

**H2 Equity, LLC**  
Record Number: PLN-11248-CUP  
Assessor's Parcel Number: 221-021-008

**Recommended Commission Action:**

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

Find the project exempt from environmental review pursuant to State CEQA Guidelines Section 15270, make the finding that the project site is in violation of Humboldt County Code and that the applicant has not provided the County the information necessary to make the required findings for approval and deny H2 Equity, LLC, 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 49,650 square feet of existing commercial cannabis cultivation of which 40,868 square feet is outdoor cultivation and 8,782 square feet is mixed light commercial cannabis cultivation. The H2 Equity, LLC, application was submitted on September 28, 2016.

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

**California Department of Fish and Wildlife Violations**

On March 27, 2018, California Department of Fish and Wildlife (CDFW) conducted a site inspection which resulted in the issuance of a *Notice of Violation* (NOV) to the applicant on March 30, 2018. The NOV identified 7 violations of Fish and Game Code:

I.	Class III stream running down the road and discharging sediment to Class II stream
II.	Sediment discharge to Class II stream from pond construction and structural pond failure
III.	Sediment discharge to Class II stream from development of an erosional gully caused by structural pond failure
IV.	Rip rap placed in Class III channel that flows into the new pond, flow was delivering turbid water to impoundment, and then delivering turbid water and causing gully formation downstream to Class II stream
V.	Modified Class III stream captured in newly constructed onstream impoundment
VI.	Water diversion from a newly constructed onstream impoundment
VII.	Grading of Class III stream causing flow disconnection from historic channel for placement of water bag storage

The Notice of Violation has been resolved, as the applicant was required to remediate and restore the conversion area to resolve the Clean Up and Abatement Order (CAO) described below. Additionally, the applicant was issued a revised Lake and Streambed Alteration Agreement to include additional project items.

On June 26, 2018, the project was referred to CDFW for comment. CDFW recommended denial of the application as the applicant had not yet submitted a revised notification for the work identified at the March 27, 2018, site inspection. The referral also noted that the project had the possibility to impact the Northern Spotted Owl, sensitive fish and wildlife resources, and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

**California State Water Resources Control Board Violations**

On April 2, 2018, the RWQCB issued a *Clean Up and Abatement Order* (CAO) for the following violations identified during the site inspection.

i.	The construction of a pond on top of a class III watercourse and seeps, adjacent to a class II watercourse which enters Salmon Creek, Class I tributary to the South Fork Eel River.
ii.	This activity was performed at the Property in October and November 2017, after the start of the rainy season, by an unlicensed contractor, without applicable permits for the land clearing and grading and instream work. The interior and exterior slopes of the unlined, earthen pond had slope failures resulting in actual and threatened sediment discharges to surface waters.
iii.	The Dischargers' activities resulting in the waste discharges to receiving waters were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board. The actual and threatened discharges of earthen waste threaten Salmon Creek and an unnamed Class II tributary watercourse; both watercourses are waters of the state, as well as waters of the United States.

The CAO required the applicant to clean up and abate the location of the conversion area and pond construction to eliminate the existing threat of pollution. The RWQCB required the applicant to complete the following actions by the established deadline:

<p><b>Immediately</b>, the Dischargers shall take all possible steps to prevent pond failure and/or to minimize to the maximum extent possible adverse impacts to water quality and beneficial uses associated with water and sediment releases from the pond. Monitor the effectiveness of the implementation actions and adaptively implement actions. Document actions including but not limited to notes, photographs, sketches, sampling results, etc. Characterize the magnitude (including sediment discharge volume and concentration) and extent of sediment discharges to waters of the state. <b>Beginning April 16, 2018</b>, provide weekly monitoring reports regarding the actions taken and the results. Following the approval of the Interim Cleanup and Stabilization Plan, the monitoring and reporting schedule contained therein shall replace this weekly requirement.</p>
<p><b>By April 11, 2018</b>, the Dischargers shall have conducted a preliminary assessment of the pond and associated receiving waters assessed by appropriately qualified and licensed geologist and engineers. The Dischargers shall submit the site characterization <b>by April 16, 2018</b>.</p>
<p><b>By April 23, 2018</b>, the Dischargers shall submit an Interim Cleanup and Stabilization Plan (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of cleanup and stabilization measures necessary to clean up wastes and trash, and to prevent further erosion and discharge of sediment and other pollutants to Salmon Creek and its tributaries during the remainder of the 2017/2018 wet weather period. The Dischargers shall begin implementation of the Interim Plan <b>within 24 hours of concurrence</b> from the Regional Water Board Executive Officer or his delegee.</p>

**By May 15, 2018**, the Dischargers shall submit to the Regional Water Board a proposed Restoration Mitigation and Monitoring Plan (hereafter "RMMP") acceptable to the Regional Water Board or its delegated officer. **No more than 60 days** after approval of the RMMP by the Regional Water Board or its delegated officer, the Dischargers shall fully implement the RMMP.

**By September 15, 2018**, submit a Completion Report for the RMMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as built of all completed restoration construction and/or abatement measures included in the approved RMMP to restore Salmon Creek and unnamed tributaries to demonstrate the RMMP has been fully implemented.

Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by **January 31** of each year **for at least five years** or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring.

In June of 2019, the applicant submitted a *Restoration, Mitigation, and Monitoring Plan Completion Report* to the RWQCB to resolve the CAO. To date, the CAO has been resolved and the applicant has completed all required restoration. The applicant is required to submit monitoring reports to the RWQCB through spring of 2023.

### **California Department of Fire and Forestry Violations**

On May 17, 2018, a *Notice of Violation (NOV)* was issued by the California Department of Forestry and Fire Protection (CAL FIRE) which documented the unauthorized conversion of 1.3 acres of timberland. Neither a Conversion Permit nor Timber Harvesting Plan was obtained prior to conducting conversion operations. The applicant had constructed a pond in the conversion area without any permits or professional oversight. The property had an approved less than 3-acre conversion, preventing the applicant from obtaining a permit for the conversion as only one less than 3-acre conversion exemption is allowed per parcel. The applicant was required to submit a Timber Conversion Evaluation Report prepared by a Registered Professional Forester documenting the actions required to bring the conversion area into compliance with the California Forest Practice Rules. The application submitted the Timber Conversion Evaluation Report on June 22, 2018. The NOV has been resolved.

### **Humboldt County Code Violations**

On July 10, 2018, the applicant received an Interim Permit from the County of Humboldt which authorized the continued cultivation of 43,560 square feet of outdoor cultivation and 22,000 square feet of mixed light cultivation. The *Compliance Agreement* associated with the Interim Permit advised the applicant that any expansion beyond the existing cultivation area would be a violation of the Interim Permit, Humboldt County Code, and State Law and may result in the cancellation or revocation of the permit.

On May 28, 2019, the Humboldt County Code Enforcement Unit (CEU) received a complaint that the applicant was leaving their mixed light greenhouses uncovered in violation of County Code and International Dark Sky Standards. The applicant was required to submit photo documentation to CEU showing that the applicant had proper shielding for the mixed light greenhouses. On June 10, 2019, the applicant submitted this documentation to CEU to resolve the complaint.

On November 12, 2019, the applicant was issued a *Violation Letter* for the unauthorized expansion of 16,536 square feet of mixed light cultivation, as calculated from satellite imagery. The applicant was required to submit a penalty payment of \$66,144 to resolve the violation. The applicant's agent submitted revised measurements based on on-the-ground measurements, reviewed by the Planning Department, resulting in a revised penalty amount of \$45,940. The applicant submitted the

penalty payment on May 13, 2020, and the Planning Department confirmed that the Interim Permit would be renewed.

On May 15, 2020, a site inspection was conducted by CDFW. CDFW staff found that the applicant was cultivating without the required Interim Permit and State License, and notified the Humboldt County Sheriff's Office. A search warrant was served by the Sheriff's Office with CDFW in attendance. The Humboldt County Code Enforcement Unit was not in attendance. Approximately 14,000 cannabis plants and 1,990 pounds of processed cannabis were eradicated from the subject parcel.

On May 18, 2020, the Planning Department reissued the applicants Interim Permit based on the resolution of the 2019 violation, with the requirement to obtain a State License prior to conducting any cultivation related activity. This action was taken without the knowledge that the site had been cultivating without permits and subject to eradication of plants just three days earlier.

On June 30, 2020, a search warrant was again served by the Sheriff's Office. The Code Enforcement Unit was not in attendance; therefore, the Planning Department was entirely unaware of the execution of this warrant. The applicant had replanted cannabis, without the required State License, and approximately 46,971 cannabis plants were eradicated from the subject parcel.

Because the County Code Enforcement Unit was not in attendance at the May 15, 2020 and June 30, 2020, warrant inspections, Planning staff did not have access to a warrant inspection report and was unaware of the totality of these violations when drafting the initial staff report for the November 4, 2021 hearing recommending approval.

On December 30, 2020, the applicant received a state license allowing them to cultivate during the 2021 cultivation season.

On November 18, 2021, the Planning Department received confirmation that the applicant was receiving water deliveries to serve the operation in violation of Humboldt County Code 314-55.4.10(m) which states that water must be sourced locally (on-site), and trucked water shall not be allowed, except for in emergencies. There is no record of the applicant notifying the Planning Department of an emergency requiring them to receive water deliveries. The applicant stated that the water delivery was not for irrigation purposes but rather was for the employee housing. The restriction on water deliveries is related to all parts of the cannabis operation, including employees.

### **Public Comment**

The project was initially scheduled for the Planning Commission hearing of November 4, 2021, with a recommendation of approval. Upon noticing the project for hearing, the application received 16 public comments recommending that the Planning Commission deny the application. The public comments included the following allegations, some of which have been confirmed and some which were unable to be confirmed:

<b>Public Comment</b>	<b>Substantiation of Comment</b>
Trucked Water Delivered to Site	Confirmed by Applicant
The Well Onsite is not Producing Water	Disproved by Applicant
Diesel Delivered to Site	Confirmed by Applicant
Accidental Ignition of Fires	Confirmed by Applicant
Unpermitted Grading	Confirmed by Staff

Illegal Timber Conversion	Confirmed by Staff
Unpermitted Water Diversions	Unable to Confirm
Unpaid Road Dues	Confirmed by the Applicant
Environmental Degradation	Confirmed by Staff
Light Pollution	Previous Complaint Documented
Law Enforcement Action	Confirmed by Staff
Generator Noise	Unable to Confirm
Excessive Intervention by Salmon Creek Volunteer Fire Department	Unable to Confirm
Excessive Intervention by CAL FIRE	Unable to Confirm

Following review of the public comments, Planning Staff contacted CAL FIRE to obtain record of responses by their department to the subject parcel. A CAL FIRE representative was able to confirm one documented visit to the subject parcel for a medical emergency in 2018. Planning Staff also contacted the local Salmon Creek Volunteer Fire Department but were not able to obtain a comment from their department prior to completion of the staff report.

The Planning Department requested that the applicant submit water hauling receipts if water was trucked to the site. The applicant provided the Planning Department with two receipts which documented the delivery of 16,000 gallons of water to the site during the months of September 2021 and October 2021. The applicant stated that the water was used for domestic purposes, although the residence is utilized by the 3-10 employees as a "shared common area" with a breakroom, restroom, and shared kitchen. The applicants approved site plan does not dedicate any water tanks for domestic use. More importantly, any domestic water used for employees is considered to be related to the cannabis operation and subject to the same restriction on trucked water. Therefore, the water deliveries are a violation of Humboldt County Code 314-55.4.10(m) which states that water must be sourced locally (on-site) and trucked water shall not be allowed, except for in emergencies. There is no record of the applicant notifying the Planning Department of an emergency requiring them to receive water deliveries.

Planning Staff were concerned that the well onsite was not producing water, requiring the applicant to receive water deliveries, and requested that the applicant obtain a pump test for the well. On November 17, 2021, Bushnell Well Drilling completed a pump test which found that the well produces approximately 15 gallons per minute, which should be adequate for the operation.

On November 22, 2021, the applicant was notified that the project was being prepared for the December 16, 2021, Planning Commission hearing with a recommendation of denial as the project is not consistent with section 314-55.4.8.1, which states that permittees and operators shall conduct all commercial cannabis activities in compliance with all applicable state laws and County ordinances. Prior to the hearing the applicant claimed that they had information indicating that the state licenses were active in 2020 and the project was continued to the January 20, 2022 hearing to provide Planning Staff ample time to communicate with the California Department of Cannabis Control regarding the state licenses.

On December 17, 2021, a Special Investigator with the California Department of Cannabis Control confirmed that the state licenses for the subject parcel had expired on December 12, 2019, and also confirmed that there were no active state licenses in place when the search warrants were executed on May 15, 2020, and June 30, 2020. The applicant did however provide emails indicating that the agreement when they purchased the farm was that the previous owner would maintain the state licenses. These emails are included in Attachment 5 to this staff report. The applicant has indicated these emails demonstrate that they believed that they did have a state

license at the time of the May 15, 2020 search warrant and June 30, 2020 search warrant. Staff believes that the record is clear however that the applicant understood that they did not have a County interim permit at the time of the May 15, 2020 warrant inspection and that they did not have a state license at the time of the June 30, 2020 inspection.

**Summary:** The submitted application does not include enough evidence to support making the required findings under Section 312-17.1. Because cultivation was initiated without the required permits on two separate occasions and water was trucked to the site, the project is not consistent with 314-55.4.8.1, which states that permittees and operators shall conduct all commercial cannabis activities in compliance with all applicable state laws and County ordinances.

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