AM

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Hello,

Please do not approve any new cannabis cultivation applications (APN 223-061-011) because the County:

1. Has yet to review and approve/deny *all* existing cannabis grow applications. Continue to see new grow applications mixed in with existing grow applications in Zoning Administrator and Planning Commission agendas.
2. Has yet to abate existing illegal grows. Times-Standard June 29, 2021 article " Sgt. Conan Moore told the Times-Standard there are more than 4,000 illicit cultivation sites in Humboldt County, all of which do not comply with the required state and local permits to engage in this commercial activity. " (<https://www.times-standard.com/2021/06/29/illicit-cannabis-grows-remain-in-the-thousands-humboldt-county-sheriffs-office-says/>)
3. Has yet to document the total water usage, project footprint square feet, and cultivation square feet of approved and interim applications. Perhaps the County already has more cannabis than the entire State of California has demand for. Refer to response to the Humboldt County Public Record Request #21-383.
4. Is under a severe drought. State of California drought information (<https://www.drought.gov/states/california/county/humboldt>) and North Coast Journal's May 27, 2021 article related to the May 25, 2021 Humboldt Board of Supervisors Meeting (<https://www.northcoastjournal.com/humboldt/humboldts-new-normal/Content?oid=20592577>).
5. This project would take water away from existing agricultural (food) customers.

Thank you for considering this request.

Sincerely,  
Marisa Darpino  
District 5

## McClenagan, Laura

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**From:** Sarah Brooks <sarahbv72@gmail.com>  
**Sent:** Thursday, June 24, 2021 8:22 AM  
**To:** Planning Clerk  
**Subject:** Public comment re: Humboldt hempire

To Humboldt County planners,

I am deeply concerned about the severe drought and the continued consideration and granting of cannabis permits. Humboldt Hempire Farms LLC APN 223-061-011 is not appropriate for Garberville or any part of the South Fork Eel River watershed at this time. Redway water district where I live directly downstream is implementing conservation restrictions in June! This is not normal and absolutely untenable to continue with business as usual. If we don't treat this drought seriously and understand climate change is likely to cause it to continue we will become a ghost town due to lack of water. Please do your jobs and plan accordingly to the resources available. Thank you, Sarah Brooks

## McClenagan, Laura

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**From:** Susan Nolan <snolan@humboldt1.com>  
**Sent:** Monday, December 13, 2021 2:29 PM  
**To:** Planning Clerk  
**Subject:** Humboldt Hempire Farms, PLN-2020-16602

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear planning commissioners,

Thank you for accepting my comments on the Humboldt Hempire Farms cannabis cultivation application, record no. PLN-2020-16602, APN 223-061-011. The planning staff has done a good job of examining the proposal. This is a troubling plan. It bends or breaks the rules, and the applicant himself has a long history of rule-breaking.

First, the proposed project is in conflict with the CCLUO.

As planning staff points out in their recommendation, the project is to be sited in an area where mature trees were growing in 2016 and removed without permit, in violation of Section 314-55.4.6.4.2. This is clearly documented in aerial photos. In addition, I would like to point out that the project is reliant on bladders for irrigation, and bladders are prohibited in the CCLUO (Section 55.4.12.8). No provision is made in the ordinance for accepting bladders which were permitted and pre-existing. There is a provision for bladders from pre-existing (unpermitted) grows to continue in use for two years, but those bladders must be removed and replaced within two years of permit approval. However, that was not invoked in this plan approval. The earlier decision to allow these is not in line with the CCLUO and opens the door for other operators to set up permitted bladders and later transfer them to cannabis use.

Secondly, the applicant has a long history of outlaw involvement with cannabis. Mr. Jeffries was sentenced to six years in prison in 2009 for large scale unpermitted cannabis cultivation and money laundering. This was not a matter of maintaining a small grow at home, but a large criminal enterprise at multiple sites.

After his release, Mr. Jeffries started work in the fall of 2015 on his water bladder project without permits (it was eventually permitted). In addition to the catchment tarps in his eventual permit, he also filled the bladders with water from the river and Connick Creek, having disturbed both streamsites without a permit. CDFW discovered he kept two sets of records for water sales. I would like to point out that the water in those bladders would have been sold to unpermitted grows, as trucked-in water is not allowed for legal grows except in emergencies (55.4.12.2.5).

Besides the various issues with the bladders, an unpermitted grow discovered in 2018. Again, the unpermitted logging; there was a second incident besides the one at the proposed building site.

One difference between permitted and unpermitted grows is that permitted grows get at least 24 hours notice before inspections: plenty of time to switch out the books, move proscribed chemicals offsite, etc.

The sheriff has objected to this project because of a current felony case. The sheriff does not often weigh in on planning decisions.

Everyone deserves a chance to come clean and join the mainstream. But there is no reason to believe that Mr. Jeffries intends to do anything besides get cover for business as usual here. His first operation was entirely outlaw; everything he has done since has mingled legal and illegal activity.

It is widely reported that the price of legal cannabis, which has been much lower than black market, has collapsed to the point where permitted growers are turning back to the black market to make ends meet. Yet Mr. Jeffries is eager to make a large investment in a permitted farm. It would be useful to ask how he intends to make it worthwhile.

Of course the county would like to bring growers into the fold of responsible legal activity. But please consider carefully if this is the kind of project that will take beneficial care of the land, be a good neighbor, and build the Humboldt brand.

Thank you very much,  
Susan Nolan.

**From:** [Tanya Lynne](#)  
**To:** [Planning Clerk](#)  
**Subject:** Re: PLN 2020-16602, for July 1, 2021 Hearing  
**Date:** Monday, June 28, 2021 9:19:44 PM

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Letter of Objection to: PLN-2020-16602  
Parcel Number: 223-061-011-000

Dear Planning Commissioners,

As a neighbor who stewards land sustainably, directly across the South Fork of the Eel River from this proposed Cannabis Cultivation, I humbly request the Humboldt County Planning Commission:

- (a) remove this Special Permit from the July 1, 2021 Consent Agenda, and allow at least 60 days, if not an entire year, for further project review
- (b) require more mitigations for potential impacts this project could cause to scarce water resources and all species who reside here,
- (c) consider all of the other permits in the Eel River watershed that were already in line waiting for your approval, before you attend to this application, and
- (d) discover all future intentions this land owner has for the development of this Zoned-Residential property.

My initial objections to this project were slightly diminished when I learned that the proposed 20 new greenhouses cannot be located in the flood plain of the Eel River. I appreciate the Planning Department for protecting the Streamside Management and Floodplain areas by setting back the proposed greenhouses to an area of the parcel that is already established for residential use.

However, I remain in firm opposition to this proposal. These contestations ought to warrant for further review by Planners and the Commission:

**(1) The use of Water, our most Biologically Valuable (and limited) Resource:**

PLN-2020-16602 claims that 600,000 gallons per year can be sustainably collected from “an 83,000-square foot tarpaulin,” but the Planner assigned to this project admitted to me, he never witnessed those pumps running. The planner witnessed the plan in theory. This Proposal has not been adequately vetted.

I contest that this “tarpaulin” is the true water collection plan of the land owner. I have heard pumps running across the river occasionally and unpredictably, often at night. None of the times I have heard water pumps running were times when rain was falling. If you are doing your due diligence, your site inspectors ought to witness 600,000 gallons of water being collected from the purported collection tarp. I do not believe that is true, or possible in the current Drought. I urge you as Stewards of the remaining water resources in Humboldt County, to honor your agreements to your constituents, and consider any water collected (from the purported rainwater collection tarp, or more likely, from the South Fork of the Eel River) to be a sacred necessity for our human community.

Moreover, according to Humboldt County’s General Plan update, Water Resources and Land Use section WR PL, Humboldt county must: “*Ensure that land use decisions conserve,*

*enhance, and manage water resources on a sustainable basis to assure sufficient clean water for beneficial uses and future generations.”* This conservation ethic codified into County Law is good reason to consider the water collected by the land owner to be a resource for the Southern Humboldt community. What about wildfires? What about our gardens, local food production, or the community's need for that water in the future? Have you adequately surveyed the Eel River, or just the South Fork, and determined how much water will fall or run through this area in the future? Local groups like the Eel River Recovery Project and the Friends of the Eel River are adamant that we are in an extended drought. All of the water that exists in California is a precious source of life and habitat for aquatic and terrestrial species, including Endangered Chinook, Coho and Steelhead Salmon.

The General Plan also indicates that the Commission must consider how *“limited water supply or threats to water quality have potentially significant cumulative effects on the availability of water for municipal or residential water uses or the aquatic environment.”* Given the propensity of wildfires in our area, and the near lack of community water storage in Garberville or Redway, this water that the property owner is already collecting ought to be thought of by Planning Commissioners as a critical resource for the community. Although the water is not potable, it could be filtered or treated. Either way, 600,000 gallons of water will be needed by our Community members, for their gardens and livelihoods, and for the protection of our community in the instance of a wildfire.

As the Humboldt County Commercial Cannabis Land Use Ordinance explicitly prohibits the use of bladders for irrigation and storage purposes, this entire plan seems contradictory to the General Plan. According to ORD#2599 CCLUO, Section: [55.4.5.10](#): *“The County reserves the right to reduce the extent of any Commercial Cannabis Activity, including but not limited to the area of cultivation, allowed under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed where the Commercial Cannabis Activity is located, will not support water withdrawals without substantially adversely affecting existing fish and wildlife resources.”* Well, there’s clear legal basis for denying this project, until it can be adequately proven that (a) the Eel River has enough water flow to support the Communities of Redway, Garberville, Phillipsville, Miranda and beyond, in addition to this project and (b) an Environmental Impact Report is completed that proves there will not be an impact from collecting Millions of gallons of Rainwater, on all of the Species and Communities that rely on the South Fork Eel River.

According to the Planning Staff report on the project, *“The California Department of Fish and Wildlife objected to this application when it was originally scheduled for the Zoning Administrator and asked that it be heard by the Planning Commission. CDFW has asked why the county is considering permitting cultivation that utilizes the existing water bladders and has commented that the project appears to be located in the flood zone and riparian setbacks. The proposed cultivation is outside of the mapped flood plain and is over 200 feet from the edge of riparian vegetation.”* I echo the concerns of CDFW. The water that is collected in the bladders below Garberville ought to be kept for Community use.

Please, really ask yourself: If the water resources the land owner is collecting are used to create more Cannabis, in a market already flooded with Cannabis and with diminishing prices on that commodity - is that the best allocation of Humboldt County’s limited water resources? Is this the best utilization of some of the only flat, Residential land remaining in all of Southern Humboldt?

## **(2) The Lack of Mitigation of Potential Impacts to the Eel River and all of its Constituents**

### Runoff:

There are no mitigation measures described in any part of this proposal for the runoff from 20 large greenhouses directly adjacent to the South Fork of the Eel River, which is widely known as a critical habitat for Endangered Salmon. In fact, Salmon are not mentioned in any part of the Planning review. If any fertilizers, especially if any acidic, inorganic, or chemical products are used on this proposed Cannabis Cultivation site, it is likely they will make their way through permeable gravel and rock, directly into the groundwater and the South Fork Eel River.

What's equally concerning about this fact of the lack of Mitigations for runoff, is the fact that the Redway Community Resources District water intake is directly down river from the proposed project site. Any materials that infiltrate or run off into the River will make their way into Community water, which has unforeseen (and un-surveyed) long term impacts on the health of your constituents.

According to the Staff Report on this project, "*Provisions have been made in the applicant's proposal to protect water quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.*" Excuse me, but, what provisions? That sentence is not much description. I see Zero mitigation measures in this proposal to (a) prevent runoff from greenhouses, (b) protect the groundwater from permeability through gravel and rock, where the greenhouses are proposed to be located, or (c) to dispose of any sediment or runoff outside of the stream side management area. Where would the runoff, or any organic matter generated by this massive grow, go?

According to California Streamside Management regulations, Title III, chapter 4:

*61.1.10.1.6 Concentrated runoff will be controlled by the construction and continued maintenance of culverts, conduits, nonerodible channels, diversion dikes, interceptor ditches, slope drains, or appropriate mechanisms. Concentrated runoff will be carried to the nearest drainage course. Energy dissipaters may be installed to prevent erosion at the point of discharge, where discharge is to natural ground or channels.*

*61.1.10.1.7 Runoff shall be controlled to prevent erosion by on-site or off-site methods. On-site methods include, but are not limited to, the use of infiltration basins, percolation pits, or trenches. On-site methods are not suitable where high groundwater or slope stability problems would inhibit or be aggravated by on-site retention or where retention will provide no benefits for groundwater recharge or erosion control. Off-site methods include detention or dispersal of runoff over nonerodible vegetated surfaces where it would not contribute to downstream erosion or flooding.*

*61.1.10.1.8 Disposal of silt, organic, and earthen material from sediment basins and excess material from construction will be disposed of out of the streamside management area to comply with California Department of Fish and Wildlife and the North Coast Regional Water Quality Control Board requirements."*

There is no mention in the Staff Report on this project that would fulfill any of the above noted requirements, as the project is technically just outside of the Streamside Management area. However, as the project site is remarkably close to the 100-year floodplain and the nearest Streamside Management area, I would urge Commissioners to consider the above regulations as applicable to this parcel and project proposal, as a cautionary stance to protect

the County's plant and animal communities.

### Endangered & Threatened Species

According to the Staff Report completed thus far on this Project, *“the Myotis evotis and Bombus occidentalis are the only mapped rare and endangered species of concern on the project site. The nearest Northern Spotted Owl Activity center (HUM0927) is located approximately 2.9 miles west from the project site and the nearest NSO observation is approximately 1.29 miles southwest from the project site.”* I differ - I believe Northern Spotted Owls travel through the area, and I often witness another Threatened Species here: the Bald Eagle. What's shocking to me, however, is there is no mention in this Proposal of the **Endangered Coho, Chinook, and Steelhead Salmon**, whose home could be the Eel River, located perhaps 200 feet from the proposed project. What will be the impact on these imperiled species? Moreover, when was the last review for Northern Spotted Owl completed? This proposal has not completed an adequate Environmental review.

Here is an (inexhaustive) list of species I've witnessed living here, near the South Fork of the Eel River, since I moved to a Cabin on Leino Lane, in Garberville, in April 2019:

California Quail; Barred Owls; Anna's Hummingbird; Hairy Woodpecker; Flycatcher; Scrub and Stellar Jay; Raven; Crow; Nutcracker; Thrush; Tanager; Sparrow; Robin; Pigeon; Tiger Swallowtail; Red-tail Hawk; Osprey; Egret; Duck; California Sister Butterfly; Water Strider; Dragonfly; Spiders of many varieties; Bee; Lizard; Snake; Salamander; Frog; Toad; Cicada; Moth; Beetle; Ant; Grasshopper; Banana Slug; Brush Rabbit; Long-tailed Vole; Gray Fox; White tailed Deer (including Fauns); Pacific Dogwood; California Laurel; Alder; Black Oak; California Buckeye; Big Leaf Maple; Cottonwood; Manzanita; Pacific Madrone; Tan Oak; Blackberry; Hazelnut; Monkeyflower; Rose; Pearly Everlasting; California Poppy; Lily; Milk Vetch; Milk Thistle; Sagebrush; Yerba Sancta; Yerba Buena; Redwood; and more!

### Noise

I contest that the noise levels on the property will remain around 45 decibels, as the limited Noise Survey describes. In fact, the property owner frequently and unpredictably engages in loud, industrial scale activity involving any of the following, if not all at once: Loud Machines; Clattering of Heavy Metal; Construction; Destruction; Timber Operations. These activities often exceed Noise levels enough to awaken or disturb myself, my neighbors, and their dogs.

As noted within the report on this Proposed Cannabis Cultivation, *“according to the Humboldt County WebGIS, timber conversions occurred on the southeast portion of the property between the months of June of 2020 and July of 2020. The project is conditioned for the applicant to have a Registered Professional Forrester evaluate the timber conversions and provide a Restocking Plan.”* Can you imagine the noise and heartbreak that occurred for our entire Ecological community during the logging on this property last summer? This trauma was re-activated recently, shortly after my neighbors and I made our opposition to this proposal known publicly - the property owner awoke the neighborhood on June 26th, 2021 at about 7:05am by felling a large, mighty tree (on a bank above the proposed project site) and tearing it apart for several hours. Then on June 27th, 2021, timber operations on the property recommenced at about 6:25am. I believe these activities were disingenuous to the agreement between Humboldt County and the Property owner to Restock and Remediate areas that were previously logged. Moreover, I am deeply offended that the property owner feels it is an



allowable use of his Residential Parcel to loudly Log and disturb our Ecosystem early in the hours on a weekend. It's extremely disrespectful to our entire neighborhood, but especially to all of the plants and animals impacted by the murder of innocent trees.

If the assessment thus far completed only noted "*General noise came from wind and passing cars from a nearby road,*" said survey was not completed at a time the Property Owner is actively working with his Machines. "*Conditions of approval will require noise to be at below 50 decibels at 100 feet which is below the guidance established by the California Department of Fish and Wildlife for protection of the species,*" as noted by Planning Staff. How is this condition being monitored or enforced?

### Light Pollution

I urge the Property Owner to consider the Light Pollution already created by the very bright Security lights attached to his existing structures, which inhibit my night vision and bother my eyes late at night. Moreover, I see no deep discussion in the Staff Report of how our quiet, dark valley will be truly impacted with the presence of 20 Mixed Light, large greenhouses.

According to the Humboldt County General Plan, Section 55.4.12.4  
*"Performance Standard for Light Pollution Control  
Structures used for Mixed Light Cultivation and Nurseries shall be shielded so that no light escapes between sunset and sunrise... Where located on a Parcel abutting a residential Zoning District or proposed within Resource Production or Rural Residential areas, any Security Lighting for Commercial Cannabis Activities shall be shielded and angled in such a way as to prevent light from spilling outside of the boundaries of the Parcel(s) or Premises or directly focusing on any surrounding uses."*

I hope the Planning Commission intends to monitor and enforce that any Security Lighting and Mixed Light Cultivation is fully shielded from the rest of the neighborhood, but especially in the interests of maintaining the surrounding Biologically Sensitive areas for other species use, especially at night. A small amount of Security Lighting or a short glimpse inside a well-lit greenhouse can inhibit night vision that is crucial for many animals' survival.

### **Alternatives to Approving PLN 2020 16602:**

Given that this project would theoretically utilize a substantial amount of the area's rainwater, I urge the Commission to require at least a full year review to ensure monitoring of the proposed rainwater collection, as well as review of the health and viability of the ecosystem in the area.

The Planning Commission should, at the very least, require the applicant to submit further evidence that this plan will Mitigate any potential harms, or reduce the scope of the project. The Mitigation of possible Runoff from Proposed Greenhouses is something that needs further assessment and design.

The Commission should continue the item to a future date at least two months later to allow for more review of potential impacts including: Noise, Light Pollution, Impacts to Habitat, Impacts to Water Resources, and the Community.

I reiterate the fact that 600,000 gallons of water directly benefits Humboldt County when it is

used for Food Agriculture, Drinking Water, and Wildfire Prevention. I guarantee, we will need this water for these uses, more than we need 20 more greenhouses of Cannabis in an already flooded market.

Please, do not authorize any project similar in scope and type, until you have fulfilled Humboldt County's mandate, as per the General Plan, for a long-term Watershed and Groundwater Supply analysis. From Humboldt County General Plan, Section WR - IM11: "Within five years after the adoption of the General Plan Update the County shall prepare a watershed analysis to determine whether the long-term surface and groundwater supply is available, including seasonal, average, dry year, and multiple dry year supplies, and preservation of existing beneficial uses of water. The study shall determine an estimate of the quantity of water available for the level of future development described in the Revised Draft EIR for the CPU. Work with water and wastewater related special districts, regulators, and other appropriate organizations to monitor watershed conditions."

Thank you for contributing your time to our community. I hope you will move to remove this PLN-2020-16602 from the July 1, 2021 Consent Agenda.

Sincerely yours,

Tanya Horlick

215B Leino Lane  
Garberville, CA 95542  
Mailing Address: PO Box 343  
Redway, CA 95560  
(707) 223-3963

## McClenagan, Laura

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**From:** Susan Nolan <snolan@humboldt1.com>  
**Sent:** Thursday, August 26, 2021 1:19 PM  
**To:** Alberts, Chris  
**Cc:** Planning Clerk  
**Subject:** Humboldt Hempire Farms permit

Dear Mr. Alberts,

I attended the hearing for Humboldt Hempire Farms Special Permit hearing yesterday evening and submitted comments, but am not sure my comments made it into the system.

These are the comments I tried to submit:

- 1) Given the applicant's history of twice clearing trees without permit, pumping water from river, and creek and stream alteration, and running several large unpermitted grows and money laundering (for which he was convicted and served time), is any additional monitoring going to be given to this project?
- 2) I would suggest a full EIR for this project, given the sloppy planning document from Stillwater, the many questionable points brought up at the hearing, and the applicant's history of lawbreaking.

I am familiar with this property and happened to be on the river bar when a large backhoe was returning to Randall Sand and Gravel after an unpermitted excavation for water collection on Connick Creek. Legalization was a great step forward for Humboldt County cannabis cultivation, but this is not the sort of operation most of us want to see permitted.

Thank you,  
Susan Nolan.

## McClenagan, Laura

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**From:** Ann Constantino <annconstantino@gmail.com>  
**Sent:** Wednesday, January 12, 2022 8:53 AM  
**To:** Lazar, Steve; Planning Clerk  
**Subject:** Humboldt Hempire PLN2020-16602,

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Planning Clerk and Steve Lazar

Please include a print out of this article as well as the legal document linked in the article to the commissioners for the Jan 20 meeting.

<https://www.courthousenews.com/judge-rules-fema-must-reconsider-floodplains-plan/>

The results of this lawsuit are still being played out. It seems to me that if a federal agency has been proved to have withheld environmental information about the flood plains of Humboldt County, that it is only prudent for the county to deny any cannabis operation reliant on the flood plain.

To grant approval for this project would be in direct defiance of the 2019 federal decision and could leave the county open to litigation.

Please confirm receipt of this email before today's noon deadline.

Thank you,

Ann Constantino  
707-923-7227

# Judge Rules FEMA Must Reconsider Floodplains Plan

*A federal judge in San Francisco ruled Wednesday to block the Federal Emergency Management Agency from moving forward with its plans to offer flood insurance to developers and property owners in 100-year flood zones in California, finding that the agency failed to consider effects development might have on endangered wildlife in those areas.*

JON PARTON / May 15, 2019

(CN) – A federal judge in San Francisco ruled Wednesday to block the Federal Emergency Management Agency from moving forward with its plans to offer flood insurance to developers and property owners in 100-year flood zones in California, finding that the agency failed to consider effects development might have on endangered wildlife in those areas.

Conservation groups Ecological Rights Foundation and Humboldt Baykeeper filed the complaint against FEMA, claiming that the government agency ignored floodplain development issues and should have worked with the Fish and Wildlife Services and National Marine Fisheries Service to address how to protect species and habitats protected by the Endangered Species Act (ESA).

FEMA plans on offering flood insurance to developers in 100-year flood zones in Humboldt, Monterey and Santa Cruz counties.

Under the National Flood Insurance Act, FEMA offers developers affordable flood insurance in order to encourage construction in floodplains. In exchange, developers and communities agree to adopt flood-control and land-use measures in order to reduce flood risks and possible damage. More than 22,000 communities participate in the program, with over 5.6 million insurance policies providing more than \$1.2 trillion in coverage.

As required by the Endangered Species Act, FEMA published a biological evaluation of the affected areas in 2016 but failed to incorporate information from the report in their plans. U.S. District Judge James Donato ruled that by doing so, the agency acted “arbitrarily and capriciously” in excluding the data.

“FEMA made the ‘no effect’ determination without any consideration of possible ESA impacts from floodplain development,” Donato wrote in the 16-page ruling. “Nothing in the [ESA] Evaluation or the administrative record provides a reasoned or reasonable basis for this decision.”

Attorneys for FEMA argued that it was not subject to the lawsuit since the agency has “no role” in issuing local permits for floodplains. Donato disagreed,

finding that the agency is still required to carry out its duties, including incorporation of the ESA evaluation in its actions.

“FEMA’s effort to pigeonhole floodplain development solely as a matter of state and local permits is untenable in light of these factors,” Donato wrote. “The requirement of a permit from a local land use authority for development in a floodplain in no way detracts from or displaces FEMA’s discretion over floodplain management.”

Donato set aside the agency’s “no effect” evaluation of the California floodplains, essentially requiring FEMA to reassess the area.

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### Additional Reads



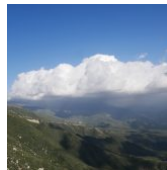
States and tribes urge judge to abolish Trump water rule  
September 30, 2021



Judge moves iconic Joshua tree closer to endangered species protections  
September 21, 2021



With Fish on the Brink of Extinction, Tribes Say Government Must Act  
June 19, 2021



California Senators Unveil Conservation Plans for 1 Million Acres of Federal Land  
May 3, 2021

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ECOLOGICAL RIGHTS FOUNDATION,  
et al.,

Plaintiffs,

v.

FEDERAL EMERGENCY  
MANAGEMENT AGENCY,

Defendant.

Case No. 17-cv-02788-JD

**ORDER RE CROSS-MOTIONS FOR  
SUMMARY JUDGMENT**

Re: Dkt. Nos. 28, 29

Defendant Federal Emergency Management Agency (“FEMA”) administers the National Flood Insurance Program (“NFIP”), which provides affordable federal flood insurance to property owners in participating communities. In 2016, FEMA published a biological evaluation to determine whether proposed revisions to NFIP would affect species and habitats protected under the Endangered Species Act, 16 U.S.C. § 1531 et seq. (“ESA”). FEMA declined to consider any ESA effects from construction or other development in floodplain areas, and did not engage in consultations with the Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service (“NMFS”).

Plaintiffs Ecological Rights Foundation and Humboldt Baykeeper are conservation organizations that have sued under the ESA’s citizen-suit provision to set aside the biological evaluation. 16 U.S.C. § 1540(g); Dkt. No. 1. Plaintiffs contend that FEMA was wrong to ignore floodplain development issues and should have consulted with NMFS and FWS about possible jeopardy to listed species and habitats.

The parties have filed cross-motions for summary judgment. Dkt. Nos. 28, 29. The Court finds them suitable for decision without oral argument. Civ. L.R. 7-1(b). Because the record

United States District Court  
Northern District of California

1 establishes that FEMA acted arbitrarily and capriciously in excluding floodplain development  
2 from the ESA evaluation, plaintiffs’ motion is granted and FEMA’s motion is denied.

3 **BACKGROUND**

4 **I. THE ENDANGERED SPECIES ACT**

5 The ESA was enacted to protect and conserve endangered and threatened species and their  
6 habitats, and embodies “a conscious decision by Congress to give endangered species priority over  
7 the ‘primary missions’ of federal agencies.” *Ctr. for Biological Diversity v. EPA*, 847 F.3d 1075,  
8 1084 (9th Cir. 2017) (quoting *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978)). It authorizes  
9 the Secretaries of Commerce and the Interior, through their agencies, to list plants and animals for  
10 protection, and to designate critical habitats. 16 U.S.C. § 1533. It is undisputed for purposes of  
11 these motions that Humboldt, Monterey, and Santa Cruz Counties are home to several listed  
12 species and critical habitats in floodplain areas. These species include coastal salmon and  
13 steelhead, the northern spotted owl, the marbled murrelet, the California tiger salamander and red-  
14 legged frog, Yadon’s piperia (a native California orchid), the Humboldt Bay wallflower, and other  
15 plants and animals. The habitats comprise some of the most scenic and wild places remaining in  
16 California. *See, e.g.*, Dkt. No. 30 (Beaman Decl.); Dkt. No. 30-1 (Kalt Decl.).

17 The ESA imposes a variety of procedural and substantive requirements to ensure that the  
18 actions of federal agencies do not harm listed species or critical habitats. *Nat’l Ass’n of Home*  
19 *Builders v. Defenders of Wildlife*, 551 U.S. 644, 652 (2007); *Ctr. for Biological Diversity*, 847  
20 F.3d at 1084; *Souza v. Cal. Dept. of Transp.*, No. 13-cv-4407-JD, 2014 WL 1760346 (N.D. Cal.  
21 May 2, 2014). The centerpiece of the ESA is Section 7(a)(2), which provides that each federal  
22 agency “shall, in consultation with and with the assistance of the [Services], insure that any action  
23 authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued  
24 existence of any endangered species or threatened species.” 16 U.S.C. § 1536(a)(2).  
25 Implementing regulations for Section 7 state that each federal agency must review its actions at  
26 the earliest possible time to determine whether they “may affect listed species or critical habitat.”  
27 50 C.F.R. § 402.14(a). In sum, these provisions require that a federal agency must consult with  
28 the appropriate Service when proposing an action that may affect a listed species or designated



1 habitat. *See Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012) (en  
2 banc).

3 The purpose of the consultations is to “draw on the expertise of ‘wildlife agencies to  
4 determine whether [an] action is likely to jeopardize a listed species’ or its habitat, and ‘to identify  
5 reasonable and prudent alternatives’ to avoid those harmful impacts.” *Ctr. for Biological  
6 Diversity*, 847 F.3d at 1075 (quoting *Karuk Tribe*, 681 F.3d at 1020). NMFS provides  
7 consultation on actions involving marine and anadromous species and habitats, and FWS for all  
8 other species and habitats.

9 The gold standard for tapping the expertise of the Services is a “formal” consultation  
10 where the action agency engages the pertinent Service to prepare a biological opinion to determine  
11 whether the action is likely to jeopardize a listed species or critical habitat. *Karuk Tribe*, 681 F.3d  
12 at 1020. An agency can also hold “informal” consultations with the Services to discuss whether  
13 formal consultation is necessary. 50 C.F.R. § 402.13(a). If the agency determines during informal  
14 consultation that the action will not adversely affect a listed species or habitat, and the Service  
15 concurs, “the consultation process is terminated, and no further action is necessary.” *Id.*

16 Whether formal or informal, consultation need be pursued only if the proposed action  
17 “may affect” a listed species or habitat. If an agency determines on its own “that its action will  
18 have ‘no effect’ on a listed species or critical habitat,” consultation is not required. *Karuk Tribe*,  
19 681 F.3d at 1027 (quotation omitted); *see also Defenders of Wildlife v. Zinke*, 856 F.3d 1248, 1252  
20 (9th Cir. 2017).

## 21 **II. THE NATIONAL FLOOD INSURANCE PROGRAM**

22 In 1968, Congress established NFIP in the National Flood Insurance Act to provide  
23 “appropriate protection against the perils of flood losses and encourag[e] sound land use by  
24 minimizing exposure of property to flood losses.” 42 U.S.C. § 4001(c). In effect, NFIP strikes a  
25 deal with state and local governments. The federal government will make affordable flood  
26 insurance available to property owners in risky areas if state and local communities adopt land-use  
27 and flood-control measures that incorporate federal guidelines for reducing flood risks and  
28 damage.

1 Congress tasked FEMA with promulgating the criteria to “guide the development of  
2 proposed construction away from locations which are threatened by flood hazards” and “otherwise  
3 improve the long-range land management and use of flood-prone areas.” 42 U.S.C. § 4102(c). To  
4 participate in NFIP, local communities must adopt ordinances and regulations that meet or exceed  
5 the criteria. 44 C.F.R. § 59.22. If a community implements more stringent flood management  
6 measures, it may be eligible under FEMA’s Community Rating System (“CRS”) for discounted  
7 policy premiums. These “incentives” are meant to provide extra encouragement for “floodplain  
8 and erosion management” and the adoption of “more effective measures to protect natural and  
9 beneficial floodplain functions,” among other goals. 42 U.S.C. § 4022(b). If a participating  
10 community goes in the opposite direction and falls out of compliance with the criteria, it may be  
11 suspended from access to federal flood insurance. 44 C.F.R. § 59.24.

12 NFIP has become a well-established federal program. More than 22,000 communities  
13 participate in NFIP, and over 5.6 million federal flood insurance policies are in effect, providing  
14 over \$1.2 trillion in coverage. FEMA-BE-0027676.<sup>1</sup> The purchase of flood insurance is now  
15 required as a condition of receiving a loan from a federally regulated bank for property located in  
16 the flood-prone areas of participating communities. 42 U.S.C. § 4012a(b)(1).

17 FEMA’s construction and management criteria are quite detailed. Among many other  
18 conditions, participating communities must implement measures “designed to reduce or avoid  
19 future flood, mudslide (i.e. mudflow) or flood-related erosion damages.” 44 C.F.R. § 59.2(b). All  
20 new construction in flood-prone areas must be designed and anchored to prevent flotation,  
21 collapse, or lateral movement. *Id.* § 60.3(a)(3). The criteria specify the siting and design of  
22 sanitary and sewage systems, the minimum elevation of new residential construction, the  
23 parameters of foundations and basements, and minimum drainage around structures to evacuate  
24 floodwaters. *See generally id.* § 60.3(a)(6), (c)(2)-(c)(6), (c)(11). FEMA also requires  
25 participating communities to adopt a “regulatory floodway” designed to prevent surface water  
26

27 \_\_\_\_\_  
28 <sup>1</sup> At the parties’ joint request, the administrative record was filed with the Court in DVD format  
and is available for review at the Clerk’s Office. *See* Dkt. No. 20. For this reason, there are no  
ECF citations for record documents.

1 from rising “more than one foot at any point” during a flood. *Id.* § 60.3(d)(2). Levees and  
2 floodwalls must meet FEMA specifications before being accredited as providing risk reduction.  
3 *Id.* § 65.10. In addition, unless exempted by FEMA, participating communities must “[p]rohibit  
4 encroachments, including fill, new construction, substantial improvements, and other development  
5 within the adopted regulatory floodway unless . . . the proposed encroachment would not result in  
6 any increase in flood levels within the community during the occurrence” of major floods. *Id.*  
7 § 60.3(d)(3)-(4).

8 FEMA publishes maps that identify flood areas throughout the United States. 42 U.S.C.  
9 § 4101(f). The maps demarcate flood zones, which determine whether flood insurance is required  
10 for a mortgage and the specific floodplain management criteria a participating community must  
11 adopt. FEMA periodically updates the maps to stay current with environmental changes and other  
12 factors. Local governments, land owners, and developers can also petition FEMA for a map  
13 change. An owner, for example, who elevates her property above a certain threshold can petition  
14 FEMA to remove it from the flood zone on the map, and thereby unburden it of insurance and  
15 other requirements. Local governments can ask to “map out” of the zone properties that are  
16 located behind a levee certified by FEMA. Developers can petition FEMA before construction to  
17 find out whether their structures will be in or out of a flood zone. *See, e.g.*, FEMA-BE-0027689;  
18 FEMA-BE-0031586-87.

### 19 **III. PRIOR LITIGATION AND THE NEW BIOLOGICAL EVALUATION**

20 The parties are not writing on a blank slate. FEMA has long maintained that Section  
21 7(a)(2) does not apply to its administration of NFIP. Environmental organizations have taken the  
22 opposite position for equally long, and have sued FEMA in several cases to enforce Section 7’s  
23 requirements with respect to NFIP. Federal courts in Florida, Washington, and California have  
24 ruled in favor of the plaintiffs and against FEMA. *See Coal. for a Sustainable Delta v. FEMA*,  
25 812 F. Supp. 2d 1089 (E.D. Cal. 2011); *Florida Key Deer v. Paulison*, 522 F.3d 1133 (11th Cir.  
26 2008); *Nat’l Wildlife Fed’n (NWF) v. FEMA*, 345 F. Supp. 2d 1151 (W.D. Wash. 2004). Each  
27 court accepted or affirmatively held that the plaintiff environmental groups had standing to sue,  
28

1 NFIP was an agency action subject to Section 7(a)(2), and to the extent FEMA made a “no effect”  
2 determination for ESA impacts, it was unsupported and unsustainable.

3 The prior litigation led to consultations between FEMA and the Services, with results that  
4 are germane to this case. The Services have published several biological opinions concluding that  
5 NFIP was likely to jeopardize ESA-listed species and habitats. *See, e.g.*, FEMA-BE-0031572  
6 (Washington); FEMA-BE-0031810 (Oregon); FEMA-BE-0030553 (Florida); *Florida Key Deer*,  
7 522 F.3d at 1139-40 (Florida). FEMA has also consulted with the Services on NFIP’s  
8 implementation in Arizona, New Mexico, Florida, Washington, and Oregon, and adopted  
9 “reasonable and prudent alternatives” identified by the Services. Dkt. No. 41-1 (Grimm Decl.)  
10 ¶¶ 15-31.

11 While this history would seem to foreclose any more ESA litigation over NFIP, there is a  
12 wrinkle here. In prior circumstances, FEMA typically made decisions about potential ESA effects  
13 with little or no explanation of its reasoning. *See, e.g., NWF*, 345 F. Supp. 2d at 1175. FEMA  
14 says it decided on a different approach after the court cases and used proposed revisions to NFIP  
15 as an opportunity to publish a biological evaluation in November 2016. Dkt. No. 41 at 2-4;  
16 FEMA-BE-0027654 (the “Evaluation”). FEMA expressly prepared the Evaluation to assess the  
17 potential effects of NFIP on listed species and designated habitats. FEMA-BE-0027656; *see also*  
18 50 C.F.R. § 402.12(a) (biological evaluation must “determine whether any such species or habitat  
19 are likely to be adversely affected by the action and is used in determining whether formal  
20 consultation or a conference is necessary.”).

21 In the Evaluation, FEMA defined the proposed action as “the implementation of the NFIP  
22 in the United States as modified by recent legislation and proposed program changes to comply  
23 with ESA requirements.” FEMA-BE-0027701. FEMA identified the “action area” as consisting  
24 of the entire United States and over 22,000 communities participating in NFIP. FEMA-BE-  
25 0027660 and 0027706; Dkt. No. 41 at 3. Given the “vast geographic extent of the Action Area,”  
26 FEMA-BE-0027748, it discussed relevant species and habitats in broad categories. It focused on  
27 nine general “primary habitats” and the species they hosted: wetlands, fresh waters, marine waters,  
28 beaches, barren lands, caves, rangelands, forest lands, and perennial snow or ice. *See* FEMA-BE-

1 0027748-52. Much of the Evaluation is devoted to describing species and habitats, and discussing  
2 the threats they face from predation, disease, and other factors. Human threats from land and  
3 water development are frequently identified. *See, e.g.*, FEMA-BE-0027779 (hydrologic  
4 management efforts); FEMA-BE-0027790 (urban development); FEMA-BE-0027799  
5 (infrastructure development).

6 The Evaluation concluded that NFIP “will have no effect on species listed as threatened or  
7 endangered under the ESA or on the designated critical habitat of such species.” FEMA-BE-  
8 0027666. This was so despite “strong evidence” of possible beneficial effects on protected  
9 species, which FEMA ultimately discounted because it had “no data or studies to support when  
10 and where” those benefits might materialize. *See, e.g.*, FEMA-BE-0027879; FEMA-BE-0027881.

11 FEMA made the “no effect” determination without any consideration of possible ESA  
12 impacts from floodplain development. FEMA said it excluded floodplain development from the  
13 scope of the Evaluation because state and local governments control land use permits for  
14 development, and no federal agency action is involved. FEMA-BE-0027659. FEMA also said  
15 that NFIP did not directly or indirectly cause or encourage floodplain development. *See* FEMA-  
16 BE-0027661. It based this statement largely on studies by the Government Accountability Office  
17 (“GAO”) and the American Institutes for Research. FEMA-BE-0027662. FEMA made all of  
18 these conclusions on a national basis without discussing the specific conditions or possible effects  
19 in Humboldt, Monterey, and Santa Cruz Counties, or any other region.

## 20 LEGAL STANDARDS

21 The ESA allows citizens to sue but does not impose a standard of review for an agency’s  
22 decisions. 16 U.S.C. § 1540(g)(1)(A). Consequently, the Court’s review is governed by Section  
23 706 of the Administrative Procedure Act. *Karuk Tribe*, 681 F.3d at 1017; *W. Watersheds Project*  
24 *v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011). Under the deferential standard of the APA,  
25 an agency action will be upheld unless it is found to be “arbitrary, capricious, an abuse of  
26 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *Defenders of Wildlife*,  
27 856 F.3d at 1256-57. An agency action is arbitrary and capricious “if the agency relied on factors  
28 Congress did not intend it to consider, entirely failed to consider an important aspect of the

1 problem, or offered an explanation that runs counter to the evidence before the agency or is so  
2 implausible that it could not be ascribed to a difference in view or the product of agency  
3 expertise.” *Defenders of Wildlife*, 856 F.3d at 1257 (quotation omitted); *see also Motor Vehicle*  
4 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Court’s  
5 deference extends to less than stellar work by an agency, so long as its analytical path and  
6 reasoning can be reasonably discerned. *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747  
7 F.3d 581, 627 (9th Cir. 2014).

8 Although the Court will not substitute its own judgment for that of the agency, it must  
9 “engage in a careful, searching review to ensure that the agency has made a rational analysis and  
10 decision on the record before it.” *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 521 (9th Cir.  
11 2010) (quotation omitted). The Court will not “rubber-stamp” agency decisions that are  
12 inconsistent with a statutory mandate or that frustrate the congressional policy underlying a  
13 statute. *Natural Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1139 (9th Cir. 2016) (internal  
14 quotation omitted). A federal agency’s decision to forego ESA consultation must be reversed if it  
15 failed to consider an important aspect of the problem or offered an explanation that runs counter to  
16 the evidence. *W. Watersheds Project*, 632 F.3d at 496.

17 Summary judgment is an appropriate procedure for deciding challenges under the APA.  
18 *Nw. Motorcycle Ass’n v. USDA*, 18 F.3d 1468, 1471-72 (9th Cir. 1994). Summary judgment may  
19 be granted when there is no genuine issue of material fact and the moving party is entitled to  
20 judgment as a matter of law. *Karuk Tribe*, 681 F.3d at 1017; *Brickman v. Fitbit, Inc.*, Case No.  
21 3:15-CV-02077-JD, 2017 WL 6209307, at \*2 (N.D. Cal. Dec. 8, 2017) (quoting *Celotex Corp. v.*  
22 *Catrett*, 477 U.S. 317, 325 (1986)).

23 Because this is a record review case, the summary judgment motions will be decided upon  
24 a review of the administrative record as it existed at the time of the agency’s decision. *Karuk*  
25 *Tribe*, 681 F.3d at 1017; *Jewell*, 747 F.3d at 602 (quoting *Camp v. Pitt*, 411 U.S. 138, 142 (1973)).  
26 This means that extra-record materials and “post-hoc rationalizations” for or against the agency’s  
27 decision will not be considered for the merits of the ESA claims. *Jewell*, 747 F.3d at 602-03;  
28 *Asarco, Inc. v. EPA*, 616 F.2d 1153, 1158 (9th Cir. 1980). A few courts appear on occasion to

1 have afforded a broader consideration of extra-record materials in ESA disputes, *see, e.g., W.*  
 2 *Watersheds Project*, 632 F.3d at 497, but the Court finds that the material in the administrative  
 3 record is sufficient to resolve the cross-motions without resort to external materials. The Court  
 4 considered plaintiffs’ declarations only for standing purposes, which FEMA raises a passing  
 5 question about, and to a minor extent for undisputed facts about the habitats, but not for the review  
 6 of FEMA’s “no effect” conclusion.

7 As the Court previously advised the parties, they are bound by the portions of the record  
 8 that they have cited and argued in these motions. Dkt. No. 20. “It is not the Court’s task to scour  
 9 the record in search of a genuine issue of triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th  
 10 Cir. 1996) (internal quotation omitted).

## 11 DISCUSSION

### 12 I. STANDING

13 FEMA does not seriously contest plaintiffs’ standing to sue. It makes a glancing mention  
 14 of standing in the opening brief for its motion, Dkt. No. 28 at 13, but omits any further discussion  
 15 of it in the reply brief or in opposition to plaintiffs’ motion. Dkt. Nos. 41, 44.

16 While the Court would be justified in finding that FEMA has effectively abandoned any  
 17 argument against standing, plaintiffs have provided ample and un rebutted evidence establishing  
 18 their right to sue. Plaintiffs filed detailed declarations demonstrating that their members live,  
 19 work, use and enjoy pertinent areas in Humboldt, Monterey, and Santa Cruz Counties, and that  
 20 they derive recreational, scientific, conservation, aesthetic, and educational benefits from the  
 21 critical habitats and listed species in those areas. Dkt. No. 29 at 21-23. Plaintiffs also provided  
 22 undisputed evidence that there are NFIP participating communities in these counties that have  
 23 adopted FEMA’s floodplain management criteria. *See, e.g.,* Dkt. No. 30-1 (Kalt Decl.) ¶¶ 20-22.  
 24 That is enough to establish standing for a violation of the ESA. *Ctr. for Biological Diversity v.*  
 25 *Export-Import Bank of the U.S.*, 894 F.3d 1005, 1012-13 (9th Cir. 2018) (quoting *Lujan v.*  
 26 *Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992)).

### 27 II. THE “NO EFFECT” DETERMINATION

28 The main issue in the cross-motions is whether the “no effect” finding in the Evaluation



1 was arbitrary and capricious in light of the failure to consider potential impacts from floodplain  
2 development. The record establishes that it was.

3 To start, FEMA does not dispute that Section 7(a)(2) applies to its administration of NFIP.  
4 Section 7(a)(2) covers “any action authorized, funded, or carried out by” a federal agency.  
5 16 U.S.C. § 1536(a)(2). The implementing regulations define “action” to mean “all activities or  
6 programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in  
7 the United States or upon the high seas. Examples include . . . actions directly or indirectly  
8 causing modifications to the land, water, or air.” 50 C.F.R. § 402.02.

9 “There is little doubt that Congress intended agency action to have a broad definition.”  
10 *Karuk Tribe*, 681 F.3d at 1020 (internal quotation omitted); *see also Natural Res. Def. Council v.*  
11 *Houston*, 146 F.3d 1118, 1125 (9th Cir. 1998) (citing *Hill*, 437 U.S. at 173). For Section 7  
12 purposes, agency action is established when the agency affirmatively authorized the underlying  
13 activity, and the agency “had some discretion to influence or change the activity for the benefit of  
14 a protected species.” *Karuk Tribe*, 681 F.3d at 1021; *see also Nat’l Ass’n of Home Builders*, 551  
15 U.S. at 669.

16 FEMA does not argue with these principles or the court decisions holding that its  
17 administration of NFIP is subject to Section 7(a)(2)’s requirements. Dkt. No. 41 at 2-3; *see also*  
18 *Florida Key Deer*, 522 F.3d at 1143-44; *NWF*, 345 F. Supp. 2d at 1171-72. The Evaluation was  
19 prepared expressly because FEMA now recognizes its Section 7 obligations. *See* FEMA-BE-  
20 0027656. Consequently, the parties agree that FEMA needed to analyze and document ESA  
21 compliance for NFIP.

22 The problem with the Evaluation is that, after committing to Section 7 review, it arbitrarily  
23 and capriciously carved out floodplain development from scrutiny. Nothing in the Evaluation or  
24 the administrative record provides a reasoned or reasonable basis for this decision.

25 FEMA sought to justify the exclusion by stating it has “no role” in issuing or denying local  
26 permits for floodplain development, so no federal action could be present to trigger Section 7. *See*  
27 FEMA-BE-0027703. But that reasoning simply turned an intentionally blind eye toward the broad  
28 scope of FEMA’s floodplain management authority. The Evaluation expressly acknowledged



1 FEMA’s broad and deep role in establishing detailed floodplain management criteria and  
2 practices, policing participation in NFIP and access to federal insurance based on community  
3 adoption and enforcement of the criteria, adjusting insurance premiums under the CRS in light of  
4 compliance, and several other measures that directly affect how floodplains are managed. *See*  
5 FEMA-BE-0027678-85. The Evaluation also expressly stated that FEMA enjoys discretion in  
6 formulating and implementing floodplain criteria and practices. *See, e.g.*, FEMA-BE-0027702,  
7 0027877. Indeed, federal regulatory discretion over floodplain management is one of Congress’s  
8 express goals in NFIP. *See* 42 U.S.C. § 4102(c).

9 The Evaluation also recognized the environmental aspects of floodplain management and  
10 development. The Evaluation described floodplains as “hydrologically important,  
11 environmentally sensitive, and ecologically productive areas.” FEMA-BE-0027707. It  
12 recognized that they “perform a variety of essential functions” such as “maintain[ing]  
13 biodiversity,” “provid[ing] breeding and feeding grounds” for fish and wildlife, protecting  
14 “habitats for ESA species,” and furnishing “aesthetic pleasure” from recreational opportunities.  
15 FEMA-BE-0027710-0027711. Insurance premiums may be adjusted under the CRS to “protect  
16 natural and beneficial floodplain functions.” FEMA-BE-0027681. And FEMA requires  
17 “compliance with the ESA as a condition of the community’s issuance of a floodplain  
18 development permit.” Dkt. No. 41 at 5.

19 FEMA’s effort to pigeonhole floodplain development solely as a matter of state and local  
20 permits is untenable in light of these factors. The requirement of a permit from a local land use  
21 authority for development in a floodplain in no way detracts from or displaces FEMA’s discretion  
22 over floodplain management. Its denial of any meaningful involvement flies in the face of the  
23 record and artificially truncates the scope of its actions for Section 7(a)(2)’s purposes. *See Conner*  
24 *v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988) (all phases and ramifications of agency action  
25 must be considered under Section 7).

26 FEMA’s fallback position is also not well taken. FEMA suggests that even if federal  
27 agency action was involved, Section 7 would still not apply because NFIP “does not cause  
28 development to occur” as a direct or indirect effect. FEMA-BE-0027741. Any floodplain

1 development that might occur is driven, in FEMA’s view, by factors unrelated to NFIP. *Id.*; see  
2 also Dkt. No. 41 at 5-6.

3 This reasoning is again the product of an unduly myopic view that has no support in  
4 governing law or the administrative record. Section 7(a)(2) applies to any agency action that “may  
5 affect” species and habitats. 50 C.F.R. § 402.14(a). This is a “relatively low threshold” and  
6 “[a]ny possible effect, whether beneficial, benign, adverse or of undetermined character’ triggers  
7 the requirement.” *Karuk Tribe*, 681 F.3d at 1027 (quoting *Cal. ex. rel. Lockyer v. U.S. Dep’t of*  
8 *Agric.*, 575 F.3d 999, 1018 (9th Cir. 2009)) (emphasis in original). Actions that have “any chance  
9 of affecting listed species or critical habitat -- even if it is later determined that the actions are ‘not  
10 likely’ to do so -- require at least some consultation under the ESA.” *Id.* The agency taking  
11 federal action must consider “the direct and indirect effects of [its] action on the species or critical  
12 habitat, together with the effects of other activities that are interrelated or interdependent with that  
13 action.” 50 C.F.R. § 402.02; see also *Sierra Club v. Bureau of Land Mgmt.*, 786 F.3d 1219, 1224  
14 (9th Cir. 2015). Indirect effects include “attenuated consequences” of the agency action. *Sierra*  
15 *Club*, 786 F.3d at 1224 (quotation omitted).

16 The Evaluation was not faithful to these standards when it concluded that NFIP did not  
17 cause or encourage floodplain development. The discussion of this complex issue ran all of three  
18 pages, and relied on an extremely limited selection of sources. FEMA-BE-0027741-43. FEMA  
19 cited data indicating that flood insurance may be underutilized, from which it inferred that factors  
20 other than NFIP must be driving any floodplain development that occurs. FEMA-BE-0027741.  
21 But even if that broad inference were accepted without reservation, it was far too slender a reed on  
22 which to base the sweeping conclusion that NFIP does not encourage development anywhere in  
23 the United States, particularly in light of the other portions of the Evaluation that explain FEMA’s  
24 extensive role in floodplain management. At best, the insurance utilization figures merely beg the  
25 question of whether NFIP affects development.

26 FEMA’s reliance on two other studies did not provide any additional evidentiary support.  
27 The GAO study it cited was published in 1982 and used data from 1960 to 1980. FEMA-BE-

28

1 0027743. How this might be useful or relevant to evaluating floodplain development in 2016, 34  
2 years after publication, was left unsaid.

3 Other weaknesses further undermined the GAO report. It was based on a review of six  
4 “coastal barrier islands” and similar communities that certainly would not adequately represent  
5 conditions and development factors in the more than 22,000 communities covered by the  
6 Evaluation. FEMA-BE-0022459. The study was done at a time when 1.9 million flood insurance  
7 policies were in effect, compared to 5.6 million today, and before the National Flood Insurance  
8 Reform Act of 1994 directed lenders in flood-prone zones to require borrowers to purchase flood  
9 insurance on their property. The study was based on interviews of only 115 people familiar with  
10 the flood insurance program, and even then, 98 of the interviewees “thought that flood insurance  
11 aided development.” FEMA-BE-0022465. And far from definitively concluding that flood  
12 insurance did not cause development, the report found that it offered a “marginal added incentive  
13 to development in the coastal and barrier island communities.” FEMA-BE-0022467.

14 The citation to the American Institutes for Research study published in 2006 was equally  
15 unavailing. This study compared rates of development in areas covered by NFIP to those in areas  
16 outside the program, and reached conflicting conclusions. On the one hand, it stated that NFIP  
17 “can have varying direct and indirect impacts on the amount of development that occurs in  
18 floodplains. Some components of the NFIP have the affect [sic] of discouraging development  
19 while other components of the program act to remove barriers to that development.” FEMA-BE-  
20 0023441. On the other, it said that NFIP did not cause floodplain development because “market  
21 forces,” rather than flood insurance, are a potent source of development. FEMA-BE-0027662. In  
22 addition to suffering from these ambiguities, the report used data collected in or before 1997, 19  
23 years before the Evaluation was published. FEMA-BE-0027743.

24 FEMA made matters worse by simply ignoring evidence that NFIP was, in fact, likely to  
25 jeopardize endangered species and habitats. In April 2016, NMFS determined that NFIP in  
26 Oregon would “directly and indirectly affect anadromous species and their designated critical  
27 habitat, and that the effects would be predominantly adverse.” FEMA-BE-0031958. In 2008,  
28 NMFS concluded that NFIP “is likely to jeopardize the continued existence” of several

1 endangered species in the Puget Sound in Washington State. FEMA-BE-0031572. Similarly,  
2 FWS had made a jeopardy determination in 2010 for several endangered species in the Florida  
3 Keys. FEMA-BE-0030552. All of these biological opinions pre-dated the Evaluation, yet it had  
4 nothing substantive to say about them on the way to making the no effect determination. That was  
5 a substantial and damaging omission. *See Friends of Santa Clara River v. U.S. Army Corps of*  
6 *Engineers*, 887 F.3d 906, 924 (9th Cir. 2018); *Jewell*, 747 F.3d at 620; *W. Watersheds Project*,  
7 632 F.3d at 497.

8 FEMA devotes a considerable portion of its summary judgment briefs to attacking the  
9 Services' findings and trying to shore up the Evaluation in general, but those post-hoc  
10 explanations and rationalizations are a day late and a dollar short in this record review case.  
11 *Jewell*, 747 F.3d at 602-03; *Humane Soc'y of U.S. v. Locke*, 626 F.3d 1040, 1049-51 (9th Cir.  
12 2010). Even if they were considered, they would not save the cause for FEMA. One of its  
13 criticisms is that the Services wrongly treated floodplain development as an agency action. *See*  
14 *Dkt. No. 28* at 7-8. That is not a fair point. The Services defined the "proposed action" as the  
15 provision of flood insurance, flood mapping, and floodplain management -- much as the  
16 Evaluation did -- and evaluated floodplain development as a possible effect of NFIP. *See* FEMA-  
17 BE-0031579; FEMA-BE-0031830. That is entirely consistent with Section 7 and its  
18 implementing regulations, and something FEMA should have done here, too.

19 Other aspects of the Evaluation raise serious concerns as well. The use of a single  
20 evaluation to cover the entire United States is problematic. FEMA defined a national "action  
21 area" for the Evaluation, and determined that the "vast geographic extent" of this area would  
22 permit only "a broad approach" to assessing ESA effects. FEMA-BE-0027748. This wide-angle  
23 perspective unduly obscured important local variables in listed species and critical habitats,  
24 floodplain development practices, and other factors that should have been taken into account.  
25 Given the extraordinary diversity of flora and fauna throughout the United States, it is hard to see  
26 how a single national biological evaluation could ever hope to be genuinely useful or true to  
27 Congress's mandate to protect species and habitats in their local environments.

1 The Evaluation’s treatment of NFIP’s potential beneficial effects on protected species and  
2 habitats was also questionable. As the Evaluation observed at several points, NFIP presents an  
3 opportunity to preserve or even enhance floodplain environments to the benefit of their plant and  
4 animal life. *See, e.g.*, FEMA-BE-0027881 (CRS incentivizes “good floodplain management  
5 practices that protect the habitat of ESA species”); FEMA-BE-0027875 (rate of floodplain  
6 construction has “if anything, decreased in recent years due to” NFIP). This accords with  
7 FEMA’s mandate to “encourage adoption of more effective measures that protect natural and  
8 beneficial floodplain functions.” 42 U.S.C. § 4022(b). FEMA should have taken potential  
9 benefits into account because the “any possible effect” test for triggering consultations includes  
10 beneficial effects. *Karuk Tribe*, 681 F.3d at 1027.

11 As a closing observation, the Evaluation did not give appropriate attention to NFIP’s  
12 effects on how floodplain development actually takes place. NFIP regulations address a wide  
13 array of development modalities, from structural elevation and drainage to the construction of  
14 levees. Yet the Evaluation dedicated no more than a footnote to these regulations, and presented  
15 no meaningful analysis of FEMA’s discretion, through the floodplain management criteria, to  
16 minimize harm to ESA-listed species and habitats.<sup>2</sup>

### 17 CONCLUSION

18 Consequently, the “no effect” determination in the Evaluation was arbitrary, capricious, an  
19 abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). Plaintiffs’  
20 motion for summary judgment is granted, and FEMA’s motion is denied.

21 The Evaluation is set aside and the matter is remanded to FEMA for further consideration  
22 in a manner consistent with this order. *Alliance for the Wild Rockies v. Savage*, 897 F.3d 1025,  
23 1037 (9th Cir. 2018); *see also Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985).  
24 Because FEMA did not make an adequate ESA determination, the administrative record is  
25 incomplete with respect to whether NFIP may affect listed species or designated habitats. For that

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27 <sup>2</sup> The footnote refers to a “detailed description” of the floodplain management criteria in the  
28 Evaluation’s appendix, which in fact contains no detail about those requirements or how their  
modification might affect protected species or habitats. *See* FEMA-BE-0027679; FEMA-BE-  
0027941.

1 reason, the Court will not require consultation with the Services at this time, but FEMA would be  
2 well advised to consider consultation in light of the biological opinions prepared for regions  
3 outside the ones in this case.

4 The Court declines to take up plaintiffs' cursory and undeveloped request to enjoin NFIP's  
5 implementation. Dkt. No. 29 at 23. If plaintiffs believe an injunction is warranted, they may file a  
6 motion within 45 days of this order.

7 **IT IS SO ORDERED.**

8 Dated: May 15, 2019

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13 JAMES DONATO  
14 United States District Judge  
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United States District Court  
Northern District of California

## McClenagan, Laura

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**From:** Ann Constantino <annconstantino@gmail.com>  
**Sent:** Thursday, January 20, 2022 3:54 PM  
**To:** Planning Clerk  
**Subject:** Comments on Humboldt Hempire PLN 2020-16602

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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1. We would like to respectfully request that Mr. Mulder recuse himself from voting on this matter. His involvement with cannabis grows gives the public the perception that he may have a conflict as does his status as a long-time resident. He also has a very close relationship with supervisor Michelle Bushnell who has a close association with the project. She involved herself directly with this application by holding a so-called mediation involving an opponent of the project's plan writer, and herself.

2. The Humboldt County sheriff rejects this project without qualification. There are pending felony charges against the applicant already a convicted felon who did time for cannabis-related money laundering and illegal cannabis cultivation.

3. The applicant has a long history of violations and disregard for environmental protections. In 2014 he was found diverting water and pumping it into 6 unpermitted 200,000 gallon bladders. Later he was able to permit the diversion. He explained to him at that time how to keep records of his water business but it was soon discovered by the county books. It was found that when he installed the bladders he violated environmental protections again and destroyed riparian vegetation. He was again given another chance and had to restore the vegetation. Despite the restoration he was allowed to continue his operations.

In 2018 he was found to be illegally diverting water again. This time to an illegal grow as well as into his property. The staff report show continued disregard for stream integrity and persistent disregard by the applicant. He has been cited for and already cited for. Over and over and over again he knowingly violates and is allowed to continue his operations.

He twice cut trees for his cannabis enterprise but escaped consequence by rearranging his cannabis property into unrelated activity. The planning staff was recommending denial last month for this tree activity.

Based on this history there is no reason to trust that this applicant will abide by the law.

4. The county has fallen behind on CEQA mandated studies of the cumulative effects of cannabis development in the neighborhoods. Jeffries has a permitted indoor grow and a water sales business on a property that has been a homestead and horse pasture during my 49 years of living in the neighborhood. The staff report is incorrect. The average property is between 5-20 acres in this neighborhood. There are two nearby clusters of homesites, one is two acres. The cumulative effect of the applicant's ongoing violations along with his established permitted operations has been studied. The welfare of neighbors and their property values have been negatively affected by the applicant's actions. The applicant has yelled hostilities at me as I walked along the river and I am afraid of him.

5. Because of the applicant's history it is reasonable to suspect that he will attempt to extend the temporary water sales business as he has now made it part of his cannabis infrastructure. He is required to have set aside funds for water sales bladders and restore the area to its former state when the CUP expires in 2030 or thereafter. The county should ascertain the applicant's intentions for his future water storage if he intends to continue his cannabis production until termination. The county should also ascertain that the applicant has the required funds set aside as required given the current downward trend in the industry.

6. The effects of the 2019 lawsuit involving FEMA's mismanagement of environmental information regarding development is being looked at more carefully in the wake of this ruling against FEMA in Humboldt, MA. It would be prudent of the county planning government to hold back on any further permitting of project development until these FEMA matters are resolved.



## McClenagan, Laura

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**From:** Jerry Latsko <latsko.jerry@gmail.com>  
**Sent:** Tuesday, January 11, 2022 8:47 PM  
**To:** Planning Clerk  
**Subject:** Humboldt Hempire Farms LLC proposal

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

This will be my fourth attempt to address the matter of Hempire Farms LLC proposal PLN202016602, APN223-061-011. It is a matter of deep concern that many residents have expressed concern about this attack on nature and, after months have gone by, can the planners and commissioners be expected to have kept a record of all the various objections that we have worked hard on presenting? There was a public meeting held via Zoom that a recording of which most definitely ought to be heard and made otherwise available. The recommendation in December was going to be to deny the permit. The applicant asked for and received the third or fourth continuance of this matter on that date so that the poorly written proposal could once again be revised. So far, in eight years of holding this property, every time he has been found in violation, whether it was pumping water out of the river, installing huge ugly bladders, removing trees or whatever, he has been given the opportunity to "correct" matters and has been penalized not at all. His operation is proposed on a stream that has been determined to be severely threatened by sediment and heat. The people of Humboldt County would never okay this land and water abuse if it were put to a vote. Humboldt County Sheriff's Office has rejected this proposal but no explanation has been given as to why county planners think it is just fine.

The proposal that the county will inspect the property once annually after giving 24 hours notice has to be a joke. The property owner has given no indication that he would adhere to any rules or regulations currently or in the past. We are in a climate situation of permanent drought and year round fire danger. Therefore, allowing one person to hoard millions of gallons of water for personal profit would be irresponsible in the extreme. This is industrial sized taking of water, not somebody catching rain in a barrel for their vegetable garden. For county government to permit this will almost certainly make county government responsible for depriving plants, animals, and humans of vital water and also no doubt will result in a decline in property values. Please deny.

## McClenagan, Laura

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**From:** Margaret Lewis <emell@wavecable.com>  
**Sent:** Monday, January 10, 2022 7:35 AM  
**To:** Planning Clerk  
**Subject:** Hempire Farms plan opposition  
**Attachments:** Hempire Farms plan opposition.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Please read the attached letter.

Thank you.

Margaret Lewis, Garberville

The undersigned residents are strongly opposed to the proposal from Humboldt Hempire Farms LLC PLN 2020-16602 filed 18 August 2020. Assessor's parcel#223-061-011.

This property owner wants to use rainwater catchment bladders to irrigate marijuana plants that he wants to grow in some 20 or so greenhouses. It is not yet known whether or not the greenhouses will be erected in the flood plain but the bladders clearly have been so for several years now. Jessie Jefferies has been found to be in violation at least four times over the last eight years (see attached) for illegal water diversion and obstruction of a stream flow on a stream that is designated as impaired for temperature and sediment by the U.S. Environmental Protection Agency pursuant to the Clean Water Act. He has consistently erected buildings, harvested trees, and changed the landscape first and then received permits after the fact. That includes installing those unsightly bladders, which surely go against California Environmental Act standards.

According to the Cannabis Cultivation Land Use Ordinance, water from such bladders is not be used to irrigate cannabis, yet that is his stated intention. Mr. Ford stated in a public meeting that, since Jefferies has been permitted to sell bulk water from these bladders it is okay to violate that ordinance but that is highly questionable. Also, those huge bladders have been and continue to be an eyesore as they lie on the flood plain.

Humboldt County Sheriff's Office has rejected this proposal but no explanation has been given as to why the county is not concerned.

The proposal that the county will inspect the property once annually after giving 24 hours of notice has to be a joke. The property owner has given no indication that he would adhere to any regulations or rules currently or in the past.

We are in a climate situation of permanent drought and year round fire danger. Therefore, allowing one person to hoard millions of gallons of water for personal profit would be irresponsible in the extreme. This is industrial sized taking of water, not somebody catching rain in a barrel for their vegetables. For county government to permit this will possibly make county government responsible for depriving plants, animals, and humans of vital water and also possibly for a decline in property values.

Margaret Lewis, Garberville

**McClenagan, Laura**

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**From:** Mark C Thurmond <mcthurmond@ucdavis.edu>  
**Sent:** Wednesday, January 19, 2022 3:08 PM  
**To:** Planning Clerk  
**Cc:** Mark C Thurmond  
**Subject:** Letter for Planning Commission  
**Attachments:** Planning Commission Jeffries Permit Jan 19 2022.docx

Dear Planning Clerk,

Could you please give the attached letter to the Commissioners for the meeting tomorrow evening?

It is in regard to the permitting of

Humboldt Hempire Farms, LLC,

Item 11, under G. Continued Public Hearings

Thank you.

Mark Thurmond DVM, PhD  
7654 Kneeland Rd, Kneeland CA  
(530) 574-2530

Re: Permitting for  
Humboldt Hempire Farms, LLC,  
Special Permit Record Number: PLN-2020-16602  
Assessor's Parcel Number: 223-061-011

January 19, 2022

To: Humboldt County Planning Commission  
From: Mark Thurmond

I am asking Commissioners to carefully consider the accumulation of evidence, as well as that lack of critical analyses and mitigation, that argue against approval of this cannabis permit.

#### Human Consequences and Social Fabrics

The many extraordinarily strong letters from citizens, residents, and official agencies provide clear and convincing evidence, experiences, and opinions that speak to the pernicious problems we likely will experience with this site and with this applicant. As noted by the Planner:

*"Most of the specific comments however were relative to the history of violations on this site and by the applicant. Community members expressed their concern that the site is unlikely to be operated in compliance due to this pattern of past practice."*

Ordinance 2.0 tells us, up front, that its (sole) purpose is to ensure health, safety, and welfare of county residents. Yet, in the formal process for evaluating applications, there is no 'box' to check for 'resident welfare', 'resident safety', 'cumulative impacts on community', or anything like that. Thus, because Commissioners are not presented with a checked box, it is strongly suggested that they think about what is being said in the letters and what it all means, taken together.

Some letters revealed apparent harassment and intimidation by the applicant, and the mental anguish and certain fear of retribution experienced by neighbors when the applicant learns of these letters. What will be the consequences of saying nothing? The Commission has not, and will not, hear from those whose fear of recrimination and retribution outweighed their moral commitment to speak out. Fear can be formidable. What happens to society and social structure when we succumb to our fear of the consequences of opposing a cannabis operation, and, instead, acquiesce to silence? What kind of relationship will remain between those who chose silence over fear and their neighbors and friends who chose steadfast (and fearful) opposition to the certain harm that will befall them and their environment? I suggest the commissioners give quiet thought to how cannabis permitting is and will continue to hurt people and damage community social fabrics, and to whether cannabis is worth it. I have thought about it and conclude that it is not.

#### Proclivity for Recidivism

The gist of information about the applicant's bouts with the law is that it did not involve just one indiscretion, or even two. Rather, these incidents revealed repeated attempts to skirt the law and county codes, time after time, year after year, for years. The evidence presented revealed what appeared to be extensive and well thought out engineering, planning, and building to divert water, and to take what was not theirs to take. Clever vertical business integration delved into a 'laundering' enterprise. Prison term and paying fines did not abate this propensity to side-step the rules.

Knowing all this, does the Commission wish to give this operator 'free rein' over the rules, by granting a permit that allows for 'self assessment' of potential pollutants, water usage, noise, lights, etc.? The

County makes annual evaluations mainly by what it refers to as ‘desk reviews’ because it cannot undertake on-site inspections, allowing operators to ‘self inspect’.. Consequently, we have a situation where the fox will be guarding the hen house, where there is little if any oversight to see what is going on. It seems we have more than enough illegal operators, so why should we create more, only under the pretense of being ‘permitted’ ?

#### To Bladder or Not to Bladder

If the County does not want to follow its own requirement, that bladders not be allowed, then it should remove the requirement. The first reason reason Planning gives for allowing bladders is that

*“the Planning Department believes it is appropriate that this non-diversionary water source be viewed as an acceptable source for on-site cannabis irrigation.” .*

This makes no sense. The source of water is actually rain, not bladders. The second reason given is that the bladders were allowed in a previous permit, so it is ok for this permit (even though it is a violation of the ordinance under which the permit is given). So, do we avoid making the same error as for the previous permit and chose to disallow bladders, which state law also would support, or do we ignore the rules, and contrive some excuse for allowing bladders?

#### Too Much Noise in Noise Metrics

The County’s presentation on noise is inaccurate and misleading. Taking an average of decibel levels makes no sense for two reasons. First, noise (the intensity of sound waves) is measured in decibels, which is a logarithmic scale. Thus, one cannot simply take an average of the decibel level; results would not be uninterpretable. Second, the presentation referred to these ‘averages’ as the ‘ambient’, which is incorrect. The ambient, for purposes of cannabis activities, would be the noise level measured when there was no sound at all being emitted by the operation, as if the operation did not exist. Any average for ambient (calculated as the antilog of the mean logs) should exclude values created by any cannabis operation. In other words, the ambient ‘average’ would not include readings during a bullhorn blast by some employee, which would skew an average toward the high end. Proper thresholds for noise, which should have been addressed in the document, would only allow sound levels to be 6 or 7 decibels above ambient, which is an approximate doubling of the sound level. Thus, the true ambient average was likely much much lower than the 40-45 decibels reported.

#### Mitigating the Lack of Mitigation

We are given this curious statement:

*“The current project was contemplated by the EIR and compliance with the provisions of the CCLUO will fully mitigate all environmental impacts of the project to a less than significant level.”,*

which of course is neither true nor possible. Mitigations were not described and no thresholds or significant level designations were given. It follows that claims of ‘full mitigation’ are nonsense. It goes on to say

*“The proposal to authorize the project in compliance with the CCLUO is fully consistent with the impacts identified and adequately mitigated in the Final EIR.”,*

which also is not true, and hardly possible, in that the FEIR identifies many other impacts not mentioned here (but should have been), many of which are not adequately mitigated in the FEIR, or even in place, as stipulated in the FEIR.

For example, as noted in other letters, there is no mention made of odor, identified by the FEIR as a problem, but for which it had no mitigation. The FEIR also identifies pollutants and stream flow inadequacies, which were not mentioned here. FEIR mitigation was to be by ‘regular in-stream monitoring’ and testing. Of course this is an empty mitigation claim because regular in-stream monitoring and testing simply does not exist here, as confirmed by DFW. A first step to mitigation is testing, observing, and measuring, which is followed by some mitigating action. Here, this first step is not even in place, so clearly, we have no way of knowing if stream flow has declined to some threshold level (a required CEQA metric also lacking from the FEIR), which would prompt investigation into resumed stream diversion, for which the applicant has demonstrated uncanny abilities. As noted in another letter, contaminating nitrates and nitrites in the river are highly likely with such intensive cannabis cultivation methods, and their cumulative impacts can be quite serious (fish kill, algal blooms, etc). Yet, no mitigation is available from Planning’s document, or, in reality, from the FEIR.

The other problem plaguing the process is that CEQA, the state statute requiring the county to assess cumulative impacts of cannabis cultivation on the environment, has not been followed by the FEIR. At its core, CEQA requires identification and assessment of all cumulative impacts. This does not mean that one potential impact, such as an impact on roads or on ambiance, be singled out and considered independently, without consideration of other cannabis operations or other impacts, as was presented in the Planning report. During the period of review for the FEIR, recommendations and critiques were provided by the Dept Fish and Wildlife, which is a Responsible and Trustee Agency pursuant to the California Environmental Quality Act, California Public Resources Code 21000. In several letters, the DFW made recommendations to the County, including those to correct serious flaws in the FEIR. In its letter of March 2, 2018, for example, it warns “---the FEIR does not analyze the potential for significant and cumulative impacts from cannabis cultivation.”, indicating a failure to comply with a key and fundamental element of CEQA.

The consequence of applying a flawed FEIR to this planning process is that claims of mitigation lack legitimacy because the FEIR does not properly or appropriately represent core principles of CEQA. In addition, the mitigation methods claimed by FEIR simply do not exist. Thus, the question becomes what to do to protect against these impacts when there no enforcement and no mitigation? How do we mitigate the lack of mitigation?

Without systems and programs in place to enforce code and to mitigate impacts, especially in a case with low expectations for, as the planning document purports, ‘bringing operations into compliance’, the only option is to not approve the permit.

Thank you.  
Mark Thurmond DVM, PhD  
Kneeland

## McClenagan, Laura

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**From:** Susan Nolan <snolan@humboldt1.com>  
**Sent:** Wednesday, January 12, 2022 9:08 AM  
**To:** Planning Clerk  
**Subject:** Humboldt Hempire Farms, PLN-2020-16602

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear planning commissioners,

Thank you for accepting my comments on the Humboldt Hempire Farms cannabis cultivation application, record no. PLN-2020-16602, APN 223-061-011. The planning staff has done a good job of examining the proposal. This is a troubling plan. It bends or breaks the rules, and the applicant himself has a long history of rule-breaking.

1) The sheriff has objected to this project because of a current felony case. We do not have any further details to judge for ourselves. However, it is not surprising. The applicant has a long history of outlaw involvement with cannabis. Mr. Jeffries was sentenced to six years in prison in 2009 for large scale unpermitted cannabis cultivation and money laundering. This was not a matter of maintaining a small grow at home, but a large criminal enterprise at multiple sites. After his release, Mr. Jeffries started work in the fall of 2015 on his water bladder project without permits (it was eventually permitted). In addition to using the catchment tarps in his eventual permit, he also filled the bladders with water from the river and Connick Creek, having disturbed both streamsites using a backhoe, without a permit. CDFW discovered he kept two sets of records for water sales.

I would like to point out that the water in those bladders would have been sold to unpermitted grows, as trucked-in water is not allowed for legal grows except in emergencies (55.4.12.2.5).

Besides the various issues with the bladders, an unpermitted grow discovered in 2018. Again, the unpermitted logging; there was a second incident besides the one at the former proposed building site.

Mr. Jeffries began his career as a complete outlaw; since then he has mingled legal and illegal activity, using permitting to gain cover for more profitable extra-legal gain.

One difference between permitted and unpermitted grows is that permitted grows get at least 24 hours notice before inspections: plenty of time to switch out the books, move proscribed chemicals offsite, etc.

2) The project is reliant on bladders for water, but bladders are prohibited in the CCLUO. Specious reasoning is employed to get around this objection, but none of those workarounds are mentioned in the CCLUO:

**"55.4.12.8 Performance Standards for Water Storage Bladders & Above-Ground Pools, and similar**

**vessels** f) Use of bladders, above-ground pools, and similar vessels is prohibited. Where a Pre- Existing Cultivation site utilizes any of these means for water storage, removal and replacement with a substitute approved method of water storage (e.g. tank(s), reservoir, etc.) shall be completed within 2 years of provisional permit approval. “ This is the entire statement on bladders, and it does not mention any of the exceptions mentioned by the planning department.

Aside from violating the county’s own rules, bladders are not allowed under the state’s cannabis regulations.

3) Much of the produce of this plan is likely to end up in the illegal market. Aside from the applicant’s history, the collapsing price of legal cannabis argues this. It’s widely reported that permitted growers are returning to the black market to make ends meet. Given the expansion of legal and illegal cultivation around our state as well as in other states, this trend can be expected to continue and strengthen. A wise investor would not be pouring money into permitting new projects intended for the legal market.

Of course the county would like to bring growers into the fold of responsible legal activity. But please consider carefully if this is the kind of project that will take beneficial care of the land, be a good neighbor, and build the Humboldt brand.

Thank you very much,



Susan Nolan.