

SUPPLEMENTAL INFORMATION #1

For Planning Commission Agenda of:
August 20, 2020

<input type="checkbox"/>	Consent Agenda Item	No. G-1
<input checked="" type="checkbox"/>	Continued Hearing Item	
<input type="checkbox"/>	Public Hearing Item	
<input type="checkbox"/>	Department Report	
<input type="checkbox"/>	Old Business	

Re: Adesa Organics LLC, Conditional Use Permit

Record Number: PLN-11923-CUP

Application Number: 11923

Assessor Parcel Number: 315-145-002, 315-211-003, 315-211-004

23550 Maple Creek Road

Attached for the Planning Commission's record and review is the following supplementary informational item:

1. Letter dated August 12, 2020 from Soluri Meserve to Planning Commission.
2. Letter dated August 14, 2020 from Soluri Meserve to Planning Commission.
3. Letter stamped "Received August 14, 2020" from a Maple Creek neighbor in support of the project.
4. Letter dated August 17, 2020 from SHN Consulting Engineers to the Planning Commission.
5. Letter opposing the project, dated August 19, 2020 from ATA Law Group, representing Friends of the Mad River, to the Planning Commission.
6. Revised findings for consistency with the California Environmental Quality Act. The revised findings are to address the comments submitted on the draft Initial Study and Mitigated Negative Declaration.

Planning staff would like to address the arguments made in item 5, the letter from ATA Law Group because many of them are based on an erroneous understanding of the project or on an inaccurate representation of the ISMND.

- A. ATA Law Group states that the IS/MND fails to consider the whole of the project because it excludes the LSAA, the Deva Amrita project, and the second rainwater catchment pond. These claims are inaccurate. The projects identified in the LSAA that relate to the proposed Conditional Use Permit are all disclosed, analyzed and mitigated for in the ISMND. The commenter conflates the entirety of the draft LSAA issued by CDFW for the entire Adesa Ranch with the CEQA project currently under review. While CDFW has requested and mandated culvert and stream crossing improvements for the entire 443 acre ranch, the majority of these are unrelated and have no nexus to the Conditional Use Permit for commercial cannabis and are not required for the proposed cannabis facility. The stream crossings and culvert replacements necessary for the cannabis project are all disclosed, analyzed and adequately mitigated for in the ISMND (See Bio

Resources section of ISMND). Other aspects of the draft LSAA have no nexus to the Conditional Use Permit.

- B. ATA Law Group states that an existing stock watering pond on the site should be evaluated in the environmental document. This existing stock pond is not part of the project and no changes are proposed to it as part of the project.
- C. ATA Law Group states that the Dev Amrita project must be evaluated. This application has been cancelled and is no longer proposed and therefore is not part of the project to be considered under CEQA.
- D. ATA Law Group states that the foreseeable effects of a second rainwater catchment pond should be considered because it could allow for additional development and cultivation activities. However, no additional development or cultivation is proposed and is unlikely to be allowed per the zoning and constraints of the property. CEQA does not require an analysis of development that is not contemplated, proposed or likely to occur.
- E. ATA states that the proposed project is based on a 2019 application and therefore must comply with the Commercial Cannabis Land Use Ordinance (Ordinance 2.0). For this claim ATA is referring to an emergency Special Permit that the applicant filed at CDFW's request to repair an existing failing stock pond on the ranch property. In this application the applicant referenced the draft LSAA that CDFW issued that includes some of the road work and stream crossings for the cannabis application. This did not change or alter the Conditional Use Permit application submitted by Adesa Organics, which was submitted on December 15, 2016. The CCLUO states that "applications for commercial Cannabis Activity land use permits filed on or before December 31, 2016 shall be governed by the regulations in effect at the time of their submittal". The only exception stated in this section is regarding Zoning Clearance Certificates in Community Planning Areas, which does not apply here. The Adesa application is required under the Humboldt County Code to be reviewed under the CMMLUO.
- F. ATA states that the stream setback must be increased to comply with state law. This is false. As mentioned previously in the staff report, the proposed setbacks to watercourses comply with the county's Streamside Management Area and Wetland Ordinance and will be required to comply with state requirements. The project did file a Notice of Application under the previous cannabis order and has received information from the Water Board staff indicating that they would be vested under that order, however the new order requires 50 foot setbacks from class 3 watercourses, 100 feet from class 2 watercourses, and 150 feet from class 1 watercourses and lakes, ponds or springs. The project is designed to be 100 feet or more from all adjacent watercourses, which are class 2 watercourses requiring a 100-foot setback.
- G. ATA states that impacts to Water Resources may be significant because 6,201,00 gallons of rainwater catchment is proposed. This is inaccurate. 4,300,000 gallons of rainwater catchment is proposed and disclosed in the ISMND. The commenter references page 7 of the ISMND referring to this amount of rainwater catchment, but this is not accurate. The proposed water storage would be 4,300,000 gallons, which is equivalent to approximately 13 acre-feet per year. According to the Humboldt Bay Municipal Water District Urban Water Management Plan the Mad River watershed annual runoff just over 1,000,000 acre feet per year. The capture of 4,300,000 gallons is approximately 13 acre feet per year, which is 0.0013 percent of the total runoff in the Mad River watershed. ATA also states that the ISMND is contradictory because it states that runoff will be collected and used for rainwater, and that it also states that runoff will infiltrate into the ground or be pre-treated prior to discharge. It is unclear how this is contradictory as the amount of runoff needed to fill rainwater ponds will be collected and additional runoff allowed to infiltrate or discharged. This is not contradictory.
- H. ATA states that the use of diesel generators will be a significant impact and points to statements by the county in the ISMND that the use of diesel generators powering 20% to

50% of the power is a significant impact and that the county is not requiring solar power from the beginning of the operation. This is false. The ISMND requires as mitigation that the project provide 80% renewable power at the very beginning of the operation. This argument from ATA completely ignores the discussion in the ISMND and the proposed mitigation measures.

- I. ATA states that the project fails to address habitat fragmentation from the proposed project. The ISMND includes over three years of studies documenting the habitats and use of these areas by sensitive wildlife species and includes mitigation to protect and ensure that these species and any sensitive habitats will be protected. ATA refers to CDFW stating that the new road will fragment high quality habitat, however the vast majority of the access road for this project is existing and will only be improved. The only new access road is an approximately 250-foot section that runs through oak woodlands to the proposed primary rainwater pond. There is no information provided by ATA or CDFW to indicate that a 250-foot access will result in significant habitat fragmentation. Further, neither ATA or CDFW provide any detail or scientific information to demonstrate the potential for significant impacts on habitat. The ISMND relies on technical studies and analysis prepared by qualified biological experts. Neither ATA nor CDFW has provided any expert analysis to contradict the information relied on in the ISMND.
- J. ATA repeats CDFW comments that there may be a significant impact from pond construction because of incongruous mitigation regarding bullfrog management. It appears that ATA and CDFW are both arguing that the specific measures in place to prevent and remove bullfrogs is inconsistent with the general requirement to keep the ponds free from bullfrogs. This makes no sense. The requirement is to keep ponds free of bullfrogs, and measures are in place to prevent bullfrog infestation and to remove them if they colonize the ponds.



tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

August 12, 2020

SENT VIA EMAIL (planningclerk@co.humboldt.ca.us)

Hon. Alan Bongio, Chair
County of Humboldt Planning Commission
825 Fifth Street
Eureka, CA 95501

**RE: Adesa Organic, LLC Conditional Use Permit
Application Number 11923**

Dear Chair Bongio and Members of the Planning Commission:

This firm represents Adesa Organic, LLC (“Adesa”) concerning its application for a new commercial cannabis operation in Humboldt County (“Project”), which the Planning Commission (“Commission”) considered at its meeting on August 6, 2020. At that meeting, the Commission first voted 3-3-1 on a motion to adopt the Project’s Initial Study/Mitigated Negative Declaration (“IS/MND”) and approve the Project. Following that, the Commission voted 6-1 to continue the public hearing on the Project to August 20, 2020 with the hope of obtaining additional information from the California Department of Fish and Wildlife (“CDFW”) during that interim period.

The letter directly addresses certain concerns raised by Planning Commissioners at that hearing. While the overall sentiment expressed by all Planning Commissions was that the Project is “a good project,” and that Adesa “did a good job” – of satisfying the requirements of the County’s Cannabis Ordinance in “exemplary fashion,” three Commissioners nevertheless voted against approval, and one abstained. Three specific concerns were expressed by these Commissioners: (i) the length of the private roadway serving the Project; (ii) possible runoff into Cowan Creek, and (iii) uncertainty about impacts to biological resources. This letter will explain how Adesa has exhaustively addressed these issues as well as speak to more generalized concerns voiced by certain Planning Commissioners about the County’s Cannabis Ordinance.

1. The Private Road

Chair Bongio expressed concern at the meeting about the “long road” serving the Project. As the staff report explains, ingress and egress for the Project includes a “1.1-mile section of private road between Maple Creek Road and the proposed project facilities.” That said, both the staff report and Road Evaluation Report make clear that this is an existing road that will continue to be used whether the Project is approved or

not. Indeed, the improvements required by the County's conditions of approval as well as the Lake and Streambed Alteration Agreement ("LSAA") will reduce erosion, air quality and other environmental impacts associated with continued use of the private road. If the Project is approved, impacts will be even further reduced through Adesa's "transportation plan that mandates the use of company shuttles for transporting employees to the project site." These improvements – which will not occur with denial of the Project – would dramatically reduce any environmental impacts associated with this existing roadway.

2. Possible Runoff

An adjacent property owner, Ronald Wilson, made comments about possible surface water impacts associated with runoff affecting his property. Chair Bongio also mentioned possible "runoff" as a reason for voting against the Project. Concerns about water quality, whether resulting from surface runoff or sewage treatment, are misplaced. The IS/MND already explains in detail how surface runoff would be addressed:

All excess irrigation runoff will be captured and recycled through an Everfilt mixed-media filtration system. No excess irrigation water is anticipated to run off site. Site topography is relatively flat at the cultivation and processing sites, with the slopes of these sites being 5-15%. There will be erosion control measures surrounding the water tanks in case of any accidental leaking. Use of OMRI-certified organic amendments will also reduce the potential for stormwater pollution and any adverse impacts to the watershed. The Adesa Organic, LLC project is enrolled as a Tier 2 discharger under the North Coast Regional Water Quality Control Board (NCRWQCB) Cannabis Cultivation Waste Discharge Regulatory Program (CCWDRP). The Waste Discharge Identification number for the Adesa Organic, LLC project is WDID# 1B161705CHUM. A separate Water Resources Protection Plan has been developed for the project.

(MND, p. 5.)

In oral comments, Mr. Wilson stated that the "design looks pretty complete." That said, Mr. Wilson speculated, with no supporting analysis, that "pumps can be overwhelmed and fail." But the law is well settled that speculation such as this about a worst-case scenario is not substantial evidence of a significant impact. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373, 110 Cal.Rptr.2d 579 [CEQA does not require lead agencies "to engage in speculation in order to analyze a 'worst case scenario'"]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 453 ["An EIR, in

Hon. Alan Bongio, Chair and
Members of the Planning Commission
County of Humboldt
August 12, 2020
Page 3 of 6

particular, need not analyze a “ ‘worst case scenario’ ”]; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 635 [same]; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1068 [same].) In any case, if Adesa’s pumps did ever fail, they would need to be repaired, consistent with the site’s Waste Discharge Requirements issued by NCRWQCB.

There are also no potentially significant impacts associated with the Project’s sewage treatment and disposal, which is also addressed in detail in the MND:

On-site Wastewater System

The project proposes a new onsite sewage disposal system to meet the needs of staff. This system will be constructed in accordance with the Humboldt County Department of Environmental Health sewage disposal system requirements. A site-specific Septic Suitability Report (SHN October 2016) has been prepared for the project in accordance with the standards of the Humboldt County Division of Environmental Health, to assess soil and groundwater conditions for this system, determine feasibility and the necessary size of the system, and guide the proposed development. The system will include toilet and handwashing facilities in the proposed ADA-compliant bathroom near the processing and storage facilities. The proposed leach fields are shown on the project site plan (Sheet 433A Site Plan, SHN June 2019).

As with surface runoff, any concern about sewage treatment and disposal is merely unsubstantiated speculation about a worst-case scenario. As established above, this is not substantial evidence of any significant impact.

In short, there are no legitimate, fact-based concerns about the Project’s potential impact on surface water quality. These issues have already been addressed in the IS/MND and the Project’s permitting documents.

3. CDFW Comments on the Project

Vice Chair Levy expressed concern about voting on the Project without first receiving formal comments on biological issues from CDFW. While CDFW did not submit formal comments during the IS/MND public comment period, CDFW has been very active on the Project by providing its comments and concerns during the IS/MND’s consultation period pursuant to CEQA Guidelines section 15063, subdivision (g). Indeed, CDFW comments about potential impacts to a single pair of golden eagles prompted the preparation of no fewer than six technical reports, including the following:

1. Natural Resource Assessment dated December 2017;
2. Technical memorandum by Gretchen O'Brien of SHN dated August 31, 2018;
3. Biological Assessment Addendum – Golden Eagle and Bald Eagle by Sandra Hunt-von Arb dated December 8, 2018;
4. Golden Eagle 2019 survey update report dated October 17, 2019 by Sandra Hunt-von Arb;
5. Technical Memorandum re: Golden Eagle Habitat in Maple Creek, California by Gretchen O'Brien dated November 19, 2019; and
6. Golden Eagle survey notes by Gretchen O'Brien for survey dated March 3, 2020.

All of these technical reports,¹ prepared by experts with unquestioned credentials, consistently concluded that there would be no substantial impact to golden eagle populations because: (i) the Project site is well located with an adequate buffer distance away (greater than one mile as indicated by CDFW via USFWS) from the nearest golden eagle nest as well as observed flight paths of the golden eagle individuals themselves; (ii) based on best available habitat mapping, the Project site provides lower quality habitat in comparison to what is available closer to the nest sites for this pair of golden eagles, which is reinforced by the observed non-use of the area by golden eagle individuals during 2019 surveys, and (iii) the typical territory size of this species (approximately a 10-mile radius) provides extensive high-quality habitat for the golden eagle individuals. As a result, there is simply not a substantial reduction in the number of the species or its range, which is the relevant standard for requiring an EIR under CEQA Guidelines section 15065 subdivision (a)(1).

These reports were summarized and forwarded by County staff to CDFW last December. We understand that CDFW subsequently determined not to provide any follow up comments during the comment period on the IS/MND. This is not the result of a failure of regulatory oversight, but rather a clear indication that CDFW's concerns have been fully addressed.

¹ These are just a few of the many investigations, studies and reports that were prepared specifically for the Project. Please see **Exhibit 1** for the complete IS/MND Source/Reference list.

4. Disagreement with the County's Cannabis Ordinance

A few Planning Commissioners voted against Project approval despite describing it as a "good project" and acknowledging that "the applicants have done a good job of meeting the requirements [of the County's Cannabis Ordinance]." Vice Chair Levy characterized Adesa's compliance with the County's Cannabis Ordinance as "exemplary." These commissioners acknowledged on the record that they would not be willing to approve any cannabis project at this location, or at any location at higher elevations in the County. In essence, these Planning Commissioners appear to have voted against the Project based on their disagreement with the County's Cannabis Ordinance itself, and not anything specific to the Project or its application materials. California law provides this is not a proper reason to deny the Project.

It is established that the enactment or amendment of zoning regulations "are legislative, but variances and similar administrative decisions [including CUPs] are adjudicative." (*Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 519-520.) Based on the critical distinction between land use actions that are "legislative" in character and those which are supposed to be "quasi-judicial", California law provides that "administrative decisions must implement established standards and rest upon findings supported by substantial evidence." (*Arnel Dev. Co., supra*, 28 Cal.3d at 519-20, relying on C.C.P., §1094.5.) An adjudicatory hearing on a CUP application may not be turned into an occasion to change land use legislation. (E.g., *Security Nat. Guaranty Inc. v. Calif. Coastal Comm.* (2008) 159 Cal.App.4th 402 [administrative appeal is not occasion for agency to re-write its land use legislation].)

It is improper for local agencies to informally re-write or change the significance of existing zoning and planning legislation without going through the formal, public process of legislating such changes. (*Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 200 [city council abused its discretion by denying building permit; appellate court directed that writ petition be granted, ordering City to issue permit] (*Gabric*).) As explained by the court, "[p]assage of zoning laws and changes to be effected thereby are proper legislative matters. Denying of permits as was done here can effectively change the meaning of the zoning laws." (*Id.* at 200-201.) Instead, "Such change is a proper subject for legislation, not piecemeal administrative adjudication." *Ibid.*, quoting *Topanga Assn. for a Scenic Community* (1974) 11 Cal.3d 510, 522.)

Here, the County's Cannabis Ordinance sets forth "established standards" for issuance of a CUP for commercial cannabis cultivation. By publicly acknowledging that the Adesa Project complies with these established standards but nevertheless voting against approval, these Planning Commissioners failed to act in their limited, and "quasi-

Hon. Alan Bongio, Chair and
Members of the Planning Commission
County of Humboldt
August 12, 2020
Page 6 of 6

adjudicatory,” role and exceeded their authority by confusing the nature of the proceeding. This point was made with clarity by Commissioner Mitchell: “Either approve or give very specific reason why to deny.” Commissioner Newman also suggested that such piecemealed administrative adjudication based on disagreement with the County’s Cannabis Ordinance was “arbitrary.”

Put simply, the CUP hearing was not an occasion for the Planning Commission to try to change the existing zoning – which expressly, albeit “conditionally”, permits the proposed cannabis cultivation project on the subject property. To the extent a member of the Planning Commission may disagree with the County’s existing Cannabis Ordinance and would prefer not to implement it, we respectfully submit the proper approach would be recusal from the agenda item, not attempting to engage in informal, piecemealed re-writing of the County’s Cannabis Ordinance. (See *Gabric, supra*, 73 Cal.App.3d at 200-201; see also *Topanga, supra*, 11 Cal.3d at 522.)

* * *

We thank the Planning Commission for its continued consideration of the Adesa Project and respectfully request that the Planning Commission approve the Project. The Adesa team is available by telephone or Zoom to address any questions or concerns prior to the next scheduled Planning Commission meeting on August 20, 2020.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PMS/wra

Attachments: Exhibit 1, IS/MND Source/Reference list

cc: John Ford, Director, Planning & Building Department
(PlanningBuilding@co.humboldt.ca.us)
Cliff Johnson, Senior Planner (cjohnson@co.humboldt.ca.us)
Amy S. Nilsen, County Administrative Officer, (cao@co.humboldt.ca.us)
Jeffrey S. Blanck, County Counsel (jblanck@co.humboldt.ca.us)

EXHIBIT 1

24. SOURCE/REFERENCE LIST

The following documents were used in the preparation of this Initial Study. The documents are available for review at the Humboldt County Planning Department during regular business hours.

Adesa Organic, LLC. 2018. *Cultivation and Operations Plan, Four Mixed Light Cultivation Projects at 23550 Maple Creek Road (APNs 315-145-002, 315-211-003, and 315-211-004)*. February 2018.

American Society of Civil Engineers (ASCE). 2010. *ASCE 7-10-Minimum Design Loads for Buildings and Other Structures*. Prepared by the Structural Engineering Institute of the American Society of Civil Engineers.

Borusas, Laura. January 2018. "Self-Certification of Maple Creek Road." January 24, 2018.

Borusas, Laura. April 2018. Personal Communication with Laura Borusas, applicant, regarding project design features. April 12, 2018 and April 16, 2018.

Borusas, Laura. January 2019. "Memo to Humboldt County Planning and Building Regarding PM₁₀ and energy generation." January 27, 2019.

California Building Standards Commission. 2013. *2013 California Building Code*.

California Department of Conservation. 2018. *Farmland Mapping & Monitoring Program*. Accessed April 22, 2018. www.conservation.ca.gov/dlrp/FMMP/Pages/Index.aspx.

California Department of Fish and Wildlife. 2017. *Referral Comments for the Adesa Organic, LLC CUP Application No. 11923*. May 12, 2017.

California Department of Fish and Wildlife. 2018. Draft Lake or Streambed Alteration Agreement Notification No. 1600-2018-0047-R1 AMT, LLC Water Diversion, Impoundment and Stream Crossings Project. September 14, 2018.

California Department of Forestry and Fire Protection (CALFIRE). 2007. *Fire Hazard Severity Zones in State Responsibility Area*.

California Department of Forestry and Fire Protection (CALFIRE). 2017. *Referral Comments for the Adesa Organic, LLC CUP Application No. 11923*. May 3, 2018 and May 24, 2018.

California Department of Transportation (CalTrans). 2018. *California Scenic Highway Mapping System, Humboldt County*. www.dot.ca.gov/hq/LandArch/scenic_highways/. Accessed April 17, 2018.

California Natural Diversity Database (CNDDDB) of the California Department of Fish and Wildlife [v.5.62.14]. 2018. <https://www.wildlife.ca.gov/data/cnddb>. Accessed April 20, 2018.

Department of Resources, Recycling, and Recovery (CalRecycle). 2018. *Solid Waste Information System (SWIS)*. www.calrecycle.ca.gov/swfacilities/directory/Search.aspx. Accessed April 24, 2018.

Cuniff, Patrick R. 1977. *Environmental Noise Pollution*. May 1977.

Department of Toxic Substances Control (DTSC). 2018. *EnviroStor Database*. www.envirostor.dtsc.ca.gov. Accessed April 18, 2018.

Department of Water Resources. 2019. *Sustainable Groundwater Management Act 2019 Basin Prioritization*. https://www.emwd.org/sites/default/files/file-attachments/sgma_basin_prioritization_2019_results.pdf. Accessed October 1, 2019.

Diesel Service and Supply. 2019. *Approximate Diesel Fuel Consumption Chart*.
https://www.dieselserviceandsupply.com/Diesel_Fuel_Consumption.aspx. Accessed September 24, 2019.

Dirty Business Soil Agricultural Consulting and Analysis (DBS). 2018. *Prime Agricultural Soil Assessment for 23550 Maple Creek Road, Korb, CA 95550*. February 19, 2018.

Division of Mines and Geology. 2018. Special Publication 42. Revised 2018.

Environmental Conservation Online System (ECOS) of the U.S. Fish and Wildlife Service. 2018.
https://ecos.fws.gov/ecp0/conservationPlan/plan?plan_id=71. Accessed on April 24, 2018.

Federal Emergency Management Agency (FEMA). 2018. *FEMA Flood Map Service Center*. Department of Homeland Security. Online Tool accessed April 18, 2018.

Environmental Protection Agency. 2009. *AP-42 Proposed Emissions Factors*.
<https://www3.epa.gov/ttn/chief/ap42/ch13/final/c13s02.pdf>. Accessed September 24, 2019.

Frank Huback Associates, Inc. 2020. Environmental Noise Control Study for Adesa Organic, Maple Creek, Humboldt County, CA.

Fratlicelli et al., U.S. Geological Survey. 1987. *Geologic Map of the Redding 1x2 Degree Quadrangle, Shasta, Tehama, Humboldt, and Trinity Counties, California*. Scale 1:250,000.

Global Power Supply. 2020. Letter regarding custom enclosure for generators.

GCS Structures, Inc. 2016. *GCS Structures, Inc. – Products, Gutter Connected Poly Greenhouses*.
<http://ggs-greenhouse.com/all-products/gutter-connected-poly-greenhouses>. Accessed December 13, 2016.

Google Earth Pro. 2018. *Views, Distances, Elevations and Views to the Project Site from Maple Creek Road, the Mad River, SR-36, Six Rivers National Forest, Surrounding Residences*. Accessed April 18, 2018 and April 25, 2018.

Humboldt County. 1984. *Humboldt County General Plan, Volume 1 Framework Plan*.

Humboldt County. 2016. CEQA Mitigated Negative Declaration for the Medical Marijuana Land Use Ordinance – Phase IV – Commercial Cultivation of Cannabis for Medical Use.

Humboldt County. 2017a. *Humboldt County General Plan for the Areas Outside of the Coastal Zone*. Adopted October 23, 2017.

Humboldt County. 2017b. *Revised Draft Environmental Impact Report for the General Plan Update*. Revised April 20, 2017.

Humboldt County. 2018. Humboldt County Code. Zoning Regulations – Title III Land Use & Development. Accessed April 2018.

Humboldt County Association of Governments (HCAOG). 2010. *Humboldt County Regional Trails Master Plan*.

Humboldt County Association of Governments (HCAOG). 2012. *Humboldt Regional Bicycle Plan*. Update 2012.

Humboldt County Association of Governments (HCAOG). 2017a. *20-Year Regional Transportation Plan*. 2017 Update.

Humboldt County Association of Governments (HCAOG). 2017b. *Humboldt County Transit Development Plan, 2017-2022*.

Humboldt County GIS. 2018. *Humboldt GIS Portal. Planning and Building – Parcels, Zoning, Land Use, other Regulatory Overlays*. gis.co.humboldt.ca.us.

Humboldt Local Agency Formation Commission (LAFCo). 2013. *Blue Lake, Kneeland & Willow Creek Fire Protection Districts Municipal Service Review*. Adopted July 17, 2013.

Hybrid Tech. February 2018. *Adesa Organic Acoustic Study*. February 2018.

Hybrid Tech. April 2018. *Adesa Organic Acoustic Study*. April 2018.

Kneeland Fire Protection District (KFPD). 2018. <http://kneelandfire.org/>. Accessed April 17, 2018.

Maple Creek Unified School District. 2017. *Referral Comments for the Adesa Organic, LLC CUP Application No. 11923*. May 12, 2017.

National Wild and Scenic Rivers System. 2018. <https://www.rivers.gov/map.php>. Accessed April 17, 2018.

North Coast Unified Air Quality Management District (NCUAQMD). 1995. *Particulate Matter (PM10) Attainment Plan*. <http://www.ncuaqmd.org/files/NCUAQMD%20Attainment%20Plan%205-95.pdf> Accessed April 19, 2018.

North Coast Unified Air Quality Management District (NCUAQMD). April 2018a. *Website – Air Quality Planning & CEQA, District Rules and Regulations*. www.ncuaqmd.org. Accessed April 19, 2018.

North Coast Unified Air Quality Management District (NCUAQMD). April 2018b. *Personal Communication: Jason Davis, Permits Manager*. April 19, 2018.

Pacific NorthWestern Biological. 2018. *Biological Assessment Addendum*. December 8, 2018.

Pacific NorthWestern Biological. 2019. *Golden eagle assessment addendum memo*. February 8, 2019.

Prins Greenhouses. 2018. Prins Greenhouse Products and Systems. <http://prinsgreenhouses.com/products/>. Accessed April 11, 2018.

Roscoe and Associates. 2017. *A Cultural Resources Investigation Report for the Adesa Organic LLC and Deva Amrita LLC CMMLUO Permits*. April 2017.

Roscoe, James and Melinda Salisbury. 2017. *Subsurface Investigations at the Cowan's Creek 433 Site A*. August 2017.

SHN Consulting Engineers and Geologists. October 2016. *Onsite Septic Suitability Investigation and Disposal System Design Recommendations, Adesa Organics, Maple Creek Area, Humboldt County; APN 315-211-003*. October 2016.

SHN Consulting Engineers and Geologists. November 2016. *Geotechnical Engineering Report, Adesa Organic Cannabis Farm, Maple Creek, California*. November 2016.

SHN Consulting Engineers and Geologists. December 2016a. *Road Evaluation Report prepared for Adesa Organic*. December 2016.

SHN Consulting Engineers and Geologists. December 2016b. *Preliminary Jurisdictional Wetland and Other Waters Delineation, Adesa Organic, Korb, California*. December 2016.

SHN Consulting Engineers and Geologists. 2017. *Natural Resources Assessment for Adesa Organic, LLC and Deva Amrita, LLC*. December 2017.

SHN Consulting Engineers and Geologists. February 2018a. *Site Plan: Adesa Organic, LLC APN 315-145-002, 315-211-003 & 315-211-004 Cannabis Development (433 A & B)*. February 2018.

SHN Consulting Engineers and Geologists. March 2018a. *Water Resources Protection Plan: Adesa Organic, LLC, APNs 315-211-003, 315-211-004, 315-145-002*. March 2018.

SHN Consulting Engineers and Geologists. August 2018. *AMT Biology Technical Memorandum addressing Golden Eagle and Northern Spotted Owl*. August 2018.

SHN Consulting Engineers and Geologists. November 2019. *Grasshopper Sparrow (Ammodramus savannarum) Impacts and Mitigation Measures for Project-related Activities at AMT, LLC*. November 2019.

SHN Consulting Engineers and Geologists. March 2020. *Golden Eagle survey notes by Gretchen O'Brien for survey dated March 3, 2020*.

Society of Fire Prevention Engineers (SFPE). 2015. *FIRES IN PHOTOVOLTAIC SYSTEMS: LESSONS LEARNED FROM FIRE INVESTIGATIONS IN ITALY*. https://www.sfpe.org/page/FPE_ET_Issue_99/Fires-in-Photovoltaic. Accessed October 2, 2019.

State Water Resources Control Board (SWRCB). 2018. Geotracker website. geotracker.waterboards.ca.gov. Accessed April 18, 2018.

Svensson. 2018. *Products: Svensson Obscura light deprivation screens*. <http://www.ludvigsvensson.com/climatescreens/obscura-light-deprivation>. Accessed April 16, 2018.

Tetra Tech. 2014. *Humboldt Operational Area Hazard Mitigation Plan Update Volume 1: Planning-Area-Wide Elements*. Prepared for County of Humboldt. February.

U.S. Census Bureau Website. 2010. *County of Humboldt: General Demographic and Housing Characteristics*. factfinder2.census.gov. Accessed April 24, 2018

U.S. Environmental Protection Agency (USEPA). 2018. *EnviroFacts Database*. <https://www3.epa.gov/enviro/>. Accessed April 18, 2018.

U.S. Geological Survey and California Geological Survey (USGS and CGS). 2006. *Quaternary fault and fold database for the United States*: <http://earthquakes.usgs.gov/regional/qfaults/>. Accessed October 14, 2016.



tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

August 14, 2020

SENT VIA EMAIL (planningclerk@co.humboldt.ca.us)

Hon. Alan Bongio, Chair
County of Humboldt Planning Commission
825 Fifth Street
Eureka, CA 95501

RE: Adesa Organics, LLC

Dear Chair Bongio and Members of the Planning Commission:

This letter, submitted on behalf of Adesa Organic, LLC (“Adesa”), responds to comments by the California Department of Fish and Wildlife (“CDFW”) dated July 31, 2020, and first received by us on August 13, 2020.

As a threshold matter, the CDFW letter raises no concerns about impacts to golden eagles, which was the subject of CDFW’s previous concerns. This new letter instead asserts issues that were never previously raised by CDFW over its years of consultation on the Adesa project. We understand that County staff has responded to all of CDFW’s issues, and so this letter only addresses CDFW’s comments regarding the draft Lake and Streambed Alteration Agreement (“LSAA”) for the Adesa property.

CDFW states, “[T]he LSAA Notification was submitted prior to the Project as currently described or analyzed by the County,” and so the LSAA purportedly does not address the “whole of the project.” Not so. This concern could have merit if the Project’s scope had expanded over time, but that is not the case. Rather, the Project has been dramatically reduced in size, scope and intensity. To wit:

- Adesa will renovate existing structures rather than construct a new 10,000-square-foot building.
- On-site post-harvest processing, or “trimming,” is no longer part of the Adesa project.
- Adesa has reduced the number of harvests a year by almost half, from 5 to 3. Adesa will not harvest year-round and will instead only harvest during the typical “outdoor” growing season, thus greatly reducing gas consumption, water usage and traffic loads.

Hon. Alan Bongio, Chair and
Members of the Planning Commission
County of Humboldt
August 14, 2020
Page 2 of 3

Thus, the LSAA Notification addresses all aspects of the Project. Further, and as CDFW knows full well, the majority of the actions required by the LSAA go far beyond the scope of the Project, and instead address conditions that existed before Adesa ever purchased the property: “Nineteen (19) encroachments are to upgrade failing and undersized culverts . . . Five (5) encroachments are to remove or maintain existing instream reservoirs that impounds surface flow waters.” (Draft LSAA dated September 14, 2018, p. 2.) Thus, compliance with the LSAA is separate from the Project presently being considered by the County. This was explained with clarity in the IS/MND, which provides in relevant part:

The IS/MND also addresses certain maintenance and repair actions to culverts and man-made reservoirs requested by the California Department of Fish and Wildlife (“CDFW”) and identified in a draft Lake and Streambed Alteration Agreement (“LSAA”). One of these project’s CDFW project PO-1, would remove an existing man-made instream reservoir that may be, according to CDFW, contributing sediment and warm water to Cowan Creek. CDFW Project PO-1, and all of the other maintenance and repair actions identified in the LSAA, are separate from the Adesa project for purposes of CEQA because they have independent utility. The Project does not require this work; it is requested by CDFW to address an existing condition whether or not the Project is approved. Accordingly, the IS/MND discloses the impacts of PO-1 for informational purposes.

(IS/MND, p. 2.)

CDFW’s suggestion that the IS/MND should be expanded to address activities unrelated to the Project is inconsistent with CEQA. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70 (two related to separate projects are “independently justified” and would serve distinct purposes); *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209 (proposed park was separate project from residential development that would use the same access road because they would serve different purposes and the park could be implemented with or without the residential project).)

Hon. Alan Bongio, Chair and
Members of the Planning Commission
County of Humboldt
August 14, 2020
Page 3 of 3

CDFW's letter does not even acknowledge the IS/MND's approach to this issue, much less explain how it purportedly fails to comply with CEQA. As established above, the IS/MND is consistent with CEQA. Finally, it should be noted that Adesa's agreement to the LSAA will result in dramatically improving conditions on the Project site.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/wra

cc: John Ford, Director, Planning & Building Department
(PlanningBuilding@co.humboldt.ca.us)
Cliff Johnson, Senior Planner (cjohnson@co.humboldt.ca.us)
Amy S. Nilsen, County Administrative Officer, (cao@co.humboldt.ca.us)
Jeffrey S. Blanck, County Counsel (jblanck@co.humboldt.ca.us)

Dear Commissioners,

I was a silent observer at the August 6th meeting. Our family has had three generations of living in Maple Creek; three generations of actually living here fulltime, with hopes for the next generation growing up here too. So we have a very high interest in what is happening here.

Thank you for turning down the Maple Creek Investments LLC. What was not evident in the proposal is the long term poor relations the group has here. The property was initially acquired by dubious means with the intent to exploit the neighborhood by damming the Mad River and selling lake front property for a huge profit. Thank goodness that fell through. Now, Dunaways, individually are pleasant people, but their wheelings and dealings have left most of the people they have sold property to, with the short end of the stick, deliberately misrepresenting the portions of their property they have sold off. As a family of lawyers they have always seemed to be weaseling through loop holes and not always being up-front or honest. They specifically started an illegal grow on that corner to set themselves up as either an existing grow or a new grow, depending on which ever one would be more advantageous for them.

Their choice of location has been particularly distressing for the community since it was not only right ON the road, it was at the main intersection, smack-dab in the middle of the most populated area of Maple Creek. And yes, it stunk, overwhelmingly for even those driving by. It must have been unbearable for those living next to it 24/7.

The concern over their water usage was huge, and not only over the water they proposed to collect. They already had used well water illegally for the entire term of the illegal grow, trucking water from the well which now they proposed to only use for drinking water. But despite assurances in the proposed plan (which kept changing) no one believes they would not supplement the irrigation water from the same source. That would have detrimentally impacted many homes around them.

The Dunaway who spoke at the meeting, (who lives in Arizona, by the way) misrepresented several things. 1- There were only two people who spoke from the Foersterling family, the rest had separate viewpoints. 2- The Dunaways have not been out here for 4 or 5 generations. The land was acquired by Robert Dunaway's father, his siblings and their children make three generations. 3- They come out occasionally for vacations. They are not part of the community and do not participated in the cares and concerns of the people of Maple Creek. Unfortunately, the over-all feeling from the community towards the Dunaways is the need to watch your backs around them. So thank you for shutting down this attempt.

I would also like to address the Adesa Organic LLC.

When we first hear about the plans for a very large grow we were concerned for all the reasons brought up at the meeting. Well, most of them. The land is hardly the pristine wilderness that was alluded to at the meeting. It has been actively ranched land for over 100 years, and not always in an environmental friendly way.

But yes, we had concerns about outsiders and a lack of care about our community and all the potential negativity. Then we actually meet the people involved and got to know them, their intent, their dedication to being a part of, and an asset to, the Maple Creek Community. They may technically be a corporation, which causes images of something huge and operated from a distance, but in CA. you only need 3 (or less depending on circumstances) to form a corporation. Scott and Laura of Adesa Organic are a young couple seeking to make Maple Creek their forever home, raise their children here, bring \$ and jobs into the community as well as create a quality product. They have a vested interest in the well-being of the whole community and are a good fit here.

During the meeting I did ponder over the term, "... get them out of the hills." I do not believe that should mean physically out of the boonies, but out of hiding. That was the intent I voted for. Yes Humboldt is known for weed; that is not going away no matter who you turn down. So let us lead the way in doing it well, as legalization spreads across the country. The idea of having large grows relocate nearer town makes no sense. As upset as people were about having a grow right on the road in our remote community, do you *really* think it will be desired in even more highly populated areas? The proposed Adesa site is well away from everyone (even the neighbor who is being pissy because their grow plan was not approved.) I am totally sympathetic to all the layers of nature and how humans impact the world. So I have noted that there is such an expanse of countryside around this project that animals have plenty of space to continue to roam naturally.

Unlike Dunaways, Scott and Laura have been exemplary in following every rule and the intent of the rules as well, not even doing like many and growing while working on the process of becoming legal. Other growers see that. If someone follows every guideline in every way and are still turned down, how does that inspire others to be legal, and not just go the illegal route? Also, if you don't approve a big, locally created grow which is doing things right, it leaves a window open for big pharmaceutical types, with deep pockets and no interest in community what-so-ever, to move in, which no one wants.

I do hope you will pass this project.

Sincerely, a Maple Creek neighbor

Apps 11923 APRN 315-211-00





Reference: 016178.700

August 17, 2020

Hon. Alan Bongio, Chair
County of Humboldt Planning Commission
825 Fifth Street
Eureka, CA 95501

Subject: Adesa Organic, LLC Conditional Use Permit Application Number 11923

Dear Chair Alan Bongio and Planning Commission Members,

I have prepared supplemental responses to some of the comments submitted by CDFW on July 31, 2020 regarding the Adesa Organic, LLC project and CEQA document. My responses follow the County Response.

CDFW Comment: Deferred Mitigation and LSAA. CDFW states that the IS/MND defers mitigation for existing impacts by stating that impacts will be addressed by obtaining an LSAA. The final IS/MND should be revised to include an analysis of all project impacts and propose mitigation

County Response: *It is unclear what CDFW is referring to in this comment. There are no proposed mitigation measures that refer to additional mitigation to be required under an LSAA. All project impacts are identified in the document and mitigation is not deferred to obtaining an LSAA.*

Senior Wildlife Biologist Response: I believe this is referring to the project Reservoir-1 (PO-1) listed on page 4 of the draft LSAA for the Adesa Organic, LLC project which is referred to in the Biological Resources section of the CEQA document as follows:

“CDFW project PO-1 (in accordance with the Draft LSAA) is for the purpose of removing an existing instream reservoir that may be, according to CDFW, contributing sediment and warm water to Cowan Creek. This project, which is unrelated to the Project because it is being requested by CDFW to address an existing condition whether or not the Project is approved, includes stream channel restoration. A permit from the North Coast Regional Water Quality Control Board is being sought for this project. This discussion is provided for informational purposes only.”

This section also refers to General Plan Policy BR-S6 (authorizing “fishery, wildlife and aquaculture enhancement and restoration project”), which allows for these types of encroachments within an SMA.



I am unaware of where the statement "impacts will be addressed by obtaining an LSAA" exists within the IS/MND, although if CDFW is, in fact, referring to the PO-1 project, the Biological Resources Mitigation Measures include:

BIO-4 Replacement of Riparian Vegetation and Special Status Vegetation Alliances

Any riparian vegetation and special status vegetation alliances (identified in Section 6.3.2 of the Natural Resources Assessment prepared by SHN) that are impacted by project activities, including but not limited to road improvement and maintenance, shall be replaced at a 3:1 ratio. The replacement of riparian vegetation will occur on the project site and could include enhancement of existing wetland and riparian areas. A mitigation plan will be prepared and submitted to regulatory agencies for review and concurrence prior to any construction that encroaches on SMAs, wetlands, or riparian areas.

BIO-7 Minimize Northern red-legged frog impacts

To protect northern red-legged frogs during restoration activities in CDFW project PO-1, conduct excavation activities August-October.

All project impacts have been analyzed in the CEQA document and these mitigations, among others listed in the document, have reduced the Biological Resources impacts to less than significant with the mitigations incorporated.

The applicant has applied for a permit with the USACE for this project (PO-1).

CDFW Comment: Proposed pond and cultivation area should be sited further from dripline of oak woodland and riparian habitat, at least 100 feet. Facilities should be located outside of stream and riparian complex.

County Response: *Project facilities are located outside stream and riparian areas. Project is required to comply with County Streamside Management and Wetland Ordinance (SMAWO) requirements which is 50 feet from edge of dripline (or top of bank, whichever is more restrictive) from intermittent streams and 100 feet from perennial streams.*

Senior Wildlife Biologist Response: Cultivation areas are located outside the 100-foot SMA buffer.

To ensure proper protection of riparian habitat and streams, Mitigation Measure BIO-5 is incorporated, which states "Fencing During Construction to Protect Wetlands and Streamside Management Areas. To protect the riparian habitat at the project site during construction activities, temporary fencing shall be installed and maintained on the edge of SMAs and delineated wetlands. The fencing shall be installed prior to the beginning of construction activities and shall be removed after the final inspection is completed by the Building Department."



Hon. Alan Bongio, Chair

Adesa Organic, LLC Conditional Use Permit Application Number 11923

August 17, 2020

Page 3

CDFW Comment: Rainwater catchment ponds. CDFW requests the County address incongruent measures and provide specificity regarding measures to address bullfrogs. CDFW states that mitigation that ponds shall be kept free of bullfrogs and that measures to control bullfrogs by draining ponds every two years are inconsistent. CDFW requests consultation with CDFW on pond construction prior to project approval.

County Response: *Requirement is to keep ponds free of American bullfrogs. Specific mitigation measures directing measures to keep ponds free from bullfrogs do not conflict with the requirement to keep ponds free of bullfrogs. Condition of approval number 10 in the staff report requires the applicant to consult with CDFW prior to construction of rainwater catchment ponds and to implement measures specified by CDFW to avoid risk of wildlife entrapment, such as reduced slope angles, escapement structures and fencing shall be included in construction.*

Senior Wildlife Biologist Response: The CDFW commenter appears to have misinterpreted Mitigation Measure BIO-2 which states: "Controlling the bullfrog population following colonization will be achieved by draining the rainwater catchment ponds **throughout the summer until no water remains** at the end of the principal cultivation and irrigation period. This shall be **repeated for 2 years** to disrupt bullfrog life cycles."

This mitigation suggests the pond will be drained **each year for two years**, as bullfrogs require nearly two years to develop from tadpole to adult.

I appreciate the opportunity to help clarify some of the comments and concerns presented regarding the Adesa Organic, LLC project.

Sincerely,

SHN



Gretchen O'Brien
Senior Wildlife Biologist

GAO:cet





August 19, 2020

Jason R. Flanders
ATA Law Group
jrf@atalawgroup.com
916-202-3018

Humboldt County, Planning Commission
c/o Planning Clerk
planningclerk@co.humboldt.ca.us

Humboldt County, Planning and Building Department
c/o John Ford, Director
JFord@co.humboldt.ca.us
planningbuilding@co.humboldt.ca.us

Via electronic mail

Re: Adesa Organic, LLC, Conditional Use Permit Application

Dear Commissioners Bongio, Pellegrini, Levy, Newman, O'Neill, McCavour, and Mitchell, and Director Ford:

On behalf of our client, Friends of the Mad River, we submit these comments in response to the Staff Report and materials published August 14, 2020, for the Commission's August 20, 2020 hearing on the matter of the Adesa Organic, LLC permit application. Friends of the Mad River is opposed to the proposed project. As discussed, below, the draft Initial Study / Mitigated Negative Declaration ("IS/MND") prepared for the project fails to meaningfully assess or mitigate many of the proposed project's potentially significant environmental effects. A CEQA Environmental Impact Report ("EIR") is required; or, for the many reasons provided, below, the proposed project should be denied.

A. The County has Clear Authority Under the Municipal Code, and Under CEQA, to Deny the Project, Which it Should.

The County clearly has authority and discretion to deny the proposed project. (*See, Las Lomas Land Co., LLC v. City of Los Angeles*, 177 Cal. App. 4th 837, 849;¹ Gov. Code § 65800

¹ In *Las Lomas*, the "city terminated its environmental review of a proposed development project and rejected the project before the completion of a draft environmental impact report (EIR), after Las Lomas allegedly spent millions of dollars in an effort to comply with the city's requirements.

[“counties and cities may exercise the maximum degree of control over local zoning matters”].) Here, the considerable weight of evidence and public policy considerations support denial of the project. Presently, there are no large-scale industrial pot farms in the rural reaches of Humboldt County where the project is proposed, nor should there be. The proposed project would create direct pressures and incentives for more conversion of rural Humboldt County to marijuana cultivation, and risk fundamentally changing the rural economy, culture, and environment.

On the other hand, just this week the Commission considered a proposed ordinance to bring existing small-scale local growers into the regulatory fold, a sound public policy to capitalize on existing resources without creating the types of new and far-reaching effects this proposed project would cause.

The additional reasons to deny this proposed project are numerous:

- The IS/MND fails to consider the whole of the CEQA project, including the Lakeside or Streambed Alteration Agreement (“LSAA”), and foreseeable growth effects from the oversized water supply ponds.
- The proposed project’s 2019 application triggers existing Municipal Code requirements, not the repealed CMMLUO.
- The stream setback fails to comply with state law.
- Hydrological impacts to creeks, wetlands, vegetation, wildlife, groundwater, and other water users caused by capturing over 6,000,000 gallons of rain annually are not considered.
- Effects from heavy use of diesel generators are significant.
- Habitat fragmentation would be considerable.

The comments from the California Department of Fish and Wildlife, and from the Humboldt Bay Municipal Water District, strongly support these conclusions. The project should be denied, or an EIR prepared.

B. Ample Evidence Supports a Fair Argument that the Project May Have Numerous Significant Effects, Requiring Preparation of an EIR.

The comments below, as well as comments received through significant public opposition to the proposed project, provide substantial evidence supporting a fair argument that the proposed project may have one or more significant environmental effects, requiring the preparation of an EIR prior to approval. The court in *Sierra Club v. County of Sonoma* fully describes this test:

The “fair argument” test is derived from section 21151, which requires an EIR on any project which “may have a significant effect on the environment.” That section mandates preparation

Las Lomas contends the city had a mandatory duty under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to complete and consider an EIR before rejecting the project. We disagree.” (*Id.* at 842.)

of an EIR in the first instance “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.” [Citation.] If there is substantial evidence of such impact, contrary evidence is not adequate to support a decision to dispense with an EIR. [Citations.] Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [Citations.] For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR. [Citations.]

((1992) 6 Cal.App.4th 1307, 1316-17.)

C. The IS/MND Fails to Consider the Whole of the Project.

The IS/MND unlawfully excludes the LSAA, the Deva Amrita project, and additional capacity created by the second pond, from environmental analysis. CEQA defines “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (CEQA Guidelines, § 15378, subd. (a).) “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term ‘project’ does not mean each separate governmental approval.” (CEQA Guidelines, § 15378, subd. (c).) The scope of the environmental review conducted for the initial study must include the entire project. Specifically, “[a]ll phases of project planning, implementation, and operation must be considered in the initial study of the project.” (CEQA Guidelines, § 15063, subd. (a)(1).)

CEQA prohibits “piecemeal review of the significant environmental impacts of a project.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 98 [quoting *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358].) The prohibition on piecemeal review “derives, in part, from section 21002.1, subdivision (d), which requires the lead agency--in this case, the Port--to “consider[] the effects, both individual and collective, of all activities involved in [the] project.” (*Berkeley Keep Jets Over the Bay Com, supra*, 91 Cal.App.4th at 1358.) The rule ensures that “that environmental considerations do not become submerged by chopping a large project into many little ones...which cumulatively may have disastrous consequences.” (*Communities for a Better Environment, supra*, 184 Cal.App.4th at 98 [quoting *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84.]) “The broad interpretation of ‘project’ . . . is designed to provide the fullest possible protection of the environment within the reasonable scope of CEQA’s statutory language.” (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 73.)

1. Impacts Related to the LSAA Should be Analyzed.

The IS/MND is wrong to exclude impacts related to the draft LSAA. (IS/MND at 2 [“the other maintenance and repair actions identified in the LSAA, are separate from the Adesa project for purposes of CEQA because they have independent utility.”]) The LSAA and the proposed project are so intertwined as to be part of the whole of the same action.

Here, the facts are similar to *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, which considered “whether the proposed home improvement center and the realignment of Old Wards Ferry Road are part of a single “project” for purposes of CEQA.” There, the City and applicant argued that the separate road realignment “was a longstanding, separate City project,” that was “not necessitated by the home improvement center project.” (*Id.* at 1221, 1228.) The court disagreed that the two actions were not part of the same project, considering factors including whether the activities:

are related in (1) time, (2) physical location and (3) the entity undertaking the action. . . . When two acts are closely connected in time and location, the potential for related physical changes to the environment in that location is greater than otherwise. Thus, the need for a single review of the environmental impact of the two acts is greater. Also, when the same entity undertakes both matters, it increases the likelihood that the matters are related—that is, are part of a larger whole.

(*Id.* at 1227.) The *Tuolumne Citizens* court also held that the question of whether multiple actions constitute a single CEQA project is a question of law reviewed *de novo* by the court, without deference to the local agency. (*Id.* at 1223-24.)

Here, the LSAA, and the project actions considered by the IS/MND, are all occurring at the same time, at the same location, by the same entity, and are clearly the same CEQA project. CDFW itself concurs, stating that “the IS/DMND should be revised to include an analysis of all Project impacts, including Project components included in the LSAA, and proposed mitigation where appropriate.”²

The project applicant did not simply reach out to CDFW, in a vacuum, with an altruistic desire to cure its many site deficiencies (having been in violation for an unknown number of years), as the so-called “independent utility” theory would suggest. Obviously, all of the proposed LSAA improvements are being done because the applicant wants to construct the proposed project.

a. *LSAA stream crossing improvements are part of the whole of the project.*

The draft LSAA itself describes a number of required project components, including a stream crossing “proposed to contain a sewage line that spans the stream channel,” a stream crossing including “[p]ermanent utility lines,” and three water wells (one new) to supply project water. (IS/MND at 174-177.) The IS/MND also describes inextricable overlap: “In one location, a water pipe is proposed to be installed in a roadway that crosses a stream.” (IS/MND at 32.) “Several proposed improvements to the access road between the Adesa Organic, LLC parking lot and the intersection with Maple Creek Road will also require stream crossing improvements.”

² CDFW Recommendations to Adesa Organics, LLC (SCH# 2020060675) Conditional Use Permit and Special Permit Initial Study and Draft Mitigated Negative Declaration (July 31, 2020), at Recommendation 1, p. 1.

(IS/MDN at 32.) “If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife. (Application on file, permit pending)” (Staff Report at 49.) All of this work, covered by the LSAA, very clearly provides necessary infrastructure to support the proposed project.

The Road Report prepared by the project applicant, and required to be implemented as a condition of approval, reveals the same. The Road Report states that it “is intended to provide recommendations necessary to allow all-season industrial use of the road compliant with county and wildlife/water quality agency standards.” (IS/MND at 208.) In turn, the Road Report analyzes and provides recommendations for most of the same water crossings that are addressed by the LSAA. (Compare IS/MND at 174-176 to IS/MDN at 211-215.) For a number of crossings, the Road Report and LSAA recommendations are the same. For others, CDFW disagreed with the Road Report, and the CDFW recommendations will instead be constructed. Regardless, because the CDFW LSAA and the project applicant’s own Road Report analyze the exact same roadway features for the same purposes (as the Road Report states, “to allow all-season industrial use of the road compliant with county and wildlife/water quality agency standards”) it is simply arbitrary and incorrect as a matter of law to conclude that the Road Report is part of the whole of the project, but the CDFW LSAA is not. The CEQA review should be revised accordingly.

The applicant’s 2019 application, discussed further, below, also confirms that LSAA work is part of the whole of the project being proposed. An attachment to the 2019 application explains that:

My client proposes to proceed with three project that are adjacent to the subject pond, are within 80 feet of each other, and are assumed to have the potential to deleteriously affect Cowan Creek. The intent is to do these projects subsequently to minimize the disturbance to the adjacent habitat Projects include Corssing-1 (WC-1) that involves the replacement of a failing and undersized 48-inch-diameter culvert with a minimum 60-inch-diameter culvert for a proposed new road, and Reservoir-1 (PO-1) that requires the removal of an existing and unpermitted instream reservoir and relocation of the existing channel. These projects require similar erosion and sediment control, temporary water diversions, and potentially an incidental take permit for the foothill yellow-legged frog.

(Attachment 1 at 3.) Just as in *Tuolumne Citizens*, the multiple elements of the same project are close in place, time, and being performed by the same applicant for efficiencies and necessity. The 2019 application states that the work is required for the “proposed new road,” clearly referencing the road needed for the proposed project. The 2019 application would repair the “failing and undersized” culvert because the new project needs to be built consistent with all basic engineering standards and habitat requirements.

b. *LSAA pond and diversion activities are part of the whole of the project.*

Water supply impacts are a critical component of the required environmental assessment. As discussed further, below, the project proposal to construction new retention ponds—with resulting adverse effects—while not relying on existing water diversion structures covered by the LSAA simply doubles this property’s water supply impacts while creating additional environmental consequences. Instead, the site’s existing ponds and diversion structures should be evaluated as alternative water sources in an EIR.

2. The Deva Amrita, LLC Project Must be Evaluated.

The applicant’s Cultivation and Operations Plan, as revised June 9, 2019, states that “Effectively all elements of Water Source are shared between the Deva Amrita, LLC (Deva Amrita or Deva) and Adesa Organic, LLC (Adesa Organic or Adesa) projects.” The IS/MND states that that “All elements of the water source and storage facilities will effectively be shared between the two projects,” but it is unclear what two projects this is referring to. (IS/MND at 94.) The Road Evaluation Report, which the mitigation measures require to be implemented, states on its cover that it “Also applies to Deva Amrita LLC.” (IS/MND at 204.) CalFire comments noted that “[a]ssociated processing would occur on-site at two (2) existing outbuildings to be shared with ‘Deva Amrita’,” (Staff Report at 99), and the Humboldt Bay Water District noted the same (Staff Report at 99). If the project has been significantly revised, a new application should be submitted, and responsible agencies should be permitted an opportunity to review the actual project being proposed.

However, the IS/MND is completely silent regarding the Deva Amrita project. As a result, it is completely unclear whether (1) the effects of the Adesa project would cause reasonably foreseeable effects of future cultivation at Deva Amrita, or (2) if Deva Amrita is no longer pursuing its project, what changes this would require for Adesa. A full explanation of how the Adesa project and the Deva Amrita project are intertwined is necessary for a complete understanding of the proposed project and its likely environmental effects.

3. Foreseeable effects from construction of the second pond must be considered.

As CDFW notes, “[t]he potential for a second irrigation pond suggests uncertainty about the build-out of this Project or potential future phases.” (CDFW Recommendation 5.) The IS/MND fails to assess future foreseeable effects of permitting more water supply capacity than presently needed. An action agency must consider indirect future effects as part of the whole of the project if: “(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) As it relates to the proposed Project, the County must analyze the effects of expanded cultivation operations resulting from the construction of an additional and unnecessary catchment pond (e.g. Pond B).

The IS/MND proposes to construct two rainwater catchment ponds, Pond A and Pond B. (IS/MND, at p. 3.) Pond A will be located near the proposed processing facility and will have a “a storage capacity of up to 3,221,000 gallons.” (*Id.*) Pond B is proposed to be located west of the cultivation area and will be smaller with “a storage capacity of up to 1,077,000 gallons.” (*Id.*) The IS/MND clarifies that Pond A will “likely be sufficient to provide for the needs of the project[,]” and that Pond B will be constructed on an “as-needed basis.” (*Id.* at p. 94.) In response to public comments concerning the catchment ponds, the County further clarifies that:

Water use is estimated at 21.5 gallons a square foot which is relatively high for cultivation. At that estimate the *primary pond will have more than enough water to provide for all irrigation needs*, nonetheless the applicant has proposed a second pond in the event that additional water is needed for irrigation or fire-fighting purposes. The secondary pond, *which likely not necessary for project needs*, is still described and analyzed in IS/MND.

(Staff Report at 117 [emphasis added].) Pond B would provide 34% more water storage capacity than the IS/DMND forecasts will be required for Project purposes. The added capacity may even be greater than 34% where the Staff Report admits that the 21.5 gallon per square foot estimate is relatively high, and where additional capacity will likely be drawn from well water. This added, and unnecessary, capacity carries with it the foreseeable effect of future increased cultivation at the Project site. Increased cultivation facilitated by a 34% increase in available water will unquestionably alter the scope of the initial project and exacerbate the Project’s resulting environmental effects. This is not speculative or unlikely, but rather, the only plausible explanation for drastically oversizing the proposed project’s water supply infrastructure. The IS/MND fails to analyze those reasonably foreseeable future impacts as required. (*Laurel Heights, supra*, 47 Cal.3d at 396.)

D. The Proposed Project is Based on an Application from 2019, Triggering Existing Municipal Code requirements, Not the Repealed CMMLUO.

On September 23, 2019, the applicant submitted a new application, to include a “new stream crossing by the addition of a 24-inch-diameter culvert for a proposed new road.” (Attachment 1.) The new road is clearly part of the whole of the project, and the project application, therefore, should be deemed to have been submitted September 23, 2019, no longer subject to the CMMLUO.

As noted, the original project application was submitted such that “all elements of Water Source are shared between the Deva Amrita, LLC” project and the Adesa project, rendering them one in the same project for CEQA purposes. To the extent Deva Amrita is no longer pursuing these water source features, the whole of the project is now so fundamentally changed that it is effectively a new project from the one applied for in 2016.

It would be contrary to public policy to permit an applicant to extensively change its project proposal, but not to allow the County to update the Municipal Code requirements applicable to the changed project.

E. The Stream Setback Must be Increased to Comply with State Law.

This proposed project is not entitled to grandfathering status for reduced setbacks under the expired North Coast Regional Water Board cannabis cultivation Order R1-2015-0023. Instead, the project would be properly governed by State Water Board Order WQ-2019-0001-DWQ, which requires that new sites provide a larger setback than the Regional Water Board Order had previously required:

“All Dischargers enrolled under Orders R1- 2015-0023 or R5-2015-0113 as of October 17, 2017 may continue to operate their facility with their existing order’s setbacks (grandfathered status) unless the Regional Water Board’s Executive Officer determines that the reduced setbacks applicable under those orders are not protective of water quality. Such Dischargers are not required to modify their facilities to comply with this General Order’s setback limits. **New disturbed areas or expansions** to the existing facilities shall comply with the setbacks provided in this General Order.”

(State Water Board Order WQ-2019-0001-DWQ, ¶ 42 [emphasis added].) Here, the project applicant applied for and received coverage under the Regional Board Order *before the facility was ever built*. Therefore, the applicant would not “continue to operate their facility” as is contemplated for grandfathering status, since no cannabis cultivation operation ever began, and no facility “modification” to the existing operation would be required. More appropriately, for all future construction of the proposed facility, the “[n]ew disturbed areas or expansions . . . shall comply with the setbacks provided” in the State Board Order. The IS/MND makes clear that new areas would be disturbed and operations expanded:

This project proposes the new installation of infrastructure for the cultivation and processing of cannabis products. Grading, ground disturbance, and the removal of on-site groundcover and vegetation within the project footprint will occur during construction of the proposed structures, access roads, parking areas, rainwater catchment ponds, water lines, water tanks, septic system, solar PV arrays, generators, and diesel tanks.

(IS/MND at 46.) Any such “[n]ew disturbed areas” are not entitled to grandfather the requirements of the null and expired North Coast Regional Board Order, and the project’s proposed setbacks must be revised to include the 150’ setback from any perennial watercourse, and related slope requirements.

We understand that Regional Waterboard staff provided an informal opinion by email that the grandfathered, reduced stream setback would apply. However, such an opinion is nonbinding, is clearly inconsistent with the plain language of the State Board permit, the staff member who rendered that opinion appears to be no longer employed with the Regional Board, it is unclear what facts the former staff member considered, and Friends of Mad River will present all of the evidence to the Regional Board and State Board for a new opinion if needed.

This evidence of noncompliance with this State Board requirement provides substantial evidence supporting a fair argument that the project, as proposed, may have significant effects to water quality and riparian habitat, requiring the preparation of an EIR.

F. Impacts to Water Resources May be Significant, Requiring an EIR.

The IS/MND fails to consider the effects to surface and groundwater in the project area that would result from the proposed project's water demands and consumption. The IS/MND states that "[t]he total water that will be collected by rainfall catchment is approximately 6,201,000 gallons annually" (IS/MND at 7), but the IS/MND fails to provide any analysis whatsoever considering what it means for adjacent surface waters, or subsurface groundwater, to deprive these waters of the normal recharge of 6,201,000 gallons of annual precipitation they would ordinarily receive, but for the proposed project. The IS/MND considers effects to sensitive species such as red-legged frog, effects to wetlands, effects to riparian vegetation, and effects to water quality, all through consideration of direct physical disturbances or discharges of pollutants; but nowhere does the IS/MND ever consider what it means for the creeks, wildlife, wetlands, or vegetation to simply *remove* 6,201,000 per year from the immediate ecosystem. (See, *EPA v. California ex rel. State Water Resources Control Bd.*, (1976) 426 U.S. 200, 719, 721 ["water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses."]) Clearly removing this amount of water from the local environment every year could cause significant adverse effects that must be analyzed under CEQA.

Moreover, this vast impoundment of rainwater on site likely constitutes an illegal prior appropriation of water without a permit. A vast majority of surface water in California begins as precipitation: to capture and store precipitation is therefore to deprive a river, creek, or stream of its water, and constitutes an appropriation. To address this issue, in part, the Legislature in 2012 adopted the Rainwater Capture Act, which "provides that use of rainwater collected from rooftops does not require a water right permit from the state board." (Attachment 2 at 1, Legislative Counsel's Digest [emphasis added].) The legislative findings note that "Rainwater and stormwater, captured and properly managed, can contribute significantly to local water supplies by infiltrating and recharging groundwater aquifers . . ." (Id. at 3 [emphasis added].) Accordingly, the Legislature amended the Water Code to expressly provide that "[u]se of rainwater collected from rooftops does not require a water right permit pursuant to Section 1201." (Id. at 4.) The proposed project's rainwater detention ponds, where "[a]ll runoff will be collected as a primary water source" (IS/MND at 6), satisfy none of these statutory exceptions, and thereby do require a water right permit. In turn, the condition of approval requiring all water rights permits to be on file is not met. (See, Staff Report at 49 ["Copy of the statement of water diversion, or other permit, license or registration filed with the State Water Resources Control Board, Division of Water Rights, if applicable. (On file)].")

The untoward effects of the applicant's well-intended but misguided proposal to capture for personal use 6,201,000 gallons of rainwater annually can be seen in the comments of adjacent property owner Ronald Wilson:

- “Cowan Creek runs directly through the project and then immediately onto our place. This water has been used and is vital to livestock watering continuously during our ownership. We have senior water rights since 1876.” (Staff Report at 111.)
- “It doesn’t address the extreme local impact it can have on those relying on a constant clean source of water. Our property is only hundreds of feet away and supplies 100 % of the stock water for the west half of our property.” (Staff Report at 111.)
- “That water is essential for livestock during the dry months as the only alternative is a mile away.” (Staff Report at 112.)

These effects are not analyzed in the IS/MND, and would be avoided by properly proceeding through a water rights appropriation permitting system that would avoid legal injury to downstream users with senior priorities. The Humboldt County Water District similarly commented that “there is no mention of the water right obtained from the California State Water Resources Control Board for this site. Has the applicant obtained a water right from the State for its operations? And if so, has it notified the State in a change in its consumptive use amounts and obtained approval from the State?” (Staff Report at 99.)

These effects would be most acutely felt by wildlife, wetlands, vegetation, and other water users, during times of drought and heat, but no analysis of varying hydrological or climatological conditions are provided in the IS/MND, which is completely unrealistic. The IS/MND finds that “the proposed project would have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years,” but fails anywhere to actually discuss what changes in precipitation, water supply, and water demand occur in normal, dry, and multiple dry years. (IS/MND at 94.) The proposed project would be primarily served by capturing rainwater, but during a dry year this would be diminished; and during a hot and dry year, crop water demands would go up. In turn, the proposed project would rely on groundwater extraction, but as discussed below, the IS/MND fails to investigate whether these wells are hydrologically connected to surrounding surface waters, which they likely are. And what little rain does fall during a dry or multiple dry years, the proposed catchment ponds would deprive from the strained local ecosystem, causing significant adverse effects.

Absolutely no analysis is provided regarding groundwater extractions. The IS/MND notes that “well water would serve as a backup to rainwater catchment and would be stored in the ponds, as needed, to meet any forbearance requirements and irrigation or operational needs” (IS/MND at 5), but provides no analysis whatsoever regarding when this may occur, how much well water may be used, or why, once operational, the project would actually or always choose to use pond water rather than groundwater. The Water District commented with similar concerns.

The IS/MND fails to investigate, at all, any potential connections between groundwater and surface water in the project area. Groundwater in the area, however, is shallow, and its proximity to several surface waters through the project site suggest a likelihood of connectivity between groundwater and surface waters that must be studied. The CDFW LSAA confirms this,

describing Well-1 as an “existing, jurisdictional, shallow, hydrologically-connected water well.” The Humboldt Bay Water District commented that the project, “while purporting to draw from the established groundwater well, the project may consequently influence the flow and volume of the Mad River and Cowan Creek, interfering with water impounded by the District” for municipal supply. (Staff Report at 99.) The IS/MND contains no factual analysis of this issue raised by CDFW and the Water District, and instead illegally defers investigation and mitigation by stating, “if the wells are found to be hydrologically connected to jurisdictional waters of the State, these sources will be subject to any applicable forbearance requirements.” (IS/MND at 94; *see, Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 [A “requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA.”]; and CEQA Guidelines, § 15070(b)(1) requiring that project plans must be revised to incorporate mitigation measures “before the proposed negative declaration is released for public review....”]) The duty to investigate the proposed project’s effects, based on the expert comments of specific regulatory agencies, falls upon the County as lead agency, but any such investigation and analysis is completely omitted. Moreover, the extremely vague statement that any wells found to be hydrologically connected to surface waters “will be subject to any applicable forbearance requirements” provides no performance standards or binding commitments to constitute an adequate mitigation measure.

Proposed mitigation measure HWQ-1 becomes very unclear in this context. On the one hand, the IS/MND states that “[a]ll runoff will be collected as a primary water source.” (IS/MND at 6.) On the other hand, HWQ-1 states that “proposed stormwater improvements will ensure that additional stormwater runoff from the proposed project infiltrates into the ground on-site or is pre-treated prior to discharge without violating any water quality standards or waste discharge requirements. The final discharge from the area for all stormwater that does not infiltrate, evaporate or is consumed, will be discharged after pre-treatment through a culvert pipe outfall that is armored with rock to provide energy dissipation.” (IS/MND at 28.) Taken together, it is entirely unclear what is happening with stormwater at the site.

These effects to surface waters, groundwaters, and the connection between the two, all require consideration for protection under the Public Trust Doctrine. In *Environmental Law Found. v. State Water Resources Control Bd.*, the court was “asked to determine whether the County and the Board have common law fiduciary duties to consider the potential adverse impact of groundwater extraction on the Scott River, a public trust resource,” and answered affirmatively. ((2018) 26 Cal.App.5th 844, 867-68.) “Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and ‘may not approve of destructive activities without giving due regard to the preservation of those resources.’” (*Id.*, quoting *Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1370.)” With this responsibility, it is not enough to simply defer to the involvement of other agencies with trustee duties, such as CDFW, and mere mitigation of trust impacts, without an accompanying public trust doctrine analysis, is insufficient. (*See, San Francisco Baykeeper v. State Lands Commn.* (2015) 242 Cal.App.4th 202, 234.)

G. Use of Diesel Generators is Inconsistent With the Municipal Code, and May Cause Numerous Significant Environmental Impacts Requiring an EIR.

The significant drawbacks and effects of powering this project with diesel generators are evident and unacceptable. The proposed project would initially utilize two 500 kW diesel-powered generators as the power source for the Project. (IS/MND at 51.) The IS/MND itself notes that the 135,000 gallons of diesel fuel per year required to run the generators at the outset of the Project “represents a significant unnecessary energy consumption for cannabis cultivation.” (IS/MND at 41.)³ This significant and unavoidable effect alone should require an EIR.

The Project commits to *eventually* transitioning to 50% renewable electricity sources within three years of the start of the Project, and eventually to a maximum of 80% renewable electricity by year six. (IS/MND at 42.) As CDFW highlights however, this approach completely fails to analyze the interim climate change impacts resulting prior to the facility’s transition to renewable energy, “[i]f the Ordinance that governs the Project requires 80% renewable power, then one-megawatt worth of diesel generators should not be allowed, and the PV array should be in place on day one...The temporal delay in reaching renewable power generation is a potential impact”⁴ Nor does the IS/MND provide any evidence or discussion showing that deriving 50%, or even 20%, of the Project’s total energy needs from diesel generators does not similarly represent “significant unnecessary energy consumption.” Here, both the interim greenhouse gas impacts of the Projects initial reliance on diesel generators, as well as the Project’s continued reliance on diesel for 20% to 50% of its energy use after six years is a significant impact that must be analyzed in an EIR.

Truck transport of diesel on dirt roads to rural reaches of the County poses additional significant and unacceptable risk of hazardous spill, accident, wildfire, and unevaluated GHG emissions. Diesel exhausts and generator noise will be harmful to wildlife. Due to these types of environmental effects, the CMMLUO does not permit generators to be used as electrical sources for indoor cultivation. (§ 313-55.4.11, 314-55-4.11.)

H. The IS/MND Fails to Adequately Consider Habitat Fragmentation Impacts of the Project.

The IS/MND fails to adequately consider the habitat fragmentation impacts of the Project. The IS/MND itself recognizes that wildlife use “nearly all portions of [the] study area as movement corridors. Most of the wildlife movement corridors are expected to be concentrated on nearby perennial drainages.” (IS/MND at 5; IS/MND, Natural Resources Assessment at pp. 4-5.)

³ Other information provided suggests diesel deliveries would occur every two weeks and be up to 10,000 gallons per delivery, suggesting that the diesel consumption could be even higher than 135,000 gallons per year.

⁴ *Id.* at Recommendation 6, p. 4.

CDFW confirms that this finding is corroborated by the scientific literature on the topic showing that “wildlife disproportionately use riparian habitat as movement corridors.”⁵

CDFW comments further note that Project “proposes a new road with water and septic pipeline, parking, garbage and compose facility, a restroom, and sustained human presence *within the riparian habitat.*”⁶ These activities, CDFW concludes, will likely bifurcate the “riparian/stream resources where the NRA most attributes wildlife movement.”⁷ The IS/MND, however, ignores the impacts highlighted by CDFW. Specifically, the IS/MND’s finding of less than significant impacts is based on the Projects’ supposed “avoidance of...principal wildlife corridors.” (IS/MND at 34.) This conclusion, however, directly contradicted by its own finding that riparian areas are *the* principal corridor in the study area, and by CDFW’s determination that the activities proposed to take place in the riparian corridors will likely bifurcate that habitat.

Finally, to the extent that the IS/MND considers any impacts to riparian corridors, it only states, in conclusory fashion with no analysis, that “there are no further improvements proposed within riparian buffers aside from water and electrical lines that will be placed within the existing road alignment and crossing.” (IS/MND at 34.) First, the IS/MND does not provide any analysis supporting its ultimate conclusion that the “water and electrical line” additions will not adversely affect riparian corridors. More importantly, its analysis here only touches on a small portion of the total project activities that CDFW has identified that will likely bifurcate the riparian habitat in the study area. The IS/DMND’s own recognition of potential fragmentation impacts, combined with CDFW’s concerns, provides substantial evidence that the Project may have a significant impact and necessitates the preparation of an EIR.

I. The IS/MND fails to Adequately Mitigate Impacts from the Proposed Catchment Ponds.

As CDFW notes, there is inconsistency in the IS/MND’s mitigation measure BIO-2, which purports to mitigate the potential impacts of American bullfrog infestation at the proposed catchment ponds. Specifically, and as highlighted by CDFW,⁸ mitigation measure BIO-2 states that “all constructed ponds *shall be kept free of American bullfrogs,*” but then continues to note that control measures, such as draining the ponds periodically, will occur “*after colonization.*” (IS/DMND, at p.36 [emphasis added].) Here, mitigation measures to remedy bullfrog colonization *after* it occurs is incongruous with the measures’ initial statement that the ponds shall be kept free of American bullfrog species. CDFW also stresses that the measures itself lacks clarity and requests further “specificity as to what and how prevention and protection measures will be implemented.”⁹ The apparent contradiction in the measures prescribed by BIO-2, combined with the lack of requisite specificity in how they will be implemented, render the measures impermissibly uncertain.

⁵ *Id.* at Recommendation 1, pp.2-3

⁶ *Id.* at Recommendation 3., p.2.

⁷ *Id.* at Recommendation 3., p.2

⁸ *Id.* at Recommendation 4, p. 3.

⁹ *Id.* at Recommendation 4, p. 3

The IS/MND also completely fails to analyze or mitigate potential entrapment impacts of the proposed ponds. Indeed, CDFW recommends including other “measures for excluding wildlife...Artificial ponds are known entrapment hazards for wildlife leading to mortality...Reducing slope angles, constructing escapement structures, and fencing sufficient to exclude wildlife are all measures that would avoid and minimize the risk of wildlife entrapment...and invasive animal colonization.”¹⁰ The entrapment risk presented by the proposed ponds is wholly undressed by the IS/MND, and constitutes a significant impact that must be analyzed in an EIR.

J. Conclusion

Thank you for your careful consideration of these comments, submitted only in response to the August 14, 2020 release of the staff report for the Commission’s August 20 hearing. Clearly, the environmental effects of the proposed project are extensive, significant, have not been fully analyzed, and would require an EIR. However, the nature and magnitude of the proposed project would be incompatible with the existing rural agricultural setting, and the project should not be conditionally approved, in which case no further CEQA review is required.

Respectfully,



Jason Flanders
ATA Law Group
Counsel for Friends of the Mad River

Cc:

efennell@co.humboldt.ca.us

mike.wilson@co.humboldt.ca.us

smadrone@co.humboldt.ca.us

friedenbach@hbmwd.com

Scott.Bauer@wildlife.ca.gov

David.Manthorne@wildlife.ca.gov

¹⁰ *Id.* at Recommendation 4, p. 3



APPLICATION FORM
Humboldt County Planning and Building Department
 Current Planning Division 3015 H Street Eureka, CA 95501-4484
 Phone (707) 445-7541 Fax (707) 268-3792

INSTRUCTIONS:

1. Applicant/Agent complete Sections I, II and III below.
2. It is recommended that the Applicant/Agent schedule an Application Assistance meeting with the Assigned Planner. Meeting with the Assigned Planner will answer questions regarding application submittal requirements and help avoid processing delays. A small fee is required for this meeting.
3. Applicant/Agent needs to submit all items marked on the reverse side of this form.

SECTION I

APPLICANT (Project will be processed under Business name, if applicable.)	AGENT (Communications from Department will be directed to agent)
Business Name: <u>AMT LLC</u>	Business Name: _____
Contact Person: <u>LAURA BORUSAS</u>	Contact Person: _____
Mailing Address: <u>23333 Maple Creek Rd</u>	Mailing Address: _____
City, St, Zip: <u>Korbel, CA 95550</u>	City, St, Zip: _____
Telephone: <u>707-391-7847</u> Fax: _____	Telephone: _____ Fax: _____
Email: <u>LBORUSAS@gmail.com</u>	Email: _____
OWNER(S) OF RECORD (If different from applicant)	
Owner's Name: _____	Owner's Name: _____
Mailing Address: _____	Mailing Address: _____
City, St, Zip: _____	City, St, Zip: _____
Telephone: _____ Fax: _____	Telephone: _____ Fax: _____
LOCATION OF PROJECT	
Site Address: <u>23550 Maple Creek Rd</u>	Assessor's Parcel No(s): <u>315-211-003</u>
Community Area: _____	Parcel Size (acres or sq. ft.): <u>618 acres</u>
Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

SECTION II

PROJECT DESCRIPTION
 Describe the proposed project (attach additional sheets as necessary): see documents

SECTION III

OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT

I hereby authorize the County of Humboldt to process this application for a development permit and further authorize the County of Humboldt and employees of the California Department of Fish and Wildlife to enter upon the property described above as reasonably necessary to evaluate the project. I also acknowledge that processing of applications that are **not** complete or do not contain truthful and accurate information will be delayed, and may result in denial or revocation of approvals.

Laura Bensusen _____ 9/23/19 _____
 Applicant's Signature Date

If the applicant is not the owner of record: I authorize the applicant/agent to file this application for a development permit and to represent me in all matters concerning the application.

 Owner of Record Signature Date

 Owner of Record Signature Date

PLN-2019-15850

This side completed by Planning and Building Staff

Checklist Completed by: _____ Date: _____

THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS APPLICATION

Item	Received	Item	Received
<input type="checkbox"/> Filing Fee of \$ _____	<input type="checkbox"/>	<input type="checkbox"/> Agricultural Feasibility Study	<input type="checkbox"/>
<input type="checkbox"/> Fee Schedule (see attached, please return completed fee schedule with application)	<input type="checkbox"/>	<input type="checkbox"/> Architectural Elevations	<input type="checkbox"/>
<input type="checkbox"/> Plot Plan 12 copies (folded if > 8½" x 14")	<input type="checkbox"/>	<input type="checkbox"/> Design Review Committee Approval	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map 12 folded copies (Minor Subd)	<input type="checkbox"/>	<input type="checkbox"/> Environmental Assessment	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map 18 folded copies (Major Subd)	<input type="checkbox"/>	<input type="checkbox"/> Exception Request Justification	<input type="checkbox"/>
(Note: Additional plot plans/maps may be required)		<input type="checkbox"/> Joint Timber Management Plan	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map/Plot Plan Checklist (complete and return with application)	<input type="checkbox"/>	<input type="checkbox"/> Lot Size Modification Request Justification	<input type="checkbox"/>
		<input type="checkbox"/> Military Training Route (see County GIS)	<input type="checkbox"/>
<input type="checkbox"/> Division of Environmental Health Questionnaire	<input type="checkbox"/>	<input type="checkbox"/> Parking Plan	<input type="checkbox"/>
<input type="checkbox"/> On-site sewage testing (if applicable)	<input type="checkbox"/>	<input type="checkbox"/> Plan of Operation	<input type="checkbox"/>
<input type="checkbox"/> On-site water information (if applicable)	<input type="checkbox"/>	<input type="checkbox"/> Preliminary Hydraulic and Drainage Plan	<input type="checkbox"/>
<input type="checkbox"/> Solar design information	<input type="checkbox"/>	<input type="checkbox"/> R1 / R2 Report (Geologic/Soils Report, 3 copies with original signatures)	<input type="checkbox"/>
<input type="checkbox"/> Chain of Title	<input type="checkbox"/>	<input type="checkbox"/> Reclamation Plan, including engineered cost estimate for completing reclamation	<input type="checkbox"/>
<input type="checkbox"/> Grant Deed	<input type="checkbox"/>	<input type="checkbox"/> Second Dwelling Unit Fact Sheet	<input type="checkbox"/>
<input type="checkbox"/> Current <input type="checkbox"/> Creation	<input type="checkbox"/>	<input type="checkbox"/> Variance Request Justification	<input type="checkbox"/>
<input type="checkbox"/> Lot Book Guarantee (prepared within the last six months prior to application)	<input type="checkbox"/>	<input type="checkbox"/> Vested Right Documentation/Evidence	<input type="checkbox"/>
<input type="checkbox"/> Preliminary Title Report (<u>two copies</u> , prepared within the last six months prior to application)	<input type="checkbox"/>	<input type="checkbox"/> Other _____	<input type="checkbox"/>
		<input type="checkbox"/> Other _____	<input type="checkbox"/>
		<input type="checkbox"/> Other _____	<input type="checkbox"/>

FOR INTERNAL USE

<input type="checkbox"/> Ag. Preserve Contract <input type="checkbox"/> Certificate of Compliance <input type="checkbox"/> Coastal Development Permit <input type="checkbox"/> Administrative <input type="checkbox"/> Planning Commission <input type="checkbox"/> Design Review <input type="checkbox"/> Inland <input type="checkbox"/> Coastal <input type="checkbox"/> Determination of Legal Status <input type="checkbox"/> Determination of Substantial Conformance <input type="checkbox"/> Extension of _____ <input type="checkbox"/> Fire Safe Exception Request	<input type="checkbox"/> General Plan Amendment <input type="checkbox"/> General Plan Petition <input type="checkbox"/> Information Request <input type="checkbox"/> Modification to _____ <input type="checkbox"/> Lot Line Adjustment <input type="checkbox"/> Preliminary Project Review <input type="checkbox"/> Special Permit <input type="checkbox"/> Administrative <input type="checkbox"/> Planning Commission H.C.C. § _____ <input type="checkbox"/> Subdivision <input type="checkbox"/> Parcel Map <input type="checkbox"/> Final Map <input type="checkbox"/> Exception to the Subdivision Requirements	<input type="checkbox"/> Reclamation Plan <input type="checkbox"/> Surface Mining Permit <input type="checkbox"/> Surface Mining Vested Right Determination <input type="checkbox"/> Timber Harvest Plan Information Request <input type="checkbox"/> Use Permit H.C.C. § _____ <input type="checkbox"/> Variance H.C.C. § _____ <input type="checkbox"/> Zone Reclassification <input type="checkbox"/> Other _____ <input type="checkbox"/> Other _____
---	---	---

Application Received By: _____ Date: _____ Receipt Number: _____

General Plan Designation: _____

Plan Document: _____

Land Use Density: _____

Zone Designation: _____

Coastal Jurisdiction Appeal Status: Appealable Not Appealable

Preliminary CEQA Status:

Environmental Review Required

Categorically Exempt From Environmental Review: Class _____ Section _____

Statutory Exemption: Class _____ Section _____

Not a Project

Other _____



(707) 441-8855

info@shn-engr.com

shn-engr.com

812 West Wabash, Eureka, CA 95501-2138

Reference: 016178

September 4, 2019

Cheri Sanville
Coastal Environmental Review and Permitting
Senior Environmental Scientist Supervisor
California Department of Fish and Wildlife
619 Second Street
Eureka, CA 95501



Subject: Adesa Organic and Deva Amrita—1600-2018-0047-R1; Pond Outlet Mitigation Proposal

Dear Cheri:

This letter is in response to your email request of August 30, 2019, requesting a "plan to go forward" prior to a meeting between California Department of Fish and Wildlife (CDFW) and the County of Humboldt (County). You have indicated it is urgent to get a grading permit from the County to mitigate a pond outlet that could be putting fish and wildlife resources at risk while also considering other fish and wildlife concerns.

My client proposes to proceed with three projects that are adjacent to the subject pond, are within 80 feet of each other, and are assumed to have the potential to deleteriously affect Cowen Creek. The intent is to do these projects subsequently to minimize the disturbance to the adjacent habitat resources by mobilizing equipment to the site one time for this proposed in-water work. Projects include Crossing-1 (WC-1) that involves the replacement of a failing and undersized 48-inch-diameter culvert with a minimum 50-inch-diameter culvert, Crossing 20 (WC-M) that includes installing a new stream crossing by the addition of a 24-inch-diameter culvert for a proposed new road, and Reservoir-1 (PO-1) that requires the removal of an existing and unpermitted instream reservoir and relocation of the existing channel. These projects require similar erosion and sediment control, temporary water diversions, and potentially an incidental take permit for the foothill yellow-legged frog.

While SHN is in the process of design and providing details and specifications for these three projects, my client would like to request the meeting between CDFW and the County be scheduled. Because my client is out of town, we need to schedule this meeting soon so that transportation arrangements can be made, if necessary. This meeting is important while design is in process so that any unforeseen requirements, or recommendations, can be incorporated into the design documents and permit application.

Cheri Sanville

Adesa Organic and Deva Amrita—1600-2018-0047-R1; Pond Outlet Mitigation Proposal

September 5, 2019

Page 2

Please call me at (707) 441-8855 if you have any questions.

Sincerely,

SHN



Greg Williston
Project Manager

GSW:ame

- c. Laura Bonusas, Adesa Organic
- Andrew Orahoske, CDFW
- Cliff Johnson, Humboldt County Planning

2012 Cal. Legis. Serv. Ch. 537 (A.B. 1750) (WEST)

CALIFORNIA 2012 LEGISLATIVE SERVICE

2012 Portion of 2011-2012 Regular Session

Additions are indicated by **Text**; deletions by

* * *

Vetoed are indicated by Text ;
stricken material by **Text**.

CHAPTER 537

A.B. No. 1750

RAINWATER CAPTURE ACT

AN ACT to amend Section 7027.5 of the Business and Professions Code, and to add Part 2.4 (commencing with Section 10570) to Division 6 of the Water Code, relating to water.

[Filed with Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1750, Solorio. Rainwater Capture Act of 2012.

(1) Under existing law, the State Water Resources Control Board (state board) and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the national pollutant discharge elimination system (NPDES) permit program and the Porter-Cologne Water Quality Control Act. Under existing law, the state board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water, upon an application to appropriate water.

This bill would enact the Rainwater Capture Act of 2012, which would provide that use of rainwater collected from rooftops does not require a water right permit from the state board.

(2) Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensing and regulation of contractors.

Existing law authorizes a landscape contractor working within the classification of his or her license to enter into a prime contract for the construction of a swimming pool, spa, or hot tub, an outdoor cooking center, or an outdoor fireplace, if certain conditions are met. Under existing law, a violation of these provisions and related provisions of existing law is grounds for disciplinary action.

This bill would additionally authorize a landscape contractor working within the classification of his or her license to enter into a prime contract for the construction of a rainwater capture system, as defined, if the system is used exclusively for landscape irrigation or as a water supply for a fountain, pond, or similar decorative water feature in a landscaping project. The bill would authorize a landscape contractor holding a specified classification to design and install all exterior components of a rainwater capture system that are not a part of, or attached to, a structure.

The people of the State of California do enact as follows:

SECTION 1. Section 7027.5 of the Business and Professions Code is amended to read:

<< CA BUS & PROF § 7027.5 >>

7027.5. (a) A landscape contractor working within the classification for which the license is issued may design systems or facilities for work to be performed and supervised by that contractor.

(b) Notwithstanding any other provision of this chapter, a landscape contractor working within the classification for which the license is issued may enter into a prime contract for the construction of any of the following:

(1) A swimming pool, spa, or hot tub, provided that the improvements are included within the landscape project that the landscape contractor is supervising and the construction of any swimming pool, spa, or hot tub is subcontracted to a single licensed contractor holding a Swimming Pool (C-53) classification, as set forth in Section 832.53 of Title 16 of the California Code of Regulations, or performed by the landscape contractor if the landscape contractor also holds a Swimming Pool (C-53) classification. The contractor constructing the swimming pool, spa, or hot tub may subcontract with other appropriately licensed contractors for the completion of individual components of the construction.

(2) An outdoor cooking center, provided that the improvements are included within a residential landscape project that the contractor is supervising. For purposes of this subdivision, "outdoor cooking center" means an unenclosed area within a landscape that is used for the cooking or preparation of food or beverages.

(3) An outdoor fireplace, provided that it is included within a residential landscape project that the contractor is supervising and is not attached to a dwelling.

(4) A rainwater capture system, as defined in Section 10573 of the Water Code, used exclusively for landscape irrigation or as a water supply for a fountain, pond, or similar decorative water feature in a landscaping project.

(c)(1) Work performed in connection with a * * * landscape project specified in paragraph (2), (3), or (4) of subdivision (b) that is outside of the field and scope of activities authorized to be performed under the Landscape Contractor * * * (C-27) **classification**, as set forth in Section 832.27 of Title 16 of the California Code of Regulations, may only be performed by a landscape contractor if the landscape contractor also either holds an appropriate specialty license classification to perform the work or is licensed as a **General Building** contractor. If the landscape contractor neither holds an appropriate specialty license classification to perform the work nor is licensed as a **General Building** contractor, the work shall be performed by a **Specialty** contractor holding the appropriate license classification or by a **General Building** contractor performing work in accordance with the requirements of subdivision (b) of Section 7057.

(2) Notwithstanding paragraph (1), a landscape contractor performing work under the Landscape Contractor (C-27) classification, as set forth in Section 832.27 of Title 16 of the California Code of Regulations, may design and install all exterior components of a rainwater capture system, as defined in Section 10573 of the Water Code, that are not a part of, or attached to, a structure.

(d) A violation of this section shall be cause for disciplinary action.

(e) Nothing in this section authorizes a landscape contractor to engage in or perform activities that require a license pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700)).

SEC. 2. Part 2.4 (commencing with Section 10570) is added to Division 6 of the Water Code, to read:

d. 6 pt. 2.4 pr. § 10570

PART 2.4. RAINWATER CAPTURE ACT OF 2012

<< CA WATER § 10570 >>

10570. This part shall be known, and may be cited, as the Rainwater Capture Act of 2012.

<< CA WATER § 10571 >>

10571. The Legislature finds and declares all of the following:

(a) As California has grown and developed, the amount of stormwater flowing off buildings, parking lots, roads, and other impervious surfaces into surface water streams, flood channels, and storm sewers has increased, thereby reducing the volume of water allowed to infiltrate into groundwater aquifers and increasing water and pollution flowing to the ocean and other surface waters. At the same time, recurring droughts and water shortages in California have made local water supply augmentation and water conservation efforts a priority.

(b) Historical patterns of precipitation are predicted to change, with two major implications for water supply. First, an increasing amount of California's water is predicted to fall not as snow in the mountains, but as rain in other areas of the state. This will likely have a profound and transforming effect on California's hydrologic cycle and much of that water will no longer be captured by California's reservoirs, many of which are located to capture snowmelt. Second, runoff resulting from snowmelt is predicted to occur progressively earlier in the year, and reservoirs operated for flood control purposes must release water early in the season to protect against later storms, thereby reducing the amount of early season snowmelt that can be stored.

(c) Rainwater and stormwater, captured and properly managed, can contribute significantly to local water supplies by infiltrating and recharging groundwater aquifers, thereby increasing available supplies of drinking water. In addition, the onsite capture, storage, and use of rainwater for nonpotable uses significantly reduces demand for potable water, contributing to the statutory objective of a 20-percent reduction in urban per capita water use in California by December 31, 2020.

(d) Expanding opportunities for rainwater capture to augment water supply will require efforts at all levels, from individual landowners to state and local agencies and watershed managers.

<< CA WATER § 10572 >>

10572. Nothing in this part shall be construed to do any of the following:

(a) Alter or impair any existing rights.

- (b) Change existing water rights law.
- (c) Authorize a landscape contractor to engage in or perform activities that require a license pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).
- (d) Impair the authority of the California Building Standards Commission to adopt and implement building standards for rainwater capture systems pursuant to existing law.
- (e) Affect use of rainwater on agricultural lands.
- (f) Impair the authority of a water supplier pursuant to Subchapter 1 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

<< CA WATER § 10573 >>

10573. Solely for the purposes of this part, and unless the context otherwise requires, the following definitions govern the construction of this part:

- (a) “Developed or developing lands” means lands that have one or more of the characteristics described in subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (b) of Section 56375.3 of the Government Code.
- (b) “Rain barrel system” is a type of rainwater capture system that does not use electricity or a water pump and is not connected to or reliant on a potable water system.
- (c) “Rainwater” means precipitation on any public or private parcel that has not entered an offsite storm drain system or channel, a flood control channel, or any other stream channel, and has not previously been put to beneficial use.
- (d) “Rainwater capture system” means a facility designed to capture, retain, and store rainwater flowing off a building rooftop for subsequent onsite use.
- (e) “Stormwater” means temporary surface water runoff and drainage generated by immediately preceding storms. This definition shall be interpreted consistent with the definition of “stormwater” in Section 122.26 of Title 40 of the Code of Federal Regulations.

<< CA WATER § 10574 >>

10574. Use of rainwater collected from rooftops does not require a water right permit pursuant to Section 1201.

4. Public Health, Safety and Welfare: The following table identifies the evidence which supports finding that the proposed development will not be detrimental to the public health, safety and welfare or materially injurious to properties or improvements in the vicinity.

Code Section	Summary of Applicable Requirements	Evidence that Supports the Required Finding
§312-17.1.4	The proposed development will not be detrimental to the public health, safety and welfare, and will not be materially injurious to properties or improvements in the vicinity.	All responding referral agencies have either provided no comment or recommended approval of the proposed use with conditions of approval. The project as proposed, mitigated, and conditioned is consistent with the general plan and zoning ordinances; and there is no evidence that the project will be materially injurious to properties or improvements in the vicinity.

5. Residential Density Target: The following table identifies the evidence which supports finding that the proposed project will 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.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
17.1.5 Housing Element Densities	The proposed development shall 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), except where: 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.	As discussed above the property was not included in the 2014 Housing Inventory because of the land use designation and zoning. There are no residences currently on the property, nor any proposed as part of this project. The project's associated developments will not reduce residential density for the parcel. The project is in conformance with the standards in the Housing Element.

6. Environmental Impact:

Please see the attached draft Initial Study-Mitigated Negative Declaration.

As required by the California Environmental Quality Act (CEQA), the Initial Study conducted by the Planning and Building Department, Planning Division (Attachment 3) evaluated the project for any adverse effects on the environment. Based on a site

inspection, information in the application, and a review of relevant references in the Department, staff has determined that there is no evidence before the Department that the project will have any potential adverse effect, either individually or cumulatively, on the environment. The environmental document on file in the Department includes a detailed discussion of all relevant environmental issues. The Planning Commission is in receipt of comments on the Initial Study and Mitigated Negative Declaration from the Audubon Society, California Department of Fish and Wildlife, the ATA Law Group, California Highway Patrol, and neighboring property owners. The Planning Commission has considered these comments and finds that the comments do not require revisions to the Initial Study and Mitigated Negative Declaration and do not alter the determination that all potential adverse environmental impacts can be mitigated to a less than significant level. Specific discussion and consideration of the comments is provided below:

1. Letter dated August 1, 2020 from Redwood Region Audubon Society.

Comment 1: Project would have a significantly higher carbon footprint than if located on agricultural or industrial land closer to major highways and served by public utilities.

Response: The county has analyzed the project that was presented for review and applied mitigation to reduce the carbon footprint of the project. See ENE-1 renewable energy mitigation.

Comment 2: Transportation for fifteen full time employees would require two nine passenger vans or one small bus to make a sixty-four mile round trip per day with an elevation difference of over 2,200 feet.

Response: One or two average daily trips would not result in significant impact. Initial Study estimates and considered up to ten average daily trips for the project.

Comment 3: Vehicle traffic required for fuel delivery and to supply diesel generators, soil for plants would significantly impact the road. There are no plans for soil recycling. There will be significant carbon emissions from these vehicles.

Response: Mitigation to reduce reliance on generators (See ENE-1) reduces the impact of fuel delivery. The Operations Plans for Adesa Organics, LLC states that the operator will use a soil fertility management system to recycle soil on-site (p.4 Ops Plan).

Comment 4: Long term plans include extension of electrical grid, which would be a growth inducing factor.

Response: The area surrounding the project site is designated as Timber Production Zone and Agricultural Exclusive, both of which would not allow for significant growth other than for agricultural purposes.

Comment 5: Project is within Grasshopper Sparrow nesting habitat and surveys should be done in nesting season.

Response: Mitigation measure Bio-8 requires nesting Bird surveys including for Grasshopper Sparrow.

2. Letter dated July 15, 2020 from Department of California Highway Patrol

Concern raised regarding safety of the road and that increased vehicle traffic could create possibility of traffic collisions.

Response: The road is a publicly maintained road that is at a similar functional capacity as a Road Category 4 given the amount of traffic on the road. The road is 20 feet wide in many areas with sufficient turnouts when necessary, and the proposed project would add approximately 10 average daily trips to the road network.

3. Email dated July 21, 2020 from Arthur Wilson

Concern raised regarding protection of water quality of Cowan Creek, pollution from chemicals, noise and light, traffic, fire safety, and regulatory oversight.

Response: These concerns are addressed in the Initial Study. See Biological Resources, Aesthetics, Noise, Hydrology/Water Quality, Noise Sections.

4. Letter undated from Ronald Wilson

Concern raised regarding protection of water quality of Cowan Creek, pollution from chemicals, noise and light, traffic, fire safety, and regulatory oversight of the project once the need for cannabis goes away.

Response: These concerns are addressed in the Initial Study. These concerns are addressed in the Initial Study. See Biological Resources, Aesthetics, Noise, Hydrology/Water Quality, Noise Sections. If facility is not utilized for cannabis, mitigation measures will still apply to the construction and maintenance of the facility.

5. Letter dated July 31, 2020 from the California Department of Fish and Wildlife

Deferred Mitigation and LSAA. CDFW states that the IS/MND defers mitigation for existing impacts by stating that impacts will be addressed by obtaining an LSAA. The final IS/MND should be revised to include an analysis of all project impacts and propose mitigation.

Response: It is unclear what CDFW is referring to in this comment. There are no proposed mitigation measures that refer to additional mitigation to be required under an LSAA. All project impacts are identified in the document and mitigation is not deferred to obtaining an LSAA.

Mixed-light cultivation. The IS/MND should address how compliance with dark sky standards will be effectively implemented in interim with temporary hoop-houses and long term.

Response: The project is phased with no lights allowed until the final construction of the greenhouses with automated light curtains. No lights will be used during hoop-house or light-dep cultivation. Mixed-light cultivation will only occur once the final greenhouses with automated light curtains is developed. Automated light curtains shall ensure that dark sky standards are met. Non-compliance would result in enforcement action including but not limited to revocation of the permit.

Proposed pond and cultivation area should be sited further from dripline of oak woodland and riparian habitat, at least 100 feet. Facilities should be located outside of stream and riparian complex.

Response: Project facilities are located outside stream and riparian areas. Project is required to comply with County Streamside Management and Wetland Ordinance (SMAWO) requirements which is 50 feet from edge of dripline (or top of bank, whichever is more restrictive) from intermittent streams and 100 feet from perennial streams.

Rainwater catchment ponds. CDFW requests County address incongruent measures and provide specificity regarding measures to address bullfrogs. CDFW states that mitigation that ponds shall be kept free of bullfrogs and that measures to control bullfrogs by draining ponds every two years are inconsistent. CDFW requests consultation with CDFW on pond construction prior to project approval.

Response: Requirement is to keep ponds free of American bullfrogs. Specific mitigation measures to direct efforts to remove bullfrogs do not conflict with requirement to keep ponds free of bullfrogs. Condition of approval number 10 in the staff report requires the applicant to consult with CDFW prior to construction of rainwater catchment ponds. Measures specified by CDFW to avoid risk of wildlife entrapment, such as reduced slope angles, escapement structures and fencing shall be included in construction.

Potential for second irrigation pond suggests uncertainty regarding water use. MND should clearly describe intent of project and size and scope.

As with any proposed agricultural operation, irrigation water can only be estimated until it is in place and operational. Water use is estimated at 21.5 gallons a square foot which is relatively high for cultivation. At that estimate the primary pond will have more than enough water to provide for all irrigation needs, nonetheless the applicant has proposed a second pond in the event that additional water is needed for irrigation or fire-fighting purposes. The secondary pond, which likely not necessary for project needs, is still described and analyzed in IS/MND.

Phasing and Climate Change. CDFW states that phasing the project with initial phase at full sun outdoor or light-dep hoop-houses and eventually transitioning to two acres of mixed-light with solar power is deferring mitigation for renewable energy. The IS/MND identifies that over one hundred thousand gallons of diesel represents a potentially significant impact and therefore deferring development of solar is deferred mitigation.

Response: CDFW is misinterpreting the project. The first phase would be full sun outdoor cultivation or light-deprivation. No lights would be used for the first phase and limited power would therefore be required. The reference in the IS to over one hundred thousand gallons of diesel is for the proposed project without the applicable mitigation. The mitigation measure for 80% renewable energy is intended to mitigate the amount of diesel usage. The IS/MND does not defer mitigation. The requirement for 80% of all power to be sourced from renewable energy is in place at the beginning of operation of the project, at all phases.

Oak and Oak Woodlands. CDFW states that removal of trees for road improvement purposes may result in removal of oak woodlands and that CEQA Section 21083.4(b) provides that any oak woodland removal may be considered a significant impact.

Response: The citation to 21083.4(b) is incorrect as 21083.4(d.3) states that conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes is exempt from 21083.4. Nonetheless, oak woodlands are not proposed to be removed as a result of the project. All trees proposed to

be removed would be less than 12 inches in diameter and would be no more than 22 trees for the entirety of the 1.1 mile access road. The majority of trees would be Doug-fir species.

Surface mining and Reclamation Act. County should include a condition of approval that rock is obtained from a SMARA approved quarry or source. If rock is obtained from within project parcel, potential impacts should be evaluated.

Response. Rock will be acquired from a SMARA approved source. This is a recommended condition of approval in the staff report (COA #12)

6. Comments submitted August 19, 2020 from the ATA Law Group representing Friends of the Mad River.
 - A. ATA Law Group states that the IS/MND fails to consider the whole of the project because it excludes the LSAA, the Deva Amrita project, and the second rainwater catchment pond. These claims are inaccurate. The projects identified in the LSAA that relate to the proposed Conditional Use Permit are all disclosed, analyzed and mitigated for in the ISMND. The commenter conflates the entirety of the draft LSAA issued by CDFW for the entire Adesa Ranch with the CEQA project currently under review. While CDFW has requested and mandated culvert and stream crossing improvements for the entire 443 acre ranch, the majority of these are unrelated and have no nexus to the Conditional Use Permit for commercial cannabis and are not required for the proposed cannabis facility. The stream crossings and culvert replacements necessary for the cannabis project are all disclosed, analyzed and adequately mitigated for in the ISMND (See Bio Resources section of ISMND). Other aspects of the draft LSAA have no nexus to the Conditional Use Permit.
 - B. ATA Law Group states that an existing stock watering pond on the site should be evaluated in the environmental document. This existing stock pond is not part of the project and no changes are proposed to it as part of the project.
 - C. ATA Law Group states that the Dev Amrita project must be evaluated. This application has been cancelled and is no longer proposed and therefore is not part of the project to be considered under CEQA.
 - D. ATA Law Group states that the foreseeable effects of a second rainwater catchment pond should be considered because it could allow for additional development and cultivation activities. However, no additional development or cultivation is proposed and is unlikely to be allowed per the zoning and constraints of the property. CEQA does not require an analysis of development that is not contemplated, proposed or likely to occur.
 - E. ATA states that the proposed project is based on a 2019 application and therefore must comply with the Commercial Cannabis Land Use Ordinance (Ordinance 2.0). For this claim ATA is referring to an emergency Special Permit that the applicant filed at CDFW's request to repair an existing failing stock pond on the ranch property. In this application the applicant referenced the draft LSAA that CDFW issued that includes some of the road work and stream crossings for the cannabis application. This did not change or alter the Conditional Use Permit application submitted by Adesa Organics, which was submitted on December 15, 2016. The CCLUO states that "applications for commercial Cannabis Activity land use permits filed on or before December 31, 2016 shall be governed by the regulations in effect at the time of their submittal". The only exception stated in this section is regarding Zoning Clearance Certificates in Community Planning Areas, which does not apply here. The Adesa application is required under the Humboldt County Code to be reviewed under the CMMLUO.
 - F. ATA states that the stream setback must be increased to comply with state law. This is false. As mentioned previously in the staff report. the proposed setbacks to watercourses

comply with the county's Streamside Management Area and Wetland Ordinance and will be required to comply with state requirements. The project did file a Notice of Application under the previous cannabis order and has received information from the Water Board staff indicating that they would be vested under that order, however the new order requires 50 foot setbacks from class 3 watercourses, 100 feet from class 2 watercourses, and 150 feet from class 1 watercourses and lakes, ponds or springs. The project is designed to be 100 feet or more from all adjacent watercourses, which are class 2 watercourses requiring a 100-foot setback.

- G. ATA states that impacts to Water Resources may be significant because 6,201,00 gallons of rainwater catchment is proposed. This is inaccurate. 4,300,000 gallons of rainwater catchment is proposed and disclosed in the ISMND. The commenter references page 7 of the ISMND referring to this amount of rainwater catchment, but this is not accurate. The proposed water storage would be 4,300,000 gallons, which is equivalent to approximately 13 acre-feet per year. According to the Humboldt Bay Municipal Water District Urban Water Management Plan the Mad River watershed annual runoff just over 1,000,000 acre feet per year. The capture of 4,300,000 gallons is approximately 13 acre feet per year, which is 0.0013 percent of the total runoff in the Mad River watershed. ATA also states that the ISMND is contradictory because it states that runoff will be collected and used for rainwater, and that it also states that runoff will infiltrate into the ground or be pre-treated prior to discharge. It is unclear how this is contradictory as the amount of runoff needed to fill rainwater ponds will be collected and additional runoff allowed to infiltrate or discharged. This is not contradictory.
- H. ATA states that the use of diesel generators will be a significant impact and points to statements by the county in the ISMND that the use of diesel generators powering 20% to 50% of the power is a significant impact and that the county is not requiring solar power from the beginning of the operation. This is false. The ISMND requires as mitigation that the project provide 80% renewable power at the very beginning of the operation. This argument from ATA completely ignores the discussion in the ISMND and the proposed mitigation measures.
- I. ATA states that the project fails to address habitat fragmentation from the proposed project. The ISMND includes over three years of studies documenting the habitats and use of these areas by sensitive wildlife species and includes mitigation to protect and ensure that these species and any sensitive habitats will be protected. ATA refers to CDFW stating that the new road will fragment high quality habitat, however the vast majority of the access road for this project is existing and will only be improved. The only new access road is an approximately 250-foot section that runs through oak woodlands to the proposed primary rainwater pond. There is no information provided by ATA or CDFW to indicate that a 250-foot access will result in significant habitat fragmentation. Further, neither ATA or CDFW provide any detail or scientific information to demonstrate the potential for significant impacts on habitat. The ISMND relies on technical studies and analysis prepared by qualified biological experts. Neither ATA nor CDFW has provided any expert analysis to contradict the information relied on in the ISMND.
- J. ATA repeats CDFW comments that there may be a significant impact from pond construction because of incongruous mitigation regarding bullfrog management. It appears that ATA and CDFW are both arguing that the specific measures in place to prevent and remove bullfrogs is inconsistent with the general requirement to keep the ponds free from bullfrogs. This makes no sense. The requirement is to keep ponds free of bullfrogs, and measures are in place to prevent bullfrog infestation and to remove them if they colonize the ponds.

Because the project was found to be subject to CEQA and a Mitigated Negative Declaration was prepared, the provisions of Section 711.4 of the California Fish and Game Code apply to this project. Within five (5) days of the effective date of the approval of this tentative map, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,456.75. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the California Department of Fish and Wildlife (CDFW) fee plus the \$50 document handling fee. This fee is effective through December 31, 2020 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact CDFW by phone at (916) 651-0603 or through the CDFW website at www.wildlife.ca.gov for a determination stating the project will have *no effect* on fish and wildlife. If CDFW concurs, a form will be provided exempting the project from the \$2,406.75 fee payment requirement. In this instance, only a copy of the CDFW form and the \$50.00 handling fee is required. This requirement appears as Condition 1 of Attachment 1 (Section 1).