COUNTY OF HUMBOLDT

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Title:	1:30 p.m. - The Hawk Valley Farms, LLC Appeal of the Planning Commission Denial of The Hawk Valley Farms, LLC Conditional Use Permit to Allow 43,560 Square Feet of Outdoor Commercial Cannabis Cultivation Operations				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	1. Staff Report, 2. 1. BOS Resolution, 3. 2. Table 1 - Application Timeline.pdf, 4. 3. Appeal filed by Day-Wilson & Kay on behalf of Hawk Valley Farms, LLC.pdf, 5. 4. PC Resolution 19-73_Hawk Valley Farms_11141.pdf, 6. 5. PC Staff Report.pdf, 7. 6. Road Evaluation for Hawk Valley.pdf, 8. Resolution 20-06, 9. Supplemental #1 Hawk Valley Appeal Item K-2, 10. Public Comment				

Date	Ver.	Action By	Action	Result
1/14/2020	1	Board of Supervisors	approved	Pass

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:
1:30 p.m. - The Hawk Valley Farms, LLC Appeal of the Planning Commission Denial of The Hawk Valley Farms, LLC Conditional Use Permit to Allow 43,560 Square Feet of Outdoor Commercial Cannabis Cultivation Operations

RECOMMENDATION:
That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-__). (Attachment 1) which does the following:
    a. Finds that the requirements of the California Environmental Quality Act (CEQA) do not apply pursuant to section 15270 (Projects Which Are Disapproved);
    b. Finds that 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;
    c. Finds that the project is not consistent with section 314-55.4.11.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;

d. Finds that the project is not consistent with section 314-55.4.11.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;
e. Finds that Hawk Valley Farms, LLC 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;
f. Denies the Appeal submitted by Hawk Valley Farms, LLC;
g. Denies the Conditional Use Permit.

SOURCE OF FUNDING:
The Appellant has paid the appeal fee associated with filing this appeal.

DISCUSSION:
Executive Summary
This is an appeal of the Humboldt County Planning Commission's June 6, 2019 denial of the Hawk Valley Farms, LLC Conditional Use Permit application to allow for the existing operation of 43,560 square feet of outdoor commercial cannabis cultivation. The project was denied unanimously by the Planning Commissions based on evidence of repeated violations of County Code including: expansion of the existing cultivation area beyond the area approved in the Interim Permit, not covering lighted greenhouses in compliance with International Dark Sky Association standards; and violating the terms of the signed Compliance Agreement in which the appellant agreed that any violations would result in denial of the permit and would render the site ineligible for future permitting.

The appellant challenges the factual basis and the precedent set by the denial, requesting that the Board vacate the Planning Commission denial and approve a modified version of the cannabis application.

The Planning Department recommends that the Board of Supervisors deny the appeal and uphold the Planning Commissions denial of the Conditional Use Permit. The Planning Commission action was heavily influenced by the signed compliance agreement where the applicant agreed that violations of county code would result in forfeiture of their ability to obtain permits. This is the first time somebody has violated provisions of their Interim Permit and asked to stay in the permit process. Secondly, the cultivation area has not been verified by evidence and CDFW has testified in past meetings and hearings that they do not believe this site supported cannabis cultivation.

Background

On September 12, 2016 Hawk Valley Farms applied for a Conditional Use Permit for one-acre of pre-existing outdoor cannabis cultivation. This site has traditionally been a flower farm. Aerial images of the property from before January 1, 2016 show approximately 3 acres of various outdoor flowers including heather and dahlias. The appellant has maintained 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

was planted. Planning Division staff initially found the applicant's claim to be somewhat plausible and agreed to process the application and present the applicant's argument to the Planning Commission. Very early in the process the California Department of Fish and Wildlife questioned whether any cannabis was ever grown on the site prior to 2016. In consultation with other cultivators in this area, there is the thought that the marine layer at this location would have made cannabis cultivation outside of greenhouses quite difficult due to mold. The applicant's letter describing the outcome of these meetings was the issuance of an interim permit for 28,000 square feet of outdoor cultivation. The pre-existing cultivation is attached to the staff report to the Planning Commission (Attachment 5) as Attachment 9.

In September 2017 staff met with the applicant and informed him that an acre of existing cultivation could not be supported. Shortly after that meeting, staff discovered that the applicant had replaced the flower fields with eighteen unpermitted hoop structures totaling 53,720 square feet over recently 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 of the greenhouses. The 28,000 square feet of pre-existing cultivation area was based on the applicant's description of planting cannabis between the dahlias. This would not normally be acceptable proof of pre-existing cultivation. Normally in order to prove pre-existing cultivation area more evidence would be required which may include aerial images showing cannabis plants, pictures from the past showing cultivation, evidence on the ground of cultivation, independent eyewitness account or some other independent evidence.

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.

In early March of 2019, the Planning Division 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 light 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 to the applicant that the CMMLUO required this to be corrected within 10 days. Later that day (March 7, 2019) an email was sent to the applicant clearly stating the requirement that he provide evidence to the Planning Division that he had implemented a system to shield the light by March 21, 2019 (Attachment 5). The applicant failed to meet this deadline. On May 1, 2019 the Planning Division 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 was directed to cease all cultivation activities.

During the March 7, 2019 site visit to investigate the complaint of light spillage, staff observed approximately 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated

nursery space equipped with electricity and artificial lights. It is important to understand that an interim permit allows an applicant to cultivate in the area that they had previously been cultivating. Changing from outdoor to mixed light within that footprint would be an expansion. Under the interim permit for this site there was not a nursery. When permits are issued, a nursery is a small area typically not greater than 10% of the cultivation area.

The development of 17,000 square feet of greenhouses equipped with artificial light far exceeds anything that has been approved for an ancillary nursery. This area identified as a nursery and the expansion to 36,720 square feet constitutes a substantial violation of the Interim permit issued on the parcel.

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 area calculation does not conform with the definition of cultivation area in the CMMLUO which clearly establishes that the correct measure of cultivation area in greenhouses as the exterior dimensions of the greenhouse.

At the time of inspection staff observed approximately 11,500 square feet of nursery space in production, and 5,500 additional square feet staged for operation. The applicant explained that the large amount of dedicated nursery space-approximately 60% of the cultivation area stated in 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 cultivation area, not tax-exempt nursery area.

On March 14, 2019 the applicant and his representative Nate Whittington of Noetic Consulting 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 5) that the applicant would have until March 25, 2019 to provide photos demonstrating the skins from two of the hoop structures had been removed. 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%. This would be an extremely large nursery area but represented the lengths staff has gone to bring this site into compliance. The applicant failed to meet this deadline.

On March 27, 2019 Planning Division staff called the applicant to inform him that he had missed the deadline to demonstrate 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 evidence of such action. During this conversation the applicant indicated that he understood the requirement and that within several days he intended to satisfy the requirements.

The CMMLUO provides the Director of the Planning and Building Department with discretion to revoke interim permits for violations of 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 interim permit was revoked. Staff also informed CalCannabis that the interim permit had been revoked. A letter was also sent to the applicant informing him that the interim permit had been revoked (Attachment 5, Staff Report to the Planning Commission). 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 Division 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 (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 authorization.

The CMMLUO provides the opportunity for existing cultivators to bring pre-existing cultivation sites into compliance with local, regional and state-wide regulatory schemes. Pre-existing cultivation is that which existed prior to 2016. On the subject parcel, the pre-existing condition verified with satellite imagery is an approximate 4-acre heather and dahlia farm. The unpermitted build-out constitutes an intensification of use not contemplated 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 all increased. As the County provided direction for how to address and resolve these compliance issues, the applicant repeatedly failed to comply with the stated requirements. This pattern of behavior demonstrates that Hawk Valley Farms LLC is unable and unwilling to operate this commercial cannabis facility in compliance with the applicable requirements. For all of these reasons, the Planning Commission denied the Conditional Use Permit in a unanimous vote on June 6, 2019.

In addition to these documented violations of County Code, the applicant has not paid the outstanding permit processing fees for their application. The applicant/appellant currently has a past due amount of $12,134.43 for processing the application to the point of decision by the Planning Commission. The applicant/appellant was sent a final notice prior to collection action on October 17, 2019. Were the project to be approved, the Planning Department would be back in front of the Board seeking revocation of the permit for failure to pay outstanding application fees.

Basis of Appeal

The basis of the appeal is set forth in the appeal letter submitted by Day-Wilson and Kay on behalf of

Hawk Valley Farms, LLC, received by the Planning and Building Department on June 14, 2019 Attachment 3. The following discussion addresses the discrete points raised in the appeal.

Analysis

Appeal Issue 1: No Expansion of Cultivation Area Occurred and Applicant Complied with County Requirements

The appellant states that when he signed an affidavit at the outset of the process, that Planning Division staff approved the full acre applied for on September 12, 2016. The appellant states that there is no factual basis for the county to have issued the Interim permit for 28,000 square feet of outdoor cultivation rather than the full acre that was applied for. The appellant claims that he was, in fact, operating in accordance with the interim permit for 28,000 square feet. The appellant further states that when Planning Division staff received the evidence that the plastic had been removed from three hoop structures on April 9, 2019 that the interim permit should have reinstated.

The appellant contends that the signed affidavit entitled him to an acre of cannabis cultivation. In fact, the affidavit signed by the appellant declares that (1) an application has been submitted to the Humboldt County Planning and Building Department to conduct commercial cannabis activity pursuant to the Humboldt County Ordinance; (2) all cannabis produced shall solely be for medical purposes; (3) all cannabis would be cultivated in accordance with local Ordinance and be distributed within the state of California; and (4) all cannabis activity would be conducted in compliance with state law. The affidavit is not a permit or entitlement as it does not specify a cultivation area and was not an approval of the square footage figure written on the application form. By signing the affidavit, the applicant specifically agreed that the cultivation of cannabis would occur pursuant to local Ordinance. The grading, construction without approval, and expansion of the cultivation area that occurred is in fact not in accordance with local Ordinance.

The appellant challenges the factual basis of the Planning Division's support for 28,000 square feet of outdoor cultivation. The appellant applied for 43,560 square feet (one acre) of pre-existing cannabis cultivation. The responsibility is the applicant's to provide substantial evidence to support the amount of cultivation on a site prior to 2016. To date, the appellant has provided no evidence that there was cannabis cultivation on the subject parcel prior to 2016. Establishing a baseline quantity of cultivation is critical to keep applications compliant to the Mitigated Negative Declaration and to the CMMLUO. In the case of Hawk Valley Farms, LLC, establishing a baseline figure was an involved process with numerous measurements taken and multiple meetings with the planning director. The difficulty with this application is the appellant claims that there was cannabis cultivation occurring among an established heather and dahlia farm but there is no other evidence that this actually occurred. In aerial images, the site looks like a commercial flower operation-it is difficult to prove definitively that there was or was not cannabis cultivation on the site. Through the meetings, however, the planning director and the appellant agreed that, based on the appellant's estimated 2015 plant count and a standard multiplier for the canopy area, that the Planning Division would support up to 28,000 square feet of outdoor cultivation on the site. The appellant later reversed course and claimed once more that the amount of pre-existing was higher than 28,000 square feet. An interim permit was issued for 28,000 square feet on July 19, 2018. It is important to point out that the agreement that staff could support 28,000 square feet of cultivation was based only on the applicant's description of what happened on

the site and is not supported by evidence. This was a decision made very early on and is extra ordinary. All other existing cultivation have been required to provide sufficient evidence of prior cultivation to justify the cultivation area. At this point approval of this cultivation area would be an exception to the rigorous analysis other applicants have been subjected to.

The appellant claims that, when using the definition of cultivation area used by the state of California, he was in conformance with the issued County interim permit. The CMMLUO definition of cultivation area specifies that hoop structures and greenhouses are to be measured by the exterior dimensions to determine cultivation area. It is not appropriate to use state definitions and apply those to County permits in order to expand cultivation area. The Interim Permit was issued for an area that was sun grown outdoor cannabis.

The appellant contends that on April 9. 2019, when planning staff received photographic evidence that plastic had been removed from three hoops; the interim permit should have been reinstated. The deadline to submit photographic evidence demonstrating that the plastic had been removed from the hoop structures was March 25, 2019. Additionally, the deadline to submit evidence of conformance with lighting standards was March 21, 2019. As of April 9, 2019, the county had received no substantial evidence of action taken to establish compliance with either requirement. Consequently, the interim permit was revoked. On this date the appellant was notified that it was his responsibility to submit substantial evidence that all cultivation activities had ceased on the site within ten days. Rather than comply with this requirement, the applicant attempted to demonstrate compliance with the items from the two previous letters. On April 9, the photos were not received timely; further, the digital date stamp on the photos that were eventually submitted did not establish that the applicant met the deadline of March 25, 2019.

Appeal Issue 2: Good faith effort to comply with lighting standards

The appellant states that he made a good faith effort to install a system to comply with the lighting requirements. He explains that he contracted with an electrician to install an automated tarp system, but that rainy weather caused delays. 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. The appellant neither provided evidence of a temporary manual tarp system (which would have satisfied the requirement), nor did he provide evidence of contract or receipt to demonstrate steps taken toward the permanent solution. In fact, the date of the invoice for the tarp system from Oregon Valley Greenhouses, Inc. is April 10, 2019, 24 working days after notice to correct the lighting was given and the day after the interim permit was revoked. The applicant did not meet the required ten working day deadline to resolve the lighting violation. Further, the Department received an additional complaint of unshielded lighting on May 1, 2019.

It should not be overlooked that the site is not approved for mixed light cultivation. The mixed light cultivation is an expansion of the Interim Permit which is a violation of the permit in its own right. The applicant attempts to describe this as a nursery, but as noted above this is far bigger than what would be allowed as a nursery. The applicant seems to have been using this as a growth area, up to the point of flowering. There is no provision for this in the CMMLUO or the CCLUO. Under both

definitions this is mixed light cultivation.

Appeal Issue 3: No evidence of a course of action in violation of Humboldt County Code and denial of a project this far in the process is unprecedented and unjustified.

The appellant states that he has endeavored to comply with the rules in a rapidly evolving system of regulations. He points out the significant financial impact of a denial nearly three years after the initial application date. The appellant states that the cancellation of the interim permit without notice given to the officially designated agent, AgDynamix, was aggravating.

In 2017 the applicant replaced an outdoor dahlia and heather farm that may have had cannabis plants growing among them with 53,720 square feet of industrial greenhouses for cannabis cultivation without any authorization. This expansion was flagged by the County and the applicant had a settlement agreement with the Planning Director in mid- 2018 followed by issuance of an Interim Permit for 28,000 square feet of cultivation. On March 7, 2019 Planning staff visited the site and confirmed that the applicant had expanded the cultivation area again.

On June 8, 2018 the Department sent the applicant a letter identifying the remaining information necessary to complete the review of the application. The applicant only responded to this letter on April 16, 2019, after the interim permit had been revoked. Despite the repeated violations and lack of responsiveness to requests for information, the Planning Department continued to provide opportunities for the applicant to remain in the permit process and only moved to deny the application once it became clear after repeated failure to resolve violations that the applicant was unable and/or unwilling to comply with county code. The application having been in process for this long is a result of the appellant's repeated code violations and lack of adequate response to County requests for information and should not vest the applicant to any sort of entitlement.

The appellant correctly states that not all communications about the violations went to the designated agent listed on the application form. Unfortunately, the applicant worked with several different agents and consultants throughout the application process. While AgDynamix was still the listed agent, Nate Whittington of Noetic Consulting had attended meetings with the applicant beginning September 2018. Additionally, the requirements in both the March 7 correspondence regarding the correction of the lighting violation, and the March 15 correspondence regarding the requirement to remove several hoop structures can best be described as operating requirements rather than application deficiencies. Many of the communications were face to face between the applicant and staff.

Appeal Issue 4: Modified Conditional Use Permit Proposal

During the appeal process, the appellant has submitted all the outstanding materials that had originally been requested for the project. As part of the appeal the applicant is requesting approval of a revised project which proposes 28,000 square feet of existing outdoor cultivation with one ancillary nursery greenhouse totaling 3,060 square feet. Cultivation activities would occur between March and October with two harvests annually using light deprivation techniques. The appellant proposes the construction of a new 7,000-sf processing structure. The appellant now also proposes planting in the ground using dry farming techniques. Estimated irrigation demand is 63,000 gallons per year. Additional irrigation

water would be sourced from five rainwater catchment tanks with a 110,000-gallon capacity. There is also a shallow well on the parcel. The well would not be an approved water source unless and until the appellant finalizes a Streambed Alteration Agreement with the California Department of Fish and Wildlife and acquires the appropriate water right from the State Water Resource Control Board. The project would require four employees for operations. Power to the site is provided by PG&E.

The proposed activities meet applicable setbacks to public lands, bus stops and cultural resources. The Ag building and the mobile dump trailer at the north end of the parcel are within the 20-foot setback required in the Agriculture Exclusive zone and would be required to be relocated or demolished if the project was approved.

Because the site is located within a floodplain, all structures would be constructed pursuant to Building Division rules for construction in the floodplain. Hoops would either be temporary structures erected between April 16 through October 15 of each year, or they would require a flood elevation certificate and be constructed pursuant to the Humboldt County Code for a permanent structure within the floodplain. All permanent structures involved in the project including the processing structure, the water tanks and potentially including the greenhouses would be subject to the requirements for development in the floodplain. The appellant proposes several additional developments for the site including a septic system, parking for 12 vehicles, and an emergency vehicle turn-around for the site.

The appellant has submitted a Water Resource Protection Plan prepared by Timberland Resource Consultants. The management of erosion and drainage, fertilizers and amendments, petroleum products as well as refuse and human waste were out of compliance. Pursuant to the State Water Resource Control Board (SWRCB) Cannabis Cultivation General Order, the appellant would have to prepare a Site Management Plan (SMP) and enroll under the new system if cultivation were to occur on the site. Conditions of approval for the project require submittal of a copy of the Notice of Applicability from the SWRCB, a copy of the SMP, and ongoing substantial evidence of satisfaction of the requirements addressed therein.

Access to the parcel is provided by the County-maintained River Bar Road. River Bar Road is not developed to the equivalent of road category 4 or better. The applicant retained Registered Professional Engineer Allan Baird to complete a Road Evaluation Report for River Bar Road. In the report Baird assesses the increased traffic resultant from the approved and proposed cannabis operations taking access off the roadway. There is one approved project (DKT Holding Group) for cultivation approximately 0.3 miles from the intersection with Highway 36.

The subject parcel is approximately 1.5 miles from the intersection with Highway 36. Baird states that the increase in average daily trips between the approved project site and the Hawk Valley site is approximately 8. There are four existing turnouts between Highway 36 and the subject parcel. Between the turnouts there is a high degree of visibility. Baird recommends the improvement of the intersection of River Bar Road and the driveway to the subject parcel to serve as an additional turnout. Humboldt County Department of Public Works responded to the Road Evaluation Report recommending that the appellant improve the intersection of the driveway and River Bar Road to a minimum width of 18 feet and length of 50 feet, that the appellant maintain the intersection in accordance with the Sight Visibility Ordinance, and that the appellant improve the turnout per the recommendation included in the Road

Evaluation Report with some slight modifications included in Attachment 6. It should be pointed out that the last leg of River Bar Road approaching the site is extremely narrow and the County has received complaints about the potential to approve cannabis operations using this segment of road.

The subject parcel was lawfully created in its current configuration and can be developed as proposed. The subject parcel is zoned Agriculture Exclusive with a General Plan designation of Agricultural Exclusive. The zone and designation allow for the continued operation of 28,000 square feet of outdoor cannabis cultivation. The project does not involve any residential development and would not reduce the density of the parcel. The parcel is flat and there is no mapped Alquist-Priolo fault zone in its direct proximity.

Conclusion

The appellant has proposed measures to address each of the violations that has occurred on the site. The appellant has revised their plan to pursue only 28,000 square feet of cultivation-the amount previously supported by the Planning Division when an interim permit was issued for that amount. The appellant has proposed to pay a penalty of $57,440 to settle the cultivation area violation. To address the repeated violation of the dark sky performance standard, the appellant proposes that the ancillary nursery greenhouse would be outfitted with an automated blackout tarp system to contain the light. The revised application meets all the technical application requirements for approval of a Conditional Use Permit. The Planning Commission's action was focused on the number of violations and the applicant signing a compliance agreement which stated he would forfeit the ability to obtain a permit if he violated the terms of the Ordinance.

To address violation of the compliance agreement, the appellant proposes that the Board of Supervisors may vacate the determination of the Planning Commission that the property would be disqualified from future permitting. When the CMMLUO was modified to include the provision for Interim Permits it was understood that this was a great privilege to allow cultivators to continue to cultivate in the manner that they traditionally had with not expansion and no violation. It was understood that if these provisions were violated that permits would be revoked, and the cultivator would lose the opportunity for future permitting on the property. This was a trust relationship where many applicants have remained in compliance and have not installed new infrastructure without obtaining their actual permits.

This is the first time that an applicant has had their Interim Permit revoked and Conditional Use Permit denied for cause and is asking the County to ignore the stated consequences of the signed Compliance Agreement. There may be circumstances in which somebody makes mistakes and quickly corrects those mistakes. They would not have their Interim Permit revoked and their Conditional Use Permit denied. This is a case of multiple large violations (expansion, unauthorized mixed light cultivation, light spill over) that were not timely resolved, and were not resolved until the Interim Permit was revoked and Conditional Use Permit scheduled for denial.

FINANCIAL IMPACT:
There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee

associated with this appeal.

STRATEGIC FRAMEWORK:
This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:
N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:
The Board of Supervisors could elect to grant the appeal and approve the project despite the project's inconsistency with HCC §314-8.2.2, §314-55.4.11.w and §314-55.4.8.11. Should the Board choose to do so, the project needs to be continued to a hearing at least 4 weeks in advance in order to prepare findings for approval.

ATTACHMENTS:
NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolutions and Findings
2. Table 1 - Application timeline
3. Appeal filed by Day-Wilson & Kay on behalf of Hawk Valley Farms, LLC
4. Resolution of the Planning Commission, Resolution No. 19-73
5. Planning Commission Staff Report
6. Road Evaluation Report

PREVIOUS ACTION/REFERRAL:
Board Order No.: N/A
Meeting of: N/A
File No.: N/A