



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: June 6, 2019
To: Humboldt County Planning Commission
From: John H. Ford, Director of Planning and Building Department
Subject: **Hawk Valley Farms, LLC Conditional Use Permit**
Record No. PLN-11141-CUP
Assessor's Parcel Number (APNs) 204-091-012

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Please contact Keenan Hilton, Planner, at 707-268-3722 or by email at khilton@co.humboldt.ca.us if you have any questions about the scheduled public hearing item.

AGENDA ITEM TRANSMITTAL

Hearing Date June 6, 2019	Subject Conditional Use Permit	Contact Keenan Hilton
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Project Description A Conditional Use Permit for Hawk Valley Farms, LLC consisting of approximately 43,560 square feet of existing outdoor cannabis cultivation. The proposed project is located on Assessor's Parcel Number (APN) 204-091-012, which is approximately 7 acres in area.

Project Location: The project is located in Humboldt County, in the Hydesville area, on the south side of State Hwy 36, approximately 1.54 miles south from the intersection of State Hwy 36 and River Bar Road, on the property known as 1492 River Bar Road, Hydesville.

Present Plan Land Use Designations: Agricultural Exclusive (AE), Humboldt County General Plan, Density: One dwelling unit per 20 acres, Slope Stability: Low Instability (1)

Present Zoning: Agriculture Exclusive (AE), Minimum building site area 160 acres (B-5[160])

Application Number: 11141

Record Number: PLN-11141-CUP

Assessor Parcel Numbers: 204-091-012

Applicant

Hawk Valley Farms, LLC
Cory Nunes
1492 River Bar Rd
Fortuna, CA 95547

Owner

Cory Nunes
PO Box 1343
Ferndale, CA 95536

Agent

AgDynamix
Teisha Machetti
732 5th Street Suite 1
Eureka, CA 95501

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: Failure to demonstrate containment of light pursuant to §314-55.4.11.w of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO); AND repeated violations of the Compliance Agreement for a Zoning Clearance Certificate for Interim Permit issued pursuant to §314-55.4.8.11 of the CMMLUO.

HAWK VALLEY FARMS, LLC
Record No. PLN-11141-CUP
Assessor's Parcel Numbers 204-091-012

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 take the following action:

Find the project exempt from environmental review pursuant to State CEQA Guidelines Section 15270, make the finding that the applicant has neglected to demonstrate timely compliance with lighting standards and has repeatedly violated the term of the Compliance Agreement for a Zoning Clearance Certificate for Interim Permit by Humboldt County Code §314-55.4.11.w and §314-55.4.8.11 and that therefore the required findings for approval can not be made, and adopt the Resolution denying the proposed Hawk Valley Farms, 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 (CUP) for Hawk Valley Farms, LLC consisting of approximately 43,560 square feet of existing outdoor cannabis cultivation. The proposed project is located on Assessor's Parcel Number (APN) 204-091-012, which is approximately 7 acres in area. Staff is recommending denial of the project based on repeated violations of County Code:

- 1) The applicant has repeatedly violated Humboldt County Code (HCC) §314-8.2.2 which states that expansion of the existing cultivation area shall not be permitted; and
- 2) the applicant has repeatedly violated Humboldt County Code (HCC) §314-55.4.11.w which requires that the artificial light source used in association with cultivation activities comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG); and
- 3) the applicant has repeatedly violated HCC §314-55.4.8.11 which provides for the granting of Zoning Clearance Certificates for Interim Permit and grants discretion to the Planning Director to revoke the Zoning Clearance Certificate and deny the Conditional Use Permit application.

The Conditional Use Permit is being presented for denial due to repeated violations of County Code, and violation of the executed Compliance Agreement for the Interim Permit. Further, the applicant has continued to cultivate cannabis on the property in violation of both County Code and state regulations due to the lack of a County Interim Permit and active state license. Were this an approved Conditional Use Permit, the Planning Department would be seeking revocation due to these repeated violations of County Code. As described below, the Planning Department has given the applicant multiple opportunities to keep this application in good standing and the applicant has repeatedly failed to do so.

Background: Hawk Valley Farms, LLC is managed solely by Cory Nunes; for the sake of narrative fluidity, no distinction is made between the entity and the individual in this staff report. Throughout the process the applicant has represented himself in meetings with staff and alternated between agents including AgDynamix (Teisha Mechetti), Noetic Consulting (Nate Whittington), Rain & Zepp (Beorn Zepp) and Shasta Engineering & Consulting (John McCarthy) in his meetings and

correspondences with county staff. For this reason, no single agent was present at all meetings or was included in all correspondence.

On September 12, 2016 Hawk Valley Farms applied for a Conditional Use Permit for one-acre of pre-existing outdoor cannabis cultivation. Aerial images of the property from before January 1, 2016 show approximately 3 acres of various outdoor flowers including heather and dahlias. During an initial meeting with Planning Department staff on September 20, 2017 the applicant claimed that cannabis plants were routinely planted in and among these flowers to obscure them from aerial views and that at least one acre of cannabis would have frequently been planted. While no substantial evidence of this pre-existing cannabis was submitted, the Planning Department initially found the applicant's claim to be somewhat plausible. However, the California Department of Fish and Wildlife has questioned this evidence, and further consultation from other cultivators in this area indicates that the marine layer in this area would have made cannabis cultivation outside of greenhouses difficult due to mold. Nonetheless, the Planning Department did agree to process the application and present the applicant's argument to the Planning Commission. The applicant's letter describing the pre-existing cultivation is attached to this staff report as Attachment 9.

Subsequent to the September 2017 meeting regarding the pre-existing cannabis amongst the flowers, staff discovered that the applicant had replaced the flower fields with eighteen unpermitted hoop structures totaling 53,720 square feet over freshly graded land. The Planning Director held meetings with the applicant on February 9, 2018 and on May 24, 2018 to discuss and resolve the apparent expansion and relocation of cultivation area as well as the unpermitted construction. The outcome of these meetings was the issuance of an Interim Permit for 28,000 square feet of outdoor cultivation. The question of the amount of pre-existing cultivation was not resolved at this time, as the applicant stated his intent to argue before the Planning Commission that an acre of cannabis was on the site prior to 2016. As discussed below, the applicant then again significantly expanded beyond the issued Interim Permit, with 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space observed in March of 2019. While the dedicated flowering space was not all in operation at the time of this visit, this was early in the cultivation season and the space was set up to begin cultivation.

In early March of 2019, the planning department received a complaint of light pollution from the site. HCC §314-55.4.11.w provides that within ten (10) working days of receiving written notification of a complaint of light pollution, the applicant shall submit written verification that the lights shielding and alignment has been repaired, inspected and corrected as necessary. In response to this complaint of light spillage staff conducted a site inspection on March 7, 2019 and found that there were unshielded lights in multiple hoop structures on the site. During the site visit staff explained the standard of no light spillage and the required timeline to the applicant. Later that day (March 7, 2019) an email correspondence was sent to the applicant clearly stating the requirement that he provide evidence to the Planning Department that he had installed a system to shield the light by March 21, 2019 (Attachment 1). The applicant failed to meet this deadline. On May 1, 2019 the Planning Department received an additional complaint from another source that a significant amount of light had continued to escape hoop structures on the parcel as recently as the night of April 29, 2019. As referenced below, this additional light complaint was received well after the applicant's Interim Permit was revoked and the applicant directed to cease all cultivation activities.

During the March 7, 2019 site visit conducted upon receipt of a complaint of light spillage, staff observed approximately 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space. Because this application is for outdoor only, mixed-light would only be supported in ancillary nursery space. And while clearly no ancillary nursery space and

therefore no artificial light at all was present on the site prior to January 1, 2016, the Planning Department has made an allowance for a small amount of nursery space (typically no more than 15% of total cultivation) to be present on outdoor cultivation areas. The applicant's development of 17,000 square feet of mixed-light nursery space is well in excess of anything that the Planning Department could support for an outdoor cultivation, and is substantially in violation of their issued Interim Permit.

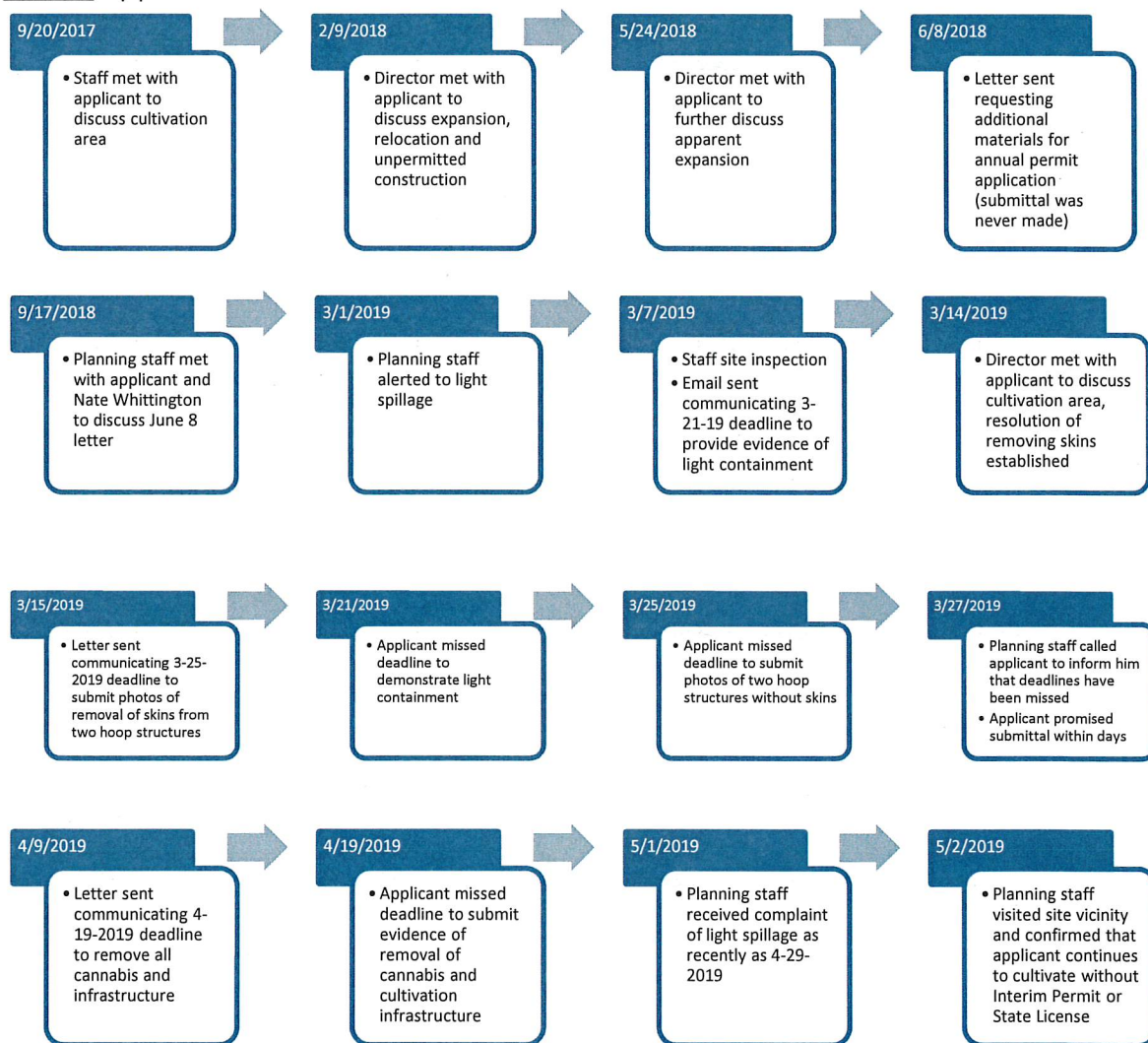
When confronted with the expansion and violation of the Interim Permit, the applicant explained his intent to place smaller hoop structures inside of the large hoops. He asserted that if you measure the dimensions of the smaller hoops, the cultivation area would not exceed the 28,000 allowed for by the interim permit. This proposed method does not conform with the definition of cultivation area in the CMMLUO which clearly establishes that the correct measure of cultivation area in structures as the exterior dimensions of hoop houses or greenhouses. Staff observed approximately 11,500 square feet of nursery space in production at the time of the inspection. The applicant explained that the large amount of dedicated nursery space—approximately 41% of the cultivation area allowed by the Interim Permit—was necessary for vegetative growth of plants prior to flowering. The county considers space dedicated to the vegetative growth of cannabis to be taxable cultivation area, not tax-exempt nursery area. On March 14, 2019 the applicant and his representative Nate Whittington met with staff and the Planning Director to resolve the issue of the unsupportable size of the nursery and unsupportable plan to put smaller hoop structures inside of larger hoop structures. It was determined during the meeting and communicated in a letter sent on March 15, 2019 (Attachment 2) that the applicant would have until March 25, 2019 to provide clear before and after photos demonstrating the removal of the skins from two of the hoop structures. By removing two of the dedicated nursery structures from the operation, it would bring the dedicated nursery space into more acceptable proportion to the cultivation area—approximately 25%. The applicant failed to meet this deadline.

On March 27, 2019 Planning Department staff called the applicant to inform him that he had missed the deadline for demonstrating conformance with the dark sky standards and the deadline to prove that skins had been removed from hoop structures. Staff re-iterated that the letter did not merely require that he take the necessary actions on his project site, but that he provide concrete evidence of such action for the administrative record. During this conversation the applicant indicated that he understood the requirement and that within several days he intended to satisfy the requirements.

HCC §314-55.4.8.11 provides the Director of the Planning and Building Department with the discretion to revoke interim permits based on non-compliance with county code. On April 9, 2019, having received no evidence or communication of any kind from the applicant to satisfy the requirements of either the March 7 email or the March 15 letter, the Director determined that the applicant was out of conformance with the code and that the interim permit would be revoked. The day of the determination—April 9—staff informed CalCannabis staff that the applicant had violated the terms of the interim permit and that local permission to cultivate had been revoked, and staff sent a letter to the applicant informing him that his lack of compliance has led to the interim permit revocation (Attachment 3). The letter clearly stated that all cannabis plants and cannabis infrastructure—later clarified to mean the skins of all hoop structures on the site—had to be removed from the site. The letter required that by April 19, 2019 the applicant submit photographic evidence to the Planning Department that all plants and infrastructure had been removed. The letter clearly stated that if this deadline was met, staff would continue to process the application for the CUP for 28,000 square feet to completion with a recommendation of approval (pending the submittal of several outstanding items). The letter also stated that if the applicant failed to meet the deadline, the project would be scheduled for a Planning Commission hearing with a recommendation of denial based on a consistent pattern of non-compliance.

In the week following the April 9 letter the applicant, his agents and various consultants made a flurry of submittals in response to the requirements of March 7 and March 15 letters. Staff responded to these submittals by re-iterating that the interim permit had already been revoked and that the applicant was required to submit photographic evidence demonstrating that all cannabis and cultivation related infrastructure had to be removed from the site by April 19, 2019. The applicant failed to meet this deadline. On May 1, 2019 the Planning and Building Department received a complaint that light was spilling from the greenhouses as recently as April 29, 2019. On May 2, 2019 staff drove to the vicinity of the site to inspect whether the applicant had removed the skins from the hoop structures. Staff did not enter the premises but documented intact hoop structures with the skins still on. The applicant was apparently continuing to cultivate without local or state authorization.

Table 1 Application Timeline



The CMMLUO and the Mitigated Negative Declaration (MND) provided the opportunity to existing cultivators to bring baseline activities into compliance with local, regional and state-wide regulatory schemes. Baseline conditions are those that existed prior to 2016 that were analyzed and considered in the MND. On the subject parcel, the baseline condition that can be verified

with satellite imagery is the existence of an approximate 4-acre heather and dahlia farm. The unpermitted build-out as it exists today constitutes an intensification of use not contemplated in the MND or in the CMMLUO. When the applicant transitioned from full sun cultivation among heather and dahlias to 3-4 harvests per year in hoop structures, the necessary amount of water, hazardous materials, staff time, vehicle trips, and ancillary light inevitably rose. As the County provided direction for how to address and resolve these compliance issues, the applicant repeatedly failed to comply with the stated requirements.

Based on these documented and repeated violations of county code, staff recommends that the Planning Commission deny the requested Conditional Use Permit.

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 §312-4.1 et seq.

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

**Record No. PLN-11141-CUP
Assessor Parcel Numbers: 204-091-012**

The Humboldt County Planning Commission makes the required findings for certifying compliance with the California Environmental Quality Act and denies the Hawk Valley Farms, LLC Conditional Use Permit request.

WHEREAS, Hawk Valley Farms, LLC submitted an application requesting approval of a Conditional Use Permit for 43,560 square feet of existing outdoor cannabis cultivation located on APN 204-091-012.

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 determined that 28,000 square feet of existing outdoor cultivation may have existed on the property prior to January 1, 2016; and

WHEREAS, Section 314-55.4.8.11 of the Humboldt County Code allows for the issuance of an Interim Permit where adequate evidence has been submitted demonstrating that a cultivation site existed prior to January 1, 2016; and

WHEREAS, Section 314-55.4.8.11 of the Humboldt County Code specifies that approval of the Interim Permit is conditional and shall occur through issuance of a Zoning Clearance Certificate and written Compliance Agreement and that violation of the compliance agreement shall be grounds for permit cancellation and disqualification of the property from future permitting.

WHEREAS, in 2017 Hawk Valley Farms graded the property and installed eighteen hoop structures totaling 53,720 square without proper permits or authorization; and

WHEREAS, Hawk Valley Farms and the Planning and Building Department reached a settlement agreement in May of 2018 that resulted in the issuance of an Interim Permit for 28,000 square feet of outdoor cannabis cultivation; and

WHEREAS, Hawk Valley Farms executed a Compliance Agreement on July 18, 2018.

WHEREAS, in 2019 Hawk Valley Farms was found to have expanded to approximately 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space in violation of the issued Interim Permit and May 2018 settlement agreement; and

WHEREAS, on March 15, 2019 the Planning Department sent Hawk Valley Farms correspondence stating that evidence showing that the skins from greenhouses being used for cultivation over the allowable 28,000 square feet was required to be submitted by March 25, 2019; and

WHEREAS, Hawk Valley Farms did not submit evidence showing that the skins from greenhouses being used for cultivation over the allowable 28,000 square feet by March 25, 2019; and

WHEREAS, Section 314-55.11.v of the Humboldt County Code requires that cultivators using artificial lighting for mixed-light cultivation shall shield greenhouses so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise; and

WHEREAS, Section 314.55.11.w states that the light source should comply with the International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG).

WHEREAS, Section 314.55.11.w further states that should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected as necessary.

WHEREAS, on March 1, 2019 the Planning and Building Department received a complaint of light leaking from greenhouses; and

WHEREAS, on March 7, 2019 the Planning and Building Department sent correspondence to Hawk Valley Farms indicating that evidence demonstrating compliance with dark sky standards was required to be submitted by March 21, 2019; and

WHEREAS, Hawk Valley Farms did not submit evidence to the Planning and Building Department demonstrating compliance with the dark sky standards by March 21, 2019; and

WHEREAS, on April 9, 2019 The Director of the Planning and Building Department revoked the Interim Permit for Hawk Valley Farms and stated that evidence demonstrating all cannabis and infrastructure must be removed from the site by April 19, 2019 or the Conditional Use Permit application would be presented to the Planning Commission for denial; and

WHEREAS, Hawk Valley Farms did not submit evidence by April 19, 2019 demonstrating that cannabis and cannabis infrastructure was removed from the site; and

WHEREAS, on May 1, 2019 the Planning and Building Department received a complaint that light was escaping from greenhouses as recently as April 29, 2019; and

WHEREAS, Planning staff visited the site on May 2, 2019 and verified that skins of greenhouses were not removed indicating that cannabis cultivation was still occurring.

WHEREAS, 312-17.1.3 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, while operating under an Interim Permit the applicant has failed to comply with the applicable standards and requirements of the Humboldt County Code; 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 June 6, 2019.

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

1. 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
2. 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 multiple times; and
3. The project is not consistent with Section 314-55.11.v of the Humboldt County Code because light from greenhouses has continued to escape at a level that is visible from neighboring properties between sunset and sunrise; and
4. The project is not consistent with Section 314-55.11.w of the Humboldt County Code because the applicant did not submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected within ten (10) working days of receiving written notification that a complaint has been filed; and
5. Hawk Valley Farms has violated the terms of the executed Compliance Agreement and is subject to permit cancellation per Section 314-55.4.8.11 of the Humboldt County Code; and
6. The required findings for approval in Section 312-17.1.3 of the Humboldt County Code can not be made because the project is inconsistent with Sections 55.4.8.2.2, 314-55.11.v and 314-55.11.w of the Humboldt County Code; and
7. Conditional Use Permit Record No. PLN-11141-CUP is denied.

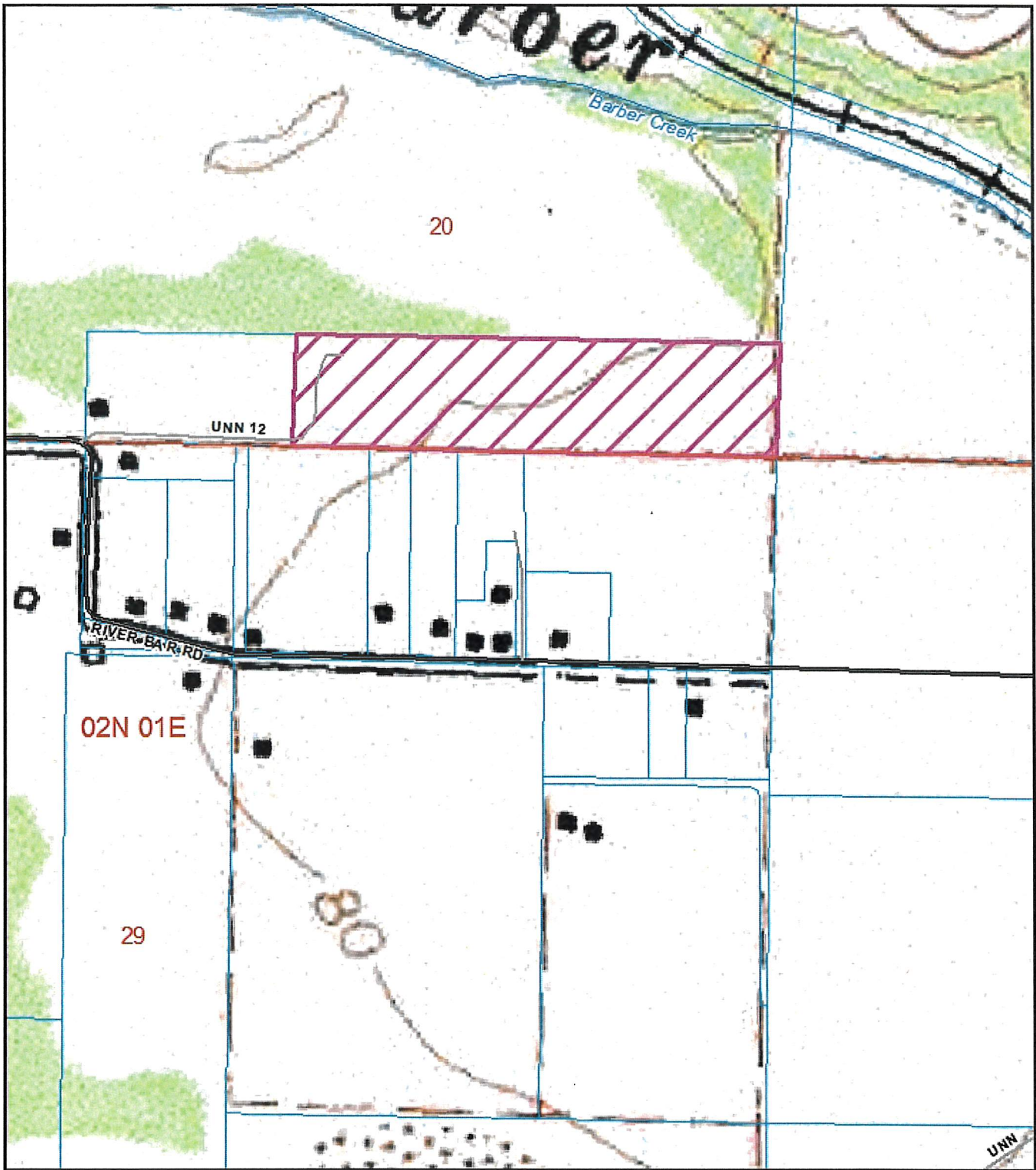
Adopted after review and consideration of all the evidence on June 6, 2019.

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.

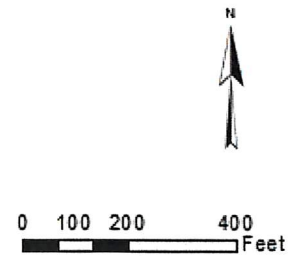
John Ford
Director, Planning and Building Department

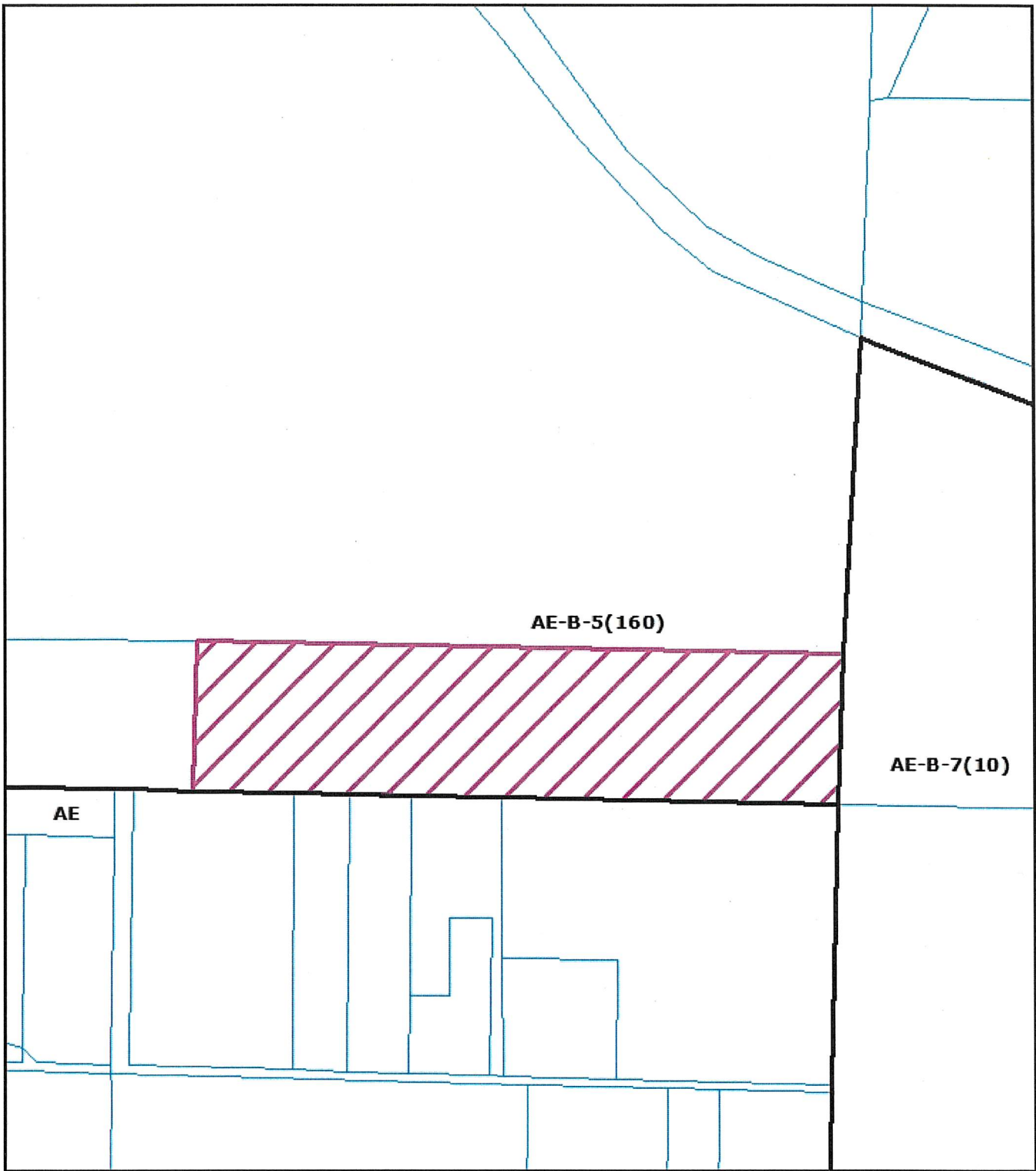


**TOPO MAP
 PROPOSED HAWK VALLEY, LLC
 HYDESVILLE AREA
 CUP-16-161
 APN: 204-091-012
 T02N R01E S20 HB&M (HYDESVILLE)**

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.

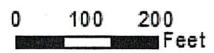


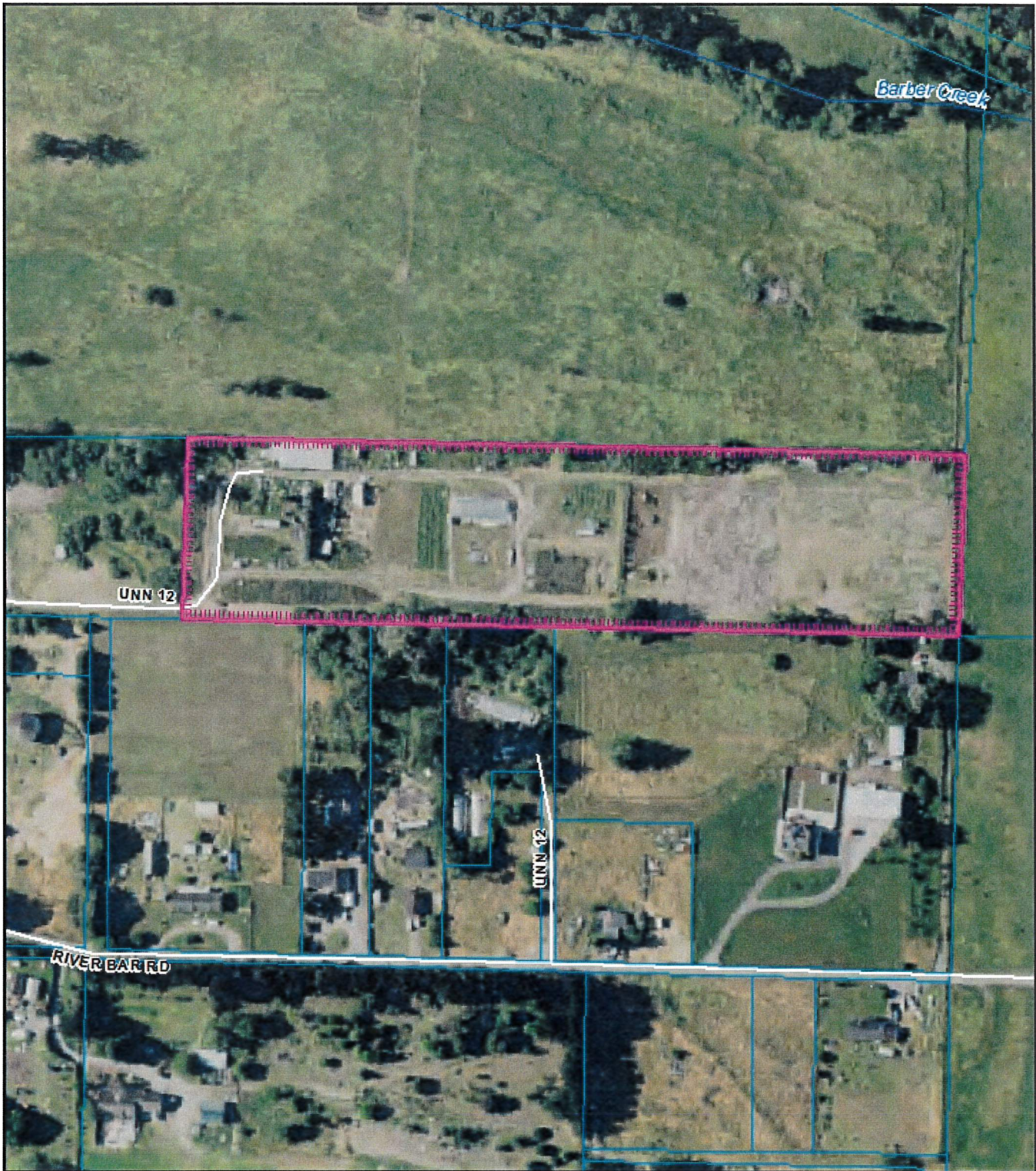


ZONING MAP
PROPOSED HAWK VALLEY, LLC
HYDESVILLE AREA
CUP-16-161
APN: 204-091-012
T02N R01E S20 HB&M (HYDESVILLE)

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.






AERIAL MAP
PROPOSED HAWK VALLEY, LLC
HYDESVILLE AREA
CUP-16-161
APN: 204-091-012
T02N R01E S20 HB&M (HYDESVILLE)

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.



0 100 200
 Feet



- NOTES:**
1. THE WATER SOURCE FOR THIS SITE IS PRIVATE WELL WATER AS SHOWN.
 2. SLOPES AT ALL CULTIVATION SITES ARE LESS THAN 5%.
 3. DURING WET WEATHER CULTIVATION SITES WILL BE MONITORED DAILY. AS NECESSARY, STRAW AND FIBER ROLLS SHALL BE PLACED TO MITIGATE ANY SEASONAL RUN OFF.
 4. NO SCHOOLS, SCHOOL BUS STOPS, PLACES OF WORSHIP, PUBLIC PARKS, TRIBAL CULTURAL RESOURCES, W/IN 600' OR OFF-SITE RESIDENCES W/IN 300'.
 5. THERE ARE NO KNOWN PRIME AG SOILS ON THE PARCEL VA HUMBOLDT WEB GIS 2016.
 6. DRIVEWAY ENTRANCE 16' EASEMENT.
 7. IMAGE DATE: 5/26/2018 VIA GOOGLE EARTH.
 8. NO HISTORICAL, BUILDINGS OR KNOWN ARCHAEOLOGICAL OR PALEONTOLOGICAL RESOURCES.
 9. AS PER MAD RIVER PROPERTIES, INC "WETLAND DETERMINATION REPORT" (CONCLUSION):
 - 3.1. "THE SUBJECT PARCEL, WITHIN THE FENCED BOUNDARY, DOES NOT CONTAIN ANY SIGNIFICANT WETLANDS. ADJACENT WETLAND FEATURES, MAPPED BY USFWS, DO NOT CROSS ONTO THE SUBJECT PARCEL AND WILL NOT LIKELY BE DIRECTLY IMPACTED BY POTENTIAL FUTURE DEVELOPMENT OF THE SUBJECT PROPERTY."

EXISTING CULTIVATION AREA DELINEATION:

14 - GREENHOUSES - ±2,880 SQ-FT @ 0-5% AVG. SLOPE EACH
 OUTDOOR PATCH - ±3,240 SQ-FT @ 0-5% AVG. SLOPE

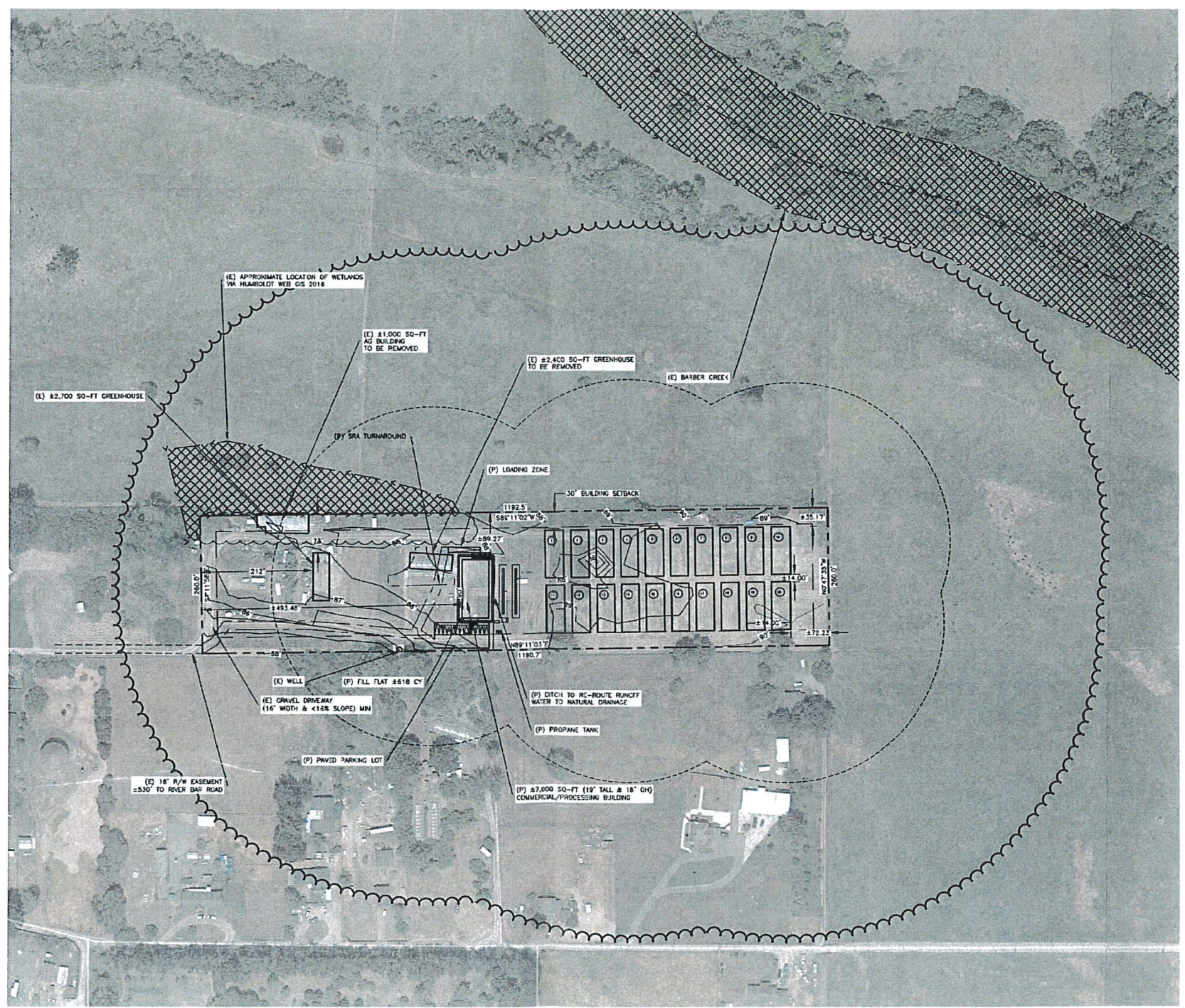
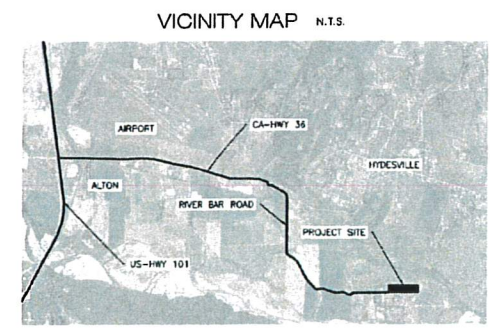
TOTAL OUTDOOR - ±43,560 SQ-FT

SIX - GREENHOUSE NURSERIES - ±2,880 SQ-FT @ 0-5% AVG. SLOPE EACH

TOTAL NURSERY - ±17,280 SQ-FT

TOTAL OF OUTDOOR & NURSERY - ±7,980 SQ-FT

- LEGEND:**
- PROPERTY LINES
 - 30' SETBACK
 - 300' SETBACK
 - 600' SETBACK
 - EXISTING GRAVEL ROAD
 - (E) EXISTING
 - (P) PROPOSED
 - DRAINAGE PATTERN
 - CMLLLO AREAS
 - SMA AREAS
 - WETLAND AREAS



SITE OVERVIEW SCALE: 1"=100'

LEGAL:

ADDRESS: 1492 RIVER BAR ROAD FORTUNA, CA 95540

ASSESSOR'S PARCEL NUMBER: 204-091-012

OWNER: LEROY HANES PO BOX 1543 FORTUNA, CA 95531 PHONE: (707) 896-2524

SETBACK: 30' PERMETER

AREA ANALYSIS

LOT SIZE: ±7.45 ACRES

DESCRIPTION: SPECIAL PERMIT FOR ±43,560 SF OF EXISTING OUTDOOR CANNABIS CULTIVATION & 17,280 SQ-FT NURSERY.

DISCLAIMER: MAPPING INFORMATION PROVIDED IS FOR HUMBOLDT COUNTY PLANNING PERMITTING PURPOSES ONLY. THIS SITE PLAN REFLECTS MANY MAPPING DETAILS THAT ARE NOT SHOWN HEREIN. THE USER SHOULD VERIFY THE ACCURACY OF THEIR OWN MAPPINGS. HOWEVER, NONE OF THE INFORMATION SHOWN IS GUARANTEED TO BE CORRECT. THE USER SHOULD VERIFY THE ACCURACY OF THEIR OWN MAPPINGS. HOWEVER, NONE OF THE INFORMATION SHOWN IS GUARANTEED TO BE CORRECT. THE USER SHOULD VERIFY THE ACCURACY OF THEIR OWN MAPPINGS. HOWEVER, NONE OF THE INFORMATION SHOWN IS GUARANTEED TO BE CORRECT.

REVISIONS	
NO.	DATE
1	4/25/2017
2	
3	
4	
5	

A.M. Baird
 Engineering & Surveying
 1757 Main St., P.O. Box 306, Fortuna, CA 95540
 (707) 725-5182

SCALE AS SHOWN
 DRAWN BY PDS
 CHKD AMB
 DATE 4/25/2017

HAWK VALLEY FARMS LLC
 APN: 204-091-012
 1492 RIVER BAR ROAD, FORTUNA, CA
 CMLLLO & ADDITION OF A PROCESSING BUILDING
 SITE PLAN

JOB NO. 16-4310-12
 SHEET NO. 1 OF 1

ATTACHMENT 1

March 7 email to the applicant following the site inspection

Hilton, Keenan

From: Hilton, Keenan
Sent: Thursday, March 07, 2019 2:38 PM
To: 'corynunes@att.net'
Subject: Outstanding Items
Attachments: Materials Needed letter.pdf; Interim Permit Letter.pdf

Cory,

Attached you will find two correspondences that I found in the file. In addition to the materials listed in the letter, please provide the following materials:

1. Lights: The ordinance does not distinguish between work lights and lights used for cultivation. The standard is that light shall not escape at a level that is visible from neighboring properties between sunset and sunrise. **Please provide evidence to the Planning Department that you have installed the system to shield the light by March 21.**
2. The site plan and cultivation and operations plan should be amended to include:
 - a. Accurate square footage of cultivation, square footage of nurseries, and number of cycles of cultivation (it may be worthwhile to wait until you have your meeting with the director to nail down how these will be calculated).
 - b. Amended water demand and projected number of employees (I assume that the change in square footage changes these numbers)
 - c. Sufficient parking for employees
 - d. Turnarounds for emergency response vehicles
 - e. Location of tanks/pond, if applicable
3. In addition to the signed NOI (mentioned in the letter), please submit a Notice of Applicability from the Regional Water Board
4. Water source
 - a. As soon as you can, please initiate the CDFW review of the hydrologic connectivity of your well. If it is not connected, then your project works as proposed. If it is connected, please ask whether it is connected to the main stem of the Van Duzen or one of the tributaries as this will change how long you can store the water for. If it is connected you must:
 - i. Secure a right to divert water from the State Water Resources Control Board & get a 1600 permit from CDFW, and add sufficient storage to make it through the forbearance period of May 15 to October 31 (or those dates included in your 1600) and/or
 - ii. Propose a rainwater catchment system of sufficient capacity to provide water for the project.

I encourage you to take a look at your materials as some of them are from over a year ago. I know that sometimes plans evolve and I want to make sure that we analyze materials that accurately reflect the operation you're running.

Let me know if you have any questions,



Keenan Hilton
Planner, Cannabis Services Division
[Planning and Building Department](#)
707.268.3722

ATTACHMENT 2

March 15 letter to the applicant following meeting with planning staff



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CANNABIS SERVICES DIVISION

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

March 15, 2019

Hawk Valley, LLC
Cory Nunes
1492 River Bar Rd.
Fortuna, CA 95540

RE: Permit Application No. 11141, APN 204-091-012-000

Dear Cory Nunes,

On March 14, 2019 you and your agent Nate Whittington met with Planning Director John Ford, Senior Planner Steven Santos and Planner Keenan Hilton to discuss your project. The outcomes of the meeting are summarized below

1. Two hoop structures used for cultivation must have the skins removed. Please provide clear before and after photos demonstrating that the work has been completed by Monday, March 25, 2019.
2. The Director determined that there will be no penalty at this time. Your interim permit for 28,000 square feet of outdoor cultivation will not be revoked at this time.
3. Dedicated nursery structures in revised plans shall not exceed 25% of the cultivation area.
4. Updated materials shall reflect the square footage you wish to pursue. This means if you plan to argue before the planning commission that there was more pre-existing cultivation than staff has recognized, your site plan and cultivation and operations plan should reflect the full amount you are pursuing.
5. The subject parcel falls within the Hydesville-Carlotta Community Planning Area and is, therefore, not eligible to receive RRR cultivation.

If you have questions about this letter, please contact Keenan Hilton at 707-268-3722 or khilton@co.humboldt.ca.us. Please accumulate all requested material and submit as a complete package. When submitting these items please include the Application Number and APN found at the top of this letter.

Sincerely,

Keenan Hilton, Planner
Cannabis Services Division

ATTACHMENT 3

April 9 letter to the applicant revoking interim permit



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CANNABIS SERVICES DIVISION

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

April 9, 2019

Hawk Valley, LLC
Cory Nunes
1492 River Bar Rd
Fortuna, CA 95540

RE: Permit Application No. 11141, Key APN 204-091-012

Cory Nunes,

The actions you said would be taken to resolve the violations on this site have not been fulfilled. This site is in violation of the interim permit and therefore is being revoked. The signed and notarized compliance agreement dated July 19, 2018 allowed 28,000 square feet of cultivation and emphasized that it was granted on the conditions that there are no violations of county code.

The following violations have been observed:

1. Unshielded lights in the nursery. Senior Planner Steven Santos and Planner Keenan Hilton performed a site inspection on March 7, 2019 to investigate the complaint. An email sent by Keenan Hilton March 7, 2019 clearly stated the requirement that you provide evidence to the Planning Department that a system to shield the lights in the nursery had been installed by March 21, 2019. This deadline was not met.
2. Cultivation area in excess of the Interim Permit. This violation was discussed in the March 14, 2019 meeting between you, Nate Whittington, Planning Director John Ford, Senior Planner Steven Santos, and Planner Keenan Hilton. The letter sent on March 15, 2019 clearly stated the requirement that photos be submitted to demonstrate the removal of skins from two hoop structures by March 25, 2019. This deadline was not met.

Planner Keenan Hilton called you on March 27, 2019 to inquire on the status of the overdue items and explain the necessity of receiving concrete evidence to prove conformity with the requirements. As of today (April 9, 2019), no evidence has been received. As a result of the above listed violations and repeated failure to satisfy the deadlines, **the Zoning Clearance Certificate for an Interim Permit is hereby revoked. All cannabis must be removed from the site and all cannabis related infrastructure must be removed by April 19, 2019. By this date you must submit photographic evidence of the removal of plants and infrastructure to the Planning Department.** If you meet this deadline, your project (CUP16-161) will continue to be processed. If you fail to meet this deadline, your project will be scheduled for the May 16, 2019 Planning Commission meeting with a staff recommendation of denial based on a consistent pattern of non-compliance.

If you have questions regarding the contents of this letter and the necessary actions, please contact Keenan Hilton Planner at (707) 268-3722.

Sincerely,



Cliff Johnson
Supervising Planner, Cannabis Division

CC: Nate Whittington, Agent

ATTACHMENT 4

April 15, 2019 letter from Shasta Engineering

SHASTA ENGINEERING AND CONSULTING

4/15/2019



Mr. John Ford, Director
Humboldt County Planning and Building Department
Cannabis Services Division
3015 H Street
Eureka, CA.

HAND DELIVERED

**RE: Hawk Valley LLC, Cory Nunes, Permit App #11141 APN 204-091-012
County Letter Dated April 9, 2019**

Dear Mr. Ford:

Mr. Nunes has retained me to assist in his process/cultivation and compliance matters going forward with the above property. The County's letter dated April 9, 2019 listed two violations on the property. Those violations have now been taken care of and are completed.

We apologize for the late response, however Mr. Nunes has done his best to bring the property into compliance and at this point it appears all items in the April 9th letter have been complied with.

As such, we would respectfully request that the requirement for removal of all cannabis from the site be removed at this time as it would create a definite hardship to the operation. While I realize that it is not your concern, only the compliance issues are of interest, I can assure you that going forward the Nunes project will be cooperative and maintain compliance with County Ordinances.

I would be happy to meet staff at the site to go over any other concerns they may have to keep things running smoothly.

Attached is a new map of the property by A.M.Baird, the system to shield the lights has been installed as requested and pictures showing the removal of the skins from the offending hoop houses is also attached.

If you or your staff need anything else at this point, please contact me.

Best Regards,


John McCarthy P.E.
Principal

SHASTA ENGINEERING AND CONSULTING

APN 204-091-012, CORY NUNES REMOVED CULTIVATION AREAS 4-15-2019



HOOP #1 SKIN REMOVED



HOOP #2 SKIN REMOVED



HOOP #3 SKIN REMOVED

ATTACHMENT 5

April 17 email to applicant and agent restating requirements and potential outcomes

Hilton, Keenan

From: Hilton, Keenan
Sent: Wednesday, April 17, 2019 9:11 AM
To: Teisha Mechetti
Cc: Cory Nunes; Noetic Consulting; nwhitt8 .; Ford, John; Johnson, Cliff
Subject: RE: Hawk Valley Farms App#11141

Hello Teisha,

Thank you for the submittal. I want to remind you of the requirements clearly stated in the April 9, 2019 letter. The Humboldt County Planning Department must receive evidence that all cannabis and cannabis infrastructure has been removed from the site by Friday, April 19. This means photos of skins off of **all** hoop structures and photos of the interior of structures demonstrating that there is no longer cannabis on site. The interim permit for this project has been revoked; the applicant has lost permission to cultivate cannabis on site. If the applicant meets the deadline, the County will work toward forecasting a hearing date with the Planning Commission with a staff recommendation of approval. If the deadline is missed, the County will take the project forward on May 16 with a recommendation of denial.

Sincerely,



Keenan Hilton
Planner, Cannabis Services Division
[Planning and Building Department](#)
707.268.3722

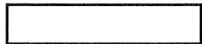
From: Teisha Mechetti <teisha@agdynamix.com>
Sent: Tuesday, April 16, 2019 3:33 PM
To: Hilton, Keenan <KHilton@co.humboldt.ca.us>; Cory Nunes <corynunes@gmail.com>; Noetic Consulting <noetic.consulting@gmail.com>; nwhitt8 . <law Nate8@gmail.com>; Ford, John <JFord@co.humboldt.ca.us>
Subject: Hawk Valley Farms App#11141

Good Day,

Please see attached items for update of this project in conformance with the changes suggested. We hope that you can prioritize the processing of this documentation in efforts to push this project to immediate hearing for approval. The applicant has undergone several modifications to this project to make it a prime candidate for approval. Thank you for your prompt attention to this matter.

Best,

Teisha M. Mechetti



Founder/Owner

teisha@agdynamix.com
(707) 798-6199 Office



agdynamix.com • facebook.com/AgDynamix

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ATTACHMENT 6

April 19 email to applicant and agent restating deadline

Hilton, Keenan

From: Hilton, Keenan
Sent: Friday, April 19, 2019 3:34 PM
To: Beorn Zepp; Ford, John
Cc: cory nunes; Johnson, Cliff
Subject: RE: Apps 11141, APN 204-091-012

Mr. Zepp and Mr. Nunes,

The Interim Permit for the project was revoked on April 9. In the letter sent on April 9 it was clearly stated that all cannabis and cannabis related infrastructure was to be removed by April 19, 2019. On April 17, 2019 I sent an email to the applicant and agents re-iterating the deadline, and clarifying that removal of the skins would satisfy the requirement for removal of infrastructure. The deadline to submit the evidence to the Planning Department is today.

Sincerely,



Keenan Hilton
Planner, Cannabis Services Division
[Planning and Building Department](#)
707.268.3722

From: Beorn Zepp <BeornZepp@RainZeppLaw.com>
Sent: Thursday, April 18, 2019 5:06 PM
To: Ford, John <JFord@co.humboldt.ca.us>
Cc: Hilton, Keenan <KHilton@co.humboldt.ca.us>; cory nunes <corynunes@att.net>
Subject: Apps 11141, APN 204-091-012

Dear Mr. Ford,

I am writing in response to the letter of April 8, 2019 indicating that the interim permit associated with the project is being terminated and that all cannabis operations must cease and desist by tomorrow, Friday April 19, 2019.

As noted in Keenan Hilton's post-meeting letter of March 15, 2019 Mr. Nunes was asked to "accumulate all the requested material and submit as a complete package." He has been waiting to receive updated site plans, which he has only received this week. We will submit the engineered site plan early on Monday morning, as my office has not yet receive final draft.

Your letter indicates that Mr. Nunes has not communicated with your office since the March 27, 2019 phone call from Mr. Hilton to Cory Nunes. However, Mr. Nunes believes he sent the attached verifying photographs on March 28th upon Mr. Hilton's request. An additional photo from April 9th of an addition unused green house is included. As you can see from these pictures, the green houses have not been used for cultivation in 2019.

Mr. Nunes had the skins of the greenhouses removed on the weekend following the March 14th meeting with you, Steven Santos and Mr. Hilton.

As to the issue of light escapement, I have attached photos of the black-out tarps which Mr. Nunes has purchased and is using while he awaits the delivery and installation of the EverFlowering light control system. He has had the system on order since shortly after the March 14th meeting as well. I intend to forward a letter from the contract confirming the expected delivery.

He may have had difficulty with communication, but has been working steadily to follow the letter and intent of your agreement, and to gather the items necessary to complete the permit process.

We would ask that you reconsider any action to terminate his Zoning Clearance Certificate for Interim Permit. As you know, such a disruption would cause the loss of substantially all of the applicant's revenue from the project and endanger its viability.

Mr. Nunes would appreciate the opportunity meet with you or your designee, to have the project inspected and shown to be in compliance.

Please do not hesitate to contact Mr. Nunes or myself if you have any questions or concerns or if you would like any further information.

Regards,

Beorn Zepp

Attorney at Law
Rain & Zepp, PLC.
(707) 442-3034
517 3rd Street, Suite 30
Eureka, CA 95501

PRIVILEGED ATTORNEY-CLIENT MATTER, ATTORNEY WORK PRODUCT

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ATTACHMENT 7

May 2, 2019 Memo to file documenting non-compliance

MEMO TO FILE

5/2/19

Applicant: Hawk Valley, LLC

Application Number: 11141

Case Number: CUP16-161

Assessor Parcel Number(s): 204-091-012

RE: Cultivation without a permit

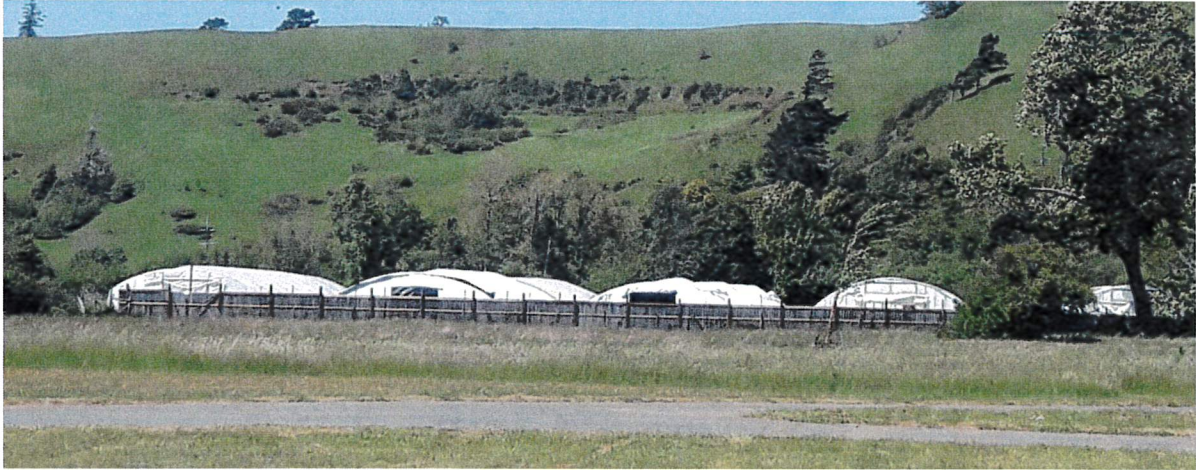
The Interim Permit was revoked for the site on April 9, 2019. The deadline to remove all skins from the hoop structures was April 19, 2019. On May 2, 2019 Rodney Yandell and I drove by the subject parcel to observe and document whether cannabis activity was occurring. The photo taken during the visit to the parcel (attachment 1) demonstrates that the requirement was not met, and that unpermitted cultivation is occurring on the parcel.

Signed,

A handwritten signature in cursive script, appearing to read "Keenan Hilton".

Keenan Hilton, Planner

Attachment 1



ATTACHMENT 8

Summary of March 7 site visit



Summary

- Applicant stated he was going to accept the county's determination of 28,000 SF of outdoor cultivation.
- Approximately 17,000 SF of exterior perimeter nursery space. Approximately 11,500 SF was observed in production.
- Approximately 36,720 SF of exterior perimeter flowering space. None was observed in production. Applicant refers to the exterior structure as a shelter and proposes to have internal hoop houses within shelter totaling 26,880 SF

Breakdown

A: Approx. 10x10 room used for seed nursery

B: Storage and drying

C: 30x90 / 2700 SF nursery in production

1: 30x90 / 2700 SF nursery in production half full contained grow lights

2: 30x90 / 2700 SF nursery in production contained work lights

3: 30x90 / 2700 SF nursery in production three quarters full contained grow lights

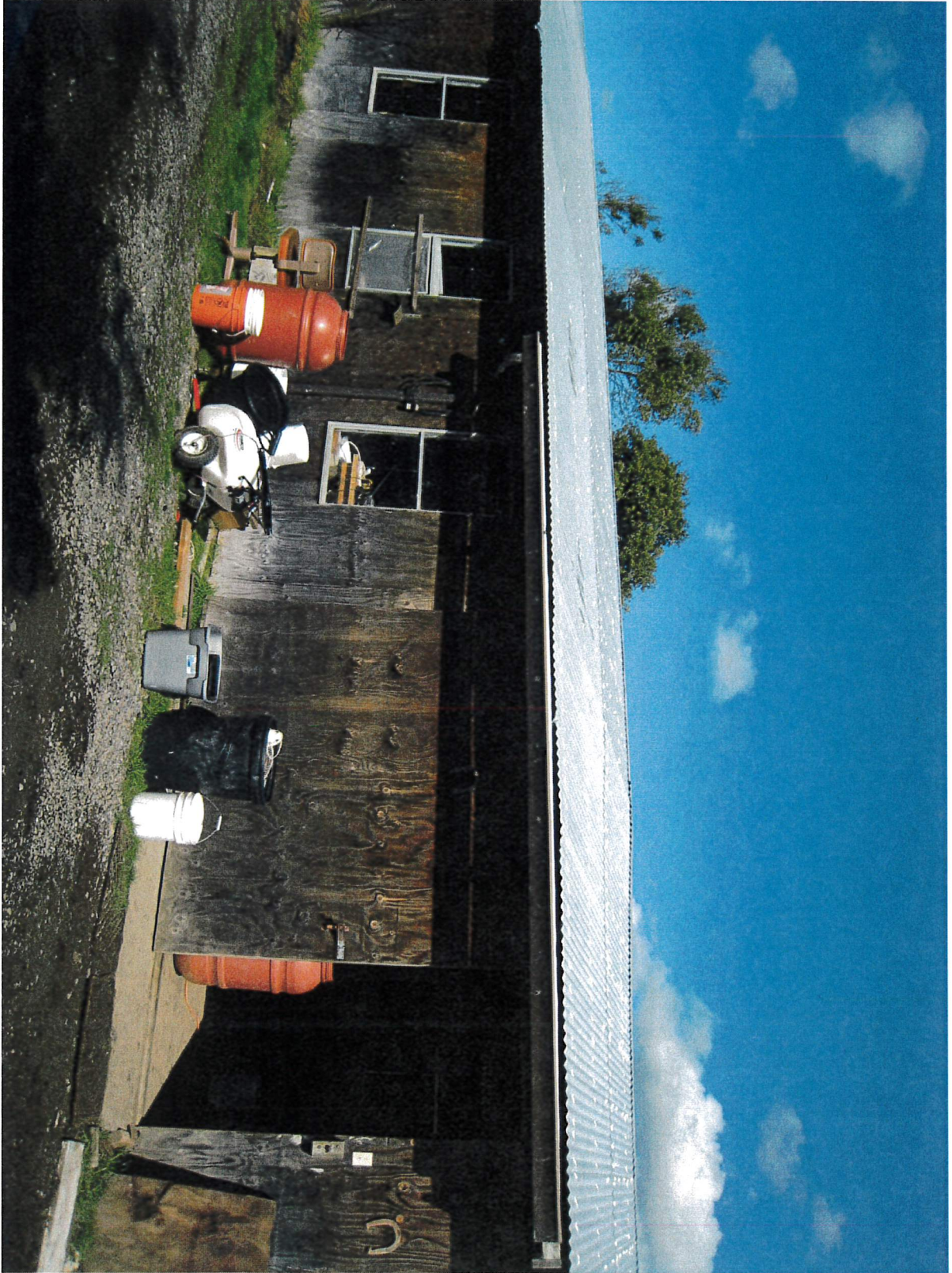
4: 34x90 / 3060 SF nursery in production contained work lights

5: 34x90 / 3060 SF nursery not in production

6 thru 17: 34x90 / 3060 SF each / 36,720 SF total for flowering not in production. Each flowering greenhouse contains four raised beds.

Cory will be proposing to place hoops over two rows of beds which would create a 14x80 polygon including one middle aisle. So each greenhouse would have a total of 2240 SF of interior hoop houses totaling 26,880 SF.

A Exterior





A: Seed Nursery

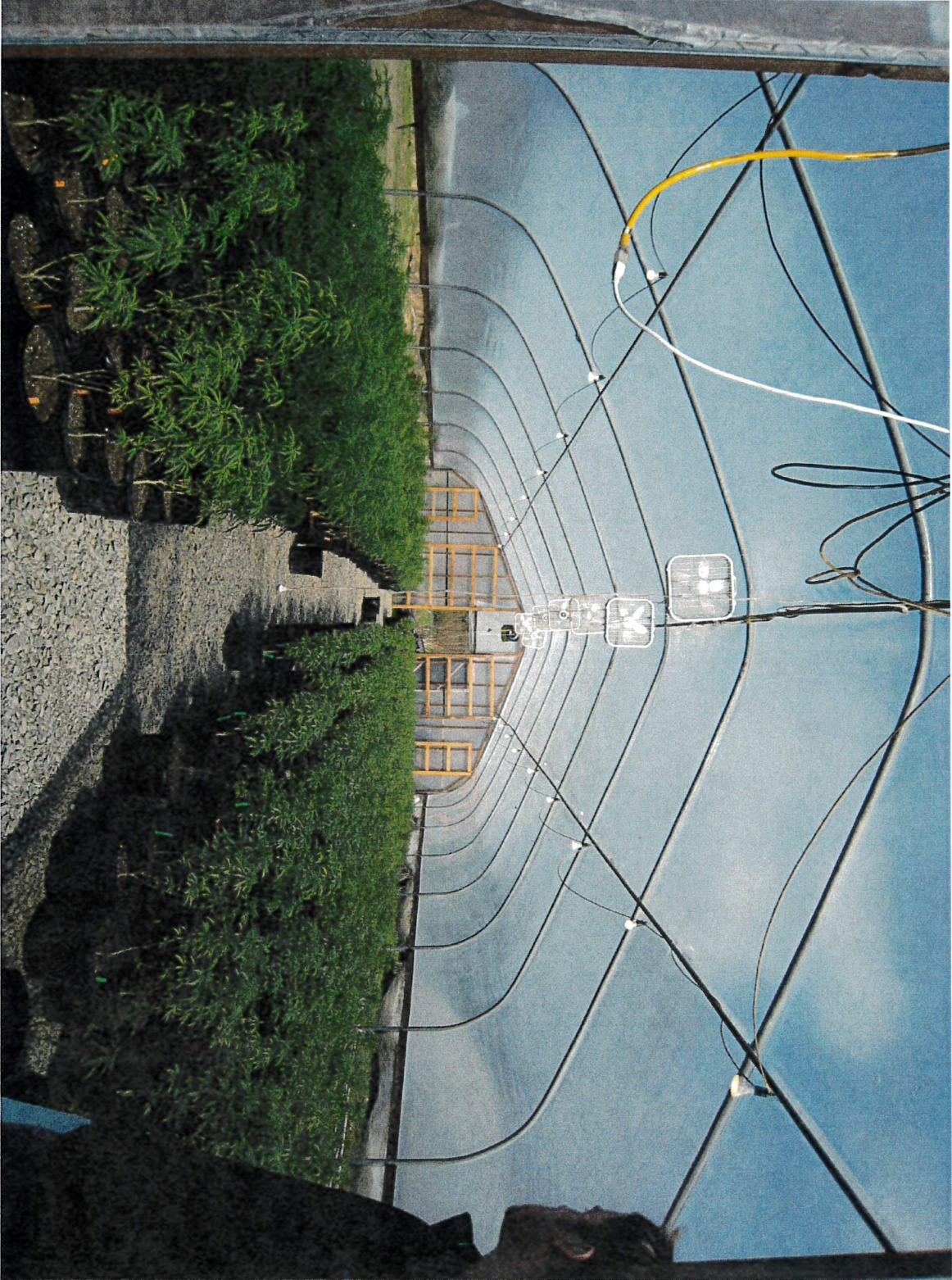


1: Nursery



2 and 4 and Generator











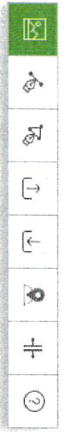
6: (bed configuration example)

ATTACHMENT 9

AERIAL IMAGERY FROM 2015 & 2018

Latitude: 40.5342 Longitude: -124.0000

Subject Parcel, 2015



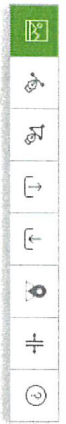
Available Images

Date Range [calendar icon] All Images [dropdown arrow]

2015-12-28	0.50 m	38.45%	Infrared
2015-09-18	0.50 m	0.01%	Sharpened
2015-09-18	0.50 m	0.01%	Sharpened
2015-08-31	0.50 m	0.04%	Sharpened
2015-08-09	0.50 m	0.04%	Sharpened
2015-08-09	0.50 m	0.04%	Sharpened
2013-04-28	0.50 m	5.04%	Sharpened
2011-09-17	0.50 m	0.04%	Sharpened
2010-06-27	0.30 m	0.04%	Color



Latitude: 40.5342 Longitude: -124...



Available Images

Date Range [] All Images []

2018-10-16	0.50 m	0.02%	PAN
2018-09-19	0.50 m	0.01%	Sharpened
2018-09-19	0.50 m	0.04%	Sharpened
2018-07-14	0.40 m	0.0%	Sharpened
2018-07-13	0.50 m	22.41%	Sharpened
2018-07-13	0.50 m	17.69%	Sharpened
2018-07-13	0.50 m	33.6%	Sharpened
2018-03-17	0.50 m	10.35%	PAN
2018-02-16	0.50 m	3.03%	Sharpened



Subject Parcel, 2018



ATTACHMENT 10

April 27, 2018 Letter from applicant describing pre-existing cultivation evidence

Humboldt County Planning Dept.
3015 H Street
Eureka, CA 95501

Hawk Valley Farms
1492 Riverbar Rd
Fortuna, CA 95540

Dear Mr. Ford,

This letter is to explain how the plants were grown and the size of plants that would consist to make up the full acre. In the year 2013 the farm had approximately 1000 plants planted. The plants average in size between 4 to 6 feet wide and 5 to 6 feet tall. In the years 2014 and 2015 there was approximately 2000 plus plants planted with the same size range. The plants were planted in between Christmas Heather, Persythesis, and other fauna. Planted in rows to hide the cannabis from detection. So with these numbers we come to 24 square feet per plant. This number times the 2000 plants gives us 48,000 square feet of canopy space. We are only asking for what we applied for, which is one acre of production. The picture provided is a cage we have used in 2013 and 2014. We understand it's not easy to see in the maps, but that was how it was supposed to be.

We appreciate your time and consideration for this project.

Thank you,


Gory Nunes
Owner

$$\begin{aligned} \pi r^2 \times \text{plants} &= \text{SF} \\ 3.14r^2 \times 2000 &= 48,000 \\ 3.14r^2 &= 24 \\ r^2 &= 7.64 \\ r &= 2.76 \\ B &= 5.52 \end{aligned}$$



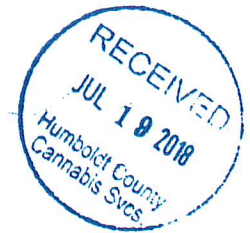


ATTACHMENT 11

Interim Permit and Compliance Agreement



HUMBOLDT COUNTY
PLANNING AND BUILDING DEPARTMENT
3015 H STREET, EUREKA, CA 95501 ~ PHONE (707) 445-7245



ZONING CLEARANCE CERTIFICATE FOR INTERIM PERMIT

Project: Pursuant to the Humboldt County Commercial Medical Marijuana Land Use Ordinance (CMMLUO), Section 314-55.4.1 et seq., specifically Section 314-55.4.8.11, a Zoning Clearance Certificate for an Interim Permit may be issued for an Existing Cannabis Cultivation and ancillary activities. An application has been submitted for the location and cultivation area shown below.

Project Location:

The project is located in Humboldt County, in the Hydesville area, on the south side of State Hwy 36, approximately 1.54 miles south from the intersection of State Hwy 36 and River Bar Road, on the property known as 1492 River Bar Road, Hydesville .

28,000 square feet of existing outdoor cultivation.

Present General Plan Designation: AE Present Zoning: AE-B-5(160)

Application Number: 11141

Key Parcel Number: 204-091-012-000

APPLICANT

Hawk Valley, LLC
Cory Nunes
1492 River Bar Rd.
Fortuna CA 95540

OWNER

Nunes Cory SM
1492 RIVER BAR RD
Hydesville CA 95540

AGENT

AgDynamix
Teisha Machetti
732 5th St. Suite I
Eureka CA 95501

Pursuant to Humboldt County Code Section 314-55.4.8.11 a Zoning Clearance Certificate shall be approved for an Interim Permit when it is demonstrated that:

1. A permit application for existing commercial cannabis cultivation and ancillary activities was submitted and determined to be complete.
2. Adequate evidence has been submitted demonstrating that a cultivation site existed on the parcel prior to January 1, 2016 and the Department independently reviewed the evidence of prior cultivation and determined the size of pre-existing cultivation area based upon aerial and satellite imagery, or other substantial evidence.
3. Approval of the Interim Permit is conditional and shall occur through issuance of the Zoning Clearance Certificate subject to a Compliance Agreement. The Compliance Agreement specifies restrictions, penalties, and commitments to complete the permit process and confines continued operations to the existing areas only.
4. Violation of the Compliance Agreement shall be grounds for permit cancellation and disqualification of the property from future permitting.
5. The interim permit authorizes the permittee to seek state licensure and continue operations until completion of the local permit review process or denial of a County permit, or December 31, 2018, whichever occurs first. The Director may extend this deadline for cause.
6. The interim permit authorizes the permittee to seek state licensure and continue operations until completion of the local permit review process and issuance or denial of a County permit, or January 1, 2019, whichever occurs first. The Director may extend this deadline for cause. Refusal of the Director to issue or extend an interim permit shall not entitle the applicant to a hearing or appeal of the decision. Additionally, approval of any interim permit does not obligate the County to approve a non-interim permit or extension of the interim permit. Permit cancellation and disqualification of the property from future permitting shall be decided by the Zoning Administrator or the Planning Commission at a noticed public hearing. Those decisions may be appealed to the Board of Supervisors pursuant to the appeal procedures outlined under Section 312-13 of these regulations.

Determination

It is the Determination of the Planning Director that all provisions of the ordinance allowing issuance of an Interim Permit have been satisfied and a Zoning Clearance Certificate is approved subject to the requirements contained in the attached Compliance Agreement (Exhibit A.)

Issued By:



John H. Ford
Director, Planning and Building Department

COMPLIANCE WITH APPLICABLE STATE AND LOCAL SUBDIVISION LAWS, REGULATIONS, AND REQUIREMENTS HAS NOT BEEN REVIEWED AS PART OF THIS CERTIFICATE. ISSUANCE OF THIS ZONING CLEARANCE CERTIFICATE FOR AN INTERIM PERMIT DOES NOT CONSTITUTE CONFIRMATION OF LEGAL PARCEL STATUS.

THIS INTERIM PERMIT IS ONLY VALID IF IT IS ACCOMPANIED BY A SIGNED AND NOTARIZED EXHIBIT A COMPLIANCE AGREEMENT THAT IS CONFIRMED TO BE ON FILE AT THE COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT.

EXHIBIT A

CANNABIS COMPLIANCE AGREEMENT FOR A ZONING CLEARANCE CERTIFICATE FOR INTERIM PERMIT

This Agreement is entered into by and between the County of Humboldt, through its Planning and Building Department, ("County"), and the "Applicant" and "Owner" listed in the Zoning Clearance Certificate for Interim Permit, regarding property represented by the parcel number(s) listed in the Zoning Clearance Certificate for Interim Permit.

RECITALS

WHEREAS, on November 14, 2017, the Board of Supervisors of Humboldt County amended Humboldt County Code ("HCC") Section 314-55.4.8 to add sub-section 314-55.4.8.11 to allow issuance of Zoning Clearance Certificates for Interim Permits to eligible applicants whose application was deemed complete for processing on or before July 14, 2017; and

WHEREAS, on February 27, 2018, the Board of Supervisors of Humboldt County amended HCC Section 314-55.4.8.11 to allow issuance of Zoning Clearance Certificates for Interim Permits to eligible applicants whose application was filed prior to January 1, 2017 and deemed complete for processing pursuant to HCC Sections 312-2.3.3 or 312-6.1.2, thereby removing the requirement that the application have been deemed complete for processing before July 14, 2017; and

WHEREAS, an eligible applicant is a person, pursuant to HCC 314-55.4.7, who submitted an application for existing commercial cannabis cultivation activities, provided adequate evidence demonstrating that a commercial cannabis cultivation site existed on the real property described in the attached Zoning Clearance Certificate For Interim Permit prior to January 1, 2016; and

WHEREAS, existing commercial cultivation activities pursuant to HCC Section 314-55.4.8.2.2 include outdoor or mixed-light commercial cannabis cultivation 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 (on parcels of one acre or larger); and

WHEREAS the Applicant and Owner filed an "Application" for a Zoning Clearance Certificate, Special Permit and/or a Use Permit pursuant HCC Sections 312-2.2 and 312-5.2.1 for existing commercial medical cannabis cultivation; and

WHEREAS, the County has reviewed the evidence provided with the Application, and has determined existing commercial cultivation activities on the real property represented by the parcel number(s) listed in the attached Zoning Clearance Certificate for Interim Permit consisting of outdoor and/or mixed light commercial cultivation, hereafter Existing Commercial Cannabis Cultivation ("ECCC"); and

WHEREAS, the County is utilizing this Compliance Agreement (“Agreement”) to allow the Applicant and Owner to complete the remainder of the permit process in a timely manner and continue operation of the ECCC while applying for a license from the State of California to cultivate cannabis; and

WHEREAS, pursuant to the authority provided in HCC Section 314-55.4.8.11, County will issue the Zoning Clearance Certificate for an Interim Permit on the real property for the ECCC and, in exchange, Applicant and Owner will in good faith complete the Application on or before December 31, 2018; and

WHEREAS, the Zoning Clearance Certificate for an Interim Permit authorizes the Applicant to seek State licensure and continue operations of the ECCC until the completion of the process for the Zoning Clearance Certificate, Special Permit, or Use Permit, or denial of the certificate or permit, or December 31, 2018, whichever occurs first; and

NOW, THEREFORE, in consideration of the faithful performance of the terms, conditions, and promises set forth in this Agreement, the Parties agree as follows:

1. Subdivision Map Act and Humboldt County Subdivision Regulations. The Applicant and Owner acknowledge this Zoning Clearance Certificate for an Interim Permit is issued without a legal determination having been made as to the number, size, shape of, or legal status of the parcel(s) that may be encompassed within the real property represented by the parcel number(s) listed in the Zoning Clearance Certificate for Interim Permit. Furthermore, the Applicant and Owner hereby acknowledge issuance of this Zoning Clearance Certificate for an Interim Permit is not an approval for development and does not entitle the Applicant, Owner, or their Successors in Interest to a conditional or unconditional certificate of subdivision compliance pursuant to Government Code Sections 66499.34 or 66499.35(c), or any other law or regulation.
2. Development Suitability. The Property Owner and Applicant hereby acknowledge the issuance of this Zoning Clearance Certificate for an Interim Permit is for existing cannabis cultivation purposes only, and does not authorize or grant any approval for development or improvement of the property. The real property subject to this Zoning Clearance Certificate for an Interim Permit has not been evaluated for suitability for development in accordance with existing or future regulations.
3. Taxation. The Property Owner and Applicant hereby acknowledge upon the date of issuance of this Zoning Clearance Certificate for an Interim Permit allowing outdoor and/or mixed light of ECCC shall be subject to taxation pursuant Humboldt County Code Sections 719.1 – 719.15.
4. Track and Trace. The Applicant and Owner shall participate in the Medical Cannabis Track and Trace Program administered by the Humboldt County Agricultural Commissioner.

5. Violations. The Applicant and Owner hereby acknowledge that the Zoning Clearance Certificate for an Interim Permit does not allow or authorize expansion or relocation of the ECCC area, either in part or in its entirety. The Applicant and Owner hereby acknowledge and understand that, notwithstanding Interim Permit page 2, number 6, expansion or relocation of the ECCC area is in violation of this Agreement and shall result in the revocation of the Zoning Clearance Certificate for an Interim Permit by the Director. The Director's decision to revoke the Zoning Clearance Certificate for an Interim Permit is not subject to appeal. In addition to the revocation of this Zoning Clearance Certificate for an Interim Permit, the revocation action will include the denial or withdrawal of the Zoning Clearance Certificate, Special Permit or Conditional Use Permit application for the existing cultivation without a noticed public hearing.
6. Additional Information. The County reserves the right to request that the Applicant and Owner submit additional information as needed to find the Application in conformance with the Humboldt County Zoning Regulations and, if applicable, the terms and conditions of any previously approved development permit, variance, or subdivision [Reference HCC Sections 312-2.4.1, 312-17.1, and 312-17.3].
7. Issuance of Permit. The Parties agree that the County's issuance of the Zoning Clearance Certificate for an Interim Permit referenced herein is conditioned on and made in reliance of the representations made by Owner and Applicant in this Agreement. . The Parties acknowledge that the issuance of the Zoning Clearance Certificate for an Interim Permit does not assure or guarantee that a Zoning Clearance Certificate, Special Permit, or Use Permit will be subsequently approved or issued. The Parties acknowledge that the Zoning Clearance Certificate, Special Permit, or Use Permit may be subject to additional conditions and mitigations to comply with the HCC, specifically HCC Section 314-61.1, the Commercial Medical Marijuana Land Use Ordinance (as amended), the California Environmental Quality Act (CEQA), and any other applicable codes, laws, or regulations. The Parties acknowledge the issuance of the Zoning Clearance Certificate for Interim Permit is in no way intended to limit or restrict the application of these laws and regulations.
8. Consent to Inspection. Owner and Applicant consent to all inspections of the property as needed, at any time during business hours Monday through Friday, while this Agreement is in effect, by the Division of Environmental Health or Planning and Building Department, and any other agencies or departments that may need to inspect the property to determine that the terms of this Agreement are being fulfilled.
9. Time Limit to Complete the Application. The Parties agree that the Applicant will complete the Application at the earliest feasible date, but in no event later than December 31, 2018. The time to complete the Application may only be extended by the Director or Planning and Building for cause beyond the control of the applicant upon the written request by Owner/Applicant.

Waiver. The failure of the County to proceed against the Applicant and/or Property Owners in an enforcement action, whether administrative, civil or criminal, for any violation of the applicable ordinance, this Agreement and/or state or local law or regulation shall not constitute or be deemed a waiver of the County's right to proceed against Owner and/or Applicant for any subsequent violation. Nothing in this Agreement shall limit in any manner the authority of the County to apply and/or enforce any provisions of the County's code or state law or regulation to the Owner and Applicant and activities occurring on the property.

10. Notices. All notices required by this Agreement shall be sent, at a minimum, via first class United States Mail with postage prepared to the Parties as follows:

To County:

Director, Planning and Building Department
3015 H Street
Eureka, CA 95501

To Property Owners:

As listed in County of Humboldt property tax records.

To Applicant:

As listed on Zoning Clearance Certificate for Interim Permit.

Notices shall be deemed served upon deposit in the United States mail. The Owner and Applicant shall notify the County in writing of any changes in address.

11. Indemnification. Owner and Applicant shall hold harmless, defend and indemnify County and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney fees or other costs of litigation, arising out of, or in connection with, the issuance of a Zoning Clearance Certificate for an Interim Permit for the subject property, the terms of the Zoning Clearance Certificate for an Interim Permit, or the terms of this Agreement.

12. Binding on Successors. This Agreement is binding on the heirs, successors and assigns of the Parties. In the event of a permit transfer, a new compliance agreement must be executed. In the event of property transfer, the Seller and Applicant have an affirmative duty to inform the Buyer of this Compliance Agreement. Seller and Applicant must also provide written proof of Buyer notification to the County.

13. Amendment. This Agreement may be amended, modified or changed by the Parties provided that said amendment, modification or change is in writing and approved by all Parties.

14. Severability. If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

15. Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

This Agreement is entered into between the Parties as of the date the Compliance Agreement is stamped as received.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR
TREASURER.

County

A handwritten signature in blue ink, appearing to read "John H. Ford".

John H. Ford, Director
Planning and Building Department
County of Humboldt

IF SIGNING ON BEHALF OF A CORPORATION, PROVIDE TITLE / CAPACITY

Property Owner(s)



Sign above. Print name here: CORY NUNES

APPLICANT

Capacity / Title: OWNER

Sign above. Print name here:

Capacity / Title:

Applicant(s) (IF DIFFERENT FROM PROPERTY OWNERS)

Sign above. Print name here:

Capacity / Title:

Sign above. Print name here:

Capacity / Title:

Attach Separate Notary Acknowledgements

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CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF HUMBOLDT }

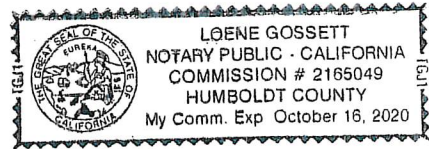
On this 18th day of July 20 18, before me, Loene Gossett Notary

Public, personally appeared Cory Naves who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Loene Gossett (seal)
Signature



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF HUMBOLDT }

On this _____ day of _____ 20 ____, before me, _____ Notary

Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature (seal)

Attach Additional Copies if Necessary

ATTACHMENT 12

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;
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 Hearing Officer 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; 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 applicant failed to provide evidence that all light associated with cannabis cultivation was shielded within ten working days of written notification by county staff as required by HCC §314-55.4.11.w.

"The light source should comply with the International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). **Should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected as necessary.** (Emphasis added)

There is minimal to no evidence of cultivation existing prior to January 1, 2016 and the applicant has repeatedly expanded the existing cultivation area and therefore failed to comply with HCC §314-55.4.8.2.2.

"A Zoning Clearance Certificate, Special Permit or Use Permit 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 shall be permitted.** The total cultivation area allowed on a single parcel shall not exceed one acre for outdoor or 22,000 square feet for mixed-light cultivation."

The applicant has violated the compliance agreement for the Zoning Clearance Certificate for Interim Permit which are grounds for cancellation of the interim permit and staff recommendation of denial per HCC §314-55.4.8.11.

"Where adequate evidence has been submitted demonstrating that a cultivation site existed prior to January 1, 2016, permit applications seeking authorization of commercial cannabis cultivation and ancillary activities at these sites shall be eligible to receive an interim permit, provided the application was determined to be complete for processing on or before July 14, 2017. Prior to issuance of any interim permit, the Department shall independently review evidence of prior cultivation and specify the size of pre-existing cultivation area (if any) based upon aerial and satellite imagery, or other substantial evidence. Approval of the interim permit is conditional and shall occur through issuance of a Zoning Clearance Certificate and written Compliance Agreement on forms provided by the County. Compliance agreements will specify permit restrictions, penalties, and commitments to complete the permit process and confine continued operation to existing areas only. **Violation of the compliance agreement shall be grounds for permit cancellation**

and disqualification of the property from future permitting. The interim permit authorizes the permittee to seek state licensure and continue operations until completion of the local permit review process and issuance or denial of a County permit, or July 1, 2018, whichever occurs first. The Director may extend this deadline for cause. Refusal of the Director to issue or extend an interim permit shall not entitle the applicant to a hearing or appeal of the decision. Additionally, approval of any interim permit does not obligate the County to anything except what is described in the compliance agreement, including but not limited to approval of a non-interim permit or extension of the interim permit. **Permit cancellation and disqualification of the property from future permitting shall be decided by the Zoning Administrator or the Planning Commission at a noticed public hearing.** Those decisions may be appealed to the Board of Supervisors pursuant to the appeal procedures outlined under 312-13 of these regulations. Applicants with pending applications where only minor additional information is needed for approval shall not be issued interim permits unless in the discretion of the Director reasons exist (not within control of the applicant) that the information cannot be provided prior to December 31st, 2017." (Emphasis added)

Due to these repeated violations of the applicable development standards, the finding that the project complies with all applicable development standards and requirements of these regulations cannot be made.

6. Environmental Impact:

The recommended action is statutorily exempt from State environmental review per section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines.