

**Humboldt Hempire Farms, LLC**  
Record Number: PLN-2020-16602  
Assessor's Parcel Number: 223-061-011

**Recommended Commission Action**

1. Describe the application as part of the Public Hearing Agenda.
2. Request Staff to present the project.
3. Open the public hearing and receive public testimony; and
4. Close the public hearing and adopt the resolution to take the following actions:
  - (a) Find that the Planning Commission has considered the Addendum to the adopted Environmental Impact Report for the Commercial Cannabis Land Use Ordinance (CCLUO) as described by Section §15164 of the State CEQA Guidelines;
  - (b) Make all required findings for approval of the Special Permit; and
  - (c) Approve the Hempire Farms, LLC Special Permit as recommended by staff and subject to the recommended conditions.

**Executive Summary:** Humboldt Hempire Farms, LLC seeks a Special Permit to allow for 14,400 square feet of new mixed light cannabis cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Cannabis Land Use Ordinance (CCLUO). The site is zoned Agriculture General and includes a land use designation of Residential Agriculture (RA5-20). The project parcel is located within a ½-mile of the Garberville Airport, and subject to the Airport Land Use Compatibility Plan (ALUCP). Cultivation will occur in six (6) 2,400 square-foot greenhouses (30 ft. x 80 ft.) totaling 14,400 square feet. Large portions of the 30-acre property are characterized by Prime Agricultural Soils, and the applicant intends to cultivate cannabis plants directly in the prime agricultural soil. Ancillary propagation and nursery activities will occur on-site in a separate area (no greater than 1,440 square feet). Artificial lighting used for mixed light cultivation, ancillary propagation nursery, and processing will adhere to shielding and International Dark Sky Association standards as set forth in the CCLUO. Processing such as drying and curing will occur on the second floor of a 5,060-square-foot shop. Drying and curing will also occur in a 2,530 square foot portion on the first floor of the existing 5,060-square-foot shop. Further processing such as trimming will take place offsite at a licensed processing facility. The property owner and three other members of his family all live on the property and will manage and operate the new and existing cultivation activities such that no off-site employees are expected to be needed. Power for the project will be provided by an existing PG&E connection and the applicant will offset energy use through purchase of carbon credits or other power provided by renewable energy sources. The property is developed with a commercial rainwater collection, storage and commercial delivery operation, an existing single-family residence, and a 5,000 square foot commercial indoor cultivation operation (PLN-2019-15441) permitted on September 10, 2019.

**Water Resources**

The parcel is situated along the southside of the South Fork Eel River. The applicant submitted a Biological Survey prepared by SHN Consulting Engineers & Geologists, Inc. dated May 11, 2018. The survey concludes setbacks are in compliance with the County's Streamside Management Ordinance. A maximum of five Mixed-Light harvest cycles will occur annually, resulting in the need for approximately 145,000 gallons of water being used for irrigation. Water for irrigation will be provided by an existing and permitted commercial rainwater catchment, storage and delivery operation that includes 3,360,000 gallons of on-site water storage (PLN-9635-CUP / CUP-15-004 Seasonal Water Solutions). The Use Permit (approved 10/6/2016) has a term of 15 years and allows for water collection, storage, delivery, and sale of non-potable water, primarily for agricultural use. An 83,000-squarefoot tarpaulin is used to collect rainwater, which is then pumped into sixteen (16) 210,000-gallon water bladders used for storage. While the CCLUO (Ord. 2.0) prohibits the use of

bladders for water storage for cannabis irrigation, permitting of these sixteen bladders is tied to a separate entitlement (CUP-15-004) authorizing commercial bulk water storage, sales, and distribution. All bladders have been permitted, installed, and inspected under a building permit issued on September 19, 2018. To comply with County Floor Zone Regulations and Conditions of the Use Permit, installation of the bladders included development of a perimeter berm (approx. 3 feet in height) to contain water in the event of sudden rupture, as well as anchoring mechanisms designed to withstand flood flows and prevent accidental transport. The permit includes conditions requiring that an engineer monitor and evaluate the integrity of the earthen berm at least once every 3 years. It is worth noting that the bladders can remain on-site and be utilized for commercial irrigation purposes regardless of whether this cultivation permit is approved. Accordingly, the Planning Department believes it is appropriate that this non-diversionary water source be viewed as an acceptable source for on-site cannabis irrigation. It should be noted that use of stored water from the bladders for irrigation of cannabis was previously authorized under the Zoning Clearance Certificate that approved 5,000 square feet of indoor cultivation in 2019.

The South Fork Eel River runs along the north side of the parcel. All cultivation and cultivation related activities are proposed outside of the mapped Streamside Management Area's for the South Fork Eel River. All cultivation and proposed structures are located outside of the FEMA Flood Zones. 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 (Attachment 4). The proposed cultivation is outside of the mapped flood plain and is over 200 feet from the edge of riparian vegetation (See Attachment 3).

The site is the subject of a current Notice of Violation (NOV) from CDFW and from the State Water Resources Control Board for an unauthorized water diversion for cannabis cultivation that occurred in 2018 (Attachment 4), prior to county and state authorization of any commercial cannabis on the property. A county code enforcement case was opened in 2018 for violations of the CCLUO and for development occurring in a Streamside Management Area associated with the cannabis cultivation in 2018. The code enforcement case was closed and the violations resolved in January of 2019 however the NOV's from CDFW and the State Water Resources Control Board remain unresolved. At this time the county has no information that indicates that there are any on-going violations related to the currently proposed cannabis cultivation.

### **Tribal Consultation**

The project is located in the Bear River and Sinkyone Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center, Bear River and Intertribal Sinkyone Wilderness Council. The applicant submitted a Cultural Resources investigation prepared by William Rich and Associates dated June 2015. The investigation concluded no cultural resources were identified in the project area during the field investigation. The project has an ongoing condition to include inadvertent archaeological discovery language.

### **Biological Resources**

According to the California Natural Diversity Data Base, 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. Marbled murrelet habitat is mapped approximately 2.32 miles north of the project site. The applicant submitted a Biological Survey prepared by SHN Consulting Engineers & Geologists, Inc., dated May 11, 2018. The Biological Survey concluded, it is unlikely that special status plant and animal species will occur within the project area because the proposed project will occur

entirely within non-native grassland historically used for agriculture and regularly mowed and tilled and covered in several large water bladders. The applicant submitted a 24-hour noise assessment that was conducted from April 22, 2021 to April 23, 2021. According to the assessment, typical noise levels recorded generated an average of 45 dB's across all sites. General noise came from wind and passing cars from a nearby road. The applicant took noise samples from three different locations on the parcel. The first sample was taken along the southeast line gate. The observed ambient noise at the location was passing cars entering the property, gate opening and closing, and wind. The average ambient noise range was 40-45 decibels. The second noise sample was taken at the east property line forest and meadow. The observed ambient noise was wind and noise sourced from the home. The average decibel reading was 40-45 decibels. The third noise sample was taken at the south property line. The observed ambient noise was heavy traffic from Sprowel Creek Road and the wind. The average decibel reading was 35-45 decibels. Staff believes noise from the project will not have direct or indirect impact on any special status species. The applicant shall ensure noise generated from the project does not result in an increase of more than three decibels of continuous noise above existing ambient noise levels at any property line of the site.

### **Access**

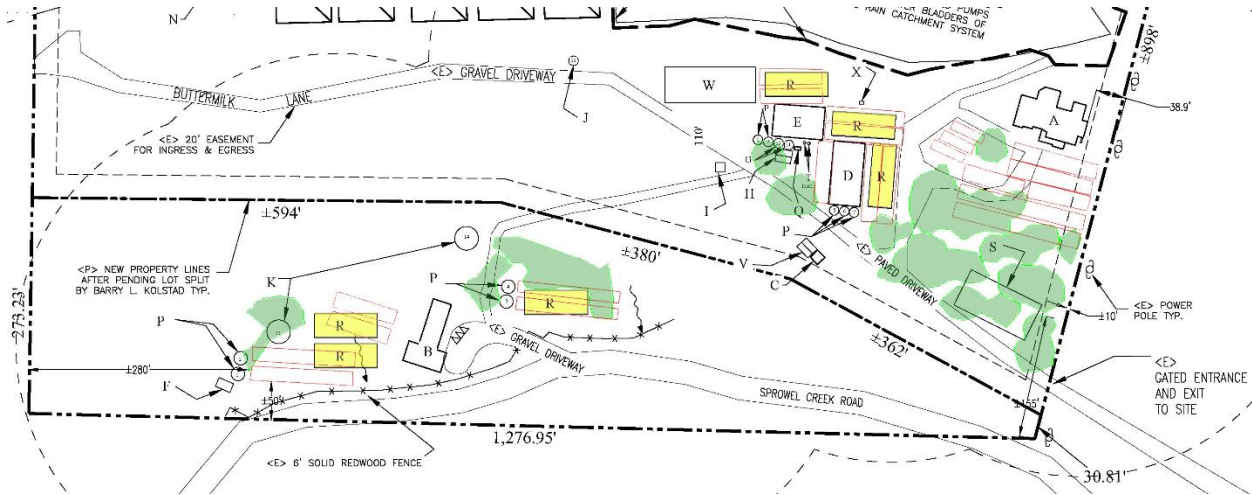
The property is accessed via Private Driveway from Sprowel Creek Road. The applicant submitted a Road Evaluation Report prepared by the Applicant. According to the report, the entire road segment is developed to the equivalent of a road category 4 standard. The project was referred to the Department of Public Works who commented that an existing Avigation Easement is recorded on the subject parcel (#2014-021439-7). The applicant shall conduct all operations consistent with the ALCUP and in a manner that does not attract flocks of birds. Open ponds shall not be permitted. The applicant shall also be advised that County maintained roads may generate dust and other impacts to the farm. The applicant shall locate their farm in areas not subject to these impacts. The applicant shall be responsible for protecting their farms against these impacts. The applicant shall hold the County harmless from these impacts. The applicant is advised that a paved road may not always remain paved and applicants shall locate their farms appropriately. Lastly, the applicant is advised that the amount of traffic on a road will vary over time which may increase or decrease the impacts.

### **Tree Removal, Community Controversy, and Recent Project Revisions**

#### *Tree Removal*

Cutting of mature trees occurred in several areas of the property in both 2020 and 2021, which came to the attention of planning staff during the leadup to the project first being scheduled to appear before the Planning Commission at meetings in July 2021. At the July 15<sup>th</sup> meeting, the project was continued to a date uncertain to allow further investigation of this and other community concerns. A community meeting was held via zoom on August 25, 2021. After performing several site visits and reviewing satellite imagery available through Humboldt County WebGIS it was ultimately determined that some of the trees removed were located within areas targeted for siting of greenhouses used as part of the Mixed-Light cultivation proposal. The applicant insisted on moving forward with the proposal and the project was scheduled to appear before the Commission on December 16, 2021 with staff recommending denial of the project. The basis for this recommendation was conflict with section 314-55.4.6.4.2 of the cannabis regulations, which prohibits the removal of trees in areas proposed for cannabis cultivation and associated infrastructure. Following a site visit and meeting with Department staff on December 15, 2021, the applicant chose to revise the proposal to conform to the cannabis regulations by reconfiguring the project design and confine all cultivation sites and infrastructure to areas that were not forested prior to January 1, 2016. It was requested that the item be continued to the meeting of January 10<sup>th</sup>, 2022 to allow the applicant to perform these revisions to the project and provide for

review and analysis by planning staff. A revised site plan and Operations Plan were submitted on December 22 which reflect a reconfiguration of the greenhouse locations and reduction of the total proposed cultivation area from 1-acre to 14,400 square feet. The following exhibit prepared by staff details areas of recent tree removal using the revised site plan and review of pre and post 2016 satellite imagery.



*Revised Site Plan Analysis - areas outlined in red are previously proposed greenhouse locations, yellow areas are new greenhouse site locations, green areas identify approximate canopy of locations where tree removal occurred in 2020 and 2021*

After performing a comparison and analysis of the proposed project revisions, planning staff have determined that the proposed greenhouses and appurtenant cultivation infrastructure are now proposed in areas of the property that have been non-forested since 2015. For this reason, the project is once again being recommended for approval at this time.

## Community Controversy & History of Violations

This project has generated a substantial amount of concern from members of the public. On August 25, 2021 the planning Department held a community meeting to discuss this project and the concerns of the public. Concern was raised over the amount of water that is proposed to be used for the project and members of the community expressed their opinion that the applicant should be giving the water to the community rather than using it for a commercial venture. 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.

Prior to permitting of the site as a commercial water storage facility with rainwater catchment, the applicant was engaged in an illegal diversion of the South Fork of the Eel River as the means to fill the on-site water bags for an unpermitted commercial water delivery business. Through participation in the county permit process the applicant elected to forgo use of the diversion for the commercial water business and instead chose to develop the site for rainwater capture through a large polyethylene tarp system that collects rainwater and diverts it into the storage bladders.

In 2020, the property was the subject of a Notice of Violation (NOV) (Investigation ID # 11785) from CDFW and from the State Water Resources Control Board (SWRCB) for an unauthorized water diversion for cannabis cultivation that occurred in 2018, prior to county and state authorization of any commercial cannabis cultivation on the property. A county code enforcement case was opened in 2018 for violations of the CCLUO and for development occurring in a Streamside Management Area associated with the unpermitted cannabis cultivation in 2018. The code enforcement case was closed and the violations resolved in January of 2019. On August 25, 2020, the applicant provided a detailed response via email to the State Water Resources Control Board Cannabis Enforcement Unit. In a letter dated April 20, 2021, the SWRCB Enforcement Unit indicated that they were closing their investigation, based on review of the applicant's response and available information. This information has been included as part of Attachment 4. At this time the county has no information that indicates that there are any on-going violations related to the currently proposed cannabis cultivation.

While the county has continued to receive complaints of possible illegal diversions from the South Fork of the Eel River, the county has been unable to confirm the allegations. On-site inspection from county staff have indicated that the bladders are being filled with rainwater in accordance with the approved Conditional Use Permit (CUP-15-004). The applicant maintains that the water from the South Fork Diversion is exclusively used for domestic use and points out that installation of a meter on this point of Diversion as required under the associated 2015 Lake and Streambed Alteration Agreement. Meter readings visible in photos from inspections performed in 2018 show 1,300 gallons of diversion and were cited as evidence in the applicant's response to the SWCRB violation investigation, suggesting that the gallonage is consistent with domestic levels of use.



Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Environmental Impact Report that was adopted for the Commercial Cannabis Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

**RECOMMENDATION:** Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Special Permit (SP).

**ALTERNATIVES:** The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the EIR for the CCLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.