

March 5, 2021

[VIA EMAIL TO COB@CO.HUMBOLDT.CA.US]

Chair Virginia Bass, and
Humboldt County Board of Supervisors
825 5th Street, Room 111
Eureka, CA 95501

**Re: *Response to Holder Law Group Comments Regarding Rolling Meadow Ranch, LLC
Initial Study and Mitigated Negative Declaration
(PLN-12529-CUP; SCH# 2020070339)
Approved Unanimously by the Planning Commission on January 21, 2021
On Appeal***

Dear Chair Bass and Supervisors:

On behalf of Rolling Meadow Ranch, Inc. (“RMR” or the “Applicant”), we below respond to certain comments dated February 2, 2021 submitted by the Holder Law Group (“HLG”) on behalf of appellants Fran Greenleaf, John Richards, and Patty Richards concerning RMR’s above-referenced project (the “Project”), and the recirculated Initial Study/Mitigated Negative Declaration (the “IS/MND”) prepared to analyze the Project’s potential environmental impacts. As you are aware, your Planning Commission approved the Project on January 21, 2021.

HLG offers no new information to the Board of Supervisors (“Board”) that it has not already submitted to County Planning Staff and the Planning Commission. HLG’s February 2 Letter repeats the same criticisms of the Project, the IS/MND, and County Planning Staff based on the same misrepresentations, baseless assumptions, and a stretched, self-serving interpretation of the law.

In reality, the Project complies with all applicable County ordinances, and its potential environmental impacts have been properly analyzed and mitigated as required by the California Environmental Quality Act (“CEQA”). After more than four years of review by the County and state agencies, the Project was properly approved by your Planning Commission. **The Board should, accordingly, deny this appeal.**

This letter proceeds first with a short description of the Project, followed by our responses to HLG’s unsupported allegations.

1. Project Background

The Project is located in McCann, an unincorporated community. The Project is located within a 7,000-acre ranch and logging property (the “Ranch”) that is owned by RMR (the Applicant). The Project site is situated on a 1,600-acre parcel within RMR’s Ranch. (IS/MND, p. 9.) HLG asserts that RMR “outbid” a conservation group to acquire the Ranch. **This is false.** In fact, RMR purchased the core Ranch parcels in 2004, and has subsequently added to the Ranch in order to maintain its integrity. The Ranch has long been used for ranching and commercial logging operations. (See IS/MND at pp. 38, 45-46.)

RMR originally submitted the Project application in 2016. (See County of Humboldt Planning Commission Staff Report Rolling Meadow Ranch, LLC, Conditional Use Permits: Record Number: PLN-12529-CUP, January 7, 2021 [“January 7 Staff Report”], p. 63.) As is typical, the application was modified over time in response to County and other agency comments, and in light of new data developed in the course of environmental review.

The Project now is comprised of six conditional use permits authorizing (16) greenhouses ranging in size from approximately 17,000 to 20,000 square feet, several drying structures, septic systems, wells, and processing buildings. (See ISMND at p. 9.) The Project includes a number of innovative mitigation measures and operational conditions to reduce or eliminate environmental impacts. For example, RMR has agreed to use an electric bus to transport employees to the Project site in order to reduce vehicle traffic, noise, and emissions. (See *id.* at p. 11.)

2. What Is “Substantial Evidence” and What Is the “Fair Argument” Test?

HLG asserts that it and others it has recruited to oppose the Project have submitted “substantial evidence” supporting a “fair argument” that the Project will have a significant impact on the environment, and that the County must therefore prepare an Environmental Impact Report (“EIR”) for the Project. (February 2 Letter, p. 4.) **This is false; no such substantial evidence has been presented, and no fair argument can be made based on substantial evidence that the Project will result in significant environmental impacts.**

Substantial Evidence. The following types of information can be (but are not always) “substantial evidence” in the CEQA context:

- Relevant facts;
- Reasonable assumptions based on facts;
- Statements made by lead agency planning staff;
- Statements made by responsible or trustee agencies;
- Expert opinion supported by facts, where the expert is qualified and demonstrates foundation; and
- Statements of area residents who are not experts, if the statements are based on relevant personal observations or involve non-technical issues.

The following types of information are never “substantial evidence”:

- Argument;
- Speculation;
- Unsubstantiated opinion or narrative;
- Evidence that is clearly erroneous or inaccurate;
- Evidence of social or economic impacts;
- Statements made by biased experts; and
- Generalized concerns and fears.

(CEQA Guidelines, § 15384; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556; *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151; *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; *Architectural*

Heritage Assn. v. County of Monterey (2004) 122 Cal.App.4th 1095; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129; *Citizens’ Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157; *Sierra Club v. California Department of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572; *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357; *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130.)

As we showed in our letter to the Planning Commission dated January 7, 2021, and again below, all evidence submitted by HLG and its recruited Project opponents fall into the latter category of information that is never substantial evidence – these parties have offered only argument, speculation, unsubstantiated opinions, and generalized concerns and fears. These are not substantial evidence.

Fair Argument Standard. The “fair argument” standard is the lens through which courts evaluate whether a lead agency correctly chose to prepare a negative declaration or mitigated negative declaration for a project rather than an EIR. Under the “fair argument” standard, an EIR must be prepared whenever it can be “fairly argued” based on substantial evidence in light of the whole administrative record that the project may have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988; CEQA Guidelines § 15064(f)(1).) Importantly, allegations of significant impact that are not supported by substantial evidence are not enough to trigger an EIR. (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608.) In other words, without supporting substantial evidence, no “fair argument” can be made that a project could result in significant environmental impacts.

As stated and shown, HLG and its recruited Project opponents have failed to present any substantial evidence that Project will have a cognizable CEQA impact. As a matter of law, no “fair argument” can thus be made that the Project will have a significant environmental impact, and no EIR is required.

3. Specific Responses

A. Information Submitted By HLG And Others Is Not Substantial Evidence Supporting A Fair Argument That The Project Will Have A Significant Impact On The Environment.

The below table summarizes information submitted by HLG and its recruited Project opponents that HLG claims constitute substantial evidence supporting a fair argument that the Project will have a significant environmental impact. None of this information qualifies as substantial evidence showing a potential impact.

<u>HLG Information</u>	<u>Response</u>
“Expert” report from a “geologist” regarding impacts to water supply and water quality. (p. 4.)	Not Substantial Evidence. The referenced report does not contain any facts specific to the Project. The Project IS/MND is supported by specific technical reports showing that the Project will have no impact on water supply or water quality.

<p>“Expert” report from a “registered civil engineer” concerning the adequacy of McCann Road as the primary access route for the Project. (p. 4.)</p>	<p>Not Substantial Evidence. The referenced report is not a technical study of the actual roadways to be utilized for the Project. Besides the technical studies demonstrating that the access route meets all County requirements, Bob Bronkall, the Deputy Director of the County Department of Public Works testified at length before the Planning Commission that the McCann Road access route to the Project satisfied all County and fire-safety requirements.</p>
<p>“A letter from the County’s senior planner concerning required information and analysis in the IS/MND.” (p. 4.)</p>	<p>Not Substantial Evidence. This was an internal review letter. All noted issues have been addressed, as clearly stated by Planning Director Ford and Planner Meghan Ryan before the Planning Commission.</p>
<p>“Two memoranda prepared by the County’s peer review consultant, Transcon Environmental, concerning errors and omissions in an early draft of the IS/MND.” (p. 5.)</p>	<p>Not Substantial Evidence. As HLG admits, this review letter related to an “early draft” of the IS/MND. All noted issues have been addressed, as clearly stated by Planning Director Ford and Planner Meghan Ryan before the Planning Commission.</p>
<p>“CDFW comments on an early draft of the IS/MND and its comments on the original and revised IS/MND.” (p. 5.)</p>	<p>Not Substantial Evidence. None of CDFW’s comments state that the Project will have a significant impact on water resources or biological resources. All CDFW concerns were addressed in the revised IS/MND and subsequent surveys, all of which show the Project will have no significant impact.</p>
<p>“Two USGS reports concerning the availability of groundwater”. (p. 5.)</p>	<p>Not Substantial Evidence. These reports, dated as early as 1959, are not specific to the Project. The Project is supported by specific technical reports showing that the Project will have no impact on water supply or water quality.</p>
<p>“Referenced County environmental review documents relevant to the analysis, including the IS/MND prepared for the CMMLUO and the EIR prepared for the CCLUO”. (p. 5.)</p>	<p>Not Substantial Evidence. Neither prior review document prepared by the County for the County’s cannabis ordinances state any facts specific to the Project showing that the Project will have a significant environmental impact. Rather, the Project complies with all mitigation measures adopted by the County.</p>
<p>“Descriptions of the narrow, windy access roads and the associated traffic hazards from residents of McCann who are intimately familiar with the roads”. (p. 5.)</p>	<p>Not Substantial Evidence. Statements by neighbors that the dislike traffic or that the roads are narrow or windy are not evidence of significant environmental impacts. Moreover, Bob Bronkall, the Deputy Director of the County Department of Public Works testified at length before the Planning Commission that the McCann Road access route to the Project satisfied all County and fire-safety requirements.</p>
<p>“Other information available at referenced websites.” (p. 5.)</p>	<p>Not Substantial Evidence. No “other websites” contain facts specific to the Project showing that the Project will have significant impacts on the environment.</p>

B. The Project Access Roads Satisfy County Standards.

HLG again argues that the Project access roads fail to meet County standards. (February 2 Letter, pp. 5-6.) HLG presented this same argument to the Planning Commission as well.

HLG ignores the fact that, in addition to the technical reports prepared specifically for the Project showing that the Project access roads are adequate, Bob Bronkall, the Deputy Director of the County Department of Public Works testified at length before the Planning Commission that the McCann Road access route to the Project satisfied all County and fire-safety requirements. (See IS/MND at p. 11; Appendix C (Humboldt County Department of Public Works Road Evaluation Report: McCann Road, November 14, 2017; Oscar Larson & Associates: Supplemental Filed Investigation: Rolling Meadow Ranch Internal Access Road Evaluations (January 14, 2019).)

HLG fails to identify any facts showing that the Project technical reports are wrong, and that the County's own Public Works Staff is wrong.

C. Project Groundwater Use Will Not Cause Significant Impacts to Aquatic Resources and Water Quality.

HLG claims, based on a USGS Water Supply study from 1959, that existing wells on the Ranch that will be used to provide water for the Project are hydrologically connected to surface water, including the Eel River. At the same time that HLG argues the wells are connected to surface water, HLG also argues that the wells will result in biological impacts based on groundwater use. (February 2 Letter, pp. 6-7.)

In fact, Fisch Well Drilling completed the three wells at issue on the Ranch pursuant to County well permits, and well completion logs were provided to the County. Based on data provided by Fisch Well Drilling, and based on Staff's own independent expertise, the wells are drilled into perched bedrock. (See January 7 Staff Report, p. 4.) The wells are also cased into bedrock. The County and state agencies, including CDFW, have relied on data provided by Fisch Well Drilling to evaluate hydrologic connectivity for numerous approved cannabis projects in the County.

Project water usage, including well production estimates, water use estimates, and a description of Project water logistics, is fully catalogued and analyzed in the IS/MND, as well as in the Staff Report. (See IS/MND, pp. 14, 250; January 7 Staff Report, p. 4.) The IS/MND identifies no adverse biological impacts resulting from groundwater use by the Project.

HLG presents no facts showing that the Project would actually result in the claimed impacts to groundwater and water quality. Again, argument and speculation are not substantial evidence.

D. The IS/MND's Analysis Of The Project's Biological Impacts Was Complete and Adequate.

HLG argues that the IS/MND's analysis of potential biological impacts is inadequate. In particular, HLG attacks the adequacy of biological surveys, and attacks the IS/MND's analysis of potential impacts to special status species. HLG's disagreement with the IS/MND's conclusions, however, is not substantial evidence that the Project could result in significant biological impacts. HLG fails, however, to point to any substantial evidence of a potential significant impact.

With respect to biological surveys, qualified biologists performed multiple surveys for plant and animal species with the potential to be present on the Project site. (See IS/MND Appendix G, NRM Corp. Rolling Meadow Ranch Golden Eagle Survey Report, July 30, 2019; Appendix I, Botanical Survey Rolling Meadow Ranch, Supplemental to Botanical Survey Report Prepared by NRM in 2018, October 15, 2020.) These surveys identify the survey methodology and basis for conclusions, and prior to the surveys, biologists conducted a CNPS and CNDDDB inventory of rare species, and the field surveys were conducted in accordance with CDFW's 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, which was conducted on foot. (*Id.* at pp. 16; 23; see also IS/MND at p. 94.) Project biological surveys cover the full scope of potential Project impacts, including direct and indirect impacts to wetlands. (See, e.g., IS/MND, pp. 146-148.) The County and CDFW have accepted biological surveys performed using these same protocols for every discretionary cannabis project approved in the County.

Project biologists also, in accordance with CDFW and County Planning Staff recommendations, completed protocol-level surveys for Golden Eagle. (Michelle McKenzie, Natural Resources Management Corporation: Golden Eagle Survey Report Rolling Meadows Ranch, February 15, 2021.) These surveys detected no Golden Eagles within the CDFW-recommended 1-mile buffer around the Project site.

County Planning Staff testified in detail as to the adequacy of the biological surveys (including for botanical resources) performed for the Project. As much as HLG and its recruited Project opponents seem to criticize these surveys and assessments, and argue that more should be done, neither HLG nor any other party has submitted facts or other substantial evidence showing that the Project would have a significant impact on any biological resource. To the contrary, all the substantial evidence in the record shows that the Project will not have a significant impact on any biological resource.

E. The Project Description Is Stable And Complete.

HLG next argues that the Project Description is “unstable, inconsistent, and uncertain” in four respects. We address each in turn below.

- “improvements to access roads and adjacent drainage culverts and water crossings.” (February 2 Letter, p. 7.) This is false. In fact, IS/MND Appendix C includes a clear description of all road improvements. On the basis of this analysis, the IS/MND concludes that all “access roads, in meeting or having equivalency to Category 4 roads, meet the Emergency Access standards of the Fire Safe Ordinance. The internal project roads to be used for project facility access have been determined, by NorthPoint Consulting, to be “within conformance of Humboldt County Code Section 3112-12, the Fires Safe Regulations (Chapter 2 – Emergency Access), with the recommended improvements included in [the] report.” By improving roads as specified by consulting engineers, the roads will meet the required standards described by Humboldt County (CMMLUO, Humboldt County Code, Fire Safe Ordinance). All access roads and interior roads will be brought up to firesafe standards.” (IS/MND, p. 224.)
- “the amount of groundwater the Project is anticipated to require annually and expanded uses for captured rainwater, including cultivation.” (February 2, Letter, p. 8.) False again. The IS/MND contains an extensive analysis of the Project's potential impact groundwater resources, including analysis of the Project's potential to impact the Weott Town Area Groundwater Basin. (See IS/MND, pp. 196-198.) The Staff Report clearly describes the Project's water usage and rainwater catchment. (See Staff Report, pp. 2, 6.) Both the

IS/MND and Staff Report concur that the Project will not result in a significant impact to groundwater resources. (See IS/MND, p. 192; Staff Report, p. 4.) Planning Staff also testified to the Planning Commission to this same effect. HLG presents no specific facts as to why or how these analyses are inadequate, nor does HLG present any substantial evidence showing that the Project will result in a significant impact to groundwater resources.

- “the location and design of project facilities and whether they encroach on wetlands, buffer areas, or the 100-year floodplain.” (February 2 Letter, p. 8.) **This too is false.** The location and siting of the Project facilities is clearly depicted and described in the IS/MND. (See IS/MND, pp. 9-30 [including multiple maps and site figures].) The extent to which the Project facilities encroach on “wetlands, buffer areas, or the 100-year floodplain” is also fully described in depicted in the IS/MND. (See IS/MND, pp. 143-148.) The IS/MND also imposes mitigation measures for the Project’s minor impacts to wetlands. (IS/MND, p. 152.) All Project components comply with required setbacks, as shown in IS/MND Figure 40. (IS/MND at p. 145.) The IS/MND also fully describes the Project’s relationship with the 100-year floodplain. (IS/MND, pp. 194-195.)
- “the number of growing cycles per year”. (February 2 Letter, p. 8.) **False.** Page 13 of the IS/MND states that the Project “will have a maximum of four cycles per year . . .” This fact is reiterated on page 2 of the January 7, 2021 Staff Report.

As is made apparent above, HLG is either intentionally misrepresenting facts to the Board, or has failed to even read the Project IS/MND, Staff Report, and associated technical reports. Either way, HLG’s arguments are baseless and do not constitute substantial evidence supporting a fair argument that the Project will have a significant environmental impact.

F. HLG’s “Additional Conditions of Approval” Are Unnecessary To Mitigate Project Impacts And Are Self-Benefitting.

HLG offers a number of “additional conditions of approval” for the Board’s consideration. None of these conditions are tied to specific Project impacts, and in fact, all Project impacts are mitigated to less than significant levels by the existing IS/MND mitigation measures and the conditions of approval proposed by Planning Staff and approved by the Planning Commission. Moreover, a number of HLG’s “additional conditions of approval” are clearly intended to personally benefit HLG’s clients, including access road improvements and limitation of traffic passing by HLG’s clients’ property. The Board should not confuse HLG’s attempt to secure personal benefits for its clients with legitimate Project mitigations.

G. The Project Is Consistent with County Land Use Regulations, Including Fire Safe Regulations and The County General Plan.

HLG claims, as it did before the Planning Commission, that the Project does not comply with County land use and zoning regulations, including Fire Safe regulations. The IS/MND addresses the Project’s consistency with County and use requirements (see IS/MND, pp. 202-203), the January 7, 2021 Staff Report confirms consistency (see pp. 32-55), and Planning Staff testified at length to this issue before the Planning Commission.

HLG fails to show how the IS/MND and Planning Staff have erred in concluding that the Project is entirely consistent with County land use regulations. Planning Staff and the Planning Commission were unconvinced by this argument, and the Board should disregard it as well.

H. Staff Properly Reviewed The Project Under The CCLUO.

HLG contends, just as it did before the Planning Commission that County Planning Staff have reviewed the Project application for the last four years under the wrong County cannabis ordinance. This assertion, besides insulting Staff's competence, is also false.

HLG argues that Staff should have processed the Project under the County's Commercial Cannabis Land Use Ordinance ("2018 CCLUO") instead of the prior-adopted Commercial Medical Marijuana Land Use Ordinance ("2016 CMMLUO"). HLG bases a number of later comments regarding the Project on this erroneous assertion.

The County adopted the CMMLUO in 2016 to regulate medical cannabis operations. The County amended the CMMLUO, and in 2018 adopted the revised ordinance as the CCLUO, to regulate commercial cannabis operations. Applications submitted prior to December 31, 2016 are subject to the provisions and requirements of the 2016 CMMLUO and not the 2018 CCLUO (2018 CCLUO, § 55.4.3.1).


HLG believes that, notwithstanding the clear dictates of County ordinance, the Project should be subject to the 2018 CCLUO rather than the 2016 CMMLUO because the Project underwent changes from the original application during its more than four years of review. Nothing in the County Code requires this outcome, and certainly, if Planning Staff believed the 2018 CCLUO should apply rather than the 2016 CMMLUO, Staff would have so decided. Instead, Staff have determined that the Project is subject to the 2016 CMMLUO. (January 7 Staff Report, p. 3.)

Here again, Planning Staff and the Planning Commission were unconvinced by this argument, and the Board should disregard it as well.

* * *

Based on the foregoing, the Project complies with all applicable County and state requirements, and the associated IS/MND is fully adequate under CEQA. Should you have any questions concerning the matters discussed herein, please do not hesitate to contact me by telephone at (916) 706-2098 or by e-mail at bjohnson@hthjlaw.com.

Sincerely,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON

By 
Bradley B. Johnson

cc: Rolling Meadows Ranch, Inc.



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March 8, 2021

VIA EMAIL (TO COB AND PLANNING DEPT. CONTACT) AND HAND DELIVERY (TO PLANNING DEPT. ONLY)

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Re: **Rolling Meadow Ranch, LLC Conditional Use Permits – Response to Staff Report and Applicant’s Response to Issues Raised on Appeal** (PLN-12529-CUP; SCH# 2020070339)

To the Humboldt County Board of Supervisors and Mr. Johnson:

On behalf of appellants Fran Greenleaf, John Richards, and Patty Richards (collectively, “Appellants” or “Petitioners”), we hereby respond to the concerning, unsupported, and inaccurate statements made in the response to issues raised on appeal concerning the above-referenced project (the “Project”). The staff report and other new information was made available for public review on Friday, March 5, 2021, providing only a few days before the Appeal hearing on March 9 to respond.¹

After reviewing the new information, Appellants maintain that (1) because a fair argument has been made as to multiple potentially significant impacts, the Initial Study / Mitigated Negative Declaration (“IS/MND”) prepared for the Project and approved by the Planning Commission does not satisfy California Environmental Quality Act (“CEQA”) requirements, and (2) the Project, as designed, is inconsistent with mandatory provisions of the Humboldt County Code (“HCC”) and other applicable laws. Rather than repeat Appellants’ extensive substantive comments and re-reference volumes of supporting evidence, the comments below incorporate prior comments and focus only on new information.

Appellants have already repeatedly (1) explained the applicable legal standards, with meticulous citations to relevant statutes, regulations, and caselaw, and (2) described the factual support for Appellants’ comments concerning this Project. Appellants’ comments demonstrate

¹ This is yet another example of how this process has unfairly imposed a burden on the impacted public, when it is the applicant and the County that stand to profit.

why, for this large Project distributed in clusters across this remote, undeveloped, and difficult to access setting, an Environmental Impact Report (“EIR”) should have been prepared in the first instance.

When an MND has been prepared, the County, as the lead agency, has the burden to show, with substantial evidence, that the Project will “clearly” have no significant environmental impacts. To compel preparation of an EIR, challengers need only show that there is substantial evidence supporting a fair argument the Project “may” have at least one significant impact.² Because County staff and the Project applicant have not satisfied their initial burden of proof concerning the potential for significant impacts, and Appellants have presented substantial evidence supporting a fair argument that the Project may result in multiple potentially significant impacts, an EIR is required.

For a complete understanding of the factual and legal basis for Appellants’ claims, please review the multiple comment letters submitted by Appellants, CDFW, a volunteer fire district, environmental organizations, and the public. Unfortunately, because the County staff released multiple versions of the IS/MND, and supplemented that analysis with additional information in multiple staff reports, the normal CEQA and administrative process has been disjointed and complicated. Consequently, Appellants (as well as the public and other agencies) have for several months been compelled to critically examine revised and supplemented analyses and submit multiple rounds of comments. A thorough environmental analysis at the outset, as County planners initially urged, would likely have avoided multiple rounds of revisions, comments, and supplemental analysis.

To satisfy CEQA’s requirements, the IS/MND must show “clearly” that there is no possibility of a significant environmental impact. Under CEQA, “[i]f the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”³ Furthermore, an MND “is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis.”⁴ As Appellants have repeatedly explained, the IS/MND does not accurately describe the “whole of the project” and fails to study, based on evidence and applicable standards, several areas of impact. Consequently, the County may not rely upon this IS/MND to approve this Project.

² The letter from the applicant’s attorney repeatedly and mischaracterizes the “fair argument” test as requiring project challengers to present substantial evidence that the project “will” result in significant environmental impacts. See Letter from B. Johnson to Board, dated March 5, 2021, pp. 2, 3, 4, 5, 6, 7. This characterization of the legal standard is patently wrong. After quoting cases that state the correct legal standard, there is simply no excuse for repeatedly misrepresenting this central legal principal.

³ *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597, quoting *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311.

⁴ See *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406, citing *Sundstrom, supra*, 202 Cal. App. 3d at p. 311.

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I. Staff and the Applicant Downplay the Project’s Potential to Cause Significant Impacts and Improperly Attempt to Shift the Burden of Proof to Appellants.

Appellants have reviewed new information and explanations provided in the staff report to the Board and in the letter dated March 5, 2021 from the applicant’s counsel.⁵ Disregarding the early requests from County planners and CDFW, and later comments from Appellants, other knowledgeable long-term neighboring residents, environmental organizations, and the public, the staff report and letter from counsel still do not provide factually supported answers to the same critical questions concerning roads, wells, and wildlife. Instead, they dismiss the substantiated comments for not proving the Project “will” cause significant impacts.

Counsel for the applicant asserts that “all evidence submitted by HLG and its recruited Project opponents fall into the latter category of information that is never substantial evidence – these parties have offered only argument, speculation, unsubstantiated opinion, and generalized concerns or fears.” This generalized statement is false. Appellants presented relevant and factually supported comments from retained experts, the County’s senior planner, and the County’s peer review consultants, as well as photograph and video evidence. These factually supported comments speak for themselves. Appellants’ comments were also reinforced and verified by the comments of CDFW, Fruitland Ridge Volunteer Fire Protection District, and environmental organizations, among others. The Board should carefully consider and weigh the comments before deciding whether to deny the appeal and approve the Project.

Additionally, the criticisms concerning the evidentiary basis underlying critical public and agency comments rely upon a double standard. The unsupported opinion by staff concerning the potential hydrologic connectivity of Project wells is not “substantial evidence.” Neither is the unsupported opinion of the well driller. County planning staff originally requested that the applicant document and demonstrate the lack of hydrologic connectivity, with expert opinion. The County also requested that the applicant describe improvements to the internal ranch roads and access roads that would bring them up to fire safe standards. The unsupported opinion of the Department of Public Works Deputy Director and the access road evaluation in the IS/MND, where the improperly applied Category 2 standard is not explained or justified in spite of clear regulatory requirements, is also not “substantial evidence.”

A. The Required Analysis of Wells / Surface Water Connectivity Implicates the County’s Duty to Protect Public Trust Resources.

The County has duties under both CEQA as well as the California Constitution to analyze a permitted activity’s potential to impact surface waters and other public trust resources.⁶ Here, Petitioners have shown that the Project’s three wells, which together will pump

⁵ Appellants note that the Applicant’s counsel’s letter should not have been included in the board’s agenda package for this appeal because this letter was apparently submitted five days after the March 1 deadline for comments announced in the notice for this meeting. Why did County staff provide the applicant with this advantage and favored status?

⁶ See *Environmental Law Found. v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 867-68.

approximately 4.6 million gallons annually, have the potential to impact adjacent aquatic resources, including streams, springs, and wetlands and potentially the Eel River itself.

Staff asserts in its report that the comments of CDFW have been addressed, but this is not accurate. CDFW repeatedly requested that the applicant hire an expert to test whether the Project wells are hydrologically connected to surface waters and to demonstrate that lack of connectivity.⁷ As described in prior comments, the County and its peer review consultant also asked the applicant to provide this substantiation from a qualified expert.⁸ The experts retained by Appellants also recommended a scientific determination.

Do the two Fisch Drilling letters and staff's "examination of well logs" explanation provide the substantiation and demonstration from a qualified expert that the wells are not hydrologically connected to surface waters? Staff and the applicant's failure to support with substantial evidence the assertion that the wells are not hydrologically connected is revealing.

For their part, Appellants hired geologists at Pacific Watershed Associates ("PWA") who determined that the potential for hydrologic connectivity needs to be studied. Because staff and the applicant have dismissed PWA's technical memorandum concerning potential well related impacts as not "substantial evidence" and that the report "does not contain any facts specific to the Project" we quote below the relevant language from this report in full.

As shown on the well completion reports, Well #1 is 140 ft from a tributary stream to Beatty Creek. Well #2 is 300 ft from a Freshwater Emergent Wetland habitat classified as PEM1Ch (NWI). Well #3 is 400 feet from a Freshwater Forested/Shrub wetland habitat classified as PSS1/EM1B that extends through elevations ranging from approximately 610 ft to 930 feet (NWI). The wells have screened intervals ranging from 150 to 200 ft in length. The elevation range of the screened well segments at all Wells #1-3 encompasses the elevation of adjacent wetland and stream surface water resources.

Significant pumping from the groundwater wells could have potential adverse impacts to the watershed from reduced groundwater storage and/or a lowering of the local water table. When groundwater levels are reduced, the location where groundwater intersects with the land surface can change (i.e., become lower), causing local springs and seeps to dry up. Geologic investigations to quantify the hydraulic properties of aquifers within the project area have not been conducted. Due to the proximity of the Wells #1-3 to surface waters, the cone of depression from continuous well water withdrawal may intersect and

⁷ See CDFW CEQA Referral Checklist for RMR Project, dated Jan. 24, 2018, p. 2; see also Email from Greg O'Connell at CDFW to County planner Meghan Ryan, dated September 10, 2020 [commenting that the IS/MND lacks substantiation for the assertion that the Project wells are not hydrologically connected to surface water]; see also CDFW Comments on Revised IS/MND, dated Dec. 30, 2020, pp. 8-9 [same].

⁸ See Appellants comments on the revised IS/MND, dated Dec. 30, 2020, pp. 22-23 [quoting comments from Senior Planner and peer review consultants].

affect nearby stream and wetland resources. Additional hydrogeologic investigations should be conducted and reported to better identify and describe potentially significant impacts to these wetlands and watercourses.

Alternatively, if the wells prove to be disconnected from all surface waters, such reported investigations should transparently substantiate their lack of hydrologic connection.

The above detailed and factually supported expert comments constitute substantial evidence supporting the claim that the Project “may” have significant environmental impacts related to intensive year-round groundwater use. In December 2020, CDFW independently commented:

In light of the Project’s geologic setting, mapped springs, wetlands, and other surface water features (IS/MND Figure 61 on page 197), and based on the potential total volume of groundwater extraction from the three new wells, CDFW recommends the applicant retain a qualified professional (e.g. geologist or engineer with hydrogeology background) licensed to practice in California to conduct a preliminary evaluation of the Project’s potential impacts to local surface water flows, and to provide recommendations that ensure Project activities will not substantially affect aquatic resources.

In order to satisfy the fair argument test, Appellants need only demonstrate, with substantial evidence, the potential for significant environmental impacts. The above detailed and supported comments satisfy this requirement and stand in sharp contrast to the conclusory assertions in the Fisch Letters and in staff reports concerning the wells’ potential hydrologic connection to surface waters. Again, the lead agency has the burden to show the Project will clearly not have any potentially significant impacts in order to proceed with an IS/MND. With respect to this “analysis,” the County has not met this burden.

B. Approving a Large Cannabis Project with Inadequate Access Roads Implicates the County’s Constitutional Duty to Protect the Public’s Health and Safety.

As Appellants have repeatedly described, the primary access road to this Project site is narrow along several areas of Dyerville Loop Road, and at McCann Bridge and for the next several miles it is mostly unpaved.⁹ The internal ranch roads are also unpaved, narrow, steep, with numerous blind curves. According to the IS/MND, portions of these roads will be improved to the County’s Category 2 standard – unpaved and approximately 12 feet wide, with few if any shoulders, and only occasional turnouts. The Road Evaluation Report attached as an appendix to the IS/MND reveals “Due to steep road grades in some locations, measured to be over 20%, and not measured but estimated to be up to approximately 30% for short distances, it is recommended that appropriate type vehicles be used when using the roads.” Is an 8-foot

⁹ See three videos showing the drive on McCann Road and Dyerville Loop Road in the Project vicinity, filmed on August 23, 2020, available at: <https://youtu.be/8D6BaB1cQ4E>, https://youtu.be/b_nrLzk_iec, and https://youtu.be/gjQi_Ikhas8; see also three videos showing different drives on McCann Road and Dyerville Loop Road in the Project vicinity, filmed on September 4 and 7, 2020, available at: <https://youtu.be/HRIJwmkSuEU>; <https://youtu.be/nVSzdiC-ySc>; and <https://youtu.be/2t3AxG9zoqo>.

wide fire engine or fire truck weighing approximately 50,000 pounds responding to a wildfire an “appropriate type vehicle”? The analysis concerning impacts to public safety does not address this important question.

The roads to Alderpoint Road are necessary for Project access during the winter months, while the McCann bridge is seasonally closed. Despite the Project’s dependence on this road and a bridge that currently requires repair / replacement along this road, the IS/MND for the Project did not consider improvements necessary to bring this road up to fire safe standards. Because these improvements were left out of the project description, the scope of impact analysis was curtailed in multiple ways, not least of which is the difficulties posed for wildfire and emergency response.

Under the California Constitution, “[t]he protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.”¹⁰ Will this constitutional “first responsibility” be satisfied by allowing the applicant to cut corners on Fire Safe Regulations, without mitigation, and without even an open acknowledgement that it is allowing the applicant an informal exception to the minimal Category 3, 16-foot wide, access road requirement?¹¹

Staff has never explained how a Category 2, 12-foot wide unpaved road will satisfy the access road requirements under the SRA Fire Safe Regulations. The County’s Fire Safe Regulations, HCC § 3112-1, requires that “Road and street networks, whether public or private, unless exempted under Section 3111-3(b), shall provide for safe access for emergency wildland fire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with Sections 3112-2 through 3112-13.”

The staff report to the Board vaguely describes the Project’s access roads as satisfying the County’s SRA Fire Safe Regulations, but never does it acknowledge that staff has relied upon the improper Category 2 access road standard. If the Project access roads are 12 feet wide, and a fire engine is 8 feet wide, how can these roads provide concurrent public evacuation and fire response access? Staff does not address critical questions concerning what is, as a matter of law, a mandatory regulatory requirement.

The staff report also asserts (without any legal or evidentiary support or analysis) that the internal ranch roads are classified as “driveways” under the HCC. As Appellants pointed out prior to the Planning Commission decision to approve the Project, under the HCC, a “driveway” is defined as “a vehicular access that serves no more than two buildings.” Yet these ranch roads will serve at least the 16 greenhouses and accompanying processing facilities. The staff

¹⁰ Cal. Const., art. XIII, § 35, subd. (a)(2).

¹¹ Projects subject to the CMMLUO must satisfy the Fire Safe Regulations, which generally require a Category 4 access road but can allow a Category 3 access road in “mountainous areas.” As Appellants previously pointed out in its Notice of Appeal, the County Code includes provisions for processing exceptions to the mandatory standards imposed by SRA Fire Safe Regulations. The staff report is conspicuously silent on this point.

report does not explain how this apparent inconsistency with the code’s definition of “driveway” has been resolved.

The County, as CEQA lead agency, has the duty to answer all of the above questions based on facts and applicable regulatory standards. Instead, County staff have attempted to improperly shift the burden of proof concerning whether there will be significant impacts onto Appellants and the public. But the failure to adhere to the County’s regulatory standards (e.g., performance standards relied upon in prior Board findings concerning significant impacts) carries with it the presumption that the insufficient access roads may cause significant impacts.¹² This all that Appellants need show in order to compel an EIR.

C. Without an Adequate Investigation of Baseline Information for the Area of Project Disturbance, the Analysis of Impacts to Biological Resources is Incomplete.

The staff report asserts that all issues concerning potentially significant impacts to biological resources raised by the County’s planning staff, its peer review consultant, CDFW, and environmental organizations have been addressed. However, this too is not accurate. In its comments on the revised IS/MND, CDFW again stated that baseline surveys for special-status species, rare plants, and wetlands are incomplete.

Following preparation of the IS/MND, staff and the applicant have attempted to supplement the analysis with additional survey information concerning the golden eagle, a fully protected species. However, this survey information is incomplete,¹³ and even if it were complete, it cannot cure the deficiencies in the IS/MND. As the California Supreme Court pointed out with respect to requirements for an EIR’s analysis of a project’s water supply impacts:

The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. “[I]nformation ‘scattered here and there in EIR appendices,’ or a report ‘buried in an appendix,’ is not a substitute for ‘a good faith reasoned analysis’ ” [Citations.] To the extent the County, in certifying the FEIR as complete, relied on information not

¹² As Appellants pointed out in prior comments on the revised IS/MND, when approving the CMMLUO and the CCLUO, the Board relied upon adherence to access road performance standards in order to find that projects permitted under these regulatory regimes would not have any significant impacts to public services. Now staff proposes an informal exception to the requirements concerning access roads; but the IS/MND does not transparently reveal this exception let alone justify it.

¹³ See CDFW comments on revised IS/MND, dated Dec. 30, 2020, pp. 5-6 [surveys supporting the IS/MND analysis lack an “evaluation of potential alternative nest sites within the Project vicinity”].

actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA.¹⁴

This same principle applies even more so here with respect to the County's investigation of baseline information concerning biological resources, wetlands, and water supply because the County has not prepared a full EIR that would more thoroughly analyze impacts and, thus, be subject to greater deference. For this reason, CDFW recommended that "the Project complete protocol golden eagles surveys and consult with CDFW prior to completion of CEQA."

CDFW's comments point out that the IS/MND analysis does not address potential cumulative impacts to important grassland prairies (golden eagle foraging habitat) that may result from locating this and other cannabis facilities on newly identified prime agricultural soils located in remote mountainous areas.¹⁵ Neither the IS/MND nor the post-analysis explanations provided by staff address this issue.

CDFW also pointed out deficiencies in the surveys conducted for rare plants, wetlands, and other special status species. Contrary to staff's blanket assertion that all issues raised by CDFW have been addressed, these deficiencies have not been corrected.

D. The Project's Proposed Electricity Supply is Uncertain.

The staff report asserts, without sufficient factual support that Project "[p]ower will be provided by PG&E with generator backup." To Appellant's knowledge PG&E has not yet confirmed in writing that power supply infrastructure can indeed be extended to the Project facilities, as assumed in the project description. This is despite the County's early request to the applicant in 2018 that it provide a "will serve" letter.

E. The Staff Report is Conspicuously Silent Concerning the Piecemealing Claim.

The staff report does not address Appellant's claim that the County's "piecemealed" review of the Project. The three Project wells were installed while the application for this Project was pending, without considering the integral importance of these wells to the overall Project. Neither the IS/MND nor staff have ever explained how permitting the three wells in this manner and allowing the applicant to grade and rock the internal ranch roads does not violate the CMMLUO in light of the following statement from Director Ford:

¹⁴ See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1238–1239, 1244.

¹⁵ See CDFW comments on revised IS/MND, dated Dec. 30, 2020, pp. 7-8.

Starting cultivation activity, including related land modifications (i.e. grading), construction, and improvements, without a permit, for either a new cultivation or expansion of an existing site, is a violation of the CMMLUO.¹⁶

Allowing the applicant to drill wells needed for the Project and make other improvements prior to completion of the environmental review and permitting processes, without considering these actions as part of “the whole of the project” undermines the process required under CEQA and is inconsistent with requirements and restrictions imposed by County regulations.

F. Staff’s Conclusory Discussion Concerning the Project’s Inconsistencies with the County’s Land Use Regulations Fails to Address the Issues Raised by Appellants.

The unsupported discussion of the Project’s inconsistencies with policies, requirements, and restrictions in the County’s regulations (e.g., the CMMLUO and Fire Safe Regulations) do not squarely address the issues raised by Appellants. Appellants have explained the ways in which this Project is inconsistent with policies concerning, *inter alia*, the location of large commercial cannabis projects (e.g., bottomlands with adequate access and ag infrastructure preferred) and minimum requirements for access roads.

II. The Applicant Makes Disparaging and Unsupported Claims in an Attempt to Distract from Appellants’ Legitimate Claims and the Public’s Justified Concerns.

A. Widespread Public Criticism Disregarded as Having Been “Recruited”

Counsel for the applicant downplays the substantial public opposition to this controversial Project. There has been no need to “recruit” project opponents. Rather, there has been a groundswell of public opposition based on the dubious merits of this Project and the inadequate analysis of Project impacts. To dismiss the substantial number of critical public comments on this Project as “recruited” is insulting to those who took the time to review the analysis and comment and demonstrates a callous disregard of serious concerns expressed by neighbors and members of the local community.

The applicant never came to the McCann community for discussion on how to make this Project more compatible with its setting and environment. If the applicant had instead proposed a seasonal (full sun), organic, scaled down cultivation operation, appropriately set back from the Eel River, forbearing groundwater pumping in the summer and fall, with improvements to the access roads to minimize traffic hazards, public services impacts, and fugitive dust pollution, there would likely be substantially less opposition from neighbors and the broader community. Instead, the applicant has attempted to squeeze a square peg into a round hole with insufficient analysis of the impacts.

¹⁶ See Memorandum from Planning Director Ford to cannabis project applicants, dated April 28, 2017, available at: <https://humboldt.gov/DocumentCenter/View/59020/April-28-2017-Letter-Application-processing-Update-and-Concerns?bidId=>, accessed 12/01/20.

B. Issues Raised on Appeal Dismissed as “False” Without Proof

The applicant’s counsel also attempts to dismiss the serious and substantiated concerns about this Project by simply asserting that the claims are “false.” These concerns cannot be so easily disregarded. Unlike counsel for the applicant, Appellants have repeatedly provided roadmaps to legal authority and evidence substantiating their claims.¹⁷ The lack of a substantiated explanation from the applicant is telling – it reveals a defense that would not stand up in court and should not prevail before this Board.

C. Recommended Conditions do not “Benefit” Appellants, the Conditions Internalize Some of the Externalities of the Applicant’s Proposed, and Highly-Profitable, Enterprise.

Counsel for the applicant dismisses the recommended protective conditions of approval as “benefiting” appellants. These recommended conditions are proposed to further reduce the externalities of the Project. If the applicant has it his way, he will run a highly-profitable cannabis operation that will generate millions of dollars each year while causing unmitigated impacts to the community and the environment. Instead of listening to and cooperating with justifiably concerned neighbors, the applicant has rejected the recommended conditions and has accused the neighbors of attempting to seek personal gain.

D. The Project Description Is Indeed Inaccurate, Unstable, and Uncertain.

Counsel for the applicant attempts to refute Appellants’ claim concerning the inadequate project description; audaciously claiming that “HLG has either intentionally misrepresented the facts to the Board or has failed to even read the IS/MND, Staff Report, and associated technical reports.” Since we routinely meticulously cite to all of the latter documents (unlike the applicant and staff), it is obvious that we have read them, so this comes down to an accusation that we have intentionally misrepresented the facts. This accusation is not well taken, especially in a case where there has not been a “good faith effort at full disclosure” as required by CEQA.

Each of the Project description features that we listed as unstable and uncertain have been changed repeatedly over time. We stand by our substantiated comments on this subject.

Further, the staff report now includes new inconsistent information concerning the total amount of cultivation space and claimed “pre-existing grows.” The unsigned “letter” from the applicant now discloses, for the first time, that facilities #1 through #16 will occupy an area that is greater than the 20% of prime agricultural soil area mapped on the parcel and, to get around the limitation, it claims that 2 of the Project greenhouses constitute pre-existing grow areas and

¹⁷ See, e.g., Exh. A to Petitioners’ letter to Planning Commission, dated Jan. 20, 2021 – Summary of Major Unresolved Issues; see also Public Comments attachments to staff report for March 9, 2021, BOS appeal hearing.

that the 7,560 square-foot propagation space does not count towards to total. The IS/MND does not describe or support these assertions.¹⁸

The staff report also recommends a new mitigation measure that was not described or addressed in the IS/MND, the application of “Lignin Oil or similar product” on portions of the unpaved access roads to suppress fugitive dust emissions.¹⁹ While dust mitigation on the road is necessary, Appellants object to the newly proposed use of an oil substance with no information on ingredients, application protocols, performance standards, and no monitoring.²⁰ This is yet another last-minute change to the Project without adequate supporting information.

III. Conclusion: the Board Should Reverse the Planning Commission’s Decision and Either Deny the Project Application or Require an EIR.

For all of the foregoing reasons, and as explained in Appellant’s notice of appeal and in extensive prior comments on the IS/MND,²¹ the Board should reverse the Planning Commission’s decision to approve this Project and either deny the application or order the preparation of an EIR. Alternatively, if the Board decides to approve the Project, Appellants request the Board impose additional conditions of approval that will further reduce or avoid the Project’s potentially significant impacts.

Very Truly Yours,



Jason Holder

cc: (Via e-mail only)
Client contacts
FOER, EPIC, CNPS, NEC, RRAS contacts
CDFW contact

¹⁸ Compare Attachment 10 to staff report to Board, Letter from Applicant addressing concerns *with* revised IS/MND [no reference to “pre-existing” grow area and no substantiation for this eleventh hour claim]. There is no evidence in the IS/MND or elsewhere in the administrative record that 39,240 square feet of cultivation area exists on the Rolling Meadow Ranch property.

¹⁹ See staff report to Board, dated March 5, 2021, p. 5; see also Attachment 10 to staff report describing newly proposed and unanalyzed dust suppression measure.

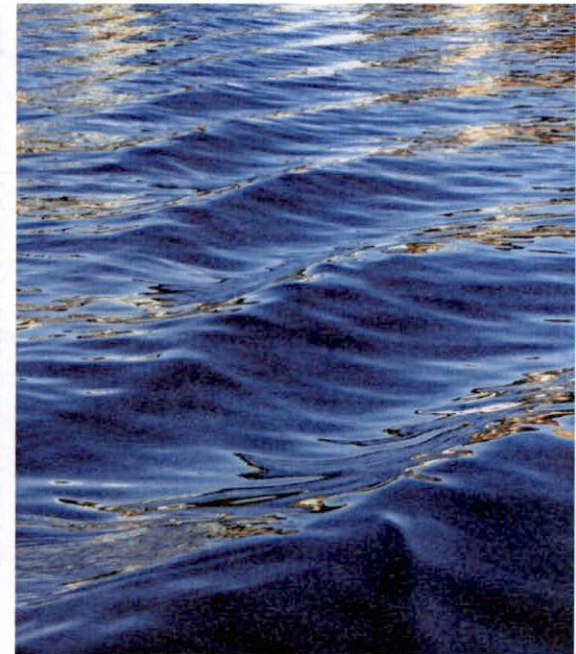
²⁰ The staff report and applicant’s unsigned letter describing the “periodic” application of lignin oil or similar produce “if necessary” does not provide any information or analysis on various products used to control dust on unpaved roads. Such readily available information should have been presented in the IS/MND. See, e.g., U.S. EPA publication, *Dust Control and Stabilization*, available at: https://www.epa.gov/sites/production/files/2015-10/documents/2003_07_24_nps_gravelroads_sec4_0.pdf, accessed March 8, 2021.

²¹ Petitioners’ prior comments on the original and revised IS/MND, dated August 17, September 10, and December 30, 2020, respectively, as well as their comments on supplemental information provided in staff reports to the Planning Commission for hearings on January 7 and January 20, 2021, respectively, are incorporated herein by reference.



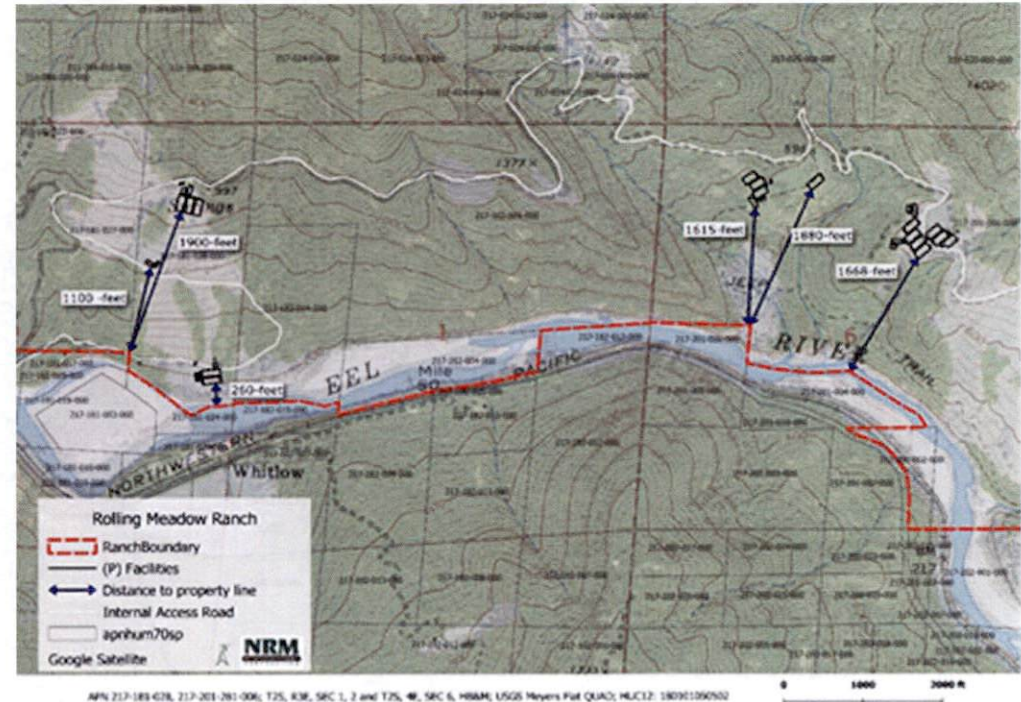
Appeal re: Rolling Meadow Ranch

Attorney Jason Holder on behalf of Appellants



Introduction and Summary of Appeal

- The Record: voluminous factually supported comments
- The Appellants: concerned neighbors who will be immediately impacted
- The Project:
 - >250,000 sq. ft. of cultivation and processing facilities
 - 16 buildings distributed in remote clusters
 - New, non-organic operation
 - Remote and difficult to access location
- Inadequate Environmental Review: IS/MND where an EIR is required



The Project Violates CEQA

- Standard applicable to an IS/MND:
 - Only allowed where clearly no significant effect on the environment would occur; and
 - There is no substantial evidence in light of the whole record that the project may have a significant effect on the environment.
- To certify the MND, the County has the burden to show the Project will have no significant impacts.
 - Instead, the Department and Planning Commission have inverted this standard.
- The IS/MND fails CEQA's "Fair Argument" Standard:
 - A party challenging a project need only present substantial evidence supporting a fair argument that there may be at least one potentially significant impact.
 - Not deferential to the Lead Agency, and is considered a "low threshold"
- Here, substantial evidence supporting Appellants' claims comes from numerous sources, including the County itself.

Sources of Substantial Evidence

- Pacific Watershed Associates, geologists
 - Potentially significant impact to Hydrology, Water Quality, and Aquatic Habitat Resources
 - Water Availability
- Steve Salzman, P.E., licensed civil engineer
 - "It is my professional opinion that the McCann Road does not currently meet the requirements for a Category 4 (or equivalent) road."
- Letter from Supervising Planner Steve Werner to Applicant

-Alternative Road Access

The issue of improving Alderpoint Road for alternative access is discussed in the IS in one sentence. We anticipate significant improvements would be required to make this access a Road Category 4 access as required by the CMMLUO. A complete discussion of the locations and types of improvements together with potential environmental

-Ranch Roads

The use of existing ranch roads and consistency with Fire Safe access is a concern that is not adequately addressed in the IS. The statement that "improvement plans will be

Sources of Substantial Evidence (cont.)

- “Peer Review” Conducted by Transcon Environmental
 - County’s own peer review consultant
 - Many deficiencies identified by Transcon remain unaddressed
- Reports from the applicant’s own consultants
- California Department of Fish & Wildlife (CDFW)
 - Initial referral checklist
 - Subsequent comment letters
- Other environmental agencies or entities
 - U.S. Geological Survey (USGS) and California Dept. of Water Resources
 - California Native Plant Society (CNPS)
 - Redwood Regional Audubon Society (RRAS)
- The Department nevertheless insists no fair argument has been made. A reviewing court likely will disagree.

Specific Substantive Flaws in CEQA Analysis

- Written comments supported by substantial evidence demonstrate numerous potentially significant effects.
- Here, due to time constraints, will be highlighting certain areas only.
- Access Roads
 - McCann and Alderpoint Roads both pose traffic safety risks
 - Likely to interfere with public services, including responding to wildfires
 - Selective application of the County's ordinances, including the CMMLUO and Fire Safety Regulations
 - Photos of McCann Road on following slides from civil engineer Steve Salzman's report



Photo No. 1. 11'-wide, one-lane, low water bridge and approach, no shoulder, gravel surface.



Photo No. 3. Looking across gravel bar

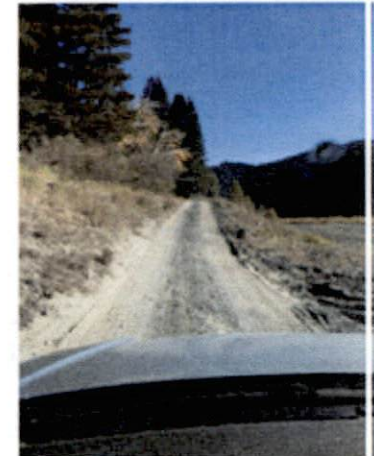


Photo No. 4. Road leaving gravel bar.



Photo No. 2. 14'-wide travel way across floodplain/gravel bar, unconsolidated shoulders. Tracks are evidence of vehicles getting stuck in the gravel off the travel way.



Photo No. 5. Looking back down to the floodplain/gravel bar, travel way is 12', inadequate shoulder, gravel surface.



Photo No. 8. 12'- wide cattle guard, gravel surface, with inter-visible turn outs.



Photo No. 13. Emergency road repair at slide, very unstable roadbed.

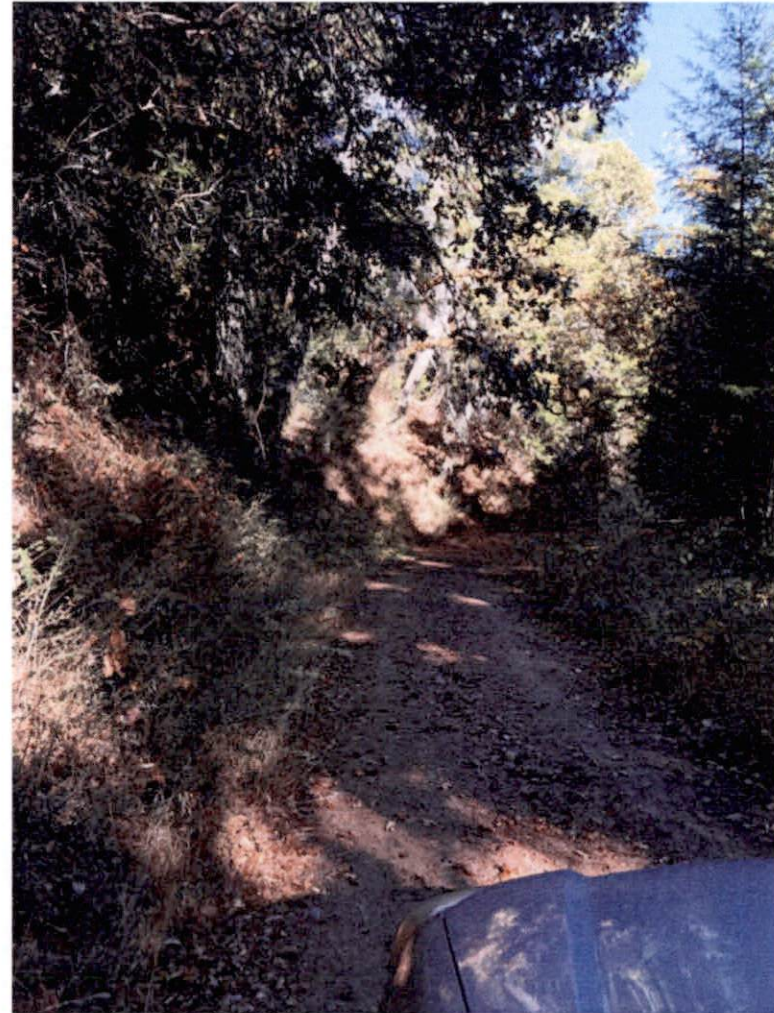


Photo No. 10. 10'-wide travel way, no shoulder, gravel surface, no inter-visible turn outs.

Specific Substantive Flaws in CEQA Analysis (cont.)

- The Project's 3 wells and hydrologic connectivity
 - Department of Water Rights Bulletin 118: "Groundwater development in the inland coastal valleys north of the divide between the Russian and Eel Rivers is generally of limited extent. ... **Many groundwater wells rely on hydrologic connection to the rivers and streams of the valleys.**"
 - In response, the applicant and the County rely on the opinion of the well driller.
- Biological and other natural resources – incomplete baseline information.
 - Partial surveys only for special status species, wetlands, and rare plants.
 - Inaccurate reporting of survey results
- Inconsistencies with CMMLUO & SRA Fire Safe Regulations
 - Timing of drilling the Project's 3 wells
 - Reliance on Category 2 roads
 - Subject to claims under the State's Planning & Zoning Law

Procedural Flaws in Process

- Piecemealed environmental review
 - Wells drilled during permitting process
 - Internal ranch roads improved during process, damaging wetlands
- Inaccurate and unstable Project description
 - Access road improvements, inc. culverts and water crossings
 - Amount of groundwater to be used
 - Increased reliance on captured rainwater, including for cultivation
 - Location and design of facilities
 - Wetlands
 - Buffer areas
 - 100-year floodplain
 - Number of growing cycles annually
- Timing effectively frustrating public review and comment

Project's Threats to Public Health, Safety & Welfare

- Located within an area of Very High Fire Severity
- McCann Bridge inadequate per Humboldt County Code §3112-4
- Fruitland VFD comment letter
- Project neither consistent with Fire Safe Regulations, nor subject to an exception
- Potential depletion of surface water in springs, tributary streams, and wetlands

Potential Additional Conditions of Approval

- No effort by applicant or County to meet with Appellants regarding modifications to the Project or conditions
- Although Appellants ask Project be denied, or that an EIR be prepared, additionally have proposed conditions to mitigate impacts, including:

Issue	Measure(s)
Traffic / Dust / Drainage	<p>Pave roads to reduce fugitive dust</p> <p>Employee shuttle bus</p> <p>Upgrade culvert</p>
Fire Safety	<p>Determine weight rating of McCann Bridge, use alternative access route (via Alderpoint) until McCann Bridge is determined to be safe for large (heavy) vehicles</p> <p>Reserve rainwater for firefighting during the fire season (June – Nov.)</p> <p>Water tender required at each of the four clusters of Project facilities</p>
Cultural Resources	Consult with tribes concerning potential impacts to burial sites and other cultural resources
Electricity	Obtain “will serve” letter from PG&E
Water	Require water meter and impose adaptive management and dry season forbearance
Water Quality	Organic farming practices and proper disposal of soil medium

Conclusion

- IS/MND is fundamentally flawed and should not be adopted
- Best options before the Board:
 - Deny the application for the Conditional Use Permits; or
 - Require that an Environmental Impact Report be prepared.
- If the Board is inclined to approve the Project, additional conditions should be imposed to mitigate the Project's potentially significant environmental and other public impacts.

Hayes, Kathy

From: Mary Gaterud <elevenator@mac.com>
Sent: Monday, March 8, 2021 4:17 PM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Bass, Virginia; Wilson, Mike; Madrone, Steve
Subject: Appeal (Record Number PLN-2021-16987) of Rolling Meadow Ranch, LLC, Cannabis Cultivation Permits (PLN-12529-CUP)

March 8, 2021

Via Email

Humboldt County Board of Supervisors
Attn: Clerk of the Board
825 5th St., Room 111
Eureka, CA 95501
Email: cob@co.humboldt.ca.us

Re: Applicant Letter/COB Comment Letter in Staff Packet for Appeal (Record Number PLN-2021-16987) of Rolling Meadow Ranch, LLC, Cannabis Cultivation Permits (PLN-12529-CUP)

Dear Honorable Board Members:

It has come to my attention that Attachment "**10- Applicant Letter re Additional [sic] project components**" raises some very troubling issues, as well as new information that has not previously been made available to the residents of McCann or the Community at large.

These new proposals for the Project's description further add to the numerous previous examples showing that **the Project's description has been notable for it's consistent alterations, vagueness, and instability throughout the process, disallowing a thorough and complete analysis of the true nature of the entirety of the Project in a final form.**

Regarding this **unsigned**, "letter from the Applicant" in the Staff Report:

The sudden addition of proposed "Propagation" in greenhouses... this requires a longer light cycle than is stated in the IS/MND. Plants that are grown for cuttings (clones), which are called "mothers," as well as the cuttings themselves, need 18 hours of light so that they remain in a vegging state, when grown inside greenhouses.

This last minute change to the plan is, yet again, another example of how the project morphs substantially with no accountability, or analysis of the new impacts/ramifications/discussion of how exactly this **new addition of 7,560 square feet devoted to said propagation** in three facilities will actually operate within the parameters (i.e.: limitation of light cycles to avoid interference with natural cycles of wildlife) already stated.

This new propagation plan is aimed at ameliorating excess cultivation square footage. The letter writer discloses that the Project Plan, as approved by the Planning Commission, exceeds the 20% limitation on usage of Prime-Ag soil in it's total greenhouse square footage. The letter writer continues in the attempt to rectify this by stating that there is nearly 40,000 square feet of existing mixed light cultivation on this property, in facilities #1 and #10. **This is patently false and absurd. There is no pre-existing mixed light cultivation on this property. I am an immediate neighbor. I have lived here for twenty years. I walk by this property and the area adjacent to supposed facility #1 every day.**

Furthermore, the new proposal to spray lignin oil, or "**similar product**" by an unknown private individual, with no accountability, on a **County Road in front of my house** with no performance standards... is unacceptable. Dust mitigation is a serious issue with this Project. I believe at one point in the IS/MND the applicant proposed spraying

lignin oil on their own ranch roads, but a reviewer struck it down, and so that's why the Applicant reverted to the proposal of using the stored rainwater catchment (previously planned to be used for fire suppression) to spray down their own roads for dust mitigation.

How can Humboldt County leadership approve a private entity to treat County roads? I find this astonishing. Especially when the statement is unsigned!!! Exactly who is responsible for this? What if some toxic/hazardous substance gets sprayed? Or no dust mitigation at all? Who do I call? What is my recourse?

Additionally, despite the **March 1st 12:00 PM** deadline for public comments to the Clerk of the Board regarding this Appeal, a letter from the attorney, Bradley Johnson, representing the Rolling Meadow Ranch property owner, dated **March 5th** is included in the Staff and Public Packet, in the Attachment Comments to the Clerk of the Board, and is subsequently entered into the official record for the Appeal Hearing. This letter, which goes on to claim that the substantial evidence arguing against this Project is categorically false, itself starts out with inaccurate information, claiming that the Planning Commission Hearing was a **unanimous vote** for the Project.

And yet, important issues presented by substantial public commentary go unaddressed by Staff, including **comments from the local Fire Protection District, and the InterTribal Sinkyone Wilderness Council. Why is this?**

There is more than enough cause for you to **Support the Appeal and Deny the Permits for this Project.**

Sincerely,

Mary Gaterud