



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

3015 H Street Eureka CA 95501
Phone: (707)445-7541 Fax: (707) 268-3792

Hearing Date: September 19, 2019

To: Humboldt County Planning Commission

From: John H. Ford, Director of Planning and Building Department

Subject: **Tohomir Karparov Conditional Use Permit**
Application Number 11294
Record Number: PLN-11294-CUP (CUP-16-219)
Assessor's Parcel Number (APN) 108-015-010

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Please contact Devin Sutfin, Planner, at 707-268-3778 or by email at dsutfin1@co.humboldt.ca.us if you have any questions about the scheduled public hearing item.

AGENDA ITEM TRANSMITTAL

Hearing Date	Subject	Contact
September 19, 2019	Conditional Use Permit	Devin Sutfin

Project Description A Conditional Use Permit for 22,000 square feet of existing mixed light commercial cannabis cultivation.

Project Location: The project is located in Humboldt County, in the Ettersburg area, on the west side of Harrow Road, approximately 7,300 feet north from the intersection of Harrow Road and Wilder Ridge Road, and 3,600 feet north from the intersection of Harrow Road and a private drive, on the property known as 1310 Harrow Road.

Present Plan Land Use Designations: Timber Production (T)

Present Zoning: Agriculture Exclusive (AE); Timberland Production (TPZ)

Application Number: 11294

Case Number: CUP-16-219

Assessor Parcel Numbers: 108-015-010

Applicant

Tihomir Karparov
1310 Harrow Road
Garberville, CA 95542

Owner

Siana Nikokov
2617 Windspinner
Las Vegas, NV 89135

Agent

Timberland Resource
Consultants
165 South Fortuna Boulevard
Fortuna, CA 95540

Environmental Review: The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines.

State Appeal Status: The proposed project is NOT appealable to the California Coastal Commission

Major Issues: Inconsistency with Humboldt County Code, lack of adequate information to support making required findings for approval, and an unresolved expansion violation.

TIHOMIR KARPAROV
Case Numbers CUP-16-219
Assessor's Parcel Number 108-015-010

Recommended Commission Action

1. Describe the application as part of the Consent Agenda;
2. Survey the audience for any person who would like to discuss the application;
3. If no one requests discussion, make the following motion to deny the application as part of the consent agenda:

Find the project exempt from environmental review pursuant to State CEQA Guidelines Section 15270, make the finding that the project site is in violation of Humboldt County Code and that the applicant has not provided the County the information necessary to make the required findings for approval and adopt the Resolution denying the proposed Tihomir Karparov project.

Executive Summary: For Planning Commission consideration is an application under the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) for a Conditional Use Permit for Tihomir Karparov consisting of approximately 22,000 square feet of existing mixed light cannabis cultivation. The proposed project is located on Assessor's Parcel Number (APN) 108-015-010, which is approximately 58 acres in area. Staff is recommending denial of the project because Humboldt County Code (HCC) 314-55.4.8.2.2 requires that the cultivation area be in existence prior to January 1, 2016. The applicant has not provided documentation of prior cultivation per HCC 314-55.4.9.4. Review of the application has determined that cultivation was initiated after January 1, 2016. HCC 314-55.4.8.2.1 does not allow new cultivation to occur in areas zoned Timber Production Zone (TPZ). In addition, a 600,000-gallon pond was constructed after January 1, 2016 without the benefit of County review.

Analysis: The application for a Conditional Use Permit was received on October 11, 2016. The project was removed from processing status on or about March 15, 2018 because staff review discovered new cultivation was initiated without permits. The pond and greenhouses were constructed within the portion of the parcel zoned TPZ. The parcel is split zoned between AE and TPZ (Attachment 1).

Analysis of the application materials and satellite imagery did not find evidence of existing cultivation and concluded that new cultivation of approximately 17,500 square feet of greenhouses and 7,600 square feet of full sun cultivation occurred in 2018. The applicant was contacted by letter October 17, 2018 and given 30 days to provide a substantial response to address the violation (Attachment 2). The department was contacted by an agent in response to the October letter and on November 9, 2018 a settlement was proposed including restoration of the site and payment of a \$42,600 penalty.

On March 13, 2019 staff met with an agent in person and requested the same, removal of all cultivation materials and payment of the penalty fee pursuant to the November 2018 settlement. On April 12, staff spoke with an agent by telephone requesting removal of all cultivation materials and payment of the penalty fee to return the project to processing. On April 17, 2019 the department emailed an agent again requesting the same actions for resolution of the violation (Attachment 3).

On April 25, 2019 staff spoke by telephone with a third party interested in acquiring the property and informed them of the required actions to resolve the violation. In addition, staff corresponded with the third party by email on April 23, 2019, July 20, 2019, and August 12, 2019. The third party stated that neither they nor the applicant possessed the funds to resolve the violation (Attachment

4).

Moreover, all five greenhouse skins were removed on or around January 22, 2019. However, staff review of aerial imagery shows a greenhouse that became active again on or around March 30, 2019 until on or around July 7, 2019 (Attachment 5).

As of the date of this staff report the violation remains unresolved, and staff are unable to make the required findings to support recommending approval of this application.

Summary: The submitted application does not include enough evidence to support making the required findings under Section 312-17.1. Because new cultivation was initiated without a permit, the project is not consistent with section 314-55.4.8.1, which states that all commercial cannabis cultivation, processing, manufacture, or distribution of cannabis for medical use shall operate in compliance with this Section, as well as all applicable state and local laws. In addition, staff have made repeated attempts to resolve the violation, yet the violation remains unresolved.

ALTERNATIVES: The Planning Commission could elect to direct staff to work with the applicant to resolve the outstanding issues and continue processing the application in accordance with HCC Section 312-4.1 et seq.

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 19-**

**Record No. PLN-11294-CUP
Assessor Parcel Numbers: 108-015-010**

The Humboldt County Planning Commission makes the required findings for certifying compliance with the California Environmental Quality Act and denies the Tihomir Karparov Conditional Use Permit request.

WHEREAS, On October 11, 2016 Tihomir Karparov submitted an application requesting approval of a Conditional Use Permit for 22,000 square feet of pre-existing mixed light cannabis cultivation located on APN 108-015-010.

WHEREAS, Section 314-55.4.8.2.2 of the Humboldt County Code provides that a permit may be issued for outdoor or mixed-light commercial cannabis cultivation for some or all of the cultivation area in existence prior to January 1, 2016, in zoning districts AE (no parcel size limitation), RA (on parcels of five acres or larger), and AG, FP, DF, FR, U, and TPZ districts (on parcels of one acre or larger) only when possible to bring them into compliance with all applicable standards set forth in this section and to eliminate existing violations as specified in this ordinance. No expansion of the existing cultivation area shall be permitted.

WHEREAS, The County Planning and Building Department has reviewed the submitted application and evidence and was unable to determine that any cannabis cultivation existed on the property prior to January 1, 2016; and

WHEREAS, In 2016 Tihomir Karparov converted timber, graded the property and created a 600,000-gallon pond, and installed five greenhouse structures to cultivate 25,100 square feet of cannabis without proper permits or authorization; and

WHEREAS, The application was removed from processing status in March 2018 because of the apparent cultivation expansion; and

WHEREAS, Tihomir Karparov was contacted by the Department on October 17, 2018 and given 30 days to respond to the violations; and

WHEREAS, On November 9, 2018 a settlement was proposed including restoration of the site and payment of a financial penalty; and

WHEREAS, Staff review of aerial imagery in 2019 showed a single greenhouse active between March 30, 2019 and July 7, 2019; and

WHEREAS, Tihomir Karparov or their representative met with staff March 13, 2019 to discuss violations. However, applicant did not provide requested materials including evidence of removal of expanded area or payment of penalty fee; and

WHEREAS, On April 17, 2019 staff was contacted by an agent, and again staff requested removal of all cultivation materials and payment of the penalty fee; and

WHEREAS, A third party contacted staff April 25, 2019 regarding resolving the violation and were informed again that the penalty must be paid, and cultivation materials removed. Follow up

emails were sent on April 23, 2019, July 20, 2019, and August 12, 2019; and

WHEREAS, The Department has not received a substantial response addressing the violations; and

WHEREAS, 312-17.1 of the Humboldt County Code requires the County to make the finding that the proposed development conforms with all applicable standards and requirements of these regulations in order to approve a permit; and

WHEREAS, The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines; and

WHEREAS, A public hearing was held on the matter before the Humboldt County Planning Commission on September 19, 2019.

NOW, THEREFORE, Be it resolved, determined, and ordered by the Humboldt County Planning Commission that:

1. The applicant has not submitted any evidence to demonstrate pre-existing cultivation on the site.
2. The project is not consistent with Section 314-55.4.8.1 of the Humboldt County Code because Tihomir Karparov has not operated in compliance with state and local laws; and
3. The project is not consistent with Section 314-55.4.8.2.2 of the Humboldt County Code because expansion over the amount of cultivation existing prior to January 1, 2016 has occurred; and
4. The required findings for approval in Section 312-17.1 of the Humboldt County Code cannot be made because the project is inconsistent with Sections 314-55.4.8.1 and 314-55.4.8.2.2 of the Humboldt County Code; and
5. The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines; an
6. Conditional Use Permit Record No. PLN-11294-CUP is denied.

Adopted after review and consideration of all the evidence on September 19, 2019.

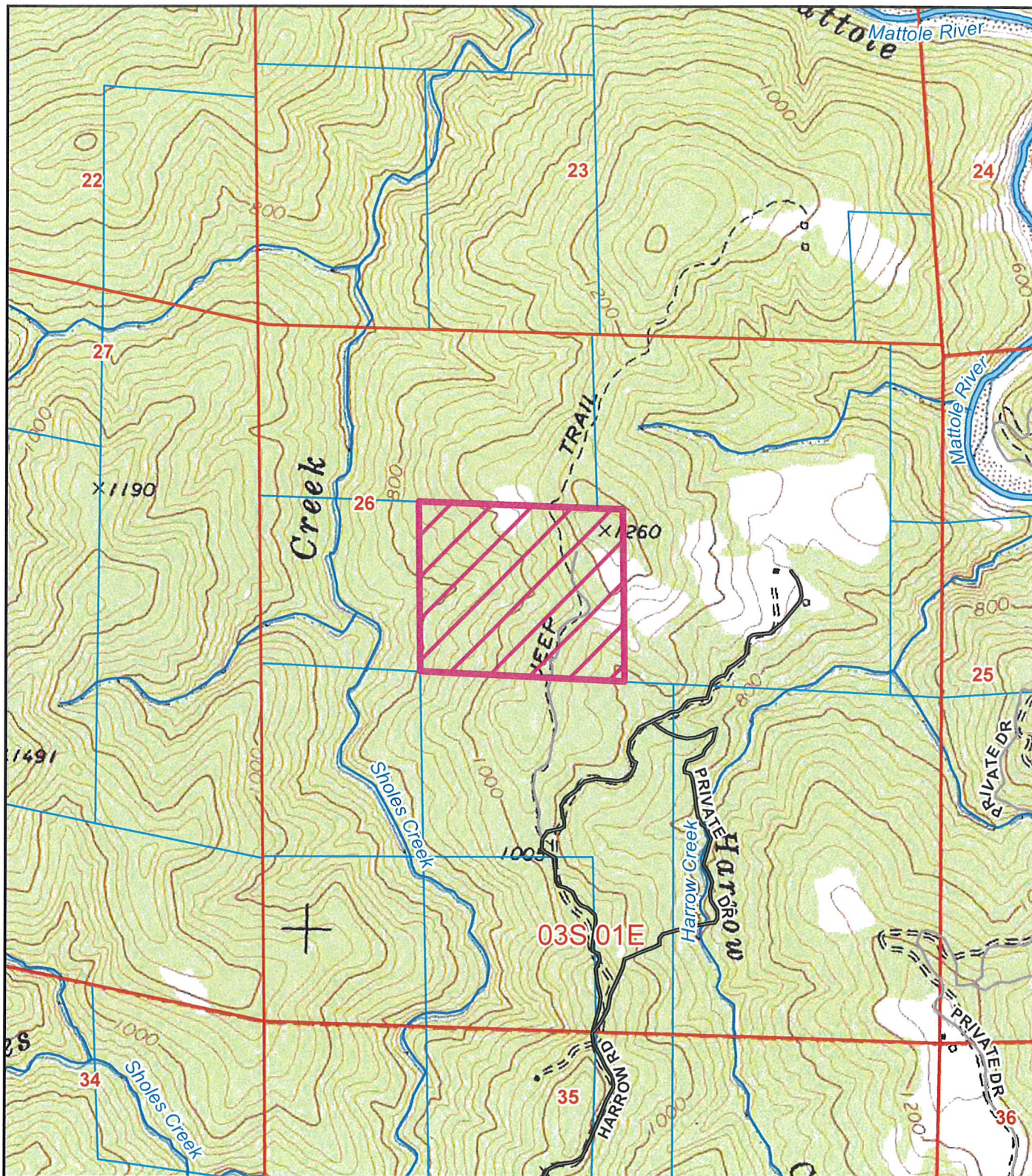
The motion was made by Commissioner ____ and seconded by Commissioner ____.

AYES: Commissioners:
 NOES: Commissioners:
 ABSTAIN: Commissioners:
 ABSENT: Commissioners:
 DECISION: Motion carries

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify

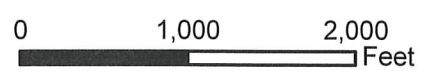
the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

John Ford
Director, Planning and Building Department

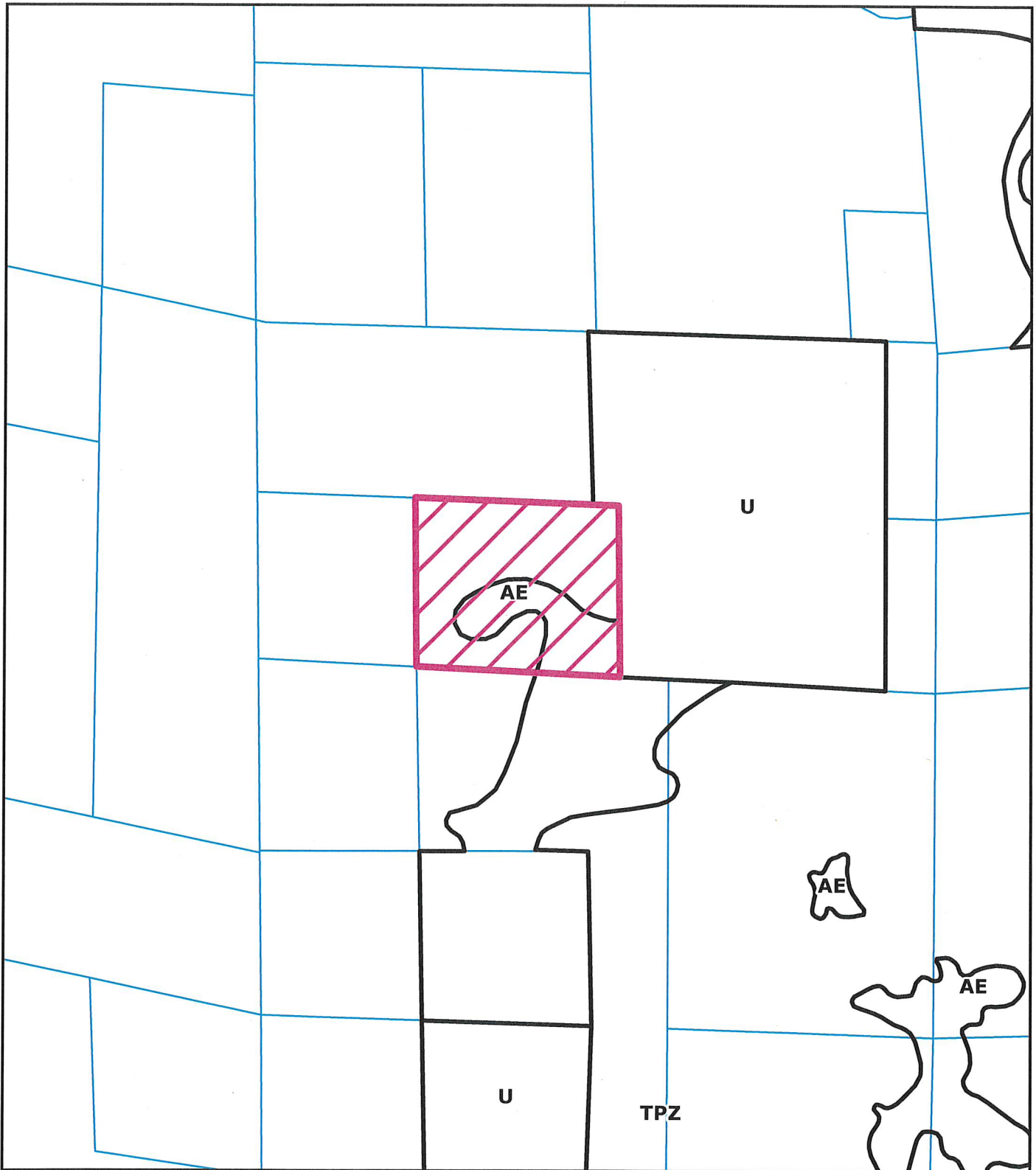


TOPO MAP
PROPOSED TIHOMIR KARPAROV
ETTERSBERG AREA
CUP-16-219
APN: 108-015-010-000
T03S R01E S26 HB&M (HONEYDEW)

Project Area = 

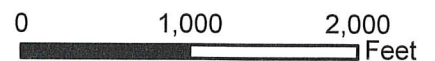


This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

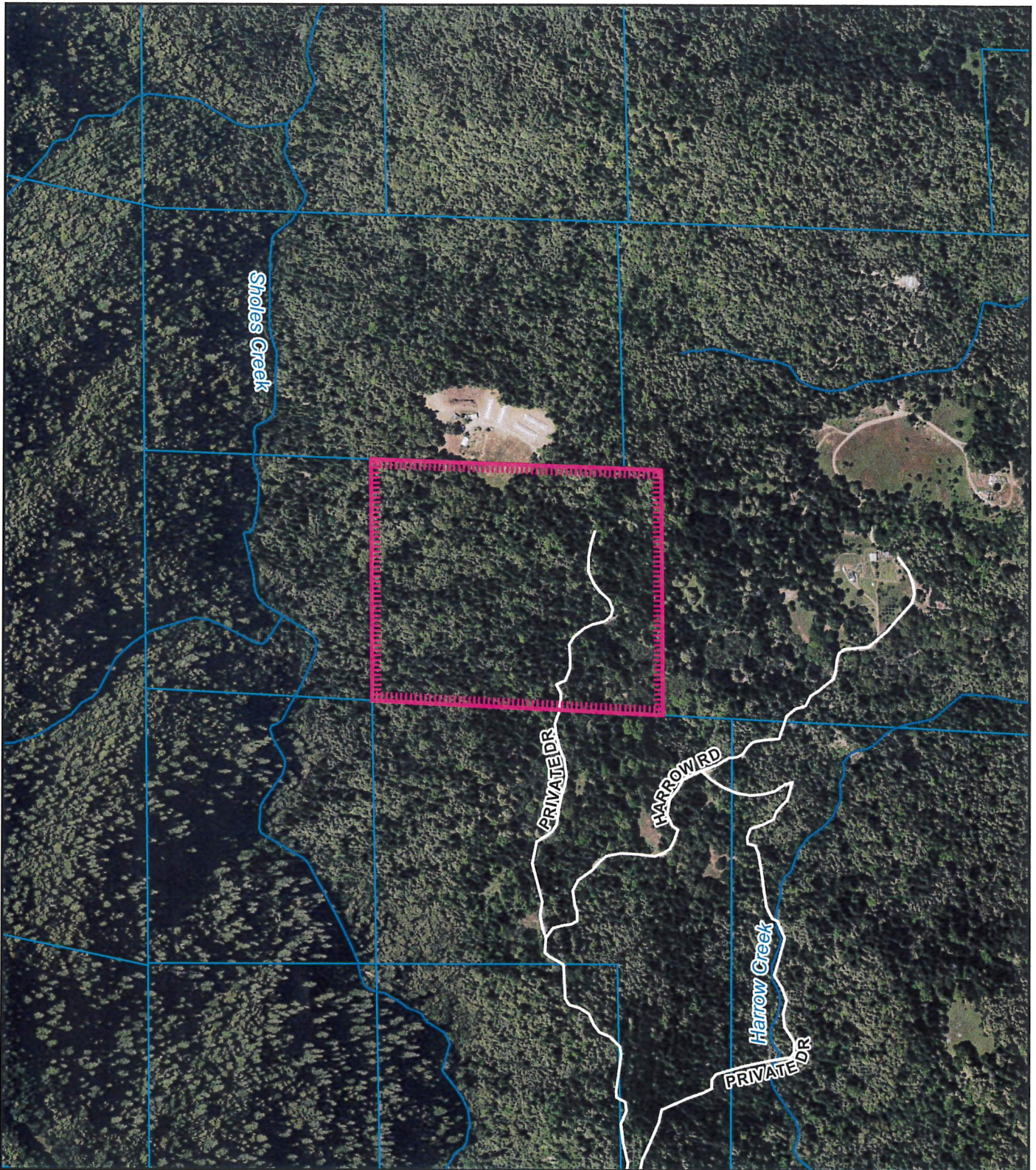


Project Area = 

ZONING MAP
PROPOSED TIHOMIR KARPAROV
ETTERSBURG AREA
CUP-16-219
APN: 108-015-010-000
T03S R01E S26 HB&M (HONEYDEW)



This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

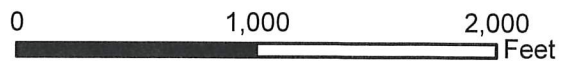


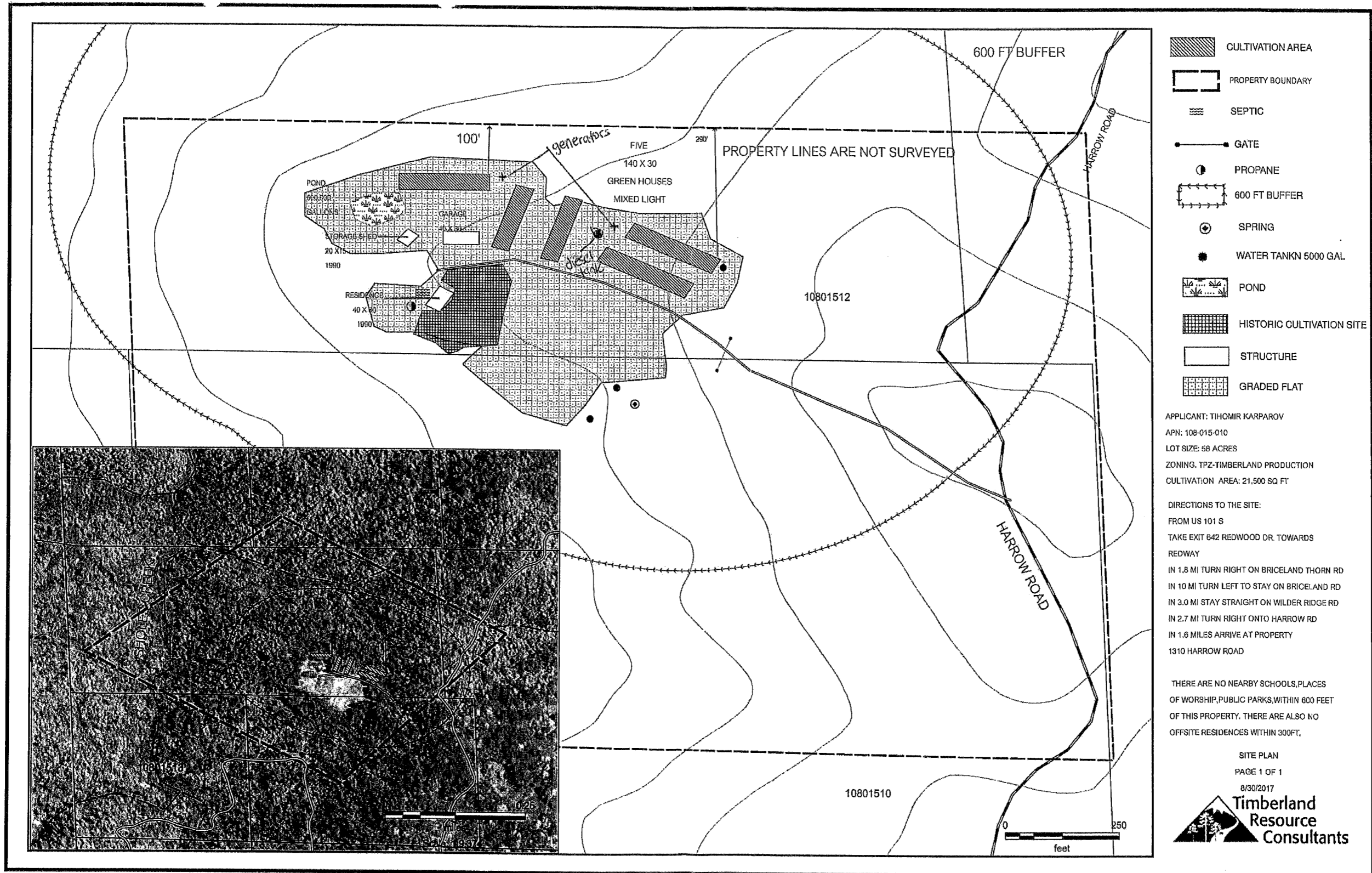
Project Area = 

**AERIAL MAP
PROPOSED TIHOMIR KARPAROV
ETTERSBERG AREA
CUP-16-219
APN: 108-015-010-000
T03S R01E S26 HB&M (HONEYDEW)**



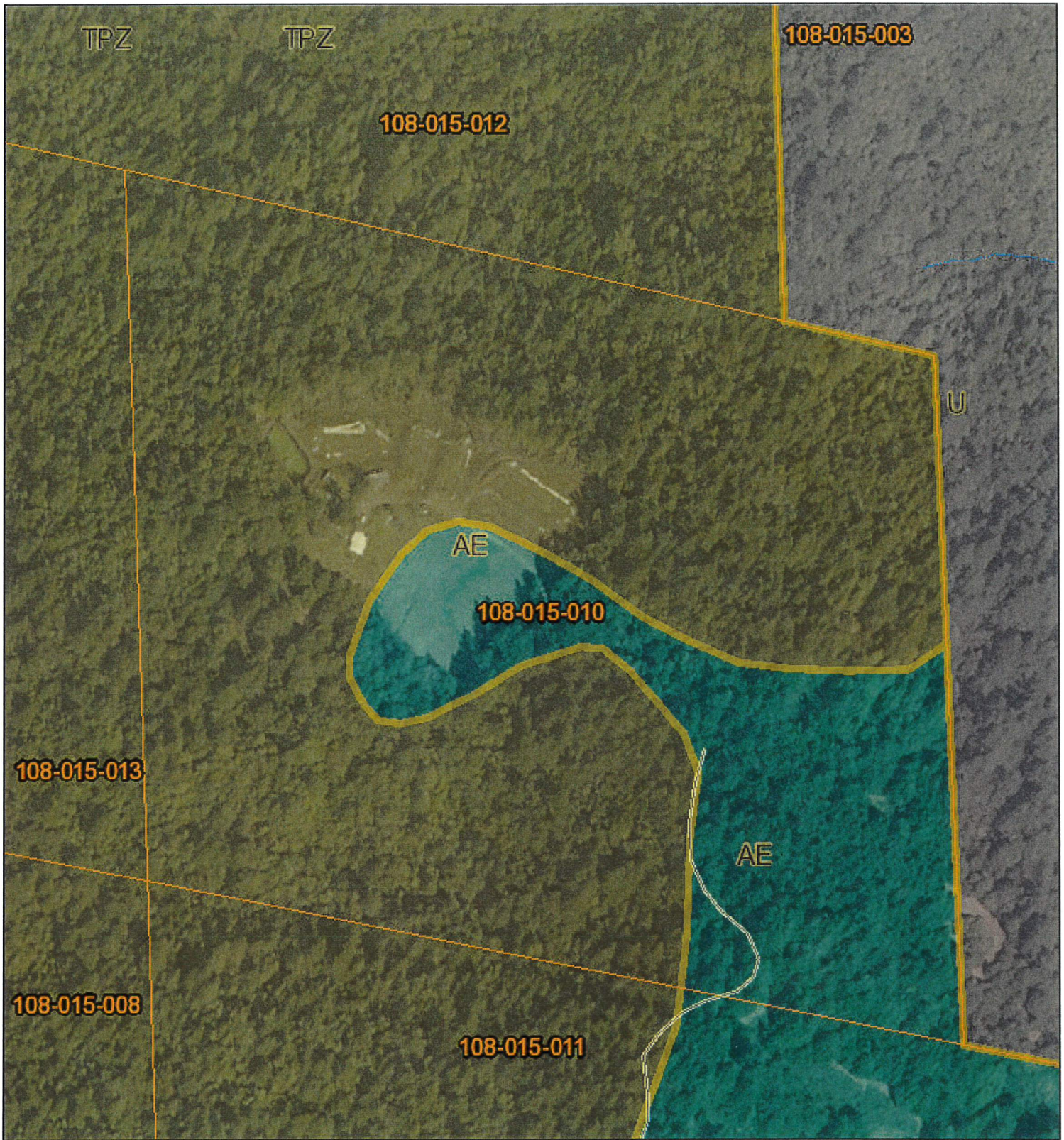
This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.





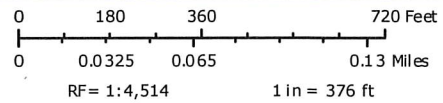
ATTACHMENT 1

Zoning Designation Map for APN 108-015-010



Zoning Designation

Humboldt County Planning and Building Department



- | | | | |
|---------------------------|---------------------------|--------------------------|--------------------|
| Highways and Roads | — Local Roads | Blue Line Streams | — Subsurface |
| — Principal Arterials | — Private or Unclassified | — Perennial 1-3 | — Parcels (Owners) |
| — Minor Arterials | — Major River or Stream | — Perennial >4 | — Zoning |
| — Major Collectors | | — Intermittent | |
| — Minor Collectors | | | |

Printed: September 9, 2019 Web AppBuilder 2.0 for ArcGIS
 Map Disclaimer:
 While every effort has been made to assure the accuracy of this information, it should be understood that it does not have the force & effect of law, rule, or regulation. Should any difference or error occur, the law will take precedence.
 Source: Humboldt County GIS, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Planet Team (2019)

ATTACHMENT 2

October 17, 2018 Violation Letter to Applicant



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CANNABIS SERVICES DIVISION

3015 H Street Eureka CA 95501
Fax: (707) 268-3792 Phone: (707)445-7541

October 17, 2018

Tihomir Karparov
1310 Harrow Road
Garberville, CA 95542

RE: Permit Application No. 11294, Key APN 108-015-010

Dear Tihomir Karparov,

Thank you for continuing to work with the Planning and Building Department on this application to permit commercial cannabis cultivation. A potential violation has been identified on this project area. The County is committed to working with all cannabis applicants to remedy violations and continue toward compliance with all local and state regulations. Your immediate action is needed to resolve the issue and return to compliance.

While verifying the existing cultivation area, staff analysis of aerial imagery showed what appears to be a violation of County Code. Evidence of existing cannabis cultivation prior to January 1, 2016 was not found. The mixed light cultivation area expanded by 17,500 square feet (see attached images). Planning Department policy is to levy a fee of twice the Measure S excise tax for the expanded area. The penalty fee for the expansion of 17,500 square feet of mixed light is therefore \$70,000. Additionally, the outdoor cultivation area expanded by 7,600 square feet resulting in a fee of \$15,200. The total penalty is therefore \$85,200. The area of expansion must be removed.

ACTION NEEDED

The following options are available to you, and your decision must be communicated to this Department in writing within 30 days:

1. Withdraw the application, remove all cannabis related fixtures and equipment from the parcel, and remediate, restore, and restock any disturbed area to their natural condition; OR
2. Respond to this letter with clear and substantial evidence to establish why the cultivation area did not expand. Responses must be received within 30 days of the date of this letter.

If no response is received within 30 days of the date of this letter, the application will be prepared for hearing with the evidence presently in the file. Staff will recommend denial and refer the project for enforcement actions.

If you have questions about this letter, please contact Stevie Luther at 707-268-3737 or sluther@co.humboldt.ca.us.

Sincerely,

Bob Russell
Deputy Director

ENC: Aerial Imagery

CC: Timberland Resource Consultants

Exhibit A:

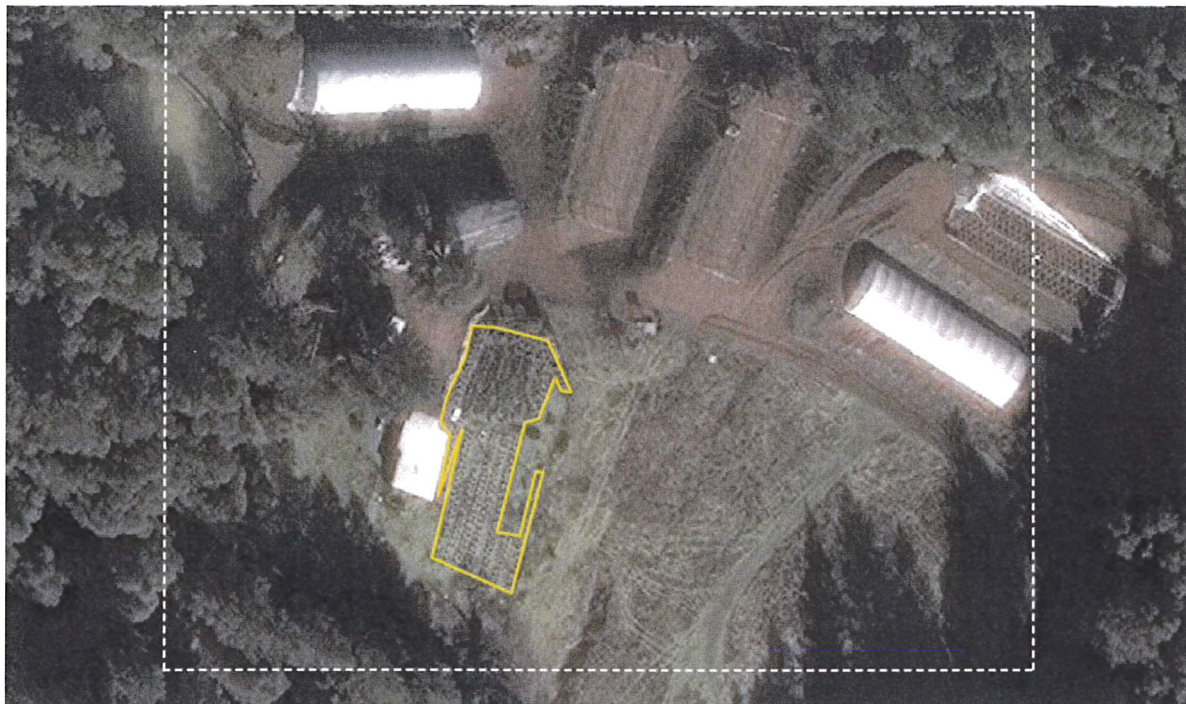
Figure 1: Evidence of site configuration prior to timber conversion, grading, and cannabis cultivation. Image date is 9/18/2015 with 5/23/2018 overlay. No evidence of existing cannabis cultivation.



Figure 2: Evidence of expansion after Jan 1, 2016 in violation of County Code. Mixed light cultivation area totals approximately 17,500 square feet on 5/23/2018.



Figure 3: Additional evidence of expansion after Jan 1, 2016 in violation of County Code. Outdoor cultivation area totals approximately 7,600 square feet on 1/28/2018.



ATTACHMENT 3

April 17, 2019 Email Reiterating Path to Violation Resolution

Sutfin, Devin

From: Castellano, Caitlin
Sent: Wednesday, April 17, 2019 11:43 AM
To: dspinosa@timberlandresource.com
Cc: Batten, Blake
Subject: 11294 Tihomir Karparov status of Vio

Hi Dave – I got your voicemail and tried to call back (725-1897) but it kept ringing.

Recent notes from mid-March says: intends to provide photos of expansion removal and pay fine.

Once this is completed the project can go back in line for processing.

I cc'd Black who I believe was assigned to this case in case you have any additional questions.

Thank you,

Caitlin Castellano, Planner
Current Planning, Cannabis Services
Planning & Building | Humboldt County, CA
3015 H Street | Eureka, CA 95501
Direct: 707-268-3731
Main: 707-445-7541
Fax: 707-268-3792
ccastellano1@co.humboldt.ca.us

ATTACHMENT 4

July 30, 2019 Email Chain Between Agents and Staff

Sutfin, Devin

From: Batten, Blake
Sent: Tuesday, July 30, 2019 3:03 PM
To: David Kaufman
Subject: RE: App 11294 APN 108-015-010 Violation
Attachments: 2.0 AA Mtg. prep questionnaire.pdf

Greetings David,

Per our phone conversation, the penalty fee associated with this parcel can only be waived if the application (11294) is withdrawn and the site is fully remediated as described in option 1 from the October 17, 2018 violation letter.

Once the application is withdrawn and the site has been verifiably remediated, it may be a viable option to pursue permitting under Ordinance 2.0. Please see the attached questionnaire which should be completed and returned to the Department along with the \$150 fee to schedule a 2.0 application assistance meeting.

Let me know if you have any questions.

Sincerely,



Blake Batten
Planner, Cannabis Services Division
[Planning and Building Department](#)
707.268.3739

From: David Kaufman <thedavidkaufman@gmail.com>
Sent: Tuesday, July 30, 2019 1:29 PM
To: Batten, Blake <bbatten1@co.humboldt.ca.us>
Subject: Re: App 11294 APN 108-015-010 Violation

Blake,

I wanted to follow up on this site. Since we spoke last, I have not acquired the property.

This property still lies vacant, unremediated, and an eye sore to the community. I am trying to settle the existing fines the current owner has racked up but \$46,000 is not profitable for me to pay and then remediate the site.

I wanted to reach out to see if I could schedule a call to discuss this application and a potential transfer/receiver-ship I am looking to proceed with. The current application does not have the funds to pay the fine in the letter that Mr. Whittington sent to me. If we can discuss the project further I think I would be willing to re-mediate the project and pay the outstanding fines.

Can we touch base on this at your earliest convenience?

Thanks,

David Kaufman

707 757 4799

On Tue, Apr 23, 2019 at 5:58 PM David Kaufman <thedavidkaufman@gmail.com> wrote:

Blake,

Thursday at 11am works for me. I have talked with Elizabeth but my concerns are pertaining to the deficiencies and Mr. Luther said you were point on that I.

My number is 916 397 5242.

David Kaufman

On Tue, Apr 23, 2019 at 1:52 PM Batten, Blake <bbatten1@co.humboldt.ca.us> wrote:

Hi David,

I have some availability this Thursday around 11:00 AM for a phone call to discuss resolution of the violation. If you send me your phone number I can give you a call on Thursday assuming that time works for you. On another note, I would recommend that you contact Elizabeth Kernahan (ekernahan1@co.humboldt.ca.us) for specific transfer questions.

Thanks,



Blake Batten
Planner, Cannabis Services Division
[Planning and Building Department](#)
707.268.3739

From: David Kaufman <thedavidkaufman@gmail.com>

Sent: Tuesday, April 23, 2019 12:29 PM

To: Luther, Stephen <SLuther@co.humboldt.ca.us>

Cc: Noetic Consulting <noetic.consulting@gmail.com>; Batten, Blake <bbatten1@co.humboldt.ca.us>

Subject: Re: App 11294 APN 108-015-010 Violation

Mr. Batten,

Mr. Luther recommended I email you. I wanted to reach out to see if I could schedule a meeting to discuss this application and a potential transfer/receiver-ship I am looking to proceed with. The current applicant does not have the funds to pay the fine in the letter that Mr. Whittington sent to me. If we can discuss the project further I think I would be willing to re-mediate the project and pay the outstanding fines.

Let me know when would work best for you to meet in person or talk on the phone.

Thanks,

David Kaufman

On Tue, Apr 23, 2019, 12:08 PM Luther, Stephen <SLuther@co.humboldt.ca.us> wrote:

Hi David,

I have been assigned a different project area, and Blake Batten copied here is now handling the conformance cases. Please contact him to discuss resolution of the violation.

Thank you,

Stephen Luther
Planner, Cannabis Division
[Planning and Building Department](#)
707.268.3737

From: David Kaufman <thedavidkaufman@gmail.com>
Sent: Tuesday, April 23, 2019 11:42 AM
To: Luther, Stephen <SLuther@co.humboldt.ca.us>
Cc: Noetic Consulting <noetic.consulting@gmail.com>
Subject: Re: App 11294 APN 108-015-010 Violation

Mr. Luther,

I wanted to reach out to see if I could schedule a meeting to discuss this application and a potential transfer/receiver-ship I am looking to proceed with. The current applicant does not have the funds to pay the fine in the letter that Mr. Whittington sent to me. If we can discuss the project further I think I would be willing to remediate the project and pay the outstanding fines.

Let me know when would work best for you to meet in person or talk on the phone.

Thanks,

David Kaufman

----- Forwarded message -----

From: Luther, Stephen <SLuther@co.humboldt.ca.us>
Date: Fri, Nov 9, 2018, 3:41 PM
Subject: Re: App 11294 APN 108-015-010 Violation
To: Noetic Consulting <noetic.consulting@gmail.com>
Cc: dspinosa@timberlandresource.com <dspinosa@timberlandresource.com>, Ford, John <JFord@co.humboldt.ca.us>

Nathan,

Thank you for the summary follow up. The proposal as outlined looks like one the County can move forward with. There was no verified existing cultivation, and so the false start penalty for the expansion of outdoor is \$42,600. All cultivation materials would be removed. The AE zone is on slopes of 15% or less, there is a rainwater catchment pond, and a prime soils report pending, so I believe the project is eligible to revise the permit being sought to new cultivation under the 1.0 application.

Thank you,

Stephen Luther
Planner, Cannabis Division
[Planning and Building Department](#)
707.268.3737

From: Noetic Consulting [mailto:noetic.consulting@gmail.com]
Sent: Thursday, November 08, 2018 8:59 PM
To: Luther, Stephen <SLuther@co.humboldt.ca.us>
Cc: dspinosa@timberlandresource.com
Subject: App 11294 APN 108-015-010 Violation

Stevie,

Following up on our recent conversation regarding this project.

The applicant originally applied for 22,000 sq ft pre-existing Mixed-Light.

It is clear that the cultivation activity began in 2016 and the applicant was incorrect in their ability to apply as pre-existing.

Further the applicant was confused in the local definition of mixed-light versus outdoor. This site is actually an outdoor operation with no supplemental lighting.

The investment group looking to acquire this project is aware of the problems and wants to seek a workable solution.

The project has enrolled in the NCRWQCB discharge waiver program along with filing an Initial Statement and has a 1600 Agreement in place.

There is a 3-acre conversion in place on this parcel

Upon researching the GIS information we discovered the parcel boundaries to be off by as much as 900 ft. I worked with Jerry on the GIS data and fixed the error.

As such the cultivation activity is located on or around the AE zone of the parcel.

We would like to propose that the applicant pay a fine of \$42,600 for the expansion of the outdoor activity. Immediately remove all cannabis and associated greenhouses.

Additionally, we would propose that this project be eligible under 1.0 for 10,000 sq ft new outdoor on the AE area of the property subject to a soils evaluation. This eligibility would be subject to the Compliance Agreement conditions being fulfilled.

I have attached the 3-acre conversion, water documents along with GIS information and the violation letter.

Thank you for your attention to this matter.

Very Truly Yours,

Nathan Whittington

--

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ATTACHMENT 5

Photos Showing 2019 Cultivation



APN 108-015-010, Apps 11294

TerraServer image dated 03/30/2019





ATTACHMENT 6

REQUIRED FINDINGS FOR PERMIT APPROVAL AND STAFF ANALYSIS

Required Findings: To approve this project, the Hearing Officer must determine that the applicant has submitted evidence in support of making **all** of the following required findings.

The County Zoning Ordinance, Sections 312-1.1.2 (Legal Lot Requirement) and 312-17.1 of the Humboldt County Code (Required Findings for All Discretionary Permits) specify the findings that are required to grant a Conditional Use Permit:

1. The proposed development is in conformance with the County General Plan, Open Space Plan, and Open Space Action Program;
2. The proposed development is consistent with the purposes of the existing zone in which the site is located;
3. The proposed development conforms with all applicable standards and requirements of these regulations;
4. The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare; or materially injurious to property or improvements in the vicinity;
5. The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation) unless the following written findings are made supported by substantial evidence: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized; and
6. In addition, CEQA states that one of the following findings must be made prior to approval of any development which is subject to the regulations of CEQA. The proposed project either:
 - a. Is categorically or statutorily exempt; or
 - b. Has no substantial evidence that the proposed project will have a significant effect on the environment and a negative declaration has been prepared; or
 - c. Has had an environmental impact report (EIR) prepared and all significant environmental effects have been eliminated or substantially lessened, or the required findings in Section 15091 of the CEQA Guidelines have been made.

Evidence Supporting the Required Findings: To approve this proposed project, the Planning Commission must determine that the applicant has submitted evidence in support of making **all** of the following required findings.

1. The proposed development must be consistent with the General Plan, Open Space Plan, and Open Space Action Program; 2. Zoning Compliance; 4. Public Health, Safety and Welfare; and 5. Residential Density:

An analysis of the proposed development regarding these findings was not performed because the applicant did not meet the threshold criteria required in finding #3

3. Conforms with applicable standards and requirements of these regulations:

The proposed project does NOT conform with applicable standards and requirements of the regulations. Specifically, Humboldt County Code (HCC) 314-55.4.8.2.2 requires that the cultivation area be in existence prior to January 1, 2016.

"Approvals for Existing Outdoor and Mixed-Light Cultivation Areas A Zoning Clearance Certificate, Special Permit or Use Permit may be issued for outdoor or mixed-light commercial cannabis cultivation for some or all of the cultivation area in existence prior to January 1, 2016, in zoning districts AE (no parcel size limitation), RA (on parcels of five acres or larger), and AG, FP, DF, FR, U, and TPZ districts (on parcels of one acre or larger) only when possible to bring them into compliance with all applicable standards set forth in this section and to eliminate existing violations as specified in this ordinance. No expansion of the existing cultivation area shall be permitted. The total cultivation area allowed on a single parcel shall not exceed one acre for outdoor cultivation or 22,000 square feet for mixed-light cultivation. (Section amended by Ord. 2559, Sec. 2, 07/19/2016)" (Emphasis added)

The applicant has not provided sufficient documentation of prior cultivation per HCC 314-55.4.9.4. Pre-Application Registration of Existing Cultivation Site

All operators of existing cultivation sites seeking recognition of cultivation activities that occurred on or before January 1, 2016, for purposes of obtaining a Zoning Clearance Certificate or discretionary permit for ongoing commercial cannabis cultivation for medical use pursuant to the CMMLUO shall register with the County of Humboldt Department of Planning & Building within 180 days of the effective date of this ordinance. Registration shall be on a form provided by the Planning Department that shall include the name and contact information of the operator, the address and/or Assessor's Parcel Number of the property where the cultivation site is located, the name and address of the property owner of the parcel, the approximate latitude and longitude coordinates of the cultivation site, and the approximate area (in square feet) under cultivation on or before January 1, 2016. Registrants shall provide sufficient documentation of prior cultivation activity. Registrants shall receive information about their options for obtaining a Zoning Clearance Certificate, Special Permit, or Use Permit as necessary for the commercial cultivation of cannabis for medical use to comply with the MMRSA. Registrants may also be eligible to receive a certificate of good standing from the County of Humboldt for purposes of obtaining priority processing of state license applications, pursuant to the MMRSA, Business and Professions Code Section 19321 (c). (Section added by Ord. 2544, Sec. 2, 01/26/2016) (Emphasis added)

The applicant has not established that the cultivation currently observed on site was in existence prior to January 1, 2016.

Further, the application is inconsistent with Section 314-55.4.11(a) which states that cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws. State and County regulations require a commercial cannabis cultivation site to have

obtained both County approval and a state license to legally cultivate cannabis. The applicant has obtained neither yet has cultivated in both 2018 and 2019 in violation of these laws. Additionally, the applicant has failed to resolve these issues. The evidence therefore shows that the commercial cannabis cultivation is not able to be conducted in compliance with all laws and is therefore inconsistent with Section 314-55.4.11(a).

6. Environmental Impact:

The recommended denial will not adversely impact the environment because it is statutorily exempt from State environmental review per section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines.