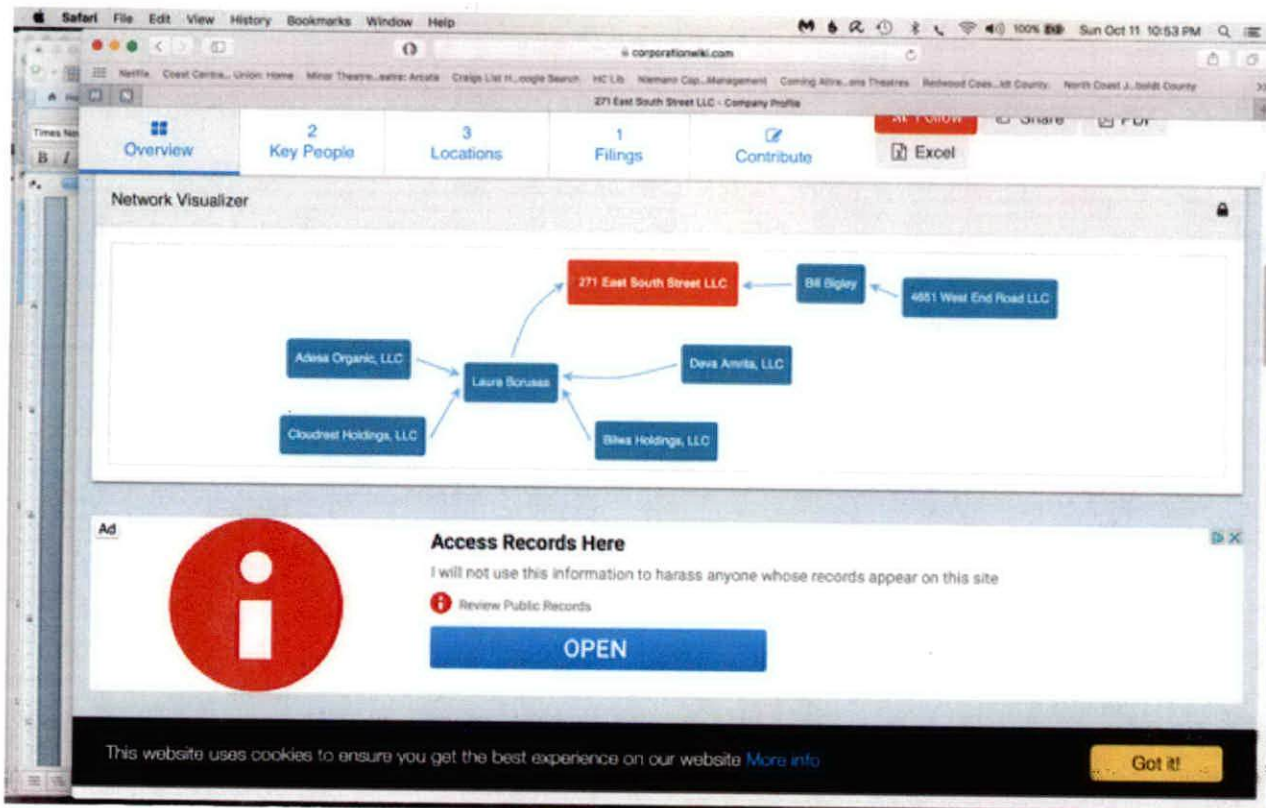


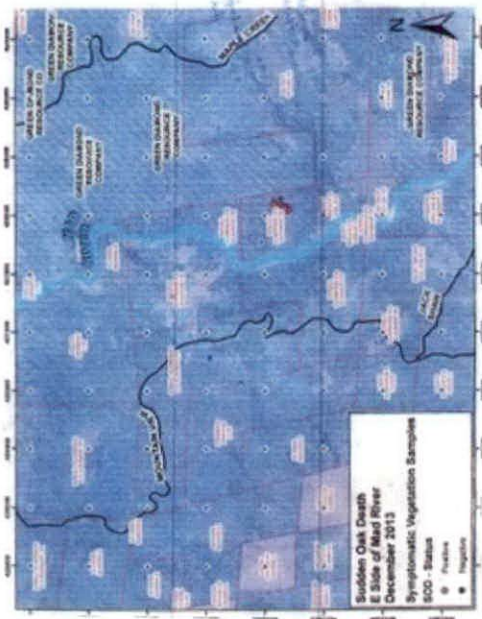
Damico, Tracy

From: Ken Miller <tamer1@suddenlink.net>
Sent: Friday, October 23, 2020 10:54 AM
To: COB
Cc: Jason R. Flanders
Subject: Friends of Mad R Appeal of Adesa CUP
Attachments: Friends of Mad River Appeal Adesa CUP.pdf; 112719 CDFW_ Golden Eagle habitat information - Adesa Organics copy.rtf; Adesa GOEA report_Woodbridge.pdf; BBR eagles & C 112719 copy.pdf; Cannabis_Applications_10miles_of_40.6503-123.8174.xlsx; GOEA FoMR 1b.pdf; GOEA2b .pdf; Michael vH 9320 Adesa PC talking points.pdf; MN AG CDF Compliance Report FINAL-10.14.15 copy.pdf; pc hearing 9-3 Adesa Transcript.pdf

To Clerk of the Board
From Friends of Mad River

Please find attached our submission to the Board with ten Attachments
Thank you
Ken Miller, for FoMR





~~Friends of the Mad River (“Friends” or “FoMR”)~~ Appeal the 9/3/20 PC approval of Adesa LLC and **request Denial of Conditional Use Permits**, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004 based on the following, as explained below:

We Must Not Sacrifice Our Remote Wildlands That Are Untouched By The Greenrush To Industrial Cannabis

1. Planning Commissioners and CDFW had serious reservations about siting such a large industrial operation in remote wildlands where no such operations exist:¹

“This area has not yet been obliterated with hoop houses and everything else that goes with it.”

We don’t have to let happen what has happened to a beautiful place like Honeydew, Alderpoint, Blocksburg.”

Alan Bongio, Chair PC

“No commercial cannabis applications have yet to be approved in this particular area and concern has been raised by referral agencies and members of the public regarding the potential of new cannabis applications to disrupt the

¹ “...we were under the impression that we wouldn't see these types of projects proposed new under the existing -- none of these ordinances. CDFW Michael van Hattem, Planning Commission 9/3 Transcript at 11.

incredibly high habitat values of the area and the overall scenic and rural quality of life....*Nonetheless, the Planning Commission should consider whether this portion of Maple Creek, with its historical very low density and passive agricultural uses, is appropriate for permitting of more intensive agricultural uses such as commercial cannabis.*” (pp3-4,SR)

“I've heard it over and over and over about the industrial size of this in such a remote area and the detrimental effects it's going to have on the whole basin. And I can't say that strongly enough.” Ronnie Pellegrini, PC

“I think it's fair to say, we, as a commission of the county, didn't necessarily intend it to be in this location.”
Noah Levy, PC

“When the ordinance and original MND were circulated, the inclusion of some additional sites like Adesa, was not what the department thought was approved. Is this what you thought was intended? Do you want large industrial cultivation sites in remote wildlands of your county?”
Michael van Hattem, CDFW, 9/3/2020 (pg 8 transcript)

2. PROJECT REVISIONS: Adesa revised this project after the Planning Commission limited their generator use to 20% of power needs for two years, then 100% renewable. These revisions, which attempt to reduce or avoid the Project’s significant effects, are so extensive as to essentially constitute a new project, which requires re-circulated environmental review. Moving the drying offsite

raises issues of increased traffic; off-site impacts, revised water storage and consumption patterns must be assessed; and the cultivation-area remains unclear. Our other concerns remain unaddressed.

The extraordinary delay in bringing this proposed project forward, originally based on a project application from 2015, but updated and revised in 2019, makes this project out of step with current County planning policy, and with the law.

3. NEIGHBORS: Everyone in the neighborhood that we have spoken with or heard from opposes this project.

4. EIR: The County erred in allowing the Adesa permit process to proceed with a mitigated negative declaration (“MND”) rather than an EIR, despite multiple Agency requests. Substantial evidence in the record supports a fair argument that the project may have significant adverse effects to wildlife including golden eagles and elk, water supply, vegetation including sudden oak death, fire safety, and growth inducing effects; all of which the MND fails to adequately assess.

Multiple Agencies Advise an EIR, MND Insufficient

Because it would introduce such a transformative industry into a unique habitat rich in sensitive wildlife that is relatively untouched by the industrial green rush, the county erred by not requiring Adesa to conduct an EIR from the outset, as it has recommended for other nearby

prospective projects (eg Mad River Estates).

~~During our ZOOM negotiations with the Applicant, John Ford said that Planning had considered an EIR for the area, but “people didn’t want one.”~~

With elevations ranging from 1000 to over 4000 feet and steep drainages to the Mad River, through undulating meadows and mosaic forests with Ponderosa pine, white fir and cedar higher up, and Douglas fir, white and black oak forests below, the Maple Creek area sustains thriving wildlife communities.²

Adesa straddles Cowan Creek, in the midst of a major wildlife corridor that stretches from the Mad River through meadow & forested terrain up to the high elevation forests.

EIRs required for ensuing potential projects after Adesa will be a postmortem that would create a new baseline by which other projects would be judged. By then the impacts from Adesa will become part of the landscape and cause impacts that have neither been identified nor evaluated in this MND, as corroborated by Michael van Hattem of CDFW to the Planning Commission on 9/3/20:

“However, due to its size and location within and adjacent to two streams of habitat, CDF believes there are

² “In California, oak woodlands have the greatest wildlife species richness of any other habitat in the state with over 330 species of amphibians, birds, and mammals relying upon these habitats at some point during their lives (CalPIF 2002).” CDFW 7/31/2020

appropriate substantial and direct impacts that have not been adequately disclosed, analyzed or mitigated.”

CDFW’s correspondence (see email 11/27/19 below), as well as the Humboldt Bay Municipal Water District letter of 10/17/2018 reiterates the call for an EIR.³

Humboldt County Planning Department also advised an EIR if significant adverse impacts could not be mitigated. They have not as explained by CDFW’s testimony to the Planning Commission on 9/3 that significant impacts have not been mitigated, or even analyzed.⁴

Humboldt Bay Municipal Water District: “For the above reasons, the District requests the Planning Commission require full environmental review of CUP 16-452 and the Special permit application SP 18-074 for Cannabis cultivation sites.” 10/17/18 HBMWD).

An EIR would address the cumulative impacts not just of multiple existing and likely projects, but also the socioeconomic transformation and growth induction associated with Adesa. It would address the risk of SOD

³ “...the District (HBMWD) requests the Planning Commission require full environmental review of CUP 16-452 and the Special permit application SP 18-074 for Cannabis cultivation sites.” 10/17/18 HBMWD

⁴ “The responses to items 1 and 2, above should also consider the cumulative impacts of the three similarly large applications proposed in proximity to this site. Under the circumstances this is the most significant consideration of the entire CEQA analysis. Unless the Initial Study can be adequately modified to present adequate evidence on the record that there is not the potential for a significant adverse impact, the only conclusion the County can reach is that an EIR must be prepared.” 9/28/18 Planning to SHN

from imported soil, and the impacts to migrating elk, neither of which is mentioned in the IS/MND.

5. IMPACTS TO GOLDEN EAGLES REQUIRE EIR

The Missing CDFW Email & Map of 11/27/2019

The Planning Commissioners and public were deprived of a critical 11/27/2019 email and map from CDFW to Director Ford that showed that CEQA requirements were NOT being met, undermining the process:

“CDFW believes there is a potential for significant adverse impacts to Golden Eagle’s as well as other protected species and sensitive natural communities by this project and cumulatively by nearby proposed projects. The extent of the potential impacts and feasible avoidance and mitigation measures should be considered in an environmental document such as an EIR.” Cheri Sanville email to Cliff Johnson and John Ford, 11/27/19

•Absent an EIR, Adesa poses an unevaluated threat of Take of Golden Eagles, even with current revisions. The MND for CMMLUO (Cannabis 1.0) **did NOT evaluate anything regarding Golden Eagles or raptors.**

Brian Woodbridge, Golden Eagle Expert, USFWS

Friends of Mad River has consulted retired USFWS Golden Eagle expert, Brian Woodbridge, to assess the adequacy of the Administrative Record’s conclusion that there would be

No Significant Impact to Golden Eagles. He has determined that conclusion is not supported by evidence in the record; *and that potentially significant effects to Golden Eagles may occur*. His conclusions correspond to other experts calling for an EIR:

“Given that the activities and effects of the Project extend well beyond the footprint of greenhouses and parking, the determination of habitat quality for the Project area should be made at the spatial extent of all foraging habitat potentially affected. In the absence of appropriate surveys to determine the degree of actual use of the prairie habitats within the Project vicinity, the potential effects of the Project on Golden Eagle foraging use are unknown.” (p24)

“However, longer-term or chronic disturbance can be a larger issue if the amount and types of human activity increase in occupied Golden Eagle habitat – not just at the nest site (cites). Because territorial Golden Eagles in the western U.S. are year-round residents on their territories, potentially disruptive human activities are not limited to the breeding season.” (p28-29)

“While the Adesa Eagle BA correctly states that Golden Eagles seem compatible with low-intensity land management activities such as livestock grazing and ranch management operations, these activities cannot be equated with industrial cannabis operations.” (p30)

“Despite empirical evidence that human disturbance within Golden eagle core areas can lead to reduced

territory occupancy and reproductive success, the Adesa Eagle BA does not address predicted levels and location of post-construction activity and human presence associated with operation and maintenance of the facility.” (p31)

“In determining that the Adesa project will have no significant impact on Golden Eagles, the Adesa Eagle BA relies entirely on a narrowly focused evaluation of the Project footprint, and an unsupported assumption that the Big Bend eagles are not using the Project area.”(p35)

“Given the uncertainty in determining which projects will move forward (CDFW 11/27 map), and their individual potential effects, the Adesa project’s impacts to Golden Eagles must be evaluated as part of a larger development process that is ongoing in the Mad River/Big Bend area.” (p 35-6)

“Research has established that Golden Eagles are intolerant of development and human disturbance above relatively low levels; territory occupancy and reproductive success decline as vehicle use and human activity increase (citations). Without landscape-level planning that incorporates the spatial distribution of known and predicted Golden Eagle territories and important habitats, the incremental impact of proposed projects such as the Adesa project will remain unknown.” (36-7)

(“Golden Eagles In The Vicinity Of The Proposed Adesa Organics Llc Cannabis Cultivation Project:A technical review of Golden Eagle ecology, management and

potential project effects,” attached)

In answer to an inquiry from Cliff Johnson dated 11/21/2019⁵ Cheri Sanville, CDFW, responded with an email to Cliff Johnson and John Ford on 11/27/2019, requesting an EIR. A map was attached to that email showing other potential projects in Eagle territory. (Big Bend Ranch eagle map attached)

Nobody, including the consultants, public or Commissioners ever saw either the 11/27/19 email or the map until after the Planning Commission narrowly approved this project 4-3, pursuant to Friends’ PRA. Yet excerpts such as the following demonstrate that this email and map would have influenced all of the interested parties and belonged in the public record:

“For the most part, when humans move into an area, golden eagles move out (territory loss) although some low levels of activity, ranching, for example, is fine and compatible.”

“Solely buffering currently used nests could inadequately protect golden eagles from human disturbance.”

Unfortunately, the absence of this email and map in the Record prevented the Planning Commissioners from having a complete record, which translated into their approval,

⁵ “Cheri,..I am going to need to be responding to them on our position on eagle habitat impacts by early December, so any comments regarding potential impacts will be helpful and needed soon.” Cliff J to Cheri@Wildlife, 11/21/19

based on their not knowing that the record was in fact incomplete:

C. McCavour: “a project in front of us that meets all of the requirements for the legal CEQA documents *that we have...*” “...we have to work with what we have”

C. Mitchell: “I feel that if a project meets all of the requirements...”

C. Newman: “this project meets all of the requirements that the ordinance is asking for”

Despite very clear guidance from CDFW in this email relevant to Adesa’s eagle evaluation and surveys, the consultants never saw the email, or the map—they are not cited in their reports or references. (See Exhibit 1, pp149-153, SR)

PNW-Biological consultant Sandra Hunt-von Arb never saw the map.⁶ Gretchen O’Brien of SHN based her habitat mapping on CWHR (428 MND), despite the 11/27 emails’ admonition against its use for specific habitat typing, especially where eagles’ presence is known.⁷

⁶ “My statements in all these letters say it is my professional opinion that the AMT project will not cause a significant negative impact to Golden Eagles. *They do not state that there are or are not potential cumulative impacts with consideration of other proposed projects in the area.*” (emphasis added) 11/27/2019 email

⁷ “CWHR is a coarse-scale model that predicts the relative suitability of habitat for particular species. It is not meant to evaluate habitat within a known active eagle territory and to draw conclusions about the relative value of that habitat. CDFW does not consider any of the large scale modeling, such as CWHR, to be appropriate for determining potential impacts at the scale of individual projects. We already know that the eagles are present on this particular territory, and have been successfully breeding for years. Therefore, SHN’s reports that attempt to differentiate between high and moderate habitat suitability for eagles is essentially a moot point

Had this email and map been available to the public, consultants, Friends of the Mad River, local-Bird experts and Planning Commissioners, the MND with respect to the eagle evaluations would have been indefensible, and an EIR obviously necessary.

Six “Technical Reports” Are Really Just Two
Adesa’s contractors submitted six “technical reports” regarding the Golden Eagle. (SR p121). However, there are only two substantive reports among these six,⁸ both showing what we have known since at least 2002, that Golden Eagles nest and live in the area. (ISMND pp 398 et seq)

The other reports either never mention GOEA (**Natural Resource Assessment** dated December 2017; Pp223-259 IS/MND), or merely reiterate findings from other studies. The **Technical memorandum** by Gretchen O’Brien of SHN dated August 31, 2018; (Page 405 ISMND) describes a 5.5 hr walk/drive “roaming survey” and a ground station of 2 hrs, which CDFW criticized as inadequate.⁹

Friends Created 2 Maps of Cannabis Projects in Eagle Territory from County-supplied APNs

because we already know the eagles are present and using the habitat.” (11/27/19CDFW email)

⁸ 10/17/2019 report in which an Eagle along Cowan Creek was spotted on 4/13/2019, and the May 2020 report that documented detections on 3/2, 4/13, and 5/15/2020.

⁹ “While they were there for many hours, he (CDFW A. Orahoske) can attest that the SHN biologist did not conduct a protocol level eagle survey.” 11/27/19 email

Getting a clear view of other approved, pending, or potential Cannabis projects in Eagle territory has proved impossibly cumbersome. County supplied a spreadsheet of APN's (attached) of all permitted or pending projects within 10 sq mi of Golden Eagle territory. FOMR created two maps of *parcels* based on this data, GOEA 1b & 2b. We also used a map from the draft Mad River Estates Initial Study, a project proposed adjacent to Adesa on Wilderness Ranch. These maps and CDFW's from 11/27/19 reveal graphically the multiple projects likely to affect the Eagle. (Four MAPS attached)

6. WATER: Local residents complained to me about the diminishing rainfalls and predictions of ongoing drought, and the effects of depriving Cowan & Wilson Creeks, and at least two other nearby unnamed drainages, of rainwater. FMR members worry that during these dryer times, limits on drawing water from Cowan Creek will be unenforceable, potentially affecting downstream Wilson Ranch which has senior rights; whether an enforceable water rights permit should be required; and what the cumulative effects to the loss of water availability might be.

In response to Friends' concerns about the lack of a water budget or SWB water right determination, Cliff Johnson used the entire Mad R watershed as the denominator, instead of the relevant affected local ones that are orders of magnitude smaller and more sensitive to inputs.

These concerns were also communicated by the Humboldt Bay Water District, but the IS/MND simply fails to analyze

local or cumulative effects to hydrology and biological resources foreseeably resulting from the Project's use of millions of gallons of water per year, especially during drought times, which are projected to increase in the near term.¹⁰

In addition, photos obtained by Regional Water Board staff show evidence of riffles suggesting a connection between the pond storage area and Cowan creek, that should require a water rights permit, and referral of this proposed project to the State Water Resources Control Board division of water rights for review.

7. General Plan Violated re: FIRE RISKS

FMR has serious concerns that insufficient fire protection resources would be available to address the increased fire and safety risk caused by the Project by use of generators, increased traffic, and more intense land use, at a time when California faces unprecedented and increasing damage from wildfires. Here, the IS/MND states that “[t]he fire hazard severity zone for the project is classified as ‘Very High,’” and acknowledges that “[t]here is potential risk of causing a wildfire during construction or operational activities.” (IS/MND at 58.) While the IS/MND does require the Project be constructed and operated in accordance with the Humboldt County Fire Safe Ordinance, the IS/MND fails to cite or evaluate Humboldt County General Plan policy IS-S5, which requires that:

¹⁰ “New drought development is indicated over a sizable fraction of California.”
https://www.cpc.ncep.noaa.gov/products/expert_assessment/sdo_summary.php

“New industrial, commercial, and residential development outside of fire district boundaries shall be responsible prior to permit approval, **to obtain from an appropriate local fire service provider written acknowledgement of the available emergency response and fire suppression services and recommended mitigations.**”

The Project would fall within the Kneeland Volunteer Fire Department sphere,¹¹ but neither Kneeland, Maple Creek, nor Blue Lake were even alerted to Adesa. Instead CalFire is the designated agency, but CalFire’s heliport at Kneeland is six miles away and is only fully operational five and a half months out of the year, and then without ground support.

Currently, multiple fires in the state have exhausted CalFire protection services. There is no assurance that a fire in the Maple Creek area would be an isolated event, but this inevitability is never considered.

CalFire warns:

- “Steep terrain and heavy wildland fuels contribute to fire intensity and spread. The distances from fire stations and road grades encountered usually create an excessive response time for effective structure fire suppression purposes.”

- “CALFIRE does not support development in areas where there is no local agency fire service for structure fires and

¹¹ See, http://humboldtlafo.org/wp-content/uploads/Kneeland-FPD-and-Sphere_7-17-13.pdf

emergency medical response. Fire services should be extended into service gap areas as a condition of development.” (SR 89-91)

“In out of district areas, response times can exceed 30 minutes (KFPD 2018).” 80 IS/MND (60-90 is more likely)

Local firefighting entities like Kneeland Volunteer Fire Department are already stretched thin and or are unprepared to address the increased fire danger from the Project, and are unaware of the details of the Project. Friends of Mad River have contacted County and volunteer fire department staff regarding this Project, and have received no assurances that Measure Z funding would be available to KVFD, whether any specific plan exists to support any available statewide mutual aid, and indeed whether any volunteer fire department has been made aware of the Project, and has the necessary budget or staff to make a timely first response to this distant location.

Finally, while the planning materials suggest that pond water would be available for fire response, a conflicting mitigation measure, BIO-2, calls for “draining the rainwater catchment ponds throughout the summer until no water remains at the end of the principal cultivation and irrigation period” to mitigate growth in invasive bullfrog populations. The IS/MND fails to address whether the dewatering of the rain catchment ponds would decrease the water source for the Project’s firefighting capacity, even with the revised addition of limited hard water tank storage.

8. TRAFFIC: Carpools and individual cars are anticipated,

in addition to vanpools. (“If employees prefer they can carpool and park in the parking lot at the processing buildings,..” 7.8 p132, ISMND) (“The proposed parking lot would provide parking spaces for up to 3 shuttle vehicles ... in addition to spaces for 3 more vehicles and one ADA-compliant parking space.” (ISMND p4, also on p 78)

Maple Creek Road is a one-way, dead end gravel road that is a rough eight miles long, often blocked by debris. Half the roads documented by SHN are under 20ft wide, standard width=24feet. Extensive unpaved sections generate sediment to the Mad R. Residents report “crazy” driving at all hours, increasing over the past several years.

Recent Project revisions to move all drying off site may contribute additional traffic effects, but no formal Project revision or subsequent environmental analysis of the revised Project have been provided.

Communications into, out of, and within the Project area are generally absent, and local residents are therefore concerned about emergency notifications of neighbors, exiting a one-way road, and access by emergency vehicles.

9. SOD: Imported soil and wet weather traffic are potential vectors into rare oak forests, per UC Extension & the North Coast Regional Land Trust.¹² See attached 2013 SOD map.

¹² “I do think the greatest issue is the potential to vector more of *P. ramorum* or other pathogens through soil or compost transfers- a minimally regulated industry.” 9/22/20 email Yana Valachovik, UC Ext

“...there are an estimated 350,000 California black oak trees on the Hunter Ranch, with black oak being a typical host for, and therefore victim of, SOD. SOD has been detected near Big Bend Ranch along Maple Creek Road, ...we have significant concern that the

The MND fails to evaluate or mitigate this potentially significant effect.

10. ELK: Based on local observations, herds migrate through the area, but there has been NO evaluation of the impacts to or from Elk in the MND. Poaching has been documented in the Maple Creek area recently. (<https://kymkemp.com/2019/05/21/reward-offered-in-elk-poaching-case/>) Local Ranchers frequently observe grazing herds.

11. PGE: Extension of PGE to the site is anticipated, but without ANY evaluation of impacts,¹³

“Alternatively, the project could interconnect into the local grid and obtain electrical energy from a local utility providing power generated from up to 80% renewable sources.” (27SR) “

“10. Power is to be supplied by PG&E.” (Notice Of Decision). ”

In negotiations, Ms. Borusas insisted on keeping the PGE option open.

The extension of PG&E to this area is unevaluated, but would have clear and significant effects, including fire

importation of soil and/or amendments from incompletely composted green waste may act as a pathway for the introduction of SOD onto the Project area.” NCRLT 9/2/20

¹³ “If the project is ever interconnected to the local grid the electrical energy would be provided by Pacific Gas and Electric Company.” (IS/MND, Pg 42), and “Power would initially be supplied by generators, with PG&E service being installed in the future.” (IS/MND pg 102)

safety, growth induction, aesthetic, wildlife impacts, and treated wood contamination.

12. Who Is Adesa?

In-migration of young people into these rural areas is generally desirable, so I understand that some would sympathize with Adesa's owners and managers. Accordingly, Adesa portrays itself as a mom & pop operation, run by a female entrepreneur, but Adesa is part of a larger interconnected group of LLCs here, in St Paul MN, and Denver Co.¹⁴

The owner of the property and principal of AMT/Adesa LLC, Mr. Bill Bigley, has been the subject of a complaint by the Minnesota AG for improper use of funds solicited for charities that allegedly deprived disabled veterans, children and cancer patients of substantial proceeds (over \$30m). "Mr. Bigley and Mr. Heiligman profit handsomely from CDF's payments to their private businesses."

The complaint is attached.

14. Failed Negotiations

While FMR opposes the Project and believes project denial would be appropriate, we nonetheless participated in negotiations, facilitated by Planning staff, with Laura Borusas and her attorney. We offered the compromise

¹⁴ Laura Borusas and Bill Bigley are affiliated with the following LLCs: Bilwa Holdings, Harvest Culture, 4651 West End Road, 71 E South Street, Cloudrest Holdings, Deva Amitra, Adesa, and possibly one in Denver, Co.

suggested by local ranchers: be good neighbors, be real farmers, grow outdoors in native soil without artificial lights and fans, one cycle annually, “vineyard style,” do an EIR, and reduce all this activity and driving. “Scale it back and reduce your human activities, respect the surroundings, respect the land, respect the wild life,” begged one long-time rancher. ”Our compromise was rejected without counterproposal.

FMR strongly believes that this project should be denied as revised & proposed.

Local ranchers and Friends of Mad River could support what would be a very different project, but only in the context of a re-circulated CEQA document/EIR under the CCLUO, in view of multiple un-analyzed impacts in the MND that would not be eliminated by all outdoor, including all the associated human activities. One rancher complained that although the site itself may be somewhat hidden, the associated activities are not.

Adesa obviously feels entitled to this permit believing they followed county procedures, have considerable investment-backed expectations, and they have reduced their initial project as required by the Planning Commission.

However, County procedures were flawed, the project remains industrial, the threat of impacts to Golden Eagles has not been adequately evaluated, and this is the wrong location to start introducing manufacturing facilities far

from infrastructure, especially without conducting a comprehensive environmental review/EIR.

Respectfully Submitted,

Ken Miller for Friends of the Mad River

10/27/2020

Attachments

“GOLDEN EAGLES IN THE VICINITY OF THE PROPOSED ADESA ORGANICS LLC CANNABIS CULTIVATION PROJECT: A technical review of Golden Eagle ecology, management and potential project effects,” Brian Woodbridge, USFWS, ret.

MAPS

- 11/27 email and draft map of potential Cannabis projects in Eagle territory, CDFW to Cliff Johnson & John Ford
- GOEA maps 1b & 2b from FoMR based on County APNs
- Mad River Estates map of Cannabis projects
- Spreadsheet of Cannabis projects within Eagle territory
- [SOD 2013 Edsall property](#)

9/3/2020 partial transcript

Michael van Hattem 9/3 presentation pdf

Who Owns Adesa?

Laura Borasus connection graphic

Minnesota AG Compliance Review (Bigley) pdf

Friends of Mad River Appeal of Adesa, LLC CUPs

**GOLDEN EAGLES IN THE VICINITY OF THE
PROPOSED ADESA ORGANICS LLC CANNABIS
CULTIVATION PROJECT:**

**A technical review of Golden Eagle ecology, management
and potential project effects**



**Prepared by:
Brian Woodbridge
Corvallis, Oregon
21 October, 2020**

**For:
Friends of the Mad River,
Mad River, Humboldt County, California**

**GOLDEN EAGLES IN THE VICINITY OF THE
PROPOSED ADESA ORGANICS LLC CANNABIS
CULTIVATION PROJECT:**

**A technical review of Golden Eagle ecology, management
and potential project effects**

Brian Woodbridge

My evaluation of the potential effects of the proposed Adesa project (Project) to Golden Eagles involves three primary steps; 1) quantifying or describing the occurrence and resource use of eagles in the project vicinity, 2) describing attributes of the Project and how they potentially affect eagles, and 3) a site-specific risk assessment that integrates the information in Steps 1&2 and describes likely outcomes and uncertainties.

**Part 1: Abundance or density of Golden Eagles within the
Adesa Project vicinity**

How many eagle territories and home ranges overlap the project?

One territory (Big Bend-Mad River Territory) is known to overlap the Project. Project records indicate this territory has been occupied since its discovery in 2002. Two nests have been recorded in this territory. Nest 1, located SW of Maple Creek approximately 1.6 miles from the Project, was reported as occupied from 2002 through 2017, and in 2020. An additional nest site (Nest 2) is located 0.72 mi from Nest 1 and assumed to be an alternate nest for this territory. Nest 2 was occupied in 2018 and 2019 and is located approximately 1.16 miles from the Project development area.

The likelihood of additional Golden Eagle territories within the Project's GOEA Analysis Area is dependent on territoriality and the landscape-scale distribution of suitable nesting and foraging habitat. Golden Eagles vigorously defend the area surrounding their nest sites, resulting in minimum inter-territory spacing (also called nearest-neighbor distance) ranging from 0.5 to 1.62 miles (Kochert *et al.* 2002). Intensive studies of GOEA territory

density in Oak-Savanna habitats in the California Coast Ranges (Wiens et al. 2015, 2018) demonstrated high densities of occupied territories, with roughly 1.3 – 2.1 mile spacing between adjacent territory centers. Moreover, estimates for Humboldt County described in the 2018 Biological Assessment Addendum Golden Eagle and Bald Eagle (hereafter, Adesa Eagle BA); “*Where extensive surveys have been conducted in Humboldt County (Coastal Douglas-fir prairie zone in the general Mattole River/Bear River area), GOEA nests/core areas were found to be 1-1.5 miles apart*”(PNWB 2018) conform to this pattern. These estimates of inter-territory spacing, combined with the distribution of nesting and foraging habitats in the analysis area, suggest that at least one additional territory would be predicted to occur within 1.5-3 miles of the Project.

The likelihood of additional territories overlapping the Project is reinforced by distances to nearby historic and suspected Golden Eagle territories. The California Natural Diversity Database (CNDDDB) contains records of three historical Golden Eagle territories within 2.7-7 miles of the Project (Table 1, Fig. 1). The Ashfield Butte and Chaparral Mountain records are from 1974

and require verification of accuracy and current status.

Nonetheless, they provide substantive evidence that the landscape surrounding the Adesa project has supported multiple Golden Eagle territories through time. For Golden Eagles, old data are not necessarily bad data; they are long-lived predators and exhibit a high degree of fidelity to their breeding territories, which may be occupied continuously for decades (Kochert *et al.* 2002, Millsap *et al.* 2015).

Table 1. Golden Eagle territory records within 10-mile radius of Adesa Project. From CNDDDB records.

| Territory Name | CNDDDB # | Year Observed | Observation |
|-----------------------|-----------------|----------------------|--------------------|
| Iaqua Buttes(?) | DS00171RN000155 | 2006 | Pair with Nest |
| Ashfield Butte | DS00167RN000267 | 1974 | Pair present |
| Chaparral Mountain | DS00159RN000110 | 1974 | Pair present |
| Big Bend | DS00171RN000108 | 2002-2020 | Pair with nest |

Although landscape-level surveys were not conducted for the Project, the Adesa Eagle BA describes results from eagle surveys on adjacent properties that indicate additional territories exist nearby:

“Additionally, I have reviewed survey data (survey summaries and station maps) from 2017 and 2018 conducted by Green Diamond Resource Company (GDRCo) as part of two nearby Timber Harvest Plans. GOEA specific surveys were conducted ~2miles north as well as ~1mile north and northeast of the AMT Project area. Surveys conducted by GDRCo observed a pair of GOEA in 2017 over 2 miles north of the AMT project area with no breeding behavior and no detection during follow-up surveys and stand searches. In 2018, they observed one subadult GOEA in June in the same vicinity, suggesting a successful nest in that general area. No adult GOEA were observed throughout the surveys consisting of 7 points each monitored 3 separate times for ~ 3hours each visit. This suggests the nest was not in the immediate proximity to the survey area. No eagles were observed while surveying for the Timber Harvest Plan adjacent and to the east of the AMT project.”

The Adesa Eagle BA does not disclose the coordinates of Green Diamond’s detection, but the presence of a pair of eagles and evidence of reproduction roughly 2 miles from the Project strongly suggests occupancy of an additional territory, despite

the nest not being detected at the time. As noted in the Adesa Eagle BA (see below), Golden Eagles can be very difficult to detect at their nest sites, especially in coniferous forest habitats. Given that the location of the occupied nest remains unknown, there is a likelihood that it occurs < 2 miles from the Adesa project.

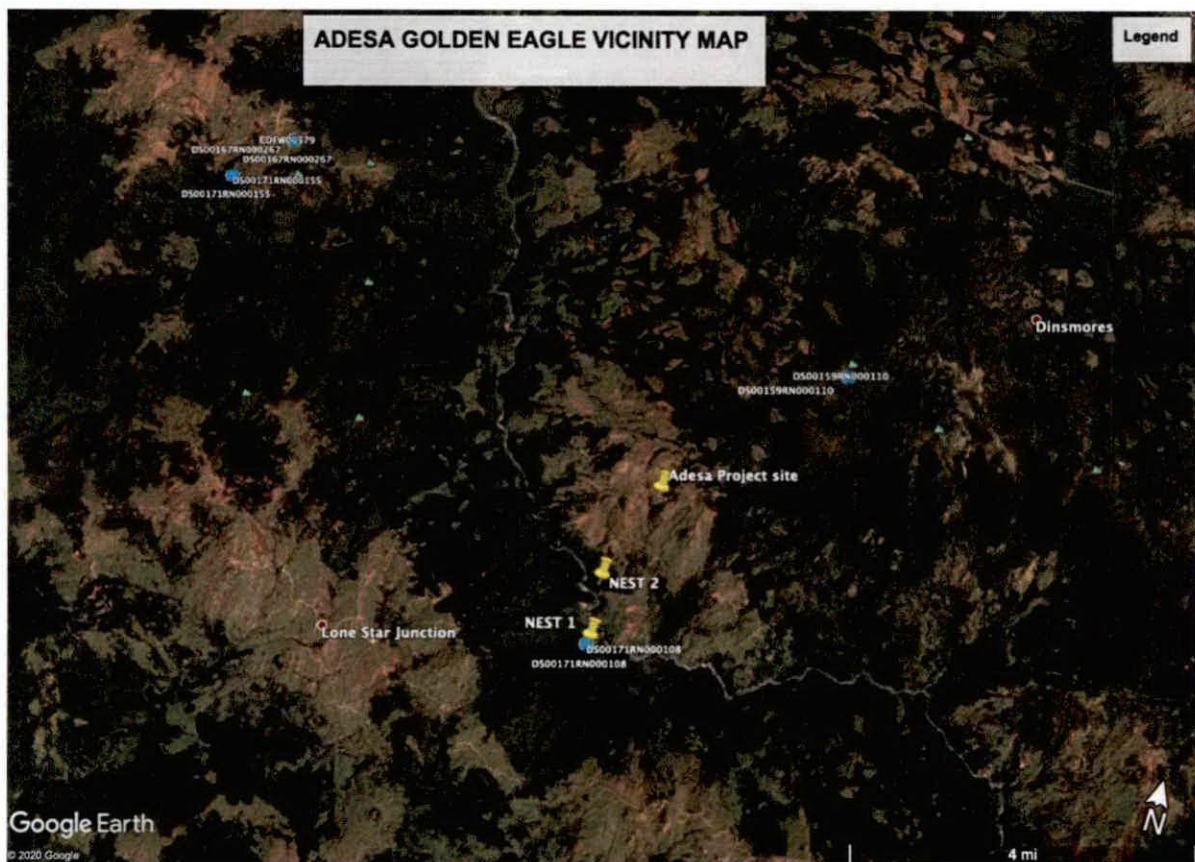


Figure 1. Map showing Adesa project location (yellow pin) with CNDDDB Golden Eagle territory records (blue dots), and Big Bend eagle territory Nests 1&2 (yellow pins).

Are surveys adequate to document all potential territories?

Surveys for Golden Eagles potentially affected by the project are of limited spatial extent, focusing primarily on the previously known nest site. My review of project reports and survey reports suggests that surveys to identify additional GOEA territories have not been conducted, despite the existence of extensive high-quality nesting and foraging habitat in the landscape surrounding the Project.

The Adesa Eagle BA and numerous other eagle-related documents in the Project file mention “protocol-level” surveys, specifically the USFWS Interim Golden Eagle Monitoring and Inventory Protocols (Pagel *et al.* 2010) used to support the determination of effects. While minimum criteria of some aspects of the USFWS protocol were followed (minimum of two 4-hour surveys per station, 30 days apart) other aspects of the protocol were not adhered to. The Project record contains no explanation of how other aspects of the protocol, such as survey extent and timing, were met.

Survey Station Placement - The survey maps and descriptions provided in the Adesa Eagle BA suggest that survey effort was focused on the lower portion of the project area, in the vicinity of the currently known Big Bend-Mad River territory. Two of the four mapped survey stations (2, 2a) are located downslope from the Project site and appear to be intended for monitoring the known nest sites associated with Cowan Creek and the Mad River; stations 1 and 1a are close to the Project site. The Project records contain no description of survey stations or effort directed at detecting eagles within a 2-mile radius (much less a 10-mile radius) of the Project site. Statements describing a “5-mile view” (SHN 8/31/2018) from survey stations do not provide information on the effects of terrain and forest cover on distant visibility. Such a description should include a ‘viewshed’ evaluation of the effect of terrain on visibility of eagles at or below tree level, particularly to the north, northeast and east of the Project site.

Survey Timing - The efficacy of territory surveys for Golden Eagles is strongly influenced by survey timing. Despite their large size, this species can be very secretive in the vicinity of

their nests and detection rates can be very low even at survey stations where eagles are known to occur (Woodbridge *unpub. data.*). Detection rates are highest during territory establishment and nest initiation early in the breeding season (typically January and February) when territorial displays occur high above the terrain and forest canopy (Kochert *et al.* 2002, Wiens *et al.* 2015). For this reason, survey protocols for both management and research purposes (Driscoll *et al.* 2010, Pagel *et al.* 2010, Wiens *et al.* 2015) require that at least some survey effort (1 protocol visit/station) be conducted during the January-February early nesting period. The Adesa Eagle BA highlights this point, stating;

“Surveys should begin early in the season (mid January with a peak in mid February) when eagles are most visible as they make impressive aerial displays meant to establish their territory boundaries as well as pair bonding displays.”

Detection probabilities decrease dramatically in March and April when female eagles are incubating and males are foraging away from the nest. Again, the Adesa Eagle BA acknowledges this; *“Once GOEA lay eggs, they enter a secretive period,*

(presumably to avoid revealing the nest location) where they are harder to find as well as follow once they are found. While GOEA are the largest raptor in North America, they are amazingly adept at being secretive when necessary, flying low at as well as below canopy level.”

Detection probabilities at territories remain lower for the remainder of the breeding season (Wiens *et al.* 2015), although well-positioned survey stations may detect prey deliveries.

Despite this information, all of the stationary and walking/driving surveys at the Adesa site were conducted after March 1st when detection probabilities would be expected to be low. This does not affect results at the Mad River/Cowan Creek territory which was known prior to surveys, enabling surveyors to focus survey effort at the occupied territory location. Even with this advantage, eagles were not detected in Project-specific surveys in 2018 (when nest 2 was occupied), nor during two of four visits in 2019 when nest 2 was occupied, highlighting the need for intensive survey effort to support determinations of occupancy and potential Project effects.

Conclusion: At least one GOEA territory is potentially affected by the Project, but the actual number is unknown. Data from intensive GOEA studies, and the distribution of the few previously known territories in the Mad River landscape, suggest that additional territories may occur within the Project's GOEA Analysis Area. Current surveys of the Project area were not conducted in accordance with protocols that may have enabled surveyors to detect additional eagles occupying habitats to the north through northeast of the Project site.

Part 2: Space-use by Golden Eagles within GOEA Analysis Area

Estimation of a proposed development's effects on Golden Eagles is strongly influenced by the spatial scale(s) at which data are collected and analyses performed. For eagles, it is important to align analyses and conclusions with appropriate, biologically relevant scales such as nest site, territory, core area, and home range. To this end, I provide here the framework and terminology best supported by current research and generally

used by the USFWS in effects determinations made pursuant to the Bald and Eagle Protection Act.

Nest - An occupied (in-use) nest structure, as evidenced by attendance by adult Golden Eagles, presence of young, and/ or fresh greenery and fecal material present on nest.

Alternate Nest - Additional nests within the territory of a pair of eagles that are used across a period of years. A territory may contain from 1 to >10 alternate nests; some may be used very infrequently (Kochert and Steenhof 2012).

Territory - The breeding area defended by a pair of adult Golden Eagles, containing the occupied and alternate nests over a period of years. Territory boundaries are measurable only by observation and mapping of territory defense and prominent perching behaviors.

Core Area - The area of disproportionate use within a territory, as measured by telemetry or (rarely) intensive observation. The results of multiple telemetry studies suggest that a radius of roughly 3.2km (2 miles) encompasses 50 to 80% of eagle use

and represents densely used ‘core area’. (Watson *et al.* 2014, USFWS 2018). Because this radius corresponds well to nearest-neighbor distances among territories, core areas may provide our best estimation of a ‘territory’.

Home Range – The entire area traversed by a territorial pair of Golden Eagles throughout the year. This includes the defended territory as well as foraging areas remote from the nest site. Because home ranges are used primarily for foraging, they vary with the spatial and seasonal distribution of foraging habitat and prey resources. Across studies, annual home range estimates vary widely, ranging from 26.7 mi² in Washington (Watson *et al.* 2014) to 114.4 mi² (Marzluff *et al.* 1997) in Idaho, but high variance among eagles tagged in these studies make such estimates difficult to apply in a management context. Watson *et al.* (2014) estimated that a 6-mile radius would encompass 95% of eagle use areas; this estimate corresponds well to 6.11 miles (radius of circle with 117.4 mi² area) calculated from Marzluff *et al.* (1997). **To encompass this wide variation in home ranges, the USFWS (2013) recommends a circle with 10-mile**

radius be evaluated for the presence of Golden Eagle territories.

The type of development and potential for significant impacts or ‘take’ of Golden Eagles influences the spatial extent that should be evaluated. While the USFWS (2013) recommends a 10-mile radius survey area for wind-energy developments where lethal take of eagles is a potential issue, smaller survey and analysis areas are appropriate for projects proposing disturbance or small-scale habitat modification. In general, the analysis area should encompass the Project and extend outward to include any eagle territories/core areas that might be affected by Project activities. For Golden Eagles, this area should extent **at least 2 miles** from the Project boundary (Watson *et al.* 2014, Crandall *et al., in prep.*). A 2-mile radius will typically incorporate 80% of home range use (Crandall *et al., in prep.*). For the purposes of this report, I will refer to this 2-mile radius area as the GOEA Analysis Area.

What is the known or likely spatial distribution of use (e.g. foraging, nest attendance) of eagles in the Adesa GOEA Analysis Area?

Currently there is one Golden Eagle territory (Big Bend territory) known to occur within the Adesa project GOEA Analysis Area, and, as described above, there is potential for an additional territory.

The Adesa project lies entirely within the estimated core use area (2-mile radius) of both alternate nests at the Big Bend Golden Eagle territory. Results of telemetry studies conducted in oak/grassland savanna in the California Coast Ranges (Hunt *et al.* 199X) and in a range of mixed coniferous forest/shrubsteppe habitats in Washington (Watson *et al.* 2014) indicate that from 50% to >80% of eagle use is concentrated in this core area, making it a critically important element in eagle conservation and management.

Have monitoring surveys been conducted to ascertain disproportionately used movement routes and areas used for foraging?

Survey protocols described in the Adesa Eagle BA are inventory and nest-site monitoring protocols, intended to detect the presence of breeding Golden Eagles at nest sites. These protocols are not intended (nor are they adequate) for identifying use areas within territories or home ranges. This is because the distribution of eagle foraging use varies spatially and temporally; influenced by seasonal changes in vegetation condition and prey availability (Bedrosian *et al.* 2019), wind conditions and terrain (uplift; Crandall *et al.* 2015, Sur *et al.* 2020), and breeding status. For example, eagles may concentrate foraging activity in areas where livestock grazing or wet winter conditions have reduced vegetation height, increasing vulnerability of prey in those areas; then shift to other areas or habitats in late spring when vegetation height recovers (Woodbridge, *pers. obs.*; Siskiyou county study area). For these reasons, researchers rely on radio telemetry or (historically) intensive observations to describe the seasonal distribution of

use within home ranges. For management purposes, it is often assumed that foraging habitat within core areas receives regular use annually and constitute a critical portion of a Golden Eagle's home range (Watson *et al.* 2014).

Rather than identifying important foraging areas for the Big Bend Golden Eagle territory, the Adesa Eagle BA relies on the results of inventory surveys conducted in 2018-2020, combined with anecdotes about habitat suitability, to make a determination of non-use of the project area. These surveys did not detect eagles using/foraging in the open habitats upslope from the Big Bend nest site(s), suggesting that the Project area was not an important foraging area for the eagles. While this conclusion may be accurate, the data provided are inadequate to support it. Foraging activity by the Big Bend eagles may be focused elsewhere in the home range in late spring/early summer or may simply have not occurred while observations were being conducted. **Importantly, the presence of an observer and vehicle within the foraging habitat in question (all four survey stations are located upslope in open habitat) could**

easily cause eagles to shift foraging into a different area temporarily.

Conclusion: While limited evidence suggests that Golden Eagles do not use the Adesa project area extensively for foraging during spring and early summer, the surveys conducted are inadequate to support a determination of non-use, or that the area is unimportant to eagles. Additional seasonal surveys conducted from blinds or more distant observation points would be necessary to make this determination.

Part 3: Resource use by Golden Eagles within GOEA Analysis Area

What habitats occur within the GOEA Analysis Area? How do eagles use local habitats for nesting and foraging?

The December 2017 Natural Resources Assessment for the Adesa project (SHN 2017) describes a wide variety of plant communities within the project area. For the purposes of evaluating habitat use by Golden Eagles, however, it is practical

to simplify the habitat classification into two broad functional categories; forested habitats providing nesting and roosting structures, cover and visual screening for nest sites; and open grassland or prairie habitats used for foraging. The categories are not mutually exclusive; foraging eagles will use small inclusions of woodland within prairie habitat to conceal their approach, and eagles will feed opportunistically on carrion under the forest canopy, or in small forest openings.

Use of forest habitats by Golden Eagles in the northern California Coast Ranges is well-described in the Adesa Eagle BA. Golden Eagles in Humboldt county typically select large Douglas-firs with large limbs, broken tops or other structural features that support their large nests (Cinnichi *et al.* 2007, 2012). Nest trees may be within late-successional stands or occur as residual trees within younger or mixed conifer hardwood stands. Two nest trees on Bear River Ridge in Humboldt County occurred in isolated Douglas-firs on steep terrain within windswept open prairie (Woodbridge, *pers. obs.* 1982). In areas of oak woodland/prairie habitat where large conifers are lacking, such as occurs in the Coast Ranges of

California and southern Oregon, Golden Eagles will nest in large white oaks or valley oaks (Wiens *et al.* 2015, Woodbridge, *pers. obs.*). Use of oaks for nesting has not been reported in Humboldt county, but surveys in these habitats are limited.

Potential nesting habitat in densely forested habitats is ubiquitous in Humboldt County, but the presence and amount of open habitats such as prairies or ‘balds’ within this forest matrix is a primary determinant of habitat suitability for Golden Eagles. Cinnichi *et al.* (2007, 2012) found that occupied Golden Eagle core areas (1.8-mile radius plots) in Humboldt county contained a mean of 2680 acres of prairie habitat; 31% more than random plots. Prairies and open oak woodland habitats serve as foraging habitats where eagles can see distant prey and use soaring and gliding flight to access prey. Golden Eagles foraging in open prairie and oak-savanna habitats frequently use slope-soaring (low rapid flight using terrain and woodland patches for concealment) to capture prey (Hunt 2002).

As heavy-bodied, soaring predators, Golden Eagles rely on flight subsidies provided by orographic and thermal uplift. The

interaction of terrain steepness and aspect with meteorological conditions such as prevailing windspeed and direction therefore constitute important elements of Golden Eagle habitat (Sur *et al.* 2020). These features are important in a management context because they cannot be mitigated or re-created if development occurs within highly suitable areas.

The August 31, 2018 Technical Memorandum from SHN used California Wildlife Habitat Relationships (CWHR) to determine habitat suitability for Golden Eagles in the Project area. As noted in comments from California Dept. of Fish and Wildlife, the CWHR program is intended for coarse-scale evaluation of an area's suitability for presence of a focal species, and is inappropriate for estimating the quality and quantity of habitat within an organism's territory or home range. For example, the CWHR map of high, moderate and low suitability Golden Eagle habitat in the Adesa project area does not distinguish between high-quality nest-site habitat in forest stands and high-quality foraging habitat in prairie. It instead ranks pixels based on both functions, providing a misleading assessment of habitat. **In addition, the CWHR habitat maps for Golden Eagles are**

extremely outdated and lack any recent (post-1990) habitat selection data for Golden Eagles in California, much less Humboldt county.

The Adesa Eagle BA also contains references to habitat suitability based on expert opinion and limited observations made during inventory surveys. Two statements in particular are inconsistent and require clarification and additional support;

“Based on personal experience, the prairies in this vicinity are primarily used for foraging.” ... “The area is surrounded by vast foraging habitat. While the area of proposed construction is prairie, due to the vicinity of treed areas on multiple sides, it should be considered as very low quality foraging habitat, especially considering the amounts of more open and therefore higher quality foraging habitat throughout the area.” ...

“Historical and current knowledge of GOEA activity in the area shows that the AMT area is of low- quality of foraging. The closest known nest is over 1.5 miles away and uses the wide prairie area on the north side of the Mad River as foraging. Surveys for both the project and neighboring landowner

activities support that GOEA continue to use the area primarily for foraging”.

The Adesa Eagle BA correctly classifies the prairie habitats within the Adesa project vicinity as foraging habitat, but then somehow re-classifies it as “very low-quality” due to; 1) 1.5-mile distance to the Big Bend territory’s nest (now 1.17 miles to Nest 2); 2) the presence of trees near the actual Project site; and 3) an unfounded claim that the eagles forage N of the Mad River. None of the reasons given can support an evaluation of habitat quality. **Given that the activities and effects of the Project extend well beyond the footprint of greenhouses and parking, the determination of habitat quality for the Project area should be made at the spatial extent of all foraging habitat potentially affected. In the absence of appropriate surveys to determine the degree of actual use of the prairie habitats within the Project vicinity, the potential effects of the Project on Golden Eagle foraging use are unknown.**

What prey resources are most important to Golden Eagles in the analysis area, or local area population? What are the habitat relationships of important prey species?

The relative importance of different habitats within a Golden Eagle's home range is strongly influenced by the availability of prey populations adequate to support long-term occupancy and reproduction. While Golden Eagles are known to prey on a wide variety of mammals and birds, successful territory occupancy and reproduction are usually linked to the availability of a small number of medium-sized mammals, typically rabbits, hares and ground squirrels (Bedrosian et al. 2017, Preston et al. 2017). Formal studies of Golden Eagle diets have not been conducted in Humboldt county, but we can combine results from studies in oak-savanna habitats elsewhere in the California Coast Ranges with knowledge of potential prey in the Project area to predict which species are likely to be important locally.

The California ground squirrel (*Spermophilus beechyi*) is the dominant prey of Golden Eagles in the California Coast Ranges (Hunt 2002). This species occurs in a wide range of open habitats - grasslands, oak woodland and forest edges, and agricultural habitats – and thrives where practices such as livestock grazing maintain low vegetation and bare areas.

California ground squirrels are abundant in prairie habitats in Humboldt county, and are considered a common agricultural pest by ranchers and exurban residents (Woodbridge, *pers. obs.*). The species' dense local populations (colonial), relatively large body size and occurrence in very open habitats makes them ideal prey for eagles. A Golden Eagle nest on Bear River Ridge contained two California ground squirrel carcasses, and additional squirrel remains were found under the nest tree during a single visit (Woodbridge *pers. obs.* 1982).

The black-tailed jackrabbit (*Lepus californicus*) is recognized as one of the dominant prey species of Golden Eagles throughout the western U.S. and is also an important prey species in the California Coast Ranges (Hunt 2002). The species occurs in shrubland, grassland and agricultural habitats, and is common in prairie and woodland habitats in Humboldt county (as noted in Adesa Eagle BA).

Because the California ground squirrel and black-tailed jackrabbit inhabit open prairie habitats and may be presumed to occur in the Adesa project area, they likely constitute an

important prey resource for Golden Eagles in the Project vicinity. This reinforces the importance of open prairie habitats as eagle foraging areas. Alternative prey such as turkeys, black-tailed deer fawns, snakes, foxes, and livestock have been recorded in diets and may occur in mixed forest habitat, there is no evidence that they constitute a prey base adequate to support long-term territory occupancy and reproduction (Bedrosian et al. 2017).

Part 4: Potential Effects of Project on Golden Eagles

Disturbance

Human disturbance is considered a primary threat to Golden Eagles in the United States (Kochert and Steenhof 2002, USFWS 2016a, b). Golden Eagles are federally protected by the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c; hereafter, Eagle Act), which prohibits unauthorized “take” of eagles. Take includes to “pursue, shoot, shoot at, poison,

wound, kill, capture, trap, collect, destroy, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3).” The U.S. Fish and Wildlife Service (2007:2) defines the word “disturb”, as used in the Eagle Act, to mean “...to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” Regardless of the technical or statutory terminology used, evaluation of a project’s potential to negatively influence Golden Eagle territory occupancy or productivity is an important aspect of eagle conservation and management.

Disturbance to Golden Eagles at breeding territories is typically evaluated relative to short-term direct behavioral effects to eagles at their nest site (USFWS 2018). These effects are usually attributed to noise and visual disturbance due to construction, road building, and vehicle use during the breeding season. However, longer-term or chronic

disturbance can be a larger issue if the amount and types of human activity increase in occupied Golden Eagle habitat – not just at the nest site (Steenhof *et al.* 2014, Spaul and Heath 2016). Because territorial Golden Eagles in the western U.S. are year-round residents on their territories, potentially disruptive human activities are not limited to the breeding season.

Nest-site Disturbance – Information in the Adesa project files, Eagle BA and Natural Resources Assessment indicates that Project construction activities will occur > 1 mile from the Big Bend territory nests 1 & 2, and are therefore unlikely to result in disturbance to breeding Golden Eagles. Because the U.S. Fish and Wildlife Service’s (2017) recommended buffer size in California and Nevada (1-mile radius) is considered likely to protect most occupied Golden Eagle nests from most types of disturbance (USFWS 2018), this determination may be valid. However, the Adesa project evaluation should be expanded to include proposed expansion of greenhouse infrastructure, power distribution infrastructure and any construction/reconstruction of roads that may occur closer to the currently occupied eagle nest.

Core Area/Foraging Habitat Disturbance - The Adesa project proposes to alter long-term patterns of agricultural use in foraging habitat within an occupied Golden Eagle territory core area, within 1.16 to 1.6 miles of nests. While the Adesa Eagle BA correctly states that Golden Eagles seem compatible with low-intensity land management activities such as livestock grazing and ranch management operations, these activities cannot be equated with industrial cannabis operations. Daily operations at the Project site are likely to greatly exceed historic levels of human and vehicular activity in the Big Bend eagle core area, resulting in a chronic, long term source of disturbance within the foraging area. The majority (89%) of a panel of Golden Eagle experts convened to evaluate disturbance management approaches agreed that protection of the core area from disturbance was more likely to conserve eagles than buffers surrounding the occupied nest (USFWS 2018). In southwestern Idaho, there were significant long-term (1966–2010) declines in Golden Eagle territory occupancy and reproduction at three territories with increased OHV activity during the later portion of the time

period, while significant declines did not occur in territories with less or no OHV activity (Steenhof *et al.* 2014). In a subsequent study in the same area, Spaul and Heath (2016) found that the probability of territory occupancy by Golden Eagles (n = 23 territories) during the breeding season was lower in areas with higher seasonal-average OHV activity. **Despite empirical evidence that human disturbance within Golden eagle core areas can lead to reduced territory occupancy and reproductive success, the Adesa Eagle BA does not address predicted levels and location of post-construction activity and human presence associated with operation and maintenance of the facility.**

Habitat Loss or Modification

Nest habitat - The Adesa project does not propose activities within suitable or occupied nesting habitat for Golden Eagles. In the Project vicinity, forest habitats containing large Douglas-fir trees used for nesting largely occur on adjacent ownerships.

Project specifications should address any project-related increase in wildfire ignition risk caused by electrical infrastructure or increased human presence.

Foraging habitat – The Adesa project proposes to modify and/or remove suitable foraging habitat in close proximity to an occupied Golden Eagle nest site, and potentially within the core area/home range of an additional territory. While the amount of foraging habitat loss (to cultivation) within the core area (2-mile radius) of the Big Bend eagle territory is anticipated to be relatively small, the analysis in the Adesa Eagle BA fails to consider the Project’s likely combined effects to eagle foraging in the area. Increased human and vehicular disturbance, changes in grazing practices and even pest (ground squirrel and rabbit) control must be evaluated in the landscape-level context of planned developments on adjacent properties (see Cumulative Effects, below). Depending on their distribution within the Adesa property, **and the amount of human and vehicular activity associated with these developments through time, the effects of these activities on Golden Eagle foraging may be considerable.**

Direct Mortality

Increased industrial agricultural development within areas occupied by Golden Eagles can have unintended consequences

that should be evaluated and mitigated during project planning and permitting. Electrocution and rodent control practices are two potential sources of direct mortality to Golden Eagles that can be associated with industrial indoor cannabis operations.

Electrocution - The Adesa project proposes three alternative sources of electricity to power their indoor operations – on-site generation via a diesel generator, installation of solar panels, and connecting to the grid; *“Power would initially be supplied by generators, with PG&E service being installed in the future.”* (IS/MND pg 102). In rural areas, the last option (connection to the grid) typically involves construction of above-ground power distribution poles both on and off the Project property. Because of their large wingspan and propensity to use exposed perches, Golden Eagles are vulnerable to electrocution on these structures (Mojica *et al.* 2018), and also may strike powerlines mid-span (APLIC 2006). **The Project file, Adesa Eagle BA, and Natural Resources Assessment for the Adesa project (SHN 2017) do not address the potential for electrocution or mid-span collision with powerlines.**

Pest Control Practices – California ground squirrels are a common agricultural pest in both indoor and open-air farming operations; feeding on crops as well as damaging infrastructure by burrowing under structures. During my 9 years of raptor fieldwork in southern Humboldt county, ranchers and farmers frequently complained to me about ground squirrels damage to barns and irrigation systems. The University of California Agricultural Extension recommends application of first-generation anticoagulant rodenticides to control ground squirrels in agricultural operations

(<http://www.groundsquirrelbmp.com/bait-cgs.html>). Because they are not applied directly on crops, on cultivated soil or inside greenhouses, rodenticides are often used in organic operations. Anticoagulant rodenticides pose a substantial poisoning threat to Golden Eagles (Herring et al. 2018). Two of 10 satellite-tagged Golden Eagles died of anticoagulant rodenticide poisoning within one year due to ground squirrel control application in northern California (Woodbridge, unpub. data). **The Adesa project should describe rodent control methods to be employed in the case of squirrel infestation.**

Cumulative Effects:

In determining that the Adesa project will have no significant impact on Golden Eagles, the Adesa Eagle BA relies entirely on a narrowly focused evaluation of the Project footprint, and an unsupported assumption that the Big Bend eagles are not using the Project area. Despite the fact that the closest foraging habitat within the eagles' core area occurs on the property, the BA instead assumes that the eagles must be using foraging habitats on adjacent parcels. The Adesa project, however, is not the only proposed industrial cannabis operation in the vicinity, and several of the adjacent properties have pending permit applications for cannabis operations.

Humboldt county has received at least 10 cannabis cultivation applications for properties adjacent to (within 1-mile of) the Big Bend Golden Eagle nests, and at least 22 applications within the Big Bend eagles' core area (2-mile radius; CDFW 11/27/2019). Given the uncertainty in determining which projects will move forward, and their individual potential effects, the Adesa project's impacts to

Golden Eagles must be evaluated as part of a larger development process that is ongoing in the Mad River/Big Bend area.

A cumulative impact analysis provided to Humboldt County Planning Department by North Point Resources (December 31, 2018) for a proposed cannabis development on Mad River Estates (an adjacent property) relied on calculation of the total area proposed for cultivation (square feet) within 1, 2, and 5-mile radii surrounding the Mad River Estates parcel. Their finding that 32 proposed industrial-scale cannabis developments within a 5-mile radius comprise only about 0.045% of the area (1% of a 1-mile radius) is entirely inappropriate to support evaluation of cumulative impacts to Golden Eagles occupying the area. **Human and vehicular activity, noise, road and energy infrastructure, noise, and habitat modification will increase dramatically from historic levels, associated with the incremental development of the Mad River/Big Bend area for industrial cannabis cultivation. Research has established that Golden Eagles are intolerant of development and human disturbance above relatively low levels; territory**

occupancy and reproductive success decline as vehicle use and human activity increase (Steenhof *et al.* 2014, Spaul and Heath 2016, USFWS 2016, 2018). Without landscape-level planning that incorporates the spatial distribution of known and predicted Golden Eagle territories and important habitats, the incremental impact of proposed projects such as the Adesa project will remain unknown.

Brian Woodbridge is recently retired after a 40-year career in wildlife management and research with the US Forest Service and US Fish and Wildlife Service. His research has focused primarily on threatened and endangered species and forest management in the Pacific Northwest, migratory raptors, and Golden Eagles. In 2013 he was selected to lead the US Fish and Wildlife Service's Western Golden Eagle Conservation Team, and was responsible for conducting conservation-related research on Golden Eagles throughout the western US. Brian has authored over 45 scientific publications pertaining to ecology and conservation of birds of prey; 21 on Golden Eagles. He remains engaged in field studies of Golden Eagle movement, breeding ecology, and conservation.

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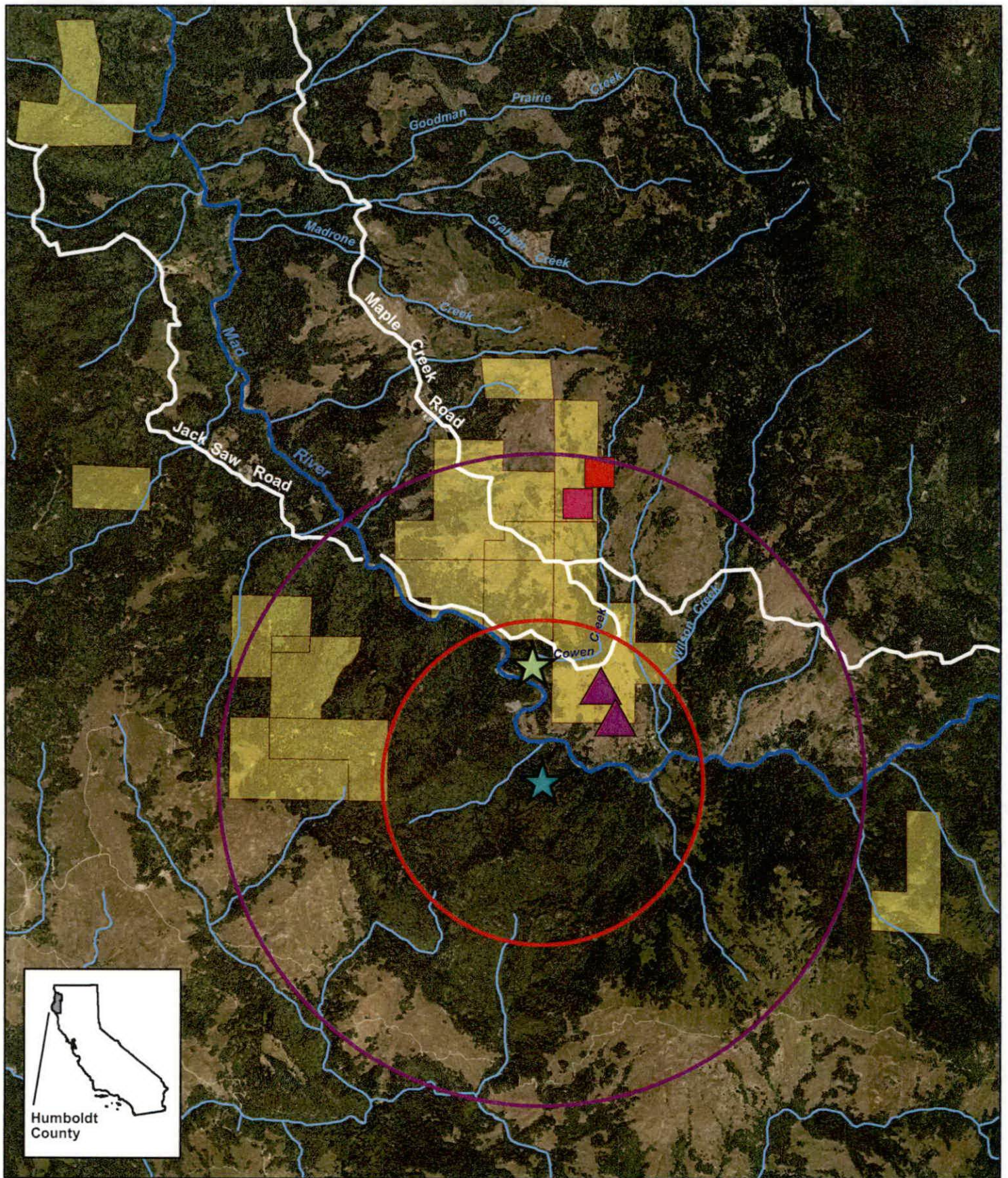
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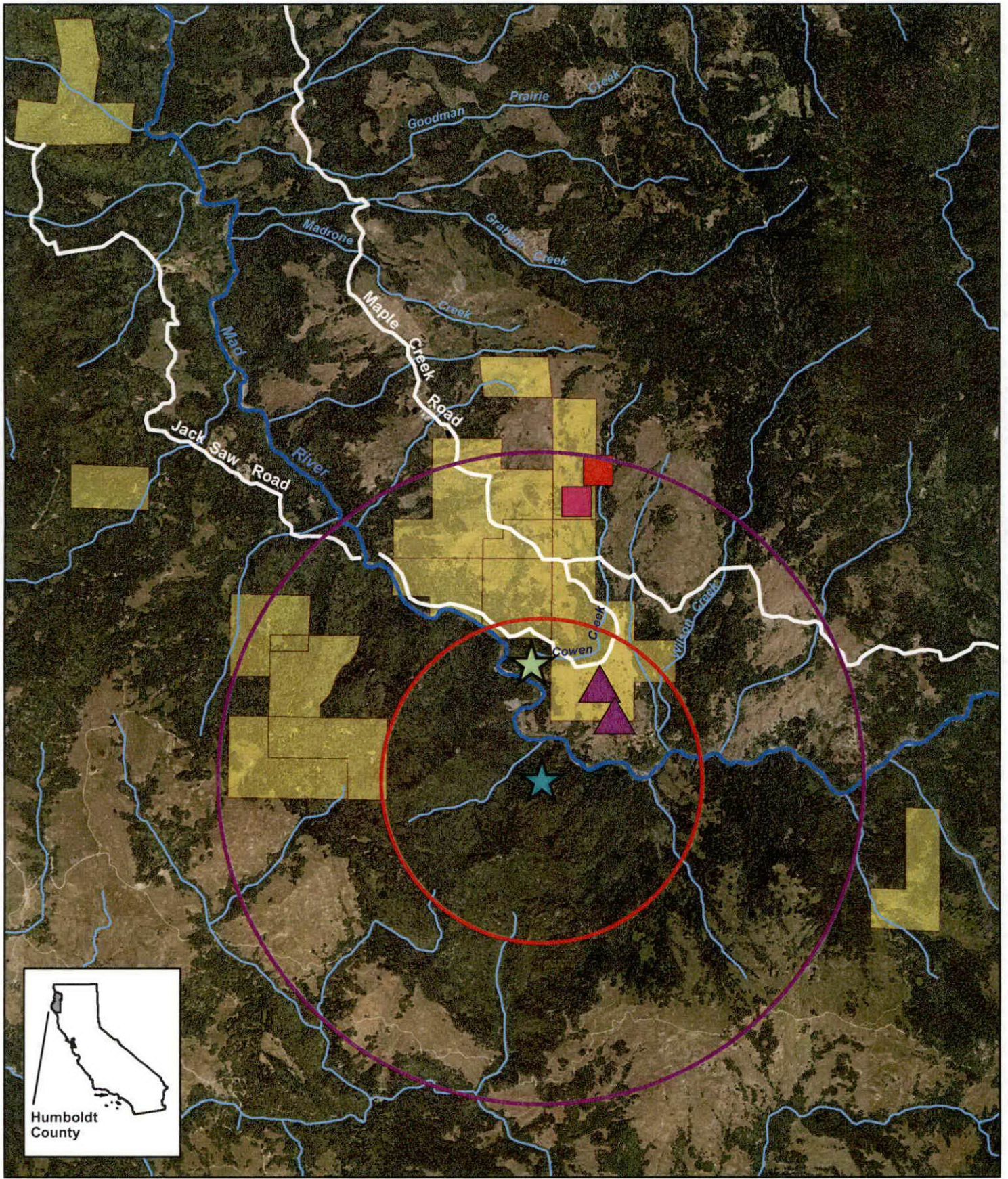
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Location of Parcels Associated with Approved or Pending Industrial Grow Sites in the Vicinity of the Maple Creek Eagles. 2020.





Location of Parcels Associated with Approved or Pending Industrial Grow Sites in the Vicinity of the Maple Creek Eagles. 2020.





STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

Compliance Review of the
Charitable Solicitation Activities,
Vendor Relationships, and Governance
of Car Donation Foundation and
Its Solicitations for
Make-A-Wish Foundation

— THE OFFICE OF ATTORNEY GENERAL —
LORI SWANSON

2015

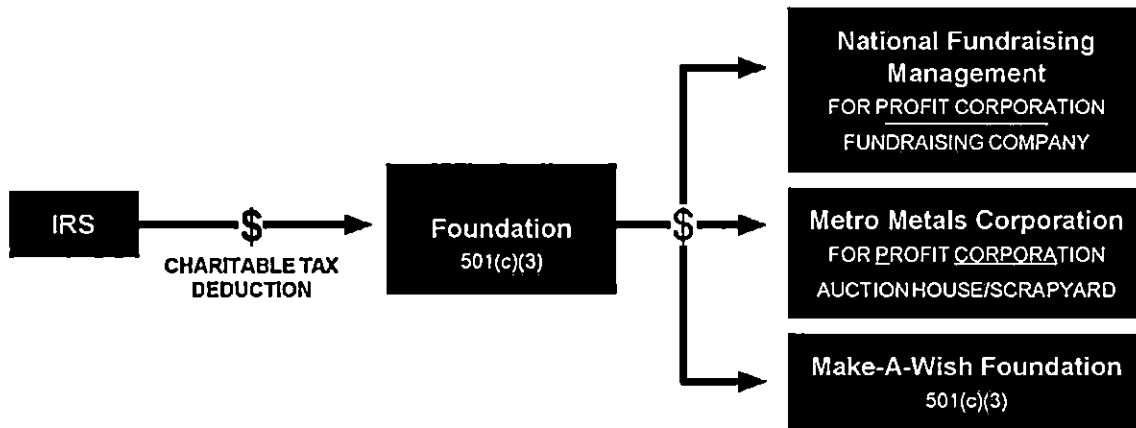
I. EXECUTIVE SUMMARY.

Car Donation Foundation (“CDF”) is a Minnesota 501(c)(3) charitable organization formed and run by William Bigley and Randy Heiligman. It solicits donors in Minnesota and throughout the United States to donate vehicles to benefit local chapters of the charity Make-A-Wish. CDF then sells or scraps these vehicles and pays a percentage of the proceeds to local Make-A-Wish chapters.

Between 2011 and 2014, CDF spent 78-82 percent of the gross proceeds from the sale and scrapping of donated vehicles on fundraising, advertising, and overhead (hereinafter collectively “fundraising costs”), with only 18 to 22 percent of the proceeds benefitting a charitable purpose. CDF was placed on the “Scrooge List” of the South Carolina Secretary of State, (Ex. 1), and the “Worst Charity List” of the Oregon Attorney General, (Ex. 2), in 2014 for its high fundraising costs.

CDF uses National Fundraising Management, Inc. (“NFM”)—a for-profit company—as a professional fundraising company to solicit donations of motor vehicles from the public and to manage its vehicle donation program. Mr. Bigley and Mr. Heiligman, CDF’s founders, own 100 percent of NFM. In the Twin Cities, CDF uses Metro Metals Corporation (“Metro Metals”)—another for-profit company—to auction and scrap vehicles donated to CDF. Mr. Bigley and Mr. Heiligman also own 100 percent of Metro Metals. Between 2011 and 2014, CDF paid NFM and Metro Metals approximately \$36 million.

The relationship between CDF, NFM, Metro Metals, and Make-A-Wish-Minnesota is depicted in the following chart:



In 2013, the Internal Revenue Service (“IRS”) raised concerns about Mr. Bigley’s and Mr. Heiligman’s simultaneous governance of the charity (CDF) and ownership of the for-profit fundraising company (NFM) and the for-profit auction/scrap dealer (Metro Metals). Mr. Bigley and Mr. Heiligman thereafter resigned from CDF’s board of directors. Since their resignations from the board of CDF, however, Mr. Bigley and Mr. Heiligman have continued to manage the day-to-day operations of the charity and provide the management services typically provided by officers of a charity. As of June, 2015, CDF had no employees and no permanent office.

II. HISTORY OF VEHICLE DONATION PROGRAMS.

A. Background of 2005 Tax Law Changes.

Charitable vehicle donation programs provide a mechanism for individuals who file itemized tax returns to claim a tax deduction and dispose of a used vehicle, ostensibly while benefiting a charitable purpose. A charitable vehicle donation program may be operated directly by a charity, or by a for-profit fundraising company on the charity’s behalf. When a vehicle is donated to a charitable program managed by a for-profit company, taxpayers subsidize a vehicle donation for which the charity may receive only a fraction of the sales price.

The United States Government Accountability Office (“GAO”) has identified four steps in a typical vehicle donation program run by a for-profit fundraising company that sells the donated vehicles: (1) advertising and fielding donor telephone calls regarding donating their vehicles; (2) taking possession of the vehicles, usually by tow truck; (3) disposing of the vehicles, most often through auto auctions; and (4) distributing the proceeds from the vehicle sales between charities and the for-profit corporations involved in the process. (Ex. 3, p. 4.)

In 2003, the GAO issued a report that was highly critical of many vehicle donation programs marketed to benefit charities. (Ex. 3.) The report stated that 733,000 tax returns in tax year 2000 claimed charitable vehicle deductions that lowered taxpayers’ income tax liability by an estimated \$654 million. (*Id.* at p. 2.) At the time of the report, taxpayers could lawfully deduct from their itemized income tax returns the fair market value of vehicle donations, with no cap based on the actual sales price of the vehicle by the charity. (*Id.* at p. 4.) The report found that taxpayers often claimed income tax deductions that exceeded the proceeds received by the charities, in part because of vehicle processing and fundraising costs and in part because many donors claimed tax write-offs in excess of the price for which charities sold their donated vehicles. (*Id.* at p. 2.)

The United States Congress subsequently revised these tax laws, effective in 2005. The law now provides that deductions for vehicles donated to and then re-sold by charities are generally limited to no more than the sales price of the vehicle received by the charity. (Ex. 4, p.

1.) More specifically, the 2005 federal tax law revisions provide the following:

For vehicles with a claimed value of \$500 or less, a taxpayer may deduct on his or her tax return only the *lesser of* \$500 or the vehicle’s fair market value. (Ex. 4, pp. 6-7.) For example, if

a vehicle has a fair market value of \$350, the donor's charitable contribution deduction may not exceed \$350.

For vehicles with a claimed value of \$500 or more, a taxpayer may only deduct on his or her tax return the *lesser of* the vehicle's fair market value or the gross proceeds the charity receives from the sale of the vehicle. (Ex. 4, pp. 6-7) For example, if a donated vehicle has a fair market value of \$900 but the charity receives \$750 in gross proceeds from its sale, the donor's charitable contribution deduction may not exceed \$750.

If the charity's intended use of the donated vehicle meets one of the following exceptions, however, a taxpayer may be eligible to deduct the fair market value of the vehicle, regardless of any re-sale value:

1. The charity makes significant use of the vehicle in its charitable programs;
2. The charity makes material improvements to the vehicle; or
3. The charity gives or sells the vehicle to a needy individual at a price significantly below fair market value, in furtherance of the charity's charitable mission.

(*Id.* at pp. 4-5.)

In 2010, Americans claimed deductions of \$389.3 million on their federal tax returns for 193,532 vehicles donated to charities. (Ex. 5.)

B. Types of Vehicle Donation Programs.

If a charity operates a vehicle donation program in a manner that confers improper benefits on private parties, the IRS may take adverse action against the charity's tax exempt status. (Ex. 6, p. 3.) The IRS has emphasized that a charity cannot license to others its right to receive tax-deductible contributions. (*Id.* at p. 4.)

The IRS has identified four main types of vehicle donation programs:

1. Charity Uses or Distributes Vehicles. In this type of program, the charity uses donated vehicles in its charitable programs or distributes the vehicles to needy individuals.
2. Charity Sells Donated Vehicles. In this type of program, the charity sells the donated vehicles and uses the proceeds to fund its charitable programs.
3. Charity Hires Agent to Operate Vehicle Donation Program. In this type of program, the charity hires a for-profit company as its agent to operate its vehicle donation program. The for-profit company acts on the charity's behalf, and its activities are subject to the charity's oversight. The IRS has stated that, in this model, the charity must actively monitor the program's operations and have the right to review all contracts, establish rules of conduct, choose or change program operators, approve of or change all advertising, and examine the program's books and records, or the charity may negatively impact its tax-exempt status.
4. For-Profit Company Receives and Sells Vehicles Using Charity's Name. In this type of program, the charity grants a for-profit company the right to use the charity's name to solicit vehicle donations. The charity receives a flat fee or a percentage of the proceeds from the sale of the vehicles. The charity does not control the for-profit company's activities. As a result, donors' contributions are deemed made to the for-profit entity and not the charity, and are not tax-deductible. The IRS has stated that, in this model, the charity has not established an agency relationship with the for-profit company, and the program is not the charity's program. (Ex. 6, pp. 3-4.)

III. HISTORY OF DEALINGS BETWEEN METRO METALS, CAR DONATION FOUNDATION, AND NATIONAL FUNDRAISING MANAGEMENT RELATING TO MAKE-A-WISH.

A. Metro Metals—A For-Profit Company—Initially Managed Make-A-Wish’s Vehicle Donation Program.

Metro Metals is located at 2576 Doswell Avenue in St. Paul, Minnesota. (Ex. 7.) It was formed as a for-profit Minnesota corporation by Mr. Bigley and Mr. Heiligman in 2003. (*Id.*) Mr. Bigley and Mr. Heiligman own 100 percent of the company. (Ex. 8, p. 4.) Mr. Heiligman is Metro Metal’s chief executive officer, president, and director. (Ex. 9.) Mr. Bigley is an officer and director. (Ex. 10.) Mr. Heiligman’s wife, Roberta Heiligman, is the company’s executive vice president. (Ex. 11.)

In 2003, Make-A-Wish Foundation of Minnesota (“Make-A-Wish-MN”) retained Metro Metals to administer its vehicle donation program. (Ex. 12, Interrogatory 2 response.) The relationship was memorialized in an agreement dated February 19, 2008. (Ex. 13.) Under the agreement, Metro Metals and Make-A-Wish-MN would essentially split the proceeds from the auctioning of vehicles donated to Make-A-Wish-MN’s charitable donation program. (*Id.*) Metro Metals and Make-A-Wish-MN would each receive █████ percent of the █████ (*Id.*) From Make-A-Wish-MN’s █████ percent share, it would pay Metro Metals \$████ per vehicle for towing and reimburse █████ percent of Metro Metals’ advertising and call center expenses. (*Id.*) For scrapped vehicles, Metro Metals would pay Make-A-Wish-MN \$████ for each donated vehicle. (*Id.*)

This relationship between the two organizations lasted until December, 2010. (Ex. 12, Interrogatory 2 response.)

B. Mr. Bigley and Mr. Heiligman Form CDF To Run “Wheels for Wishes.”

In 2007, Mr. Bigley and Mr. Heiligman formed Car Donation Foundation (“CDF”) as a Minnesota non-profit organization. (Ex. 14.) CDF was granted 501(c)(3) tax-exempt status by

the IRS in 2009. (Ex. 15.) In October, 2010 CDF registered with the Minnesota Attorney General's Office ("Minnesota AGO") as a charitable organization under chapter 309 of the Minnesota Statutes. (Ex. 16.) CDF's initial board of directors was comprised of Mr. Bigley, Mr. Heiligman, and Mr. Heiligman's wife. (Ex. 17, p. 2.)

The organization appears to have been largely dormant until 2010. In 2010, CDF approached Make-A-Wish-MN and suggested that its vehicle donation program be managed by CDF, instead of Metro Metals. (Ex. 12, Interrogatory 2 response.) Craig Greenberg—whose law firm has acted as an attorney for Metro Metals, CDF, and NFM, and who is a former CDF board member—has acknowledged that such a structure was designed to make the fundraising and overhead costs of running a vehicle donation program for the recipient charity (here, Make-A-Wish-MN) appear lower to the donating public because the recipient charity did not need to report the fundraising expenses in its public filings. (Ex. 18, p. 2.)

On December 31, 2010, Make-A-Wish-MN and CDF entered into a Charitable Promotion and Licensing Agreement. (Ex. 19.) Make-A-Wish-MN granted CDF the right to use its name and logo to advertise CDF's vehicle donation program. (*Id.*) In exchange, CDF agreed to pay Make-A-Wish-MN the amount remaining after CDF paid its expenses, including CDF's payments to NFM and Metro Metals for services they performed for it and for advertising costs. (*Id.* at ¶ 6.) CDF has entered into similar relationships with numerous other local Make-A-Wish chapters around the country. (Ex. 34.)

CDF calls its vehicle solicitation program "Wheels for Wishes." (Ex. 20.) CDF organizes and manages a newspaper, Internet, and radio advertising program to solicit vehicle donations whose proceeds will benefit the various local Make-A-Wish chapters. (Ex. 8, p. 9.)

From January 1, 2010 to May 30, 2011, CDF retained Metro Metals to take calls from prospective donors who responded to these ads. (Ex. 8, p. 5.) As set forth below, Minnesota law requires a company that acts as a professional fundraising company for a charity to register with the Minnesota AGO. Minn. Stat. § 309.531. A professional fundraiser includes any person who for financial compensation or profit performs any service in connection with which charitable contributions (including property, such as cars) are solicited, or who plans, manages, advises, consults, or prepares materials with respect to the solicitation of contributions. Minn. Stat. § 309.50, subd. 6. Metro Metals was not registered with the Minnesota AGO as a professional fundraiser for CDF.

With minor exception,¹ CDF has only solicited vehicles that were advertised to benefit Make-A-Wish.

C. Mr. Bigley And Mr. Heiligman Form National Fundraising Management To Act as A For-Profit Professional Fundraiser for CDF.

In May, 2011, Mr. Bigley and Mr. Heiligman formed National Fundraising Management, Inc. (“NFM”) as a for-profit Minnesota corporation. (Ex. 24.) NFM lists its executive office address with the Minnesota Secretary of State as 2576 Doswell Avenue in St. Paul—which is the address for Metro Metals. (Ex. 25.) NFM registered with the Minnesota AGO as a professional fundraiser in February 2012. (Ex. 26.)

¹ The vast majority of vehicles solicited by CDF are advertised as benefiting Make-A-Wish. Between about 2013 and 2015, CDF had a relationship with Breast Cancer Research Foundation (“BCRF”) in which, according to its 990, it paid BCRF approximately \$110,000. (Ex. 21.) This is believed to have included less than 100 vehicles received from Minnesota donors. CDF calls its vehicle solicitation program on behalf of BCRF “Cars to Cure Breast Cancer.” (Ex. 22.) NFM provided communications between Messrs. Bigley and Heiligman which emphasized the profit to be made by the for-profit companies. For example, in an October 11, 2013 email to Mr. Heiligman, Mr. Bigley states: “I would be happy if we can get [REDACTED] cars a year for them which is about [REDACTED] a day. That would make us about \$[REDACTED] year.” (Ex. 23.) In addition, in about July, 2015, CDF began to solicit vehicles with the stated purpose of benefitting disabled veterans. (See *infra* Section X, p. 40.)

Mr. Bigley and Mr. Heiligman own all of the stock of NFM. (Ex. 27.) Mr. Heiligman is its president, chief executive officer and director, and Mr. Bigley is its vice president and director. (Ex. 28.) NFM's only client is CDF. (*Id.*) Minnesota law requires both a charity and its fundraiser to file a "solicitation notice" with the Minnesota AGO before they may solicit donations in Minnesota. Minn. Stat. § 309.531, subd. 2(b). In 2012, Mr. Bigley signed the solicitation notice for *both* NFM and CDF. (Ex. 29.)

On June 1, 2011, less than one month after NFM was formed, CDF retained NFM to manage its "Wheels for Wishes" fundraising program. (Ex. 30.) The contract between CDF and NFM was signed by Mr. Bigley for CDF and Mr. Heiligman for NFM. (*Id.* at p. 7.) Under the contract, CDF paid NFM a commission of 50 percent of the "net proceeds" of each donated vehicle. (*Id.* at ¶ 5.1.) "Net proceeds" is defined in the contract to mean the gross sales price of a vehicle less NFM's out-of-pocket expenses, auction fees, advertising, and call center expenses. (*Id.*) The net effect of this contract essentially was that NFM, a for-profit corporation, and Make-A-Wish, a charity, split the proceeds (after all expenses were paid) of the sale of vehicles intended for charity.

In January, 2015—after the Minnesota AGO began to investigate CDF—CDF and NFM changed their contract to require CDF to pay NFM a fee equal to 30 percent of the gross sales price of donated vehicles. (Ex. 31, ¶ 1.) While the change from 50 percent of net proceeds to 30 percent of gross sales may sound more equitable, it does not appear to have made a substantial reduction to the profit of the for-profit corporations. In an email from December 4, 2014, Mr. Bigley told Mr. Heiligman that NFM was already charging the Make-A-Wish chapters a nationwide average of ■ percent of the gross sales price of donated vehicles. (Ex. 32.) One change that is potentially significant under the new agreement is that NFM has less of an

incentive to keep costs, such as advertising expenses, low, because the amount of expenses NFM incurs on behalf of CDF no longer affects NFM's bottom line.

In exchange for this compensation, NFM manages the operations of CDF. NFM solicits vehicle donations for CDF from prospective donors who call in response to advertisements. NFM prepares all advertisements and solicitation materials—the key ingredient in getting prospective donors to call. NFM develops the content of advertising, handles social media advertising, speaks with potential donors, and issues tax receipts to donors. (Ex. 33.)

CDF has also signed contracts with more than 30 local Make-A-Wish chapters in other states besides Minnesota. (Ex. 34.) NFM is registered to act as a professional fundraiser for CDF in about 40 states. (Ex. 28.)

It appears that the CEO of Make-A-Wish-MN was a key promoter for CDF in landing these contracts with other Make-A-Wish chapters. While serving as CEO of Make-A-Wish-MN, he was paid more than \$70,000 from NFM and Metro Metals. (Ex. 35, 36, 37.) Make-A-Wish-MN states he received \$5000 from the for-profit companies for each local chapter of Make-A-Wish that signed up with CDF. (Ex. 35). On June 16, 2015, the board of directors of Make-A-Wish-MN scheduled a special board meeting to investigate the payments NFM and Metro Metals made to the CEO. (*Id.*) On June 15, 2015, the CEO of Make-A-Wish-MN resigned from his position. (*Id.* at p. 2.)

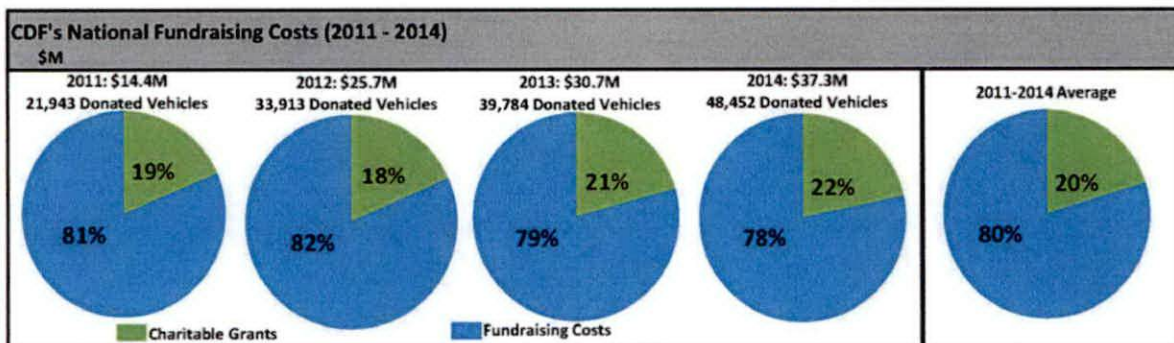
IV. CDF'S VEHICLE DONATION PROCEEDS ARE CONSUMED BY FUNDRAISING COSTS.

As noted above, in 2014, CDF was listed on the South Carolina Secretary of State's "Scrooge List," (Ex. 1), and the Oregon Attorney General's "20 Worst Charities" list. (Ex. 2.)

A. On Average Over the Last Four Years, About 80 Percent of CDF's National Revenue Was Spent On Fundraising Costs.

CDF's revenue from vehicle donations doubled from 2011 to 2014. In total, it received approximately \$108 million in gross revenue in these years. It received gross revenue of \$14.4 million from the sale/scraping of 21,943 vehicles in 2011 (Ex. 38), \$25.7 million from the sale/scraping of 33,913 vehicles in 2012 (Ex. 39), \$30.7 million from the sale/scraping of 39,784 vehicles in 2013 (Ex. 40), and \$37.3 million from the sale/scraping of 48,452 vehicles in 2014. (Ex. 41.) CDF spent approximately 81 percent of its revenue on fundraising costs in 2011 (Ex. 38), 82 percent in 2012 (Ex. 39), 79 percent in 2013 (Ex. 40), and 78 percent in 2014. (Ex. 41.) In other words, CDF's charitable grants were only 19 percent of gross vehicle sales revenue in 2011, 18 percent in 2012, 21 percent in 2013, and 22 percent in 2014.

This is depicted in the following chart:



Notes

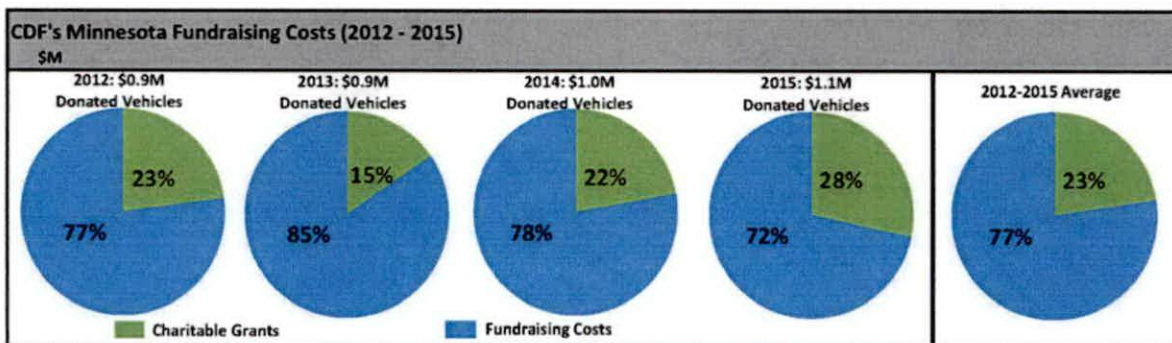
2011 - 2014 based on Car Donation Foundation's annual IRS 990 forms

B. CDF's Fundraising Costs in Minnesota.

Between 2011 and 2014, CDF received an average of about 1,400 vehicles donated each year by Minnesota residents. (Ex. 42.) In Minnesota, CDF received gross revenue of \$906,463 from the sale/scraping of vehicles between June 2011 and May 2012 (Ex. 43), \$913,313 between May 2012 and April 2013 (Ex. 44), \$963,569 between May 2013 and April 2014 (Ex. 45), and \$1,123,531 between May 2014 and April 2015, for a total of approximately \$3.9 million

during these periods. (Ex. 46.) It spent about 77 percent of this Minnesota revenue on fundraising costs during the 2011-2012 reporting period, (Ex. 43), 84.6 percent on fundraising costs in 2012-2013, (Ex. 44), 78 percent on fundraising costs in 2013-2014, (Ex. 45), and 72 percent on fundraising costs in 2014-2015. (Ex. 46.) In other words, in Minnesota, about 23 percent of CDF’s gross vehicle sales revenue went to charity in 2011-12, 15.4 percent in 2012-13, 22 percent in 2013-14, and 28 percent in 2014-2015.

This is depicted in the following chart:



Notes
 2012 - 2015 based on NFM's campaign reports for CDF
 Campaign year reflects year in which campaign ended (e.g. 2015 campaign year 5/1/14 to 4/30/15)

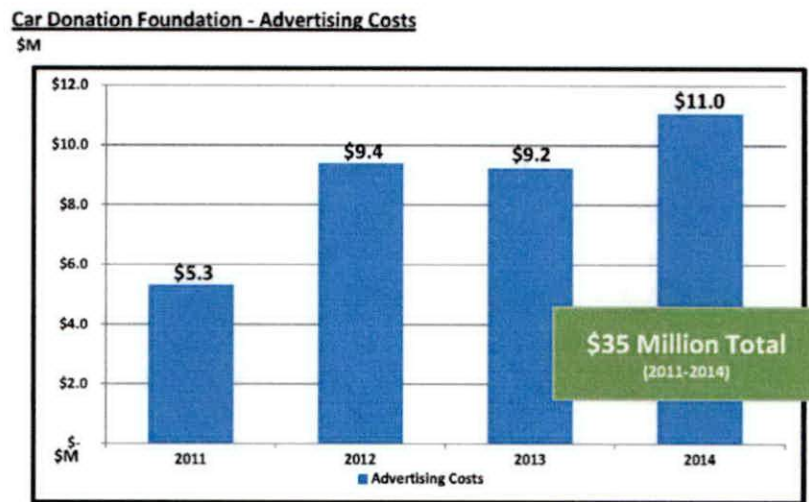
C. More Than 30 Percent of CDF’s Gross Vehicle Sales Revenue Is Spent on Advertising.

CDF is extremely competitive, and advertising costs are a major expense for CDF. Emails between Mr. Bigley and Mr. Heiligman underscore the importance of advertising. In one email, Mr. Heiligman, using his Metro Metals account, tells Mr. Bigley and the NFM marketing staff: “This is pure and simply a marketing business we are in. The best marketer will win!!” (Ex. 47.) In another email, Mr. Bigley tells a local charity chapter: “This is a competitive business and we need to take volume from our competitors.” (Ex. 48.)

CDF is a prolific advertiser in the newspaper and on the Internet. CDF paid a total of \$34.9 million for advertising between 2011 and 2014. (Exs. 49-52.) CDF paid \$5.3 million (37

percent of gross vehicle sales revenue) in advertising in 2011, \$9.4 million (37 percent of gross vehicle sales revenue) in 2012, \$9.2 million (30 percent of gross vehicle sales revenue) in 2013, and \$11 million (30 percent of gross vehicle sales revenue) in 2014. (*Id.*)

CDF's advertising expenses are illustrated in the following chart:



Notes
2011 - 2014 based on Car Donation Foundation's annual IRS 990 forms

V. MR. BIGLEY AND MR. HEILIGMAN PROFIT HANDSOMELY FROM CDF'S PAYMENTS TO THEIR PRIVATE BUSINESSES.

A. The Law of Private Benefit and Charitable Institutions.

To be tax-exempt, charitable organizations must be organized and operated exclusively for exempt purposes. 26 C.F.R. § 1.501(c)-(d) (2014); *see also* I.R.S. Gen. Couns. Mem. 39,862 at *11. (November 22, 1991). Exempt purposes, also frequently referred to as "charitable purposes," include religious, charitable, scientific, literary, and educational purposes. 26 C.F.R. § 1.501(d)(1)(i).

Organizations whose activities or operations serve primarily non-charitable interests are not entitled to tax exemption, which is a form of a governmental subsidy conferred on charitable organizations. *See Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544

(1983). Such a subsidy is conditioned on the organization providing a public benefit. *Id.* This concept—i.e., that a tax-exempt charitable organization must serve public and not private interests—is commonly referred to as the “private benefit doctrine.”

Under the private benefit doctrine, a private benefit that is more than “incidental” or “insubstantial” should not receive a tax subsidy. “The presence of a single noncharitable purpose, if substantial in nature, will destroy exemption regardless of the number or importance of the charitable purposes.” *Am. Campaign Academy v. CLR*, 92 T.C. 1053, 1065 (1989). Prohibited private interests under the doctrine include any “advantage, profit, fruit, privilege, gain [or] interest” flowing to a private party, as opposed to the public generally. *Id.* (quotation omitted).

The IRS reviews private benefit issues both qualitatively and quantitatively. 26 C.F.R. § 1.501(c)(3)-1(c)(1). A private benefit is qualitatively incidental if “the benefit to the public cannot be achieved without necessarily benefitting private individuals.” I.R.S. Gen. Couns. Mem. 39,862 at *12. In other words, a qualitatively incidental private benefit is one that can be fairly characterized as “unintentional.” *See id.*

The tax regulations use as an example a tax-exempt educational organization (“O”) which trains individuals in a program developed by O’s president (“P”). 26 C.F.R. § 1.501 (c)(3)-1(d)(iii), Example 3. The rights to the program are owned by a for-profit business (“K”) owned by P. *Id.* Before O was formed, the program was taught by K. *Id.* K licenses to O the right to use the program and O pays royalty payments to K for that right. *Id.* K provides the trainers and course materials to O, and sets the tuition for the program. *Id.* O, effectively a shell organization, is organized and operated to create a market for K’s and P’s services. This

arrangement, regardless of its reasonableness, provides more than a qualitatively incidental benefit to K and P, making O ineligible to be a tax-exempt organization. *Id.*

A private benefit is quantitatively incidental only when it is “insubstantial when viewed in relation to the public benefit conferred by the activity.” I.R.S. Gen. Couns. Mem. 39,862 at *12. Reviews of whether a tax-exempt organization is providing a quantitatively greater private versus public benefit are based on the particular facts and circumstances of each case. *See Church in Boston v. Comm’r of Internal Revenue*, 71 T.C. 102, 108 (1978). As part of this review, “the substantiality of the private benefit is measured in the context of the overall public benefit conferred” by the organization’s activities. I.R.S. Gen. Couns. Mem. 37,789 at *4 (December 18, 1978).

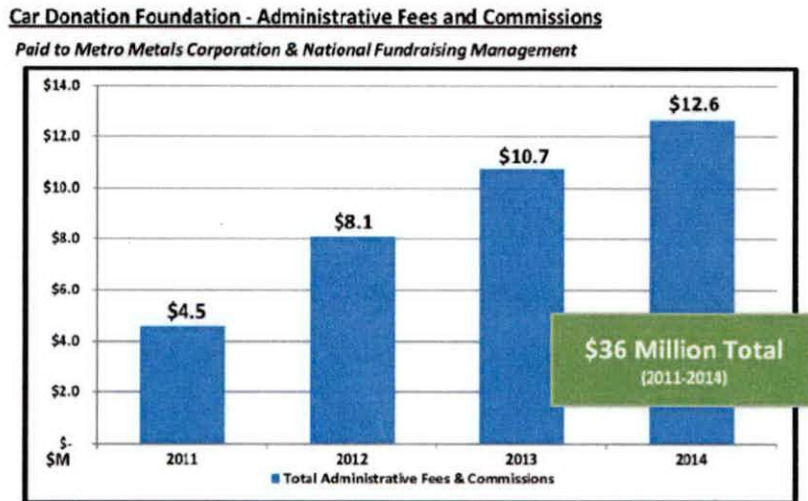
Although there is no set formula, the tax regulations describe an illustrative art museum which exhibits and offers tours of art created by local artists. 26 C.F.R. § 1.501(c)(3)-1(d)(iii) Example 2. All displayed art is for sale. *Id.* For every piece sold, the museum receives 10 percent of the selling price and the local artist gets 90 percent of the sales price. *Id.* Because the artists receive 90 percent of the proceeds from the sale of the art, an amount that is not quantitatively incidental, the museum is not entitled to tax exempt status because it is operated primarily for the private interests of the artists.

Accordingly, any private benefit arising from a charitable organization’s activities is supposed to be both qualitatively (i.e., unintentional) and quantitatively (i.e., insubstantial) incidental relative to its overall public benefit for an organization to be entitled to tax-exempt status. I.R.S. Gen. Couns. Mem. 39, 862 at *12. This includes private benefits conferred not only on the charitable organization’s insiders, but also private individuals unrelated to the organization. *See Am. Campaign Academy*, 92 T.C. at 1068-69.

B. CDF has Paid Approximately \$36 Million to NFM and Metro Metals In Four Years.

As noted above, Mr. Bigley and Mr. Heiligman co-manage CDF—which is NFM’s only client—and also own NFM and Metro Metals. CDF pays a substantial portion of the revenue received from the sale of donors’ vehicles to NFM and Metro Metals. Since 2011, CDF has paid NFM and Metro Metals \$35.9 million in administrative fees and commissions. (Exs. 53-56.) CDF paid NFM and Metro Metals \$4.6 million in administrative fees and commissions in 2011, \$8 million in 2012, \$10.7 million in 2013, and \$12.6 million in 2014. (*Id.*)

This is illustrated in the following chart:



Notes
2011 - 2014 based on Car Donation Foundation’s annual IRS 990 forms

According to CDF’s 2012 Form 990, NFM and Metro Metals were organized as subchapter-S corporations. (Ex. 57.) Subchapter-S corporations pass corporate income through to their shareholders on their personal tax returns at individual income tax rates for federal tax purposes. (Ex. 58.) NFM appears to be highly profitable for Mr. Bigley and Mr. Heiligman. As of September, 2014, Mr. Bigley told Mr. Heiligman that NFM was on pace to make a profit of about \$ [REDACTED] for the year, with a profit margin of [REDACTED] percent for the month of August, 2014.

(Ex. 59.) A ■ percent profit margin for NFM is consistent with other information NFM provided to the Minnesota AGO.

It is not known if a similar profit level existed in other years. If it did, since 2011, Mr. Bigley and Mr. Heiligman would have earned profit of \$ ■ or \$ ■ million each—as a result of their 100 percent ownership of the for-profit fundraising company, NFM.

At least four of Mr. Bigley and Mr. Heiligman's immediate family members are also employed by their for-profit corporations. As noted above, Mr. Heiligman's wife, Roberta, is executive vice-president of Metro Metals. (Ex. 11, Ex. 60.) Mr. Heiligman's son, Jamie Heiligman, works for NFM as operations director. (Ex. 61.) Mr. Heiligman's daughter, Aliza Heiligman, works for NFM as media marketing director. (*Id.*) Mr. Bigley's son, Jackson Bigley, works for NFM as a donation specialist. (*Id.*)

C. Mr. Bigley and Mr. Heiligman Resign From the CDF Board of Directors But Continue to Run the Organization As Co-Executive Directors.

Until 2013, CDF's board of directors included Mr. Bigley, Mr. Heiligman, Mrs. Heiligman, and Craig Greenberg, whose law firm is also an attorney for Metro Metals and NFM. (Ex. 8, p. 2.)

In 2013, the IRS examined the ties between CDF, NFM, and Metro Metals. (*Id.* at p. 6.) The IRS noted that a charitable organization should not serve as a "lead generator to get business for the founders' for-profit companies." (Ex. 62.) The agency questioned whether CDF should retain its 501(c)(3) tax-exempt status in light of the significant benefit conferred on the two for-profit corporations by Mr. Bigley and Mr. Heiligman through their control of CDF. (Exs. 8, 62.)

Mr. Bigley, Mr. Heiligman and his wife, and Mr. Greenberg thereafter resigned *en masse* from CDF's board of directors in June, 2013. (Ex. 63.) It appears that the IRS was satisfied that

these mass resignations would create an arm's length relationship between CDF and the for-profit corporations.

The CDF board of directors thereafter immediately delegated day-to-day management responsibility for running CDF to Mr. Bigley and Mr. Heiligman. (Ex. 64.)

The resignations of Mr. Bigley and Mr. Heiligman may in fact have been more of a cosmetic change. CDF states that it has no employees. (Ex. 8, p. 4.) It has no permanent office of its own but instead rents space to receive mail in a shared office suite that many other businesses list as their address. (Exs. 18, 65.) In his emails, Mr. Bigley identifies himself as "co-executive director" of "Wheels for Wishes", an assumed name of CDF. (Exs. 23, 48, 59, 77.) The board of directors of CDF has authorized Mr. Bigley and Mr. Heiligman to "provide the management services typically provided by officers of CDF." (Ex. 64) Mr. Bigley attends quarterly board meetings of CDF, and Mr. Bigley and Mr. Heiligman provide general management and oversight of the car donation program. (Exs. 21, pp. 4, 6; 64.) CDF concedes in its financial statements that management of the organization is outsourced to NFM—Mr. Bigley's and Mr. Heiligman's for-profit company. (Ex. 66.)

Despite this, in its 2013 and 2014 Form 990s, CDF checked "no" to the question: "Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?" (Ex. 67, p. 6(A)(3).) Additionally, CDF, in its 2014 Form 990, checked "no" to the question: "Was the organization a party to a business transaction with...[a]n entity of which a current or former officer, director, or key employee (or family member thereof) was an officer, director, trustee, or direct or indirect owner?" (Ex. 68.) As a result, CDF does not

disclose in its Form 990 that Mr. Bigley and Mr. Heiligman, who co-manage CDF, also own CDF's major for-profit vendors, NFM and Metro Metals. (Ex. 69.)

CDF's attorneys have acted for NFM and Metro Metals as well. After Mr. Greenberg—the attorney for NFM and Metro Metals—resigned from CDF's board in June, 2013, CDF authorized him to “provide services typically provided by treasurer and secretary of CDF,” including to authorize payments and sign checks. (Ex. 64.) Mr. Greenberg's firm represents CDF in connection with the Minnesota AGO's investigation. Mr. Greenberg's firm simultaneously represents Metro Metals and NFM on a variety of other matters. For example, it represents NFM on its regulatory filings as a fundraising company throughout the nation. (Ex. 70.) One of the firm's attorneys is Mr. James Smith, whose wife, through her business Legal Compliance Services, LLC, also represents NFM on regulatory matters. (Ex. 71.) In May, 2015, Mr. Smith represented Metro Metals in a trial in Ramsey County District Court in which a jury convicted the company of auctioning stolen cars and paying the proceeds to the thieves. (Ex. 72.)

VI. THE RELATIONSHIP BETWEEN CDF AND THE FOR-PROFIT CORPORATIONS MR. BIGLEY AND MR. HEILIGMAN CO-OWN RAISES QUESTIONS ABOUT THE STEWARDSHIP OF THE CHARITY.

A. Officers Owe a Duty of Loyalty and Care to the Charity.

Among other things, the Minnesota Nonprofit Corporation Act provides that directors and officers of a nonprofit corporation are fiduciaries of that organization. Minn. Stat. §§ 317A.251, .361 (2014). A fiduciary is an individual who is required to act for the benefit of the nonprofit corporation. *Black's Law Dictionary* (10th. ed. 2014). In particular, “[a]n officer of a nonprofit corporation owes a fiduciary duty to that corporation to act in good faith, with honesty in fact, with loyalty, in the best interests of the corporation, and with the care of an ordinary,

prudent person under similar circumstances.” *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 442 (Minn. Ct. App. 2001) (citing Minn. Stat. § 317A.361). These fiduciary duties have been described to include a director’s and officer’s duty of loyalty and duty of care. *Markewich ex rel. Medtronic, Inc. v. Collins*, 622 F. Supp. 802, 809 (D. Minn. 2009); *Miller v. Miller*, 222 N.W.2d 71, 78 (Minn. 1974).

“A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated...is considered an officer,” and thus a fiduciary, of the nonprofit organization. Minn. Stat. § 317A.361 (2014); *see also Christopher v. Hanson*, 2010 WL 3002889, at *7 n. 5 (D. Minn. May 24, 2010) (stating that delegation of duties by officers “deem[s] a person to whom the officer’s duties are delegated an officer for purposes of determining the standard of conduct that must be exercised in the discharge of the delegated official duties.”).

Regarding the duty of loyalty, directors and officers owe an active duty of honesty and good faith while transacting the business of the corporation and any dealings with it. *Keough v. St. Paul Milk Co.*, 285 N.W. 809, 823 (Minn. 1939). This means that a board member, director or officer must put the interests of the nonprofit corporation first and foremost in his or her dealings with others. One manner by which this duty of loyalty is implicated is when directors or officers engage in transactions which involve a conflict of interest. Conflicts of interest often arise when a director or officer engages in personal financial dealings or transactions with the nonprofit corporation for which he or she serves, or engages in transactions between the nonprofit corporation and other entities in which the director or officer has a personal interest. *Mid-List Press v. Nora*, 275 F.Supp.2d 997, 1003-04 (D. Minn. 2003).

Separately, the director's or officer's duty of care requires that he or she act in a reasonable and informed manner when making decisions regarding the management and operations of the nonprofit. *See Potter v. Pohl*, 560 N.W.2d 389, 392 (Minn. Ct. App. 1997). This means that a director or officer must ensure they remain informed about the business of the corporation, and actively participate in its management and operations in order to make reasonable and informed decisions on the nonprofit's behalf.

In short, these fiduciary duties subject board members, directors, and officers of nonprofit corporations to the "highest standard of integrity." *Hope Lutheran Church*, 626 N.W.2d at 442.

B. The For-Profit Ties of Mr. Heiligman and Mr. Bigley Raise Questions About Governance of CDF.

Mr. Bigley and Mr. Heiligman's simultaneous co-management of the charity, CDF, and ownership and management of the two for-profit corporations, NFM and Metro Metals, raise concerns about the extent to which their actions benefit the charity versus their for-profit corporations. As noted above, their two for-profit corporations have received approximately \$36 million in fees and commissions from CDF since 2011. These concerns include:

(1) Auditors Raise Concerns about Messrs. Bigley's and Heiligman's Management and Oversight of CDF.

CDF's auditors have identified problems arising out of the overlapping management of NFM, Metro Metals, and CDF. For example, prior to 2015, CDF was contractually required to reimburse NFM for actual expenses. (Ex. 30.) In practice, NFM simply charged CDF 15 percent of the net sales price of vehicles (e.g., the gross sales price minus the auction house fees) as a substitute for actual expenses. (Ex. 73.) CDF paid these expenses. In April, 2014, CDF's auditing firm noted that NFM did not provide CDF with invoices to document its expenses so the firm could not determine if the expenses incurred by NFM were comparable to the 15 percent

that NFM took for expenses. (Ex. 74.) CDF does not appear to have changed this practice, however, until 2015, when it changed its payment structure with NFM.

Make-A-Wish's auditors have also raised concerns. Make-A-Wish has the right to inspect CDF's books and records under its contract with CDF. (Ex. 19 ¶ 4.9.) No documentation was provided to indicate that Make-A-Wish had done so prior to this year. In May, 2015—after the Minnesota AGO served a Civil Investigative Demand on the local chapter asking for information about CDF—Make-A-Wish Foundation of America (“Make-A-Wish National”) conducted a on-site review of CDF. This review was “due to numerous potential red flags around the operations of the [Wheels for Wishes] program, including a low (i.e., less than 25 percent) program ratio as well as concerns regarding the close relationship between CDF and its for-profit affiliates.” (Ex. 75, p. 1.) The audit was conducted by a senior consultant from Deloitte & Touche and a senior manager from Make-A-Wish National. (*Id.*)

The audit report made a number of findings:

First, the report questioned the lack of competitive bidding for the auction services of Metro Metals, “one of the main auction houses used to auction off cars [and which is] owned by parties related to CDF.” (*Id.*)

Second, the report questioned CDF's payment of NFM's expenses. The audit noted that the invoices NFM submitted to CDF lacked detail, explaining that “if CDF were an independent organization, the amount of detail would be insufficient to understand or verify exactly what services were rendered, or why the amount being charged is appropriate.” (*Id.*) The audit indicated that while NFM charges CDF advertising fees of around \$1 million per month, NFM did not provide CDF with the actual invoices. (*Id.*) The audit further noted that for 2014 and the first quarter of 2015, CDF paid NFM \$29 million without sufficient documentation or

substantiation. The report stated that this payment gave the appearance that NFM was taking a cut of the donations made to CDF:

“[T]o an outsider examining only the invoicing in its current form, such a significant amount being removed from a charity by a related, for-profit organization appears more like a ‘cut’ of the proceeds than it does a legitimate management fee.”

(*Id.* at 3.)

The audit concluded by expressing concerns about CDF’s independence:

“These control gaps call into question whether the organization is being operated at arm’s length from the related for-profit entities. [These] are control issues that would not be acceptable at any charity that was operating independently and in the best interest of its donors and beneficiaries. For the sake of its donors and intended beneficiaries, CDF should be operated completely at arm’s length from all related organizations, should be given full operational control of and visibility into all parts of its business cycle, and should demand invoicing from its vendors, related and otherwise, that is sufficient to document exactly what they are paying for.”

(Ex. 75, p. 3.)

In July, 2015, Make-A-Wish National performed a site visit of NFM. (*Id.*) In its report to Make-A-Wish-MN about the visit, Make-A-Wish-National continued to question CDF’s independence from NFM. (*Id.*) Among other things, Make-A-Wish-National noted that in order to ensure that CDF is distinct from NFM in substance and in form “[i]ndependent CDF representatives should be reviewing and approving NFM’s donation reconciliations on a regular basis,” and “CDF should be receiving third-party invoices and detailed computations in support of what they pay NFM each month . . . and [have those] approved by independent CDF representatives.” (*Id.*)

(2) Mr. Bigley and Mr. Heiligman Blur the Identities of CDF, Metro Metals, and NFM.

Mr. Bigley and Mr. Heiligman sometime blur the identities of CDF, NFM, and Metro Metals. For example, Mr. Bigley frequently corresponds with Mr. Heiligman about CDF at his

Metro Metals email account. (*See, e.g.*, Ex. 77.) According to CDF's outside auditing firm, NFM's accounting personnel were located at Metro Metals as of 2013. (Ex. 74, p. 2.)

It is important that CDF exercise oversight of NFM and Metro Metals for a number of reasons. For example, as noted above, in 2014 a lawsuit was filed by seven individuals against Metro Metals. (Ex. 72.) The lawsuit alleged that Metro Metals accepted stolen vehicles from thieves, at a time when they should have known they were stolen, paid cash to the thieves, and then disposed of the cars. (Ex. 72) In May, 2015 the jury returned a verdict against Metro Metals for each victim. (*Id.*) This raises questions about the practices of Metro Metals, which CDF (the charity) should monitor.

██████████ provides auto auction and vehicle donation processing services to charities and has an ██████████

██████████ (Ex. 76.) ██████████ is a competitor to both Metro Metals and NFM. (*Id.*) At one point, Mr. Bigley and Mr. Heiligman discussed whether to ██████████

██████████ (Ex. 32.) Mr. Bigley (using an email address of "Wheels for Wishes" (e.g., CDF)) told Mr. Heiligman (at his email at Metro Metals) that a

██████████ not necessary because: ██████████

██████████ and that if they were to serve as an auction house for cars donated through Wheels for Wishes, ██████████

██████████ (*Id.*) This raises the question of whether Mr. Bigley and Mr. Heiligman are protecting NFM and Metro Metals against

Another example occurred in CDF's negotiations with ██████████ ██████████
Mr. Heiligman's son, Jamie, represented "Wheels for Wishes" (an assumed name of CDF) in its

negotiations with ██████ Metro Metals and ██████ are business competitors in that they both ██████. At one point in December, 2014, ██████ proposed a deal with Jamie Heiligman through which no ██████ would be charged for Metro Metals and proposed a ██████

(Ex. 77.) ██████

████████████████████ (Ex. 77.) It is not known whether this proposal was consummated. Mr. Bigley (using an email account for Wheels for Wishes) forwarded the email to Mr. Heiligman (at his Metro Metals email account). (*Id.*) These discussions raise the question of whether Mr. Bigley and Mr. Heiligman, acting on behalf of NFM, were attempting to leverage CDF's relationship with ██████ to benefit their for-profit companies at the expense of CDF.

(3) Mr. Bigley Downplays Attempted Oversight by CDF's Charity Partners.

When charities have raised concerns with Mr. Bigley, they were sometimes minimized. For example, when a local Make-A-Wish chapter raised concerns about wanting to receive a larger percentage of the gross revenue from CDF, Mr. Bigley wrote to Mr. Heiligman (at his Metro Metals email account) about “the two problem people [at Make-A-Wish].” (Ex. 78.) When an Executive Director of a different CDF charitable partner began asking questions about the arrangement, Mr. Bigley chalked it up to her being “an Italian from Brooklyn.” (Ex. 79.) On another occasion, Mr. Bigley—using his title as co-executive director of Wheels for Wishes (i.e., CDF)—communicated with Mr. Heiligman (at his Metro Metals email account) about Disabled American Veterans, Department of Minnesota, Inc. (“DAV-MN”) (*Id.*; see also *infra* Section IX.) When the DAV-MN board asked Mr. Bigley questions about prospective charges to DAV-MN under various Metro Metals pricing options, Mr. Bigley told Mr. Heiligman: “let’s hope the

new board stops looking for something to do to make them look like they are smart ‘business’ guys.” (*Id.*)

VII. “WHEELS FOR WISHÈS” BLENDS ITS IDENTĪTY WITH MAKE-A-WISH.

A. Charitable Solicitations Should Be Truthful and Not Misleading.

Minnesota law provides that: “No charitable organization soliciting contributions shall use a name, symbol or statement so closely related or similar to that used by another charitable organization...that the use thereof would tend to confuse or mislead the public.” Minn. Stat. § 309.55, subd. 2. Minnesota law further provides that, “No charitable organization...shall use or employ any fraud...or deceptive practice...in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes.” Minn. Stat. § 309.55, subd. 5.

Minnesota law also requires charitable organizations and their professional fundraisers to make certain disclosures to prospective donors when soliciting donations of any type, including property. For example, prior to orally requesting a contribution or contemporaneously with a written request, the following information must be clearly disclosed:

- (a) the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- (b) the tax deductibility of the contribution; and
- (c) a description of the charitable program for which the solicitation campaign is being carried out.

Minn. Stat. § 309.556, subd. 1. A professional fundraiser must also disclose its name as on file with the Minnesota AGO and that the solicitation is being conducted by a professional fundraiser. Minn. Stat. § 309.556, subd. 2. The purpose of these disclosures is to provide

transparency to donors and the public. As set forth below, CDF did not make the disclosures required by section 309.556.

B. CDF Conflates Itself With Make-A-Wish.

CDF gets prospective donors of vehicles to call its solicitation center (staffed by NFM, the professional fundraiser) through two main types of advertising: (1) Internet advertising, and (2) newspaper advertising. For years, these ads prominently mentioned Make-A-Wish, prominently featured the Make-A-Wish logo, and did not mention Car Donation Foundation or notify donors that they were not donating directly to Make-A-Wish.

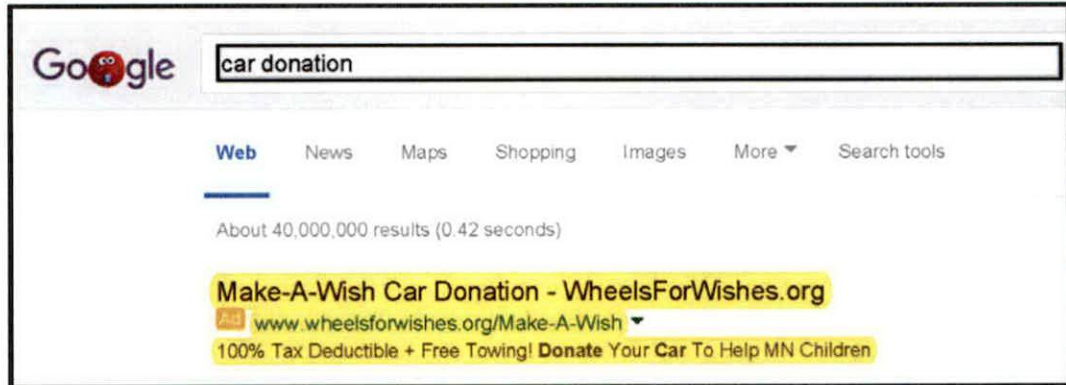
Internet advertising accounts for more than [REDACTED] percent of CDF's advertising budget. In 2013, for example, CDF paid about \$[REDACTED] of \$9.2 million spent on advertising expenses—for Internet advertising. (Ex. 80; Ex. 51)

Among other things, CDF pays Internet search engines like Google and Bing to have its website, *www.wheelsforwishes.org*, appear as an ad when [REDACTED] donors search the Internet using search terms like “cars charity” or “car donation.” (Ex. 80.) In December, 2013, one local Make-A-Wish chapter asked CDF not to use the phrase “Make-A-Wish Car Donation” in advertising because they said “it was misleading as donors were not donating directly to Make A Wish.” (Ex. 81.) An NFM employee subsequently lamented the change to Mr. Bigley and Mr. Heiligman: [REDACTED]

[REDACTED] (*Id.*)

CDF continues to use the title “Make-A-Wish Car Donation” in paid Internet ads in Minnesota and around the United States. Attached as Exhibit 82 is an Internet ad by CDF that appears when a Minnesota computer user searches Google for “car donation.” The ad—a link to

the *wheelsforwishes.org* website—starts with the heading: “Make-A-Wish Car Donation.” The ad appears as follows:



Attached as Exhibit 83 is an Internet ad that appears when a Minnesota computer user searches Google for “donate car charity.” Nationwide searches on Google and Bing yield similar results. (Ex. 84.) Attached as Exhibit 85 is a similar newspaper banner ad that also references “Make-A-Wish Car Donation.” The banner ad appeared as follows:



CDF runs frequent newspaper advertisements to solicit vehicle donations. Attached as Exhibit 86 is an example of an ad that has run in newspapers in Minnesota. The ad features a little girl holding a puppy and prominently states “DONATE YOUR CAR” followed by “*Wheels for Wishes* benefiting Make-A-Wish Minnesota.” (Ex. 86). The ad prominently includes the Make-A-Wish logo. (*Id.*) The ad does not mention CDF or NFM. (*Id.*) The ad directs callers to

call (651) 645-WISH or visit the website *wheelsforwishes.org*. (*Id.*) This phone number is registered to Metro Metals. (Ex. 87.)

A similar ad from May, 2015 from a Minnesota newspaper soliciting donors to “Share the Power of a Wish” is attached as Exhibit 88. This ad does not mention CDF or NFM. (Ex. 88). Indeed, prior to June, 2015,² the organization’s ads did not provide the name and location by city and state of CDF (as required by Minnesota Statutes section 309.556), did not mention CDF, and prominently displayed the logo for Make-A-Wish. One such ad appeared as follows:

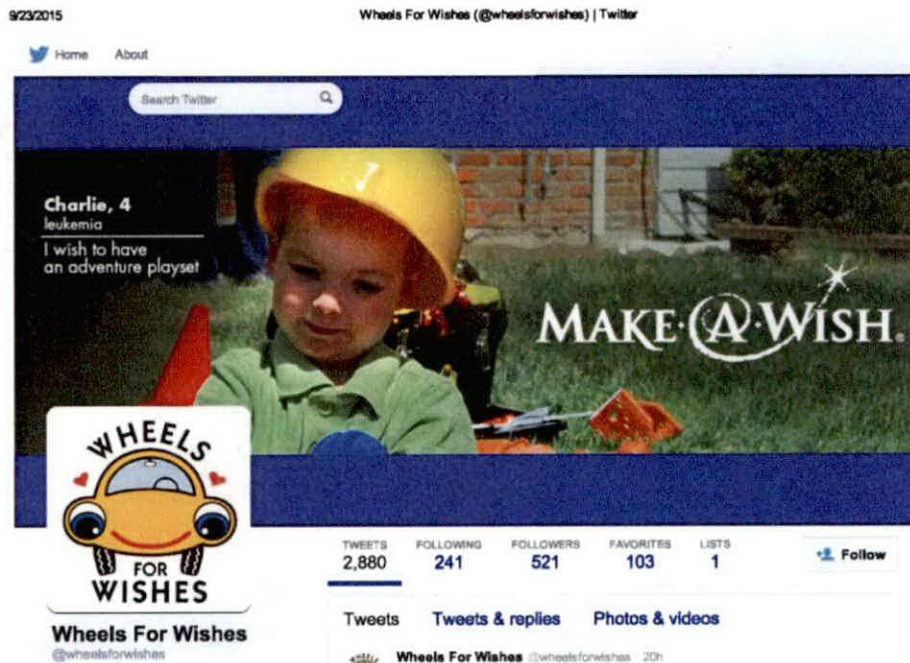


Make-A-Wish-MN and Make-A-Wish-National have raised concerns with CDF and Mr. Bigley about “the fact that [Wheels for Wishes] sometimes looked as if it were a program of Make-A-Wish rather than an independent charity.” (Ex. 89.) These concerns include the use of Make-A-Wish’s logo, the use of stories in an inaccurate manner or without permission, and that the “voice” (e.g., “call us today,” “we help children,” etc.) used on the website made it seem like it was coming from Make-A-Wish, not an independent charity. (*Id.*)

² CDF altered some of its newspaper ads in June, 2015 in the midst of the MN AGO investigation to include a small footnote reference to CDF. As of October 13, 2015, however, CDF was still running newspaper ads in a Minnesota newspaper that did not contain even this small footnote.

Attached as Exhibit 90 are excerpts from the Wheels for Wishes website, www.wheelsforwishes.org, as downloaded on September 20, 2013.³ The website prominently stated that “Your Tax Deductible Car Donation Helps Make Children’s Wishes Come True!” (Ex. 90.) It stated that when a person donates a vehicle, “*we turn your burden into wishes.*” (*Id.* (italics added).) On the front page, it stated that, “Proceeds from the sale of your vehicle donation benefit your local Make-A-Wish and help grant wishes of children diagnosed with life-threatening medical condition.” (*Id.*) A drop-down for “About Wheels for Wishes” extensively described Make-A-Wish and asks donors to “call *us* today” (*Id.*(italics added).)

Similarly, the heading of the Wheels for Wishes Twitter feed (saved on September 23, 2015) predominately features the Make-A-Wish logo alongside a photo of a child.⁴ (Ex. 91.) The Twitter feed header appears as follows:



³ The website has since been changed after the Minnesota AGO commenced its investigation.

⁴ The Make-A-Wish-MN website has compounded the confusion. Under the heading “donate a vehicle,” Make-A-Wish-MN says: “Donate your car, truck, motorcycle, SUV, RV or boat today to *our* charity car donation program called ‘Wheels for Wishes.’” (Ex. 92 (italics added).)

C. CDF's Solicitations Have Confused Minnesota Donors.

Numerous Minnesota donors who donated vehicles to CDF told the Minnesota AGO that they believed they were donating directly to Make-A-Wish and were not familiar with CDF. (*See, e.g.*, Ex. 93 (affidavits of Minnesota donors).) For example, M.C., who had a friend whose daughter had cancer and was granted a wish by Make-A-Wish, searched for car donation programs online and found what she thought was Make-A-Wish's website. (*Id.*) It was her belief that she was donating directly to Make-A-Wish and it would receive the value of the car. (*Id.*) In reality, she was on the "Wheels for Wishes" website and was donating to CDF.

J.W. wanted to donate her vehicle to help families in Minnesota that have sick kids. (*Id.*) J.W. wanted to and it was her understanding that she was donating her vehicle directly to Make-A-Wish. (*Id.*) In fact, J.W. unknowingly donated her vehicle to CDF, with the result that 50 percent of the net proceeds from the sale of her vehicle was paid to a for-profit company owned by Messrs. Bigley and Heiligman. (*Id.*)

T.N. wanted to donate her vehicle to help children with cancer through what she thought was Make-A-Wish's Wheels for Wishes website. (*Id.*) She discovered the Wheels for Wishes website by searching for car donation organizations on the Internet. (*Id.*) T.N. noted that the Wheels for Wishes website referenced Make-A-Wish throughout and had multiple links to the official Make-A-Wish website. (*Id.*) T.N., however, was on CDF's website.

R.W. saw what looked like a Make-A-Wish advertisement in the newspaper and called what he believed to be Make-A-Wish's phone number in the advertisement. (*Id.*) It was his intention to donate his vehicle directly to Make-A-Wish to support its mission of helping sick children. (*Id.*) These confusing advertisements led R.W. to actually donate his car to CDF.

D.R. wanted to donate his car to Make-a-Wish to help it provide trips to Disney World for sick kids. (Ex. 93) D.R. generally researches charities before donating, found what he believed was Make-a-Wish's car donation website, and thought he was donating his car to Make-a-Wish. The website was actually CDF's, to which he donated his car by mistake. (*Id.*)

Other donors similarly reported that they saw and heard the name "Wheels for Wishes" in newspaper, radio, and internet advertisements and that it was their understanding that Wheels for Wishes was a branch or division of Make-A-Wish. (*See id.*)

NFM's customer service representatives have contributed to donor confusion. For example, in a November, 2014 phone recording, a NFM representative answered the phone by stating, "Thank you for calling Make A Wish, uh Wheels for Wishes". (Ex. 94 p. 1.) Another call was answered "Make A Wish Foundation – or sorry, Wheels for Wishes". (*Id.* at p. 3.) When the donor asked if Wheels for Wishes was the same organization as Car Donation Foundation, the NFM representative stated "[N]o, we are not the same. Car Donation Foundation is separate. We take donations specifically for the Make-A-Wish Foundation." (*Id.*) As noted above, "Wheels for Wishes" is an assumed name of CDF. (Ex. 20.)

D. CDF Offers Conflicting Information to Donors Who Ask About the Percentage of Their Donation That Will Benefit Charity.

Compounding the donor confusion resulting from CDF's marketing campaigns, CDF phone recordings reveal that donors have been told conflicting or confusing information regarding what percentage of their donation will benefit Make-A-Wish.

In April 2015, when a donor inquired about what percentage of her donation would go to Make-A-Wish, an NFM representative stated "it's about 50 percent to 70 percent. It depends on how much we get for the car." (Ex. 94 p. 5.)

During a phone recording from November 2014, when a donor asked a NFM representative “And then all the money, all the monies sold go to charity? The children’s clarity?”, the NFM representative responded “Correct, sir.” (Ex. 94 at p. 9.)

As discussed in Section IV above, on average over the last four years, approximately 80% of CDF’s gross revenue was spent on fundraising and advertising expenses and only approximately 20% went to charity.

VIII. CDF HAS PROVIDED MISLEADING AND INACCURATE TAX INFORMATION TO DONORS.

Minnesota law requires a charity to disclose information about the tax-deductibility of a contribution. Minn. Stat. § 309.556. CDF’s auditors have admonished it for providing incorrect information to donors about the tax deductibility of their donations. (Ex. 95.)

A. CDF Overstates The Deductibility of Donated Vehicles.

The GAO has stated that solicitations for charitable vehicle donations are potentially deceptive when they do not specify that taxpayers must itemize their deductions to claim a vehicle donation, since many taxpayers do not itemize their deductions. (Ex. 96.) Indeed, in 2013, only about 30 percent of taxpayers itemized their deductions, while close to 70 percent claimed the standard deduction. (Ex. 97.) CDF’s ads routinely state that vehicles donated to it are “100 percent tax deductible.” (See, e.g., Exs. 83, 85, 86.) In fact, only taxpayers who itemize their deductions may deduct a vehicle donated to CDF.

The GAO has also expressed concern about advertisements that state that donors can get the “maximum deduction” when donating a vehicle, since federal law requires deductions to be capped at the sales price of the vehicle. (Ex. 96.) CDF’s ads regularly offer donors the “maximum tax deduction” (Exs. 84, p.3; 98.) For example, one such ad reads as follows:



Similarly, a recording that is played when donors call CDF and are placed on hold states “Did you know we are an IRS approved 501(c)(3) organization? That entitles you to take the maximum tax deduction allowed by law for your donation.” (Ex. 99.)

B. CDF Has Incorrectly Told Donors That They Can Claim At Least \$500 For Their Vehicle Donations.

If a donated vehicle has a claimed value of \$500 or less, a donor may deduct on his or her tax return the *lesser* of \$500 or the fair market value of the vehicle. (Ex. 100.) In an April 29, 2011 letter to CDF management, the charity’s auditing firm wrote: “During the time we spent at Car Donation Foundation’s office we heard donors being told, by Car Donation Foundation staff, that they would receive at least a \$500 donation even if the vehicle sold for less at auction. Donors are entitled to the lesser of \$500 or the fair market value of the vehicle sold at auction. This should be communicated to donors when they call.” (Ex. 95, p. 2.)

Based on a review of recent phone recordings CDF provided to the Minnesota AGO, NFM staff continued to give Minnesota donors incorrect tax information. (Ex. 101.) For example, a donor was told in November, 2014 that she would get a “automatic \$500 tax deduction for donating[.]” (*Id.* at p. 6.) Another donor was told in November, 2014 that he would receive “an acknowledgment letter that acts as a tax receipt for [a] preliminary deduction of \$500.” (*Id.* at p. 8.) In February 2015, a donor was told she would be mailed a “preliminary

receipt that tells you have a minimum of \$500 to deduct from your taxes for charity.” (Ex. 101 p. 12.) This is consistent with what numerous donors told the Minnesota AGO: that CDF or its professional fundraiser, NFM, explained to them that they could deduct at least \$500 for any donated vehicle. (Ex. 93.) As noted above, under IRS regulations, donors are not entitled to an automatic \$500 deduction for vehicles with a claimed value of \$500 or less.

As noted in Section IX.C. below, Metro Metals gave similar incorrect information to two analysts from the AGO.

C. CDF’s Auditors Point Out Other Concerns.

The IRS requires charities to provide Form 1098-C to donors who donate vehicles with a claimed value of more than \$500. (Ex. 102.) If the charity improves or uses a vehicle or gives it to a needy individual, the donor may deduct the fair market value of the vehicle. (Ex. 100.) If a charity sells a donated vehicle without substantial improvement, the donor may deduct the lesser of the sales price of the vehicle or fair market value. (*Id.*) Boxes 5a and 5b on Form 1098-C allow for the charity to certify that the vehicle is being used in a program, improved, or given to a needy individual, in which case the donor’s deduction is not capped at the sales price. (Ex. 102.)

In 2011, CDF’s auditing firm noted a “significant deficiency” in the manner in which CDF prepared tax receipts. (Ex. 95.) It pointed out that CDF was incorrectly marking boxes 5a and 5b on Form 1098-C. The firm pointed out that the IRS instructs that box 5a should not be marked for organizations that do not use the donated vehicle for significant charitable purposes for at least six months, and box 5b should not be marked for organizations that sell vehicles to the public at auction. The auditor pointed out that CDF was marking the boxes even though they

did not apply and it re-sold the vehicles at auction. (Ex. 95.) The auditor pointed out that IRS penalties for incorrectly marking the boxes are 39.6 percent of the claimed value of the vehicle.

IX. CDF AND ITS LATEST SOLICITATIONS PURPORTING TO HELP DISABLED VETERANS.

As noted below, CDF recently began to solicit vehicle donations with the ostensible purpose of benefitting disabled veterans. As of August, 2015, however, CDF has donated no money to disabled veterans.

A. Minnesota Law Regulates Professional Fundraisers.

Minnesota law provides that no person shall act as a professional fundraiser for a charitable organization in Minnesota unless it first becomes registered with the Minnesota AGO. Minn. Stat. § 309.531. Minnesota law broadly defines a “professional fund-raiser” to mean any person who for compensation performs any service for a charitable organization in which contributions are solicited by the person or who for compensation plans, manages, advises, consults or prepares materials for or regarding the solicitation of donations in Minnesota. Minn. Stat. § 309.50, subd. 6. In turn, the term “solicit” is broadly defined to include any direct or indirect request for a contribution. Minn. Stat. § 309.50, subd. 10. Contribution is defined as the promise or grant of money or property of any kind based on representations that whole or any part will be applied to a charitable purpose. Minn. Stat. § 309.50, subd. 5.

Before a registered professional fundraiser may solicit funds in Minnesota on behalf of a charity, it must file a “solicitation notice” and registration statement on forms provided by the Minnesota AGO. Minn. Stat. § 309.531. As part of its registration statement, a professional fundraiser must file a copy of its contract with the charitable organization. *Id.*, subd. 2. Among other things, the contract must contain information enabling the Minnesota AGO to identify the services the professional fundraiser is to provide and, if the professional fundraiser directly or

indirectly solicits in Minnesota, the contract must disclose the percentage or reasonable estimate of the percentage of the total amount solicited from each person to be received by the charitable organization for charitable purposes. *Id.* The charitable organization on whose behalf the professional fundraiser is acting must certify that the solicitation notice and accompanying material are true and correct. Minn. Stat. § 309.531 subd. 2. As noted above, Minnesota law also requires any professional fundraiser soliciting donations in Minnesota to disclose the name of the professional fundraiser and that the solicitation is conducted by a professional fundraiser. Minn. Stat. § 309.556.

Within 90 days after a solicitation campaign has been completed or within 90 days following the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional fundraiser that solicited contributions in Minnesota in conjunction with the charitable organization shall file with the Minnesota AGO a financial report for the campaign, including gross revenue and an itemization of all expenses incurred, on a form prescribed by the Minnesota AGO. Minn. Stat. § 309.531, subd. 4.

The registration and disclosure requirements for professional fundraisers are intended to provide transparency to donors. “[W]here a charitable organization is to receive but a small share of the total funds solicited in the name of a charity or a non-profit organization, the public solicited has a right to know these facts so that people may knowingly decide on that basis whether or not they wish to make their donations.” *State v. Francis*, 95 Misc.2d 381, 385 (N.Y. Sup. Ct. 1978); *see also Vill. of Schaumburg v. Citizens for a Better Env’t et al.*, 444 U.S. 620, 638 (1980). Moreover, “[t]he fact that [charitable organizations] agree to the terms of the contracts should not preclude the Attorney General from protecting the public’s right. The contracts with the non-profit organizations are not merely bilateral, but rather establish a

triangular relationship with the public as the third party whose interest should be protected.” *Francis*, 95 Misc.2d at 385. Disclosure of charitable organizations’ finances may assist in preventing fraud as such measures may help make “contribution decisions more informed, while leaving to individual choice the decision whether to contribute to organizations that spend large amounts on salaries and administrative expenses.” *Id.*

B. Metro Metals Appears to Have Operated As An Unregistered Professional Fundraiser in Minnesota.

Metro Metals does not appear to have complied with these statutory requirements. As discussed below, Metro Metals appears to have acted as an unregistered professional fundraiser for Disabled American Veterans, Department of Minnesota, Inc. (“DAV-MN”). At no time was Metro Metals registered to act as a professional fundraiser with the Minnesota AGO for either organization, nor did it make the statutory disclosures required of professional fundraisers.

Metro Metals is licensed with the Minnesota Department of Public Safety (“DPS”) as a scrap metal processor, used vehicle parts dealer, and used motor vehicle dealer. (Ex. 103.) Metro Metals sometimes does business under the assumed name Metro Auto Auctions. (*Id.*) In its dealer application filed with DPS, Metro Metals stated that it used the assumed names Car Donation Foundation, Wheels for Wishes, and Charity Car Auctions in its used car dealer business. (*Id.*)

From 2009 until July, 2015, Metro Metals managed DAV-MN’s vehicle donation program. (Ex. 104.) On behalf of DAV-MN, Metro Metals ran frequent newspaper ads in Minnesota soliciting people to donate motor vehicles. (Ex. 105 ¶ 3.1.) Attached as Exhibit 106 is a copy of an ad that ran in June, 2015 in the St. Paul, Minnesota newspaper. Bearing the image of a soldier holding a child with a flag, the ad has the caption “Donate Your Vehicle” and prominently contains the logo for DAV-MN. The ad, which was prepared by Metro Metals,

stated that proceeds helped local veterans in Minnesota and asked donors to call (651) 255-3382, a phone number registered to Metro Metals. (Ex. 107.) A call to (651) 255-3382 is answered by a recording that stated, "Thank you for calling Vehicles for Veterans." (Ex. 108.) The recording did not disclose that the call center was staffed by employees of a for-profit fundraising company. (Ex. 104.) The ad also asked donors to visit the website *www.vehiclesforveteransmn.com*, a website taken out by Mr. Bigley and Metro Metals in 2009. (Ex. 109.) This website automatically re-routed visitors to another website, *www.vehiclesforveterans.org*, taken out by Mr. Bigley and Metro Metals in 2007. (Ex. 110.) This website is owned exclusively by Metro Metals, and Metro Metals was solely responsible for its design and text. (Ex. 104.)

The website "Vehicles for Veterans" did not disclose Metro Metal's role or involvement. To the contrary, attached is a printout of the website. (Ex. 111.) Under "About Us," the website prominently stated: "When you make a car donation to Vehicles for Veterans, the proceeds from the sale of your vehicle benefit Disabled American Veterans (DAV)." (*Id.*) The website went on to state: "Since its inception in 2009, the Car Donation Foundation, the parent charity of Vehicles for Veterans, has donated over \$25 million dollars to charities such as the Disabled American Veterans to help them do the great work that is needed." (*Id.*) In fact, Car Donation Foundation has no contract with DAV-MN and is not the "parent charity" of "Vehicles for Veterans." Rather, "Vehicles for Veterans" appears to be a name used by Metro Metals in connection with its solicitation of vehicles for DAV-MN. The website did not disclose the involvement of Metro Metals, though the website belongs to and was exclusively managed by Metro Metals. (Ex. 104.) The listed address under "contact us" was DAV-MN's address in a government office building. (Ex. 111.)

DAV-MN entered into its most recent agreement with Metro Metals in January, 2014. (Ex. 105.) Under the terms of that agreement, Metro Metals fields phone calls from prospective donors, accepts vehicles from donors, and sells the vehicles on behalf of DAV-MN. (Exs. 104; 105.) For this work, Metro Metals receives ■ percent of the gross revenue generated from the monthly sale or salvage of vehicles donated to DAV-MN. (Ex. 105 ¶ 5.1.) Although not provided for in the terms of DAV-MN's January, 2014 agreement with Metro Metals, DAV-MN paid the for-profit Metro Metals for the company's expenses in administering the vehicle donation program, including reimbursing Metro Metals for towing and ■ percent of all advertising costs and auction fees from outside vendors. (Exs. 104; 112 ¶1.)

Attached as Exhibit 113 is a photo of Metro Metals building, located at 2576 Doswell Avenue in St. Paul, Minnesota. Directional signage at the Metro Metals premises states that Metro Metals conducts public auto auctions, the proceeds from which benefit Wheels for Wishes and Disabled American Vets. (Ex. 113.) This tells members of the public that their purchase of a vehicle at Metro Metals will benefit a charity.

The outside of the premises also includes an insignia for "Charity Car Auctions." As discussed previously, Charity Car Auctions is an assumed name of Metro Metals. (Ex. 103.) Metro Metal's website, *charitycarauctions.com*, states that it sells cars on behalf of charities, including Make-A-Wish and Disabled American Veterans. (Ex. 114.) Under the header "Donate a Car to a Local Charity," the website states: "Do you have a vehicle you would like to donate? Donate your car to Wheels for Wishes or Vehicles for Veterans and help a Twin Cities charity today! Proceeds from vehicles donated to Wheels for Wishes benefit the Make-A-Wish Foundation of Minnesota and proceeds from cars donated to Vehicles for Veterans benefit the Disabled American Veterans of Minnesota." (*Id.*) Elsewhere, the website states: "Charity Car

Auctions is a division of Metro Auto Auctions. We are selling cars on behalf of charities, including Make-A-Wish Foundation of Minnesota, Disabled American Veterans and other local charities.” (*Id.*) Another Metro Metal’s website, www.metroautoauctions.com, had similar language as of February 2015. (Ex. 115.) The website’s home page stated: “Specializing in the sale of donated vehicles on behalf of local charities,” including Disabled American Vets and Make-A-Wish. (Ex. 115.) Under a section “Donate a Vehicle,” it stated: “Need a Tax Break? Make-A-Wish is the Answer. Donate your car, motorcycle, boat, camper.” (*Id.*)

In June, 2015, DAV-MN ended its relationship with Metro Metals and directed Metro Metals to stop using the DAV-MN name and logo in its solicitations, including on Metro Metals’ Vehicles for Veterans website. (Ex. 104.) Until July 16, 2015, Metro Metals continued to run advertisements in a St. Paul, Minnesota newspaper using DAV-MN’s name and logo to solicit vehicles. (Ex. 106.) As of September 24, 2015, Metro Metals’ Charity Car Auction website continued to state Metro Metals sells cars on behalf of “Disabled American Veterans.” (Ex. 114.)

C. NFM Also Appears to Have Acted as an Unregistered Professional Fundraiser for DAV-MN.

Although DAV-MN’s agreement was with Metro Metals, it appears that NFM also provided professional fundraiser services to DAV-MN. According to DAV-MN, Metro Metals’ call center was located at NFM’s office building. (Ex. 104.) This is consistent with phone recordings provided to the AGO from DAV-MN, which it received from NFM. (Exs. 124, 125.) For example, in a April, 2015 telephone recording, a donor is told that the call center he reached fields calls for “the Make A Wish Foundation, so...Wheels for Wishes, the Cars to Cure Breast Cancer, which is breast cancer research, and also the Vehicles for Veterans Program, which is for the Disabled American Veterans of Minnesota.” (Ex. 124 p.1.) As such, it appears that NFM—

not Metro Metals—operated the call center for DAV-MN’s vehicle donation program. It is unclear if NFM provided any other additional services to DAV-MN, including designing and placing advertising.

D. Metro Metals and NFM Provided Misleading Information About the Tax Deductibility of Donations.

Like NFM, Metro Metals also appears to have provided donors questionable information about the tax deductibility of their donations. In January 2015, two analysts from the Minnesota AGO made an inquiry at Metro Metals’ office in St. Paul about how charitable car donations work. (Ex. 116.) The Metro Metals employee told them that “we represent three charities, Disabled Veterans, Make-A-Wish Foundation, Breast Cancer Research.” The employee stated that: “We then take the car, put it through an auction, whatever we might get for it in the auction that’s what goes to the charity.” In fact, Metro Metals is not registered with the Minnesota AGO to represent these charities, and it is not accurate that all the auction proceeds benefit a charity.

The Metro Metals employee also told the analysts: “your minimum donation for tax purposes is five hundred dollars” and that “if the car goes for four hundred dollars, you still get five hundred dollars.” (*Id.*) This is not correct. Under federal law for vehicles with a claimed value of \$500 or less, a donor may only deduct the lesser of \$500 or the fair market value of the vehicle. (Ex. 100.) As noted above, CDF was also previously admonished by its auditing firm for providing similarly inaccurate information to donors about the tax deductibility of their donations.⁵

The “why donate your vehicle” section of the website Metro Metals ran for DAV-MN further stated that: “You’ll be eligible for an itemized deduction on your federal tax return.”

⁵ At the time of this audit, CDF did not have any employees, and the call center was staffed by either NFM or Metro Metals employees.

(Ex. 117.) In fact, only about 30 percent of donors itemize deductions on their federal income tax returns such that they are eligible to deduct a vehicle donation. (Ex. 97.)

Based on a review of telephone recordings, NFM also appears to have given donors of DAV-MN similarly incorrect tax information. (Exs. 108, 124.) For example, a NFM representative told one donor that he would be entitled to a “\$500 tax deduction” and he would receive a “preliminary receipt [entitling him]...to the first \$500 tax deduction.” (Ex. 124 p. 3, 6.)

E. CDF’s New Vehicles for Vets MN Campaign is Misleading.

Starting on July 18, 2015, CDF began running daily newspaper advertisements in Minnesota newspapers soliciting vehicles for disabled veterans under the name “Vehicles for Vets MN”. (Ex. 118.) CDF registered the assumed name “Vehicles for Vets MN” with the Minnesota Secretary of State’s Office on July 21, 2015. (Ex. 119.) The newspaper advertisement for “Vehicles for Vets MN” features a uniformed soldier in a wheelchair and states “Proceeds benefit local disabled veterans.” (Ex. 118.) The ad does not mention CDF or NFM. (*Id.*) It directs donors to visit the website “vehiclesforvetismn.org.” (*Id.*)

As of July 20, 2015, persons who visit “vehiclesforvetismn.org” are automatically routed to “www.vehiclesforveterans.org,” a website originally taken out by Metro Metals in 2007 for its “Vehicles for Veterans” campaign for DAV-MN, as discussed above. (Ex. 110.) Attached as Exhibit 120 is a printout of excerpts of the website from July 20, 2015. On its homepage, CDF states “Your car donation helps benefit disabled veterans throughout Minnesota” and “Since 2004, car donations have provided over 2.6 million dollars to charities such as Disabled American Veterans of Minnesota.” CDF has no agreements or affiliations with any veterans groups in Minnesota. (Ex. 121.) As of August 13, 2015, CDF had not made *any* grants or contributions to DAV-MN or any other veterans charity. (*Id.*)

When a Minnesota computer user searches “car donation charity” on Bing, an ad placed by CDF is at the top of the search results. (Ex. 122.) The ad, a link to the *vehiclesforveterans.org* website, has a subheading which states: “Minnesota Disabled Vets Support A Well Known Charity Today!” and “Charity Vehicle Donation for Disabled American Veterans of Minnesota.” (*Id.*) Similarly on Google, when a Minnesota computer user searches “car donation disabled american veterans”, an ad placed by CDF, with a link to the *vehiclesforveterans.org* website, has a subheading which states “Benefit Minnesota Disabled Veterans Support A Well Known Charity Today!” (Ex. 123.) Again, CDF had no agreement, affiliation, or relationship with DAV-MN or any other veterans charity as of August, 2015. (Ex. 121.)

X. CONCLUSION

Transparency is a bedrock principle for charitable solicitations. CDF has obfuscated this transparency by running a solicitation campaign that misleadingly blurs its identity with that of the Make-A-Wish charities. Minnesota residents who donated vehicles to CDF have told the Minnesota Attorney General’s Office that they believed they were donating their vehicles directly to Make-A-Wish. These donors did not appear to appreciate that approximately 80 percent of their donations were not used in furtherance of charitable activity, nor were donors aware that a significant portion of their donations benefited two private for-profit corporations owned by the two individuals who founded and manage CDF. CDF’s latest solicitations promising help to disabled veterans are also misleading.

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BEFORE THE HUMBOLDT COUNTY PLANNING COMMISSION

**In re: Partial Transcript of Adesa LLC Planning
Commission hearing of 9/3/2020**

Planning Commission members:

- John Ford, Director**
- Alan Bongio, Chair**
- Noah Levy**
- Melanie McCavour**
- Brian Mitchell**
- Michael Newman**
- Peggy O'Neill**
- Ronnie Pellegrini**

Reported by: Tania N. Brunell, CSR No. 4277

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PARTIAL TRANSCRIPT OF ZOOM HEARING AS FOLLOWS:

* * *

COMMISSIONER BONGIO: Public 7454.
Unmute yourself.

MR. SAWATSKY: Kent Sawatsky. Thank you for
the opportunity to speak.

I am against this project for a lot of reasons.
They've already been spoken, most of them.

It's a new project, a new project, and why
would -- I mean, unless they bought the generators,
there's no reason why they wouldn't be doing something
other than generators.

This is -- I just drove by coming back and
forth, a wonderful heard of elk. Wildlife corridor, I'm
worried about. Has there been an elk study? These elk
are coming around in big herds up there. I put up a
\$2,500 reward when three of them were killed in the
Maple Creek area, so they are of concern to me. And the
corridors they need are a concern to me. Mother
nature's kind of sending a message. She's doing a --
the Sudden Oak really bothers me.
cumulative impacts bother me. Allegedly, there was a
threat of litigation. Wasn't there a threat of
litigation. I highly recommend you deny, kick the can

1 to the sups.

2 You just passed a wonderful thing, where the
3 small growers -- well, how many jobs are we creating
4 there? I don't know; maybe 200 jobs versus -- it just
5 seems that we're throwing mother nature under the bus
6 here a little bit. And so I'm going to stand against
7 this one.

8 Thank you for my opportunity to speak on this
9 particular topic.

10 COMMISSIONER BONGIO: Ron Wilson.

11 MR. WILSON: Good evening. I've spoken before,
12 and I'm still concerned about the water quality of Cowan
13 Creek, being as our property is immediately adjacent
14 downstream of that, and even though the plan seems to
15 spell out a lot of specifics, as far as being organic, I
16 don't necessarily -- maybe it's a question -- is I don't
17 necessarily see where they are bound to that, and my
18 concern is the possible introduction of chemicals or
19 diesel or anything into that creek.

20 And another statement in a letter written to
21 the board, it was stated that the site was only visible
22 from Green Diamond and their own property. It is maybe
23 not a big issue, but it is also visible from our
24 property. But that was conveniently left out. And I am
25 one owner and I'm not terribly concerned about that, but

1 there were five other owners, and maybe somebody should
2 ask them if they're -- if that bothers them. But we
3 have received virtually no contact between the
4 development -- during the development of this project.

5 Thank you for hearing me. Bye-bye.

6 COMMISSIONER BONGIO: Thank you.

7 (Portion herein not transcribed.)

8 COMMISSIONER BONGIO: I'm going to close public
9 comment now and bring it back to the commission. I want
10 to also note that we have two members, I believe, from
11 California Fish and Wildlife, and if the commission has
12 any questions for them, this is the opportunity to ask
13 them.

14 Yes. And if either of the members from
15 California Fish and Wildlife would like to speak, feel
16 free to speak up now, and then we may have some
17 questions for you.

18 MR. VAN HATTEM: Sure.

19 Welcome. Thanks to the commissioners, and it's
20 nice to see you commissioners. It's been some time
21 since I've been around.

22 My name's Mike Van Hattem. I'm a senior
23 environmental scientist with the California Department
24 of Fish and Wildlife. I'm normally based in the Eureka
25 office. Today I'm based in my house like the rest of

1 you. These are unusual times.

2 So I had a chance today to look back at the
3 previous commission meeting on this topic, and it was
4 discussed that our letter had several inaccuracies. We
5 met with John Ford and Cliff Johnson and discussed the
6 letter that we authored, and, as a result of that, we've
7 now put together some talking points which I'd like to
8 deliver at this point. And then also mention that Scott
9 Bauer is here as well. He has a much greater
10 understanding of the ordinances than I do. But I am
11 here to answer questions as well, and I note that there
12 were inaccuracies on the document itself as well that
13 are worth discussing.

14 So with that, I just want to rattle off this
15 page of points, and then, again, we're here to talk as
16 you have questions.

17 So, as you know, we sent a comment letter on
18 the MND -- of course, Mitigated Negative Dec. --
19 explaining the (inaudible) standard. We all need to
20 keep that in mind. Since then, since we met with
21 Director Ford and Cliff Johnson, here is the status of
22 our position on these issues.

23 So kind of going from the top to the bottom of
24 our letter, the first point was regarding deferred
25 mitigation and the Streambed Alteration Agreement. This

1 project has been long in the making and CDFW hasn't
2 addressed LSA's Stream Alteration Agreement in process
3 that included a pond removal project that lives within
4 the footprint of the cultivation project proposal.

5 We believe the pond removal should have been
6 evaluated as part of the whole project. However, since
7 pond removal is a positive result for resources in this
8 stream system, it is not a significant issue for CDFW.

9 Regarding mixed-life cultivation, there is
10 ample but not quantitative evidence demonstrating
11 cultivators' noncompliance with the county's light
12 pollution ordinance standards. The department stands by
13 its recommendation that the MND should assess the
14 potential impacts of noncompliance and include
15 mitigation measures to ensure compliance.

16 Regarding habitat fragmentation in oak
17 woodlands, these topics are related. The project on its
18 surface does not show extensive direct impacts to
19 riparian and oak woodland habitat. However, due to its
20 size and location within and adjacent to two streams of
21 habitat, CDF believes there are appropriate substantial
22 and direct impacts that have not been adequately
23 disclosed, analyzed or mitigated.

24 Regarding the rainwater attachment ponds, CDFW
25 believes in order to avoid extraction of bullfrogs and

1 wildlife in open water, these types of storage
2 facilities -- remember we're talking about facilities
3 here; it's not habitat -- let me see. I lost my point
4 here. Should include fencing that excludes colonization
5 and use, which would limit future management needs.

6 And, again, Cliff addressed this early on
7 today, which I appreciate, but I also note that we
8 really don't want to see any wildlife in these
9 facilities. I have been on cultivation sites where
10 bears were in lined ponds, bears, pot line ponds. My
11 point is, these are facilities, they should exclude all
12 wildlife, large or small.

13 Phasing in climate change. The county pointed
14 out the MND includes mitigation requiring the project to
15 be 80 percent renewable on day one. If that is the
16 case, issue is resolved. The problem with the document
17 was that it was a little bit challenging to discern
18 that, and I still think the mitigation measure should
19 stay on day one. If that's what the county is saying
20 now, we're fine with it.

21 And then our last bullet before I have two
22 other statements is that -- regarding the Surface Mining
23 Reclamation Act and the rocking of the road. That's a
24 simple recommendation to address, and we would like to
25 see that addressed, meaning that any rocked roads, any

1 material used for rock roads comes from a permitted
2 -- smart permitted site. We've had extensive illegal
3 mining in this county and we don't want to see any more.

4 The elephant in the room is what I want to talk
5 about now. There is an additional issue that is the
6 elephant in the room the department would like to raise,
7 the approval of large industrial cultivation sites on
8 remote wildlands. When the ordinance and original MND
9 were circulated, the inclusion of some additional
10 sites like Adesa, was not what the department thought
11 was approved. The MND relies on a siting -- on siting
12 on prime ag soils, which most existing mapping is
13 located -- which most of the existing mapping is located
14 on the bottomlands that are currently ag.

15 Question for the planning commission: Is this
16 what you thought was intended? Do you want large
17 industrial cultivation sites in remote wildlands of your
18 county?

19 One last point: At the last commission
20 meeting, the validity of the department's position in a
21 letter was in questions. Let me state the obvious.
22 A letter signed by the regional manager is the
23 department's position, and questioning of that only sows
24 seeds of doubt and rumors that degrades the process and
25 the efforts by CDFW to provide input to the planning

1 process.

2 And with that I'm happy to take your questions.
3 Thank you so much.

4 COMMISSIONER BONGIO: Thank you, Mike.

5 Any questions for Mike?

6 Go ahead, Noah.

7 COMMISSIONER LEVY: Hi.

8 It's not so much a question, although I may
9 still have one, but I just first wanted to acknowledge a
10 couple things and thank Mr. Van Hattem for speaking here
11 and appearing before us. I really, really appreciate
12 his input. Some of the concerns that I have about this
13 project have been resolved by these mitigations and by
14 what Mr. Van Hattem just said.

15 And I also want to just, you know, apologize
16 for the comment that I made about rumors of division
17 between local DFW staff and the regional department. So
18 also, since I did put it out there, that I was privy to
19 something last meeting that EPIC, the nonprofit group
20 that I'm still a part of, on its board, had submitted a
21 PRA request to try to get to the bottom of that
22 question, of what the internal department discussion of
23 this project was. I have no new information. EPIC has
24 no new information. There's nothing more to say. I
25 just wanted to make that sort of ex parte exclusion,

1 that all I know is that there's nothing more -- no
2 documents have been turned over yet, so there's nothing
3 -- there's nothing there.

4 But more importantly, I -- I appreciate that
5 Mike said in particular, that the concerns about climate
6 and fuel use and things like that have been essentially
7 mitigated by this -- by these mitigations, and also
8 about the pond, I think. And I guess -- I guess I would
9 -- just to boil all this down to a question. You know,
10 we -- we do have some -- we as a community, as a
11 commission, have some mixed feelings about a big project
12 like this happening in a remote special extremely
13 biodiversity-rich place like this. The idea has always
14 been that, by having this ordinance, we would -- we
15 would improve what was already happening. Okay? We
16 would clean up; we would require applicants to clean up
17 lands that have been somewhat degraded and had a
18 detrimental effect on the wildlife and biodiversity.

19 This project is a little different because it's
20 new. It's not cleaning up an existing site. But all
21 that said, do you think that -- you know, but there have
22 been some things like the pond removal and relocations,
23 is a great example of this. I mean, does the department
24 support this project? I'm still sort of trying to get
25 to the bottom of whether the Department of Fish and

1 wildlife feels that this is a good thing to approve.
2 It's clear that these applicants have worked hard to
3 comply with a lot of requirements, but I think that's --
4 that's kind of the issue that's causing us heartburn.

5 So I'd still love to hear more from the
6 department on that core essential question.

7 Thank you.

8 MR. VAN HATTEM: Sure. And I encourage Scott
9 to jump in if he wants.

10 You know, we're not in a position to approve or
11 deny a project. We certainly have opinions about this
12 project. You know, again, like I pointed out at the
13 bottom of our punch list there, we were under the
14 impression that we wouldn't see these types of projects
15 proposed new under the existing -- none of these
16 ordinances. We thought prime ag meant where it's mapped
17 on Humboldt web GIS, where ag is already occurring. So,
18 you know, we live in the CEQA world. You are the lead
19 agency. We have opinions. We may or may not be able to
20 make significant arguments. You know, mitigated neg.
21 dec. is a mitigated neg. dec.; that's the middle
22 document between the CX and the EIR. You know, we -- we
23 don't go there. If we did go there, our letter would be
24 different. It would -- when we make significant
25 arguments, they're robust, we stand behind them, and --

1 and you know it, because we'll ask for things like, in
2 this case, you should do an EIR. We'll say it. At
3 least for the issues that we own. Of course, we only
4 own a fraction of the CEQA issues.

5 The fuel trucks make me very nervous. They can
6 become our issue when they go into the creek. I hope
7 that doesn't happen. But, nevertheless, we are not the
8 approving body for this, you all are, and that's really
9 what I can say.

10 COMMISSIONER BONGIO: Thank you, Michael.

11 Any other questions for Michael?

12 Scott, do you have anything you'd like to add?

13 Okay.

14 Okay. So it's back to --

15 Go ahead.

16 MR. BAUER: Scott here.

17 No, I just want to say that Mike -- Mike
18 covered all our issues. You know, he did a -- he did a
19 great job. So thank you for letting us have the time to
20 discuss them.

21 COMMISSIONER BONGIO: Thank you both for coming
22 to -- or participating tonight. I know you have better
23 things to do, so appreciate it very much.

24 MR. BAUER: Thank you.

25 COMMISSIONER BONGIO: All right. Bringing it

1 back to the commission for deliberation. Anybody have
2 any questions, want to start the discussion?

3 Go ahead, Ronnie.

4 COMMISSIONER PELLEGRINI: I'd like to start out
5 with a motion.

6 COMMISSIONER BONGIO: That works.

7 COMMISSIONER PELLEGRINI: All right. I'd like
8 to move to find the project exempt from CEQA and to
9 adopt the resolution denying the proposed Adesa LLC
10 project due to its adverse impact on the public welfare
11 for all of the previously stated reasons.

12 COMMISSIONER BONGIO: We have a motion on the
13 floor. Do we have a second?

14 COMMISSIONER O'NEILL: I'll second it.

15 COMMISSIONER BONGIO: That motion's second.
16 Is there any discussion on the motion?

17 Seeing none, I would call for the --

18 Oh, Noah, do you have your hand up? I thought
19 that was a --

20 MR. LEVY: Yeah, yeah, yeah. Thank you. I
21 mean, I appreciated -- you know, 9:08, so on a certain
22 level, it's time to move this along to a vote. But I
23 just wanted to put it out there, a couple of things,
24 because I truly -- I feel very torn by this project.

25 One thing is that I see this applicant and

1 their track record as having been receptive to the
2 mitigations that are asked of them. And those
3 mitigations basically are driven by the ordinance, you
4 know, so I feel a little bit like, and Mike Van Hattem
5 really underscored, that this is a little bit of a case
6 of unintended consequences. You know, we wrote an
7 ordinance. It said what situations can allow for new
8 cultivation. We didn't -- I think it's fair to say, we,
9 as a commission of the county, didn't necessarily intend
10 it to be in this location. But this location apparently
11 complies. Certainly that's what he said about the
12 Department of Fish and Wildlife perspective. As far as
13 I can tell, although I -- you know, I'm willing to be
14 corrected on this -- this applicant and the various
15 professionals that they have working for them are
16 willing to make modifications, and have been willing to
17 make modifications, to comply with the concerns that the
18 county has.

19 And so I at least wanted to put on the table
20 before we deny this -- I mean, I know there is now a
21 motion -- is that maybe there's a version of this
22 project that has some additional mitigations that can
23 make it a little bit more palatable to -- to everybody,
24 to the commission.

25 I think my AirPad just died. I hope you can

1 still hear me.

2 But -- but that's -- that's what I wanted to
3 say, is that, you know, maybe -- maybe we don't have to
4 see this as approve it or deny it. There's already been
5 additional mitigations. There has been a certain amount
6 of discussion of, you know, couldn't they just get the
7 generators out altogether and make it a full-sun
8 operation. I know that changes the economics. I don't
9 totally understand how that changes the economics, but
10 it does. But, you know, there's been a lot of
11 investment in this project, and I'm frankly pretty
12 uncomfortable with just a full -- full-on saying no
13 when, as far as I can tell, these applicants have really
14 jumped through all the hoops that our rules said they
15 have to jump through. And yet we're sort of
16 uncomfortable with it because it presents a bit of a --
17 a -- you know, sort of an inherent contradiction in what
18 we thought our ordinance was going to allow and what it
19 can result in. But I just wanted to put that out there.

20 COMMISSIONER BONGIO: Thank you, Noah.

21 Brian has his hand up.

22 Go ahead, Brian.

23 COMMISSIONER MITCHELL: Thank you, Mr.

24 Chairman.

25 I just want to -- I disagree with what Noah

1 said and say it maybe a bit more strongly.

2 I think it's extremely inappropriate that an
3 applicant has spent four years working on the project,
4 countless thousands of dollars or maybe more than that,
5 and we don't even give them the courtesy of a
6 discussion. It's clear that people's minds are -- are
7 made up, but I feel that if a project meets all of the
8 requirements that we, the county, have put in place,
9 then that project should be either modified and so we
10 feel comfortable approving it or --

11 Thank you, Brian.

12 Mike, do you have your hand up?

13 COMMISSIONER NEWMAN: Yes, I was going to voice
14 the same concerns and what Commissioner Levy and
15 Mitchell have voiced, which is, this project meets all
16 of the requirements that the ordinance is asking for,
17 and I feel uncomfortable in denying a project such as
18 this without any other due process. They've jumped
19 through all the hoops, and the ordinance was written as
20 it was, and I -- I would be remiss in voice -- in not
21 voicing my opinion, that I cannot feel good about
22 denying this project outright.

23 COMMISSIONER BONGIO: Thank you, Mike.

24 Melanie, you have your hand up.

25 COMMISSIONER MCCALOUR: Yes, thank you.

1 I just wanted to speak also before it went to a
2 vote so that the public is aware how -- what we're
3 thinking on this.

4 I have a -- I have a problem with denying this
5 project as well. We have talked a lot about promoting
6 small farmers. Small farms, small grows, and that is
7 important, but it's not the same thing as having a
8 project in front of us that meets all of the
9 requirements for the legal CEQA documents that we have.
10 So, you know, while we are perhaps looking at modifying
11 things for the future and we are looking at policies
12 that promote smaller farms, that doesn't mean that we
13 then can go ahead and just start denying larger ones
14 that -- you know, that have met all of the requirements.
15 I mean, we have to work with what we have. I mean, the
16 time to make those adjustments would have been before
17 when we had that opportunity, when most of us, I think,
18 on the commission weren't here.

19 So in my view, this project does meet all of
20 the requirements. You know, my personal feeling is that
21 outdoor is better. It's also cheaper, healthier, higher
22 in terpenes, all of that, but our job is to, you know,
23 relay questions that are posed to us by the public and
24 discuss -- discuss those, but also, importantly, to see
25 whether it meets the legal requirements. And this one

1 clearly does.

2 As far as the environmental impacts go, it is
3 an area with a lot of logging. I myself have some
4 logging experimental trials up in the area. And, you
5 know, while those undergo their own environmental review
6 and meet those, it's undeniable that the road impacts
7 are going to be greater for logging than for this. So
8 -- and all of the other ones, like I said, they undergo
9 their own review, and so that -- you know, that's
10 immaterial, that they both met their environmental
11 requirements. It's not really our job to compare those
12 two industries.

13 So I'm not in favor of denying the permit.

14 Thanks.

15 COMMISSIONER BONGIO: Thank you.

16 Ronnie, I see you got your hand up.

17 COMMISSIONER PELLEGRINI: I do certainly
18 appreciate my fellow commissioners' comments on this,
19 but I still go back to some of the early concerns with
20 the groundwater replenishment and the concerns that the
21 Humboldt Bay Municipal Water District addressed, and --
22 you know, and there are other -- other environmental
23 issues that are of concern to me, and were kind of
24 emphasized in the presentation by the Fish and wildlife
25 service tonight. Yes, we can mitigate some things, but

1 we can't mitigate for everything, and we do -- the
2 responsibility lies with us, as the planning commission,
3 you know, to -- to -- to deny or to approve this permit,
4 and I just think it is not the right place. I mean,
5 I've heard it over and over and over about the
6 industrial size of this in such a remote area and the
7 detrimental effects it's going to have on the whole
8 basin. And I can't say that strongly enough.

9 COMMISSIONER BONGIO: Thank you, Ronnie.

10 I'm going to chime in on this one like I
11 usually do at the end. I want to disclose that I went
12 up and drove through the area, not on the property but I
13 drove Mad River -- or Maple Creek Road, that area. I
14 know the area pretty well anyhow.

15 I've been against this project from the start.
16 There's many reasons I stated. I -- I think they did a
17 good job of mitigating a lot of them, but what I'm going
18 to say is, I drove through a lot of parts of this county
19 and some of them have just been absolutely destroyed
20 because of cannabis. I've brought that up before. I
21 know this is its own project, but we don't have to let
22 happen everywhere in this county what's happened to a
23 beautiful place called Honeydew and other places like
24 Alderpoint and Blocksburg. You can just go down the
25 list. This area has not yet been obliterated with hoop

1 houses and everything else that comes with it. You
2 know, the road issues in there are -- are an issue. You
3 can say they aren't, but that road is not up for the
4 kind of traffic that it's getting right now. Okay?
5 It's not up for the logging traffic, but that's a whole
6 nother issue.

7 So, with that, you know where I stand. We have
8 a motion and we have a second on the floor. I'm going
9 to call for the vote. Had a lot of discussion on it.
10 We need to get this wrapped up tonight, and
11 unfortunately we're not going to get to our next one
12 because of the late hour.

13 So with that, I would ask Suzanne to call for
14 the vote.

15 THE CLERK: Yes, sir.

16 Commissioner Bongio?

17 COMMISSIONER BONGIO: No.

18 THE CLERK: Commissioner Pellegrini?

19 COMMISSIONER PELLEGRINI: No.

20 COMMISSIONER LEVY: No, no wait. The motion
21 was to deny, you know.

22 COMMISSIONER BONGIO: That's a good point. I'm
23 going to ask Ronnie to restate --

24 MS. PELLEGRINI: I move to find the project
25 exempt from CEQA and adopt the resolution denying the

1 proposed Adesa LLC project due to its adverse impact on
2 the public welfare.

3 COMMISSIONER BONGIO: Thank you, Ronnie.
4 Does the second still concur with that?

5 COMMISSIONER O'NEILL: Yes.

6 COMMISSIONER BONGIO: All right. So we have a
7 motion and a second.

8 Now we do a roll call.

9 THE CLERK: Yes.

10 Commissioner Bongio?

11 COMMISSIONER BONGIO: Yes.

12 THE CLERK: Commissioner Pellegrini?

13 COMMISSIONER PELLEGRINI: Yes.

14 THE CLERK: Commissioner Levy?

15 COMMISSIONER LEVY: No.

16 THE CLERK: Commissioner Newman?

17 COMMISSIONER NEWMAN: No.

18 THE CLERK: Commissioner O'Neill?

19 COMMISSIONER O'NEILL: Yes.

20 THE CLERK: Commissioner Mitchell?

21 COMMISSIONER MITCHELL: No.

22 THE CLERK: Commissioner McCavour?

23 COMMISSIONER MCCALOUR: No.

24 COMMISSIONER BONGIO: It appears that the no's
25 have it four to three, so the project --

1 MR. FORD: What just happened is the motion
2 failed, so now what the commission needs to do is
3 formulate a motion that will pass.

4 COMMISSIONER MITCHELL: I would like to make a
5 motion. I'd like to move that we close the public
6 hearing, adopt a mitigated negative declaration prepared
7 for the Adesa Organics, LLC project, pursuant to Section
8 15074 of the state CEQA guidelines, make all the
9 required findings of the (inaudible) of the conditional
10 use permit based on evidence in the staff report and
11 adopt the resolution approving the proposed Adesa
12 Organics, LLC project subject to the recommended
13 conditions.

14 And I would additionally like to add one
15 additional mitigation measure, which is that the
16 generators are only allowed for the first two years, and
17 that they have to be fully based on renewable resources
18 and renewable energy after two years.

19 COMMISSIONER McCAVOUR: I'll second it.

20 COMMISSIONER BONGIO: We have a motion to
21 second.

22 Seeing none --

23 Melanie, do you have -- no, I guess you didn't.
24 I'm sorry.

25 So with that, Suzanne, call for the vote.

1 THE CLERK: Okay.
2 Commissioner Bongio?
3 COMMISSIONER BONGIO: No.
4 THE CLERK: Commissioner Pellegrini?
5 COMMISSIONER PELLEGRINI: No.
6 THE CLERK: Thank you.
7 Commissioner Levy?
8 COMMISSIONER LEVY: Yes.
9 THE CLERK: Commissioner Newman?
10 COMMISSIONER NEWMAN: Yes.
11 THE CLERK: Commissioner O'Neill?
12 COMMISSIONER O'NEILL: No.
13 THE CLERK: Commissioner Mitchell?
14 COMMISSIONER MITCHELL: Yes.
15 THE CLERK: Commissioner McCavour?
16 COMMISSIONER MCCALOUR: Yes.
17 THE CLERK: Thank you.
18 COMMISSIONER BONGIO: So the motion carries
19 with the four-three vote; and approve the project.
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REPORTER'S CERTIFICATE

I, TANIA N. BRUNELL, Certified Shorthand Reporter, State of California, certify:

That the foregoing proceedings were stenographically reported by me and thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

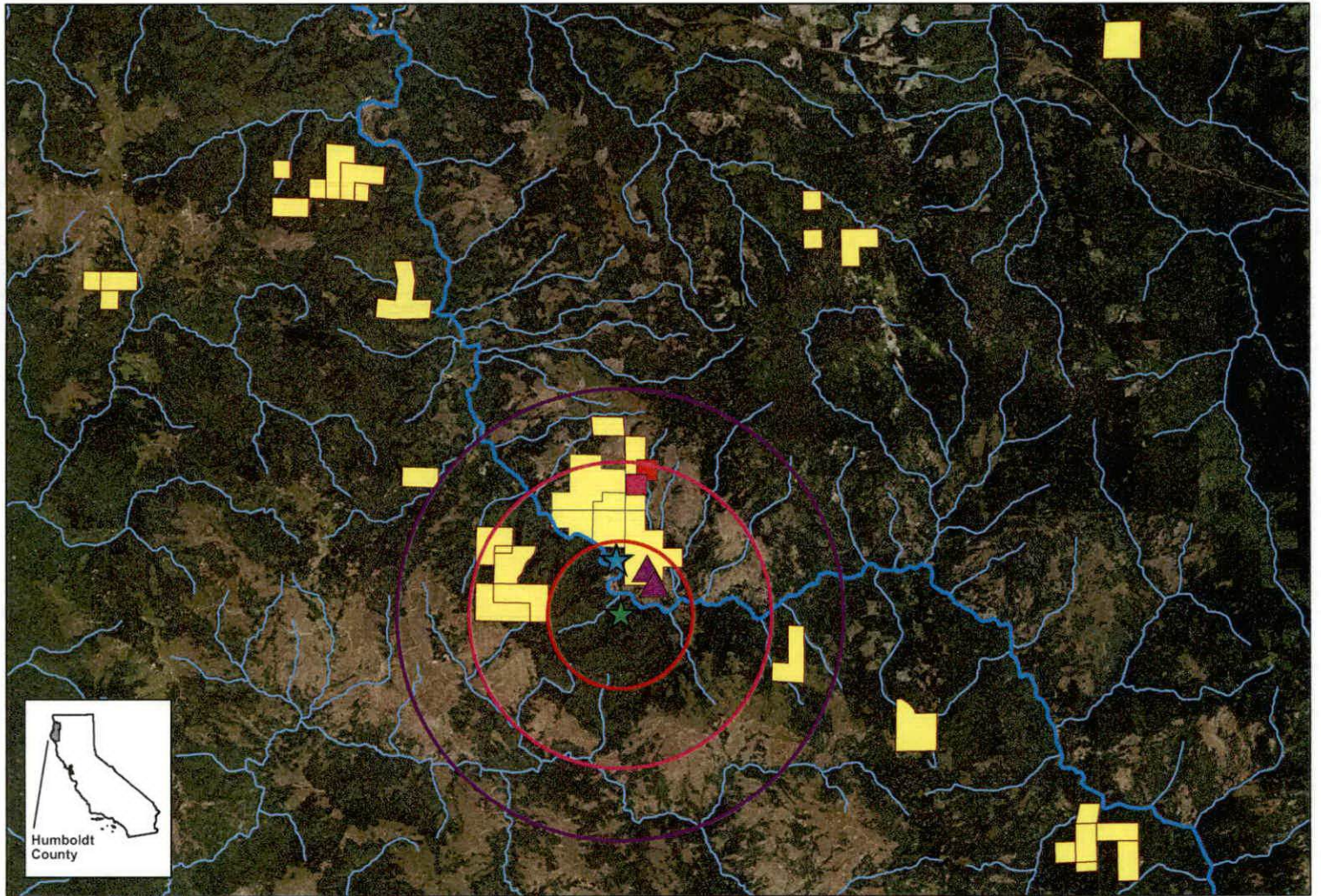
I further certify that I am not a relative or employee of any attorney or any of the parties, nor financially interested in the action.

DATED this 18th day of October, 2020.

TANIA N. BRUNELL, CSR No. 4277

Adesa – Planning Commission talking points

- CDFW sent a comment letter to Humboldt County planning -commenting on several resource issues in the MND
- Since then we have met with John Ford and Cliff Johnson – and here is the status of our position on these issues:
 - Deferred Mitigation and LSAA – this project has been long in the making, and CDFW had a draft LSA in process that included a pond removal project that lies within the footprint of the Cultivation project proposal. We believe the pond removal should have been evaluated as part of the ‘whole’ project. However, since pond removal is a positive result for resources in this stream system, it is not a significant issue for CDFW.
 - Mixed Light Cultivation – there is ample but not quantitative evidence demonstrating cultivators non-compliance with the County’s light pollution ordinance standards. The Department stands by this recommendation that the MND should assess the potential impacts of non-compliance, and include mitigation measures to ensure compliance.
 - Habitat Fragmentation and Oak Woodlands – these topics are related. The Project on its surface does not show extensive direct impacts to Riparian and Oak Woodland habitats, however, due to its size and location within and adjacent to two streams and habitats, CDFW believes there are potential substantial indirect impacts that have not be adequately disclosed, analyzed or mitigated.
 - Rainwater Catchment Pond – CDFW believes in order to avoid attraction of bullfrogs and wildlife to open water, these type of storage facilities should include fencing that excludes colonization and use, which would limit future management needs. CDFW will be providing the County with example language standards that could be applied.
 - Phasing and Climate Change – the County pointed out that the MND included a mitigation requiring the Project to be 80% renewable on day one. Issue is resolved.
 - Surface Mining and Reclamation Act – we did not discuss this with Planning staff. It is a simple recommendation to address.
- There is an additional issue that is the elephant in the room the Department would like to raise – the approval of large industrial cultivation sites on remote wildlands. When the Ordinance and original MND were circulated, the inclusion of some additional sites like Adesa was not what the Department thought was approved. The MND relied on siting on Prime Ag soils, which most existing mapping is located in bottomlands that are currently Ag. Question for the Planning Commission – is this what you thought was intended? Do you want large industrial cultivation sites in remote wildlands of your County?
- One last point – at the last Commission meeting the validity of the Department’s position and letter were questioned. Let me state the obvious - a letter signed by the Regional Manager IS the Department’s position and questioning that only sows seeds of doubt and rumor that degrades the process and the effort by CDFW to provide input to the Planning process.
- I am happy to take questions. Thank you.



Location of Parcels Associated with Approved or Pending Industrial Grow Sites in the Vicinity of the Maple Creek Eagles. 2020.



From: "Sanville, Cheri@Wildlife" <Cheri.Sanville@wildlife.ca.gov>
Subject: Potential for impacts RE: Golden Eagle habitat information -
Adesa Organics
Date: November 27, 2019 at 2:32:38 PM PST
To: "Johnson, Cliff" <CJohnson@co.humboldt.ca.us>
Cc: "Ford, John" <JFord@co.humboldt.ca.us>, "Babcock, Curt@Wildlife"
<Curt.Babcock@wildlife.ca.gov>

Hi Cliff,

Golden eagles are protected by the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c; hereafter, Eagle Act), the Migratory Bird Treaty Act (16 U.S.C. 703-712), and various state regulations and guidelines. The Eagle Act is the primary law protecting golden eagles in the U.S. (USFWS 2009). The Eagle Act prohibits unauthorized 'take' of eagles. Take includes to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3)." The U.S. Fish and Wildlife Service (hereafter, Service) defined the word 'disturb', as used in the Eagle Act, to mean "...to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (USFWS 2007:2)." In contrast with the Service's definition of disturbance, researchers often simply define human disturbance as activities that disrupt an animal's normal physiology or behavior (Knight and Skagen 1988, Frid and Dill 2002, Romero 2004). Golden eagles are fully protected under state law in California.

Use of CWHR

CWHR is a coarse-scale model that predicts the relative suitability of habitat for particular species. It is not meant to evaluate

habitat within a known active eagle territory and to draw conclusions about the relative value of that habitat. The difference between "°high"± and "°medium"± suitability is the presence of conifer forests (presumably for nest sites), and much of what CWHR predicts as high suitability in other parts of our region do not have any eagle territories. CDFW does not consider any of the large scale modeling, such as CWHR, to be appropriate for determining potential impacts at the scale of individual projects.

We already know that the eagles are present on this particular territory, and have been successfully breeding for years. Therefore, SHN's reports that attempt to differentiate between high and moderate habitat suitability for eagles is essentially a moot point because we already know the eagles are present and using the habitat.

Please note the disclaimer in the CWHR Training Manual:
"°Ultimately, the CWHR user is responsible for proper system use, while CDFG and CIWTG are responsible for improving the system and promoting proper use. The system is not perfect (see Accuracy of the CWHR Database), and users must acknowledge and accept these inaccuracies when using CWHR. If error-free predictions about wildlife habitat-relationships are needed for whatever reason, then CWHR should not be used. However, if relatively course-scale habitat-relationships models are needed for a variety of predictions about regularly-occurring California wildlife, then CWHR is an appropriate tool. CDFG and CIWTG are responsible for operation, maintenance, and improvement of the system, as well as training users in appropriate use. Yet, no one but the CWHR user is responsible for system

use and output interpretation.

The credibility of the CWHR system, its developers and managers, and wildlife biologists all

suffer when the system is used inappropriately or inadequately.”± CWHR Training Manual at p. 7.

Direct Project Related and Cumulative Impacts

Per communication with USFWS, if recommended temporal (avoid the breeding season for construction) or distance buffers (generally one mile unless blasting or other loud non-regular noise is involved) cannot be implemented, take under the bald and golden eagle protection act is likely to occur. If buffer incursions occur, the duration and intensity matters. If habitat will be lost, enough so that it would likely prevent eagles from successfully breeding or cause the loss of a breeding territory, that is considered take. Anything that prevents eagles from being able to breed, temporarily or long term, is considered take. If enough habitat is lost, or made unavailable for eagle use, that could cause the loss of a breeding territory. Bald eagles are generally much more tolerant of human presence than golden eagles. For the most part, when humans move into an area, golden eagles move out (territory loss) although some low levels of activity, ranching, for example, is fine and compatible. Displacement of eagles from a breeding territory equates to the loss of a breeding territory on the landscape, and adult eagles will often kill other adult eagles when displaced and competing for a breeding territory. Secondary poisoning from rodenticides and lead shot (from eating hunting spoils or ground squirrels shot for sport) are big problems for eagles too and is something else to consider depending on the nature of specific projects.

The following is gleaned from some of the attached publications, publicly available guidance documents and GOEA experts:

Cumulative effects are defined as: "the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions"± (50 CFR 22.3). Numerous relatively minor disruptions to eagle behaviors from multiple activities, even if spatially or temporally distributed, may lead to disturbance that would not have resulted from fewer or more carefully sited activities. The accumulation of multiple land development projects or siting of multiple infrastructures that may be hazardous to eagles can cumulatively reduce the availability of alternative sites suitable for breeding, feeding, or sheltering, resulting in a greater than additive risk of take to eagles. To ensure that impacts are not concentrated in particular localities to the detriment of locally important eagle populations, cumulative effects need to be considered at the population management level"RService Regions for Bald Eagles and Bird Conservation Regions for Golden Eagles"Rand, especially for project-specific analyses, at local area population levels (the population within the average natal dispersal distance of the nest or nests under consideration). Eagle take that is concentrated in particular areas can lead to effects on the larger management population because 1) disproportionate take in local populations where breeding pairs are 'high' producers may reduce the overall productivity of the larger population; and 2) when portions of the management population become isolated from each other the productivity of the overall management population may decrease.

Disturbance that is subtle or temporary but chronic could have cumulative effects on fitness. For instance, repeated disturbances may result in decreased reproduction through changes in behavior, such as reduced parental care or abandonment of the nest or territory (e.g., White and Thurow 1985). Repeated exposure to stressors can also compromise an animal's reproduction or survival through cumulative negative effects on its physiology (Wingfield 1988, Sapolsky et al. 2000, Busch and

Hayward 2009). It is possible for human activities to cause both short- and long-term disturbance; for example, construction of roads or cultivation related infrastructure could lead to short-term disturbance during the construction phase and long-term disturbance during operation and maintenance.

Human activities may also negatively impact eagles outside the breeding season (USFWS 2007). Survival of golden eagles could be negatively affected by human activities that decrease foraging efficiency or increase energy expenditures (Frid and Dill 2002); particularly during winter when many individuals may already be energetically stressed due to cold temperatures and reduced prey availability (Newton 1979). Reproduction of golden eagles could likewise be impacted by human disturbance outside the nesting season; for example, if individuals are unable to attain adequate breeding condition due to lost foraging opportunities or wasted energy (Newton 1979, Hirons 1985, Martin 1987). It might therefore be important to protect golden eagles from human activities outside the breeding season, as well as during it.

Solely buffering currently used nests could inadequately protect golden eagles from human disturbance. Activity by male golden eagles at used nests is generally limited to prey delivery or briefly relieving the female during incubation or brooding (Collopy 1984, Watson et al. 2014a). Male golden eagles often rest on perches in view of used nests but are also frequently active in other parts of their home ranges (Watson et al. 2014a). Because males provision females and offspring during the nesting season, chronic disturbance of them while foraging might negatively affect reproduction. Reproduction might also be affected if parents or offspring are disturbed after the young fledge and are active beyond the area immediately surrounding the nest. In southwestern Idaho, golden eagles perched away from nests were 12 times more likely to flush in response to recreationists than eagles at nests (Spaul and Heath in press). This suggests

that frequent human activity away from used nests could result in chronic disturbance of foraging golden eagles and thus, reduced foraging success or provisioning rates.

Two significant questions remain with respect to the impacts of all or any one of the multiple projects proposed for this GOEA territory.

1. Cumulative Impacts analysis

a. The attached map and table shows the HumCo planning applications for cannabis cultivation and associated development within the habitat core for the GOEA territory. Please note that there may be additional proposals for cannabis cultivation and other development that are foreseeable, as the data we used was from April 2019.

b. Also attached is the letter from HumCo to Mad River Estates, that makes a formal finding of significance under CEQA and references the GOEA, among other impacts. This county letter coupled with the multiple proposals makes clear that there is a potential for cumulative impacts.

c. As communicated by Sandra Hunt-von Arb to CDFW, "°Your request for clarification on the scope of my assessment: I assessed the impacts of the AMT project on the Big Bend Mad River Golden Eagle Territory. I have only discussed the project itself, its relation to the known eagle territory in the area, and have not discussed any of the other proposed projects in the vicinity other than shared golden eagle survey information that I was able to attain. My statements in all these letters say it is my professional opinion that the AMT project will not cause a significant negative impact to Golden Eagles. They do not state that there are or are not potential cumulative impacts with consideration of other proposed projects in the area."±

2. Additional survey data needed to determine the habitat core and the potential for alternate nest sites

a. Protocol level surveys (USFWS guidance) were not conducted on the Adesa properties in 2018 or 2019. The 2018 survey effort for Adesa was late in the year, very short in duration, and distracted. On May 30, 2018, Andrew Orahoske was conducting the site visit with the SHN biologist (and others), and simultaneously evaluated many stream crossing, reservoirs and the proposed project footprint. While they were there for many hours, he can attest that the SHN biologist did not conduct a protocol level GOEA survey because of the LSAA site inspection (draft LSAA includes 31 encroachments). Also, on May 30, 2018, I accompanied Kalyn Bocast and USFWS, John Hunter to Mad River Estates, where the GOEA was observed. Similarly, during the June 19, 2018 site inspection, the SHN biologist and others were primarily evaluating the LSAA projects, and while the SHN biologist did conduct a stationary survey, it only lasted two hours, as stated in the report. During the 2019 survey effort, on April 17, 2019 a biologist from Pacific Northwest Biological observed an adult GOEA soaring over the Adesa property, within 0.5 miles of the proposed project area, likely a territorial eagle associated with the known nest site nearby.

b. To date CDFW has received very little survey data for this GOEA territory. While SHN and PNW Biological have provided limited data for the Adesa properties, we have not received anything from biologist Keith Slauson for the 2019 season, and he was under contact for the Mad River Estates and Big Bend Ranch properties. We met with Mr. Slauson earlier this year in the CDFW office to attempt to coordinate survey work and site visits, however the owner of the Mad River Estates property denied CDFW access earlier this year, and we have not heard anything from Mr. Slauson. It is possible that the landowner/developer has additional data that has not been provided. Perhaps reaching out to Mr. Slauson would be helpful to determine if survey work was completed in 2019.

c. The available survey data for the GOEA territory indicates that at least two nests have been active the last several years.

CDFW believes there is a potential for significant adverse impacts to Golden eagles, as well as other protected species and sensitive natural communities by this project and cumulatively by nearby proposed projects. The extent of the potential impacts and feasible avoidance and mitigation measures should be considered in an environmental document such as an EIR. Northern Spotted Owls, Grasshopper Sparrows and California oat-grass prairie are also documented to occur and should be considered in such a document as well as any other sensitive species potentially present.

Thanks for your consideration and have a Happy Thanksgiving,
Cheri

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Ph. 707.441.5901
cheri.sanville@wildlife.ca.gov

The Mission of the California Department of Fish and Wildlife is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

From: Johnson, Cliff <CJohnson@co.humboldt.ca.us>  **Sent:** Thursday,

November 21, 2019 2:48 PM **To:** Sanville, Cheri@Wildlife
<Cheri.Sanville@wildlife.ca.gov> **Subject:** FW: Golden Eagle habitat
information - Adesa Organics

Cheri, Attached is a supplement turned in regarding the eagle habitat. I am going to need to be responding to them on our position on eagle habitat impacts by early December, so any comments regarding potential impacts will be helpful and needed soon. Thanks

Cliff

From: Laura Borusas <lborusas@gmail.com> **Sent:** Thursday, November 21, 2019 11:03 AM **To:** Johnson, Cliff <CJohnson@co.humboldt.ca.us>; Schatz, Elizabeth <eschatz1@co.humboldt.ca.us> **Cc:** Greg Williston <gwilliston@shn-engr.com>; bill bigley <Bill@citysound.us> **Subject:** Fwd: Golden Eagle habitat information

Hi Elizabeth,

Attached is some more information regarding available eagle habitat in the area.

Thanks,

Laura

----- Forwarded message ----- **From:** Gretchen O'Brien
<gobrien@shn-engr.com> **Date:** Tue, Nov 19, 2019 at 1:51 PM **Subject:**
Golden Eagle habitat information **To:** Greg Williston
<gwilliston@shn-engr.com> **CC:** Laura Borusas <lborusas@gmail.com>

Laura,

Please find attached supplemental information regarding Golden Eagle habitat availability in the vicinity of your project as well as supporting

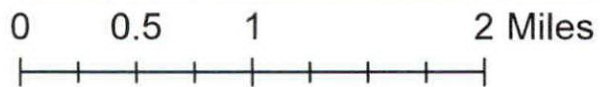
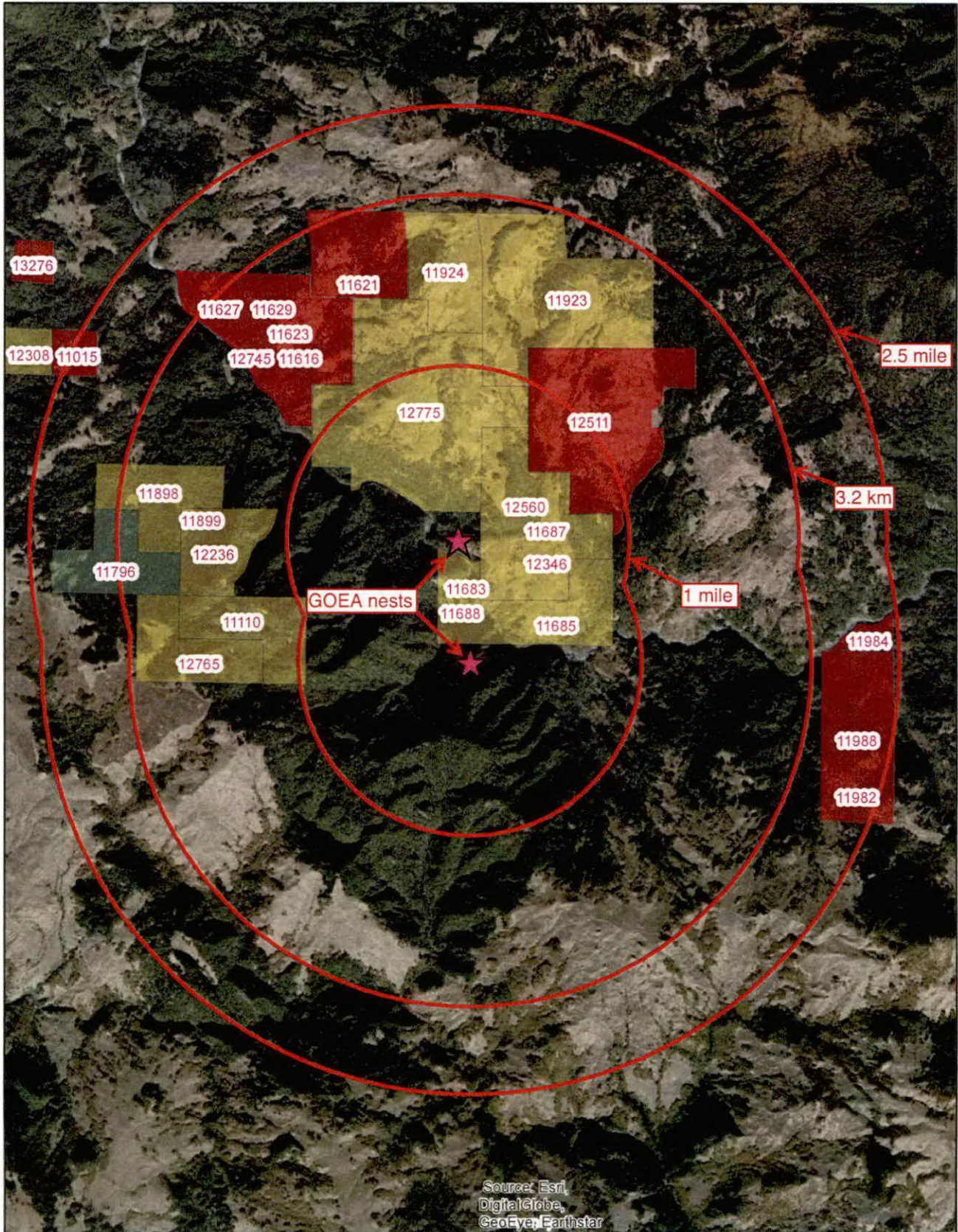
documented typical habitat use patterns.

Sincerely,
Gretchen

Gretchen O'Brien
Senior Wildlife Biologist

Civil Engineering, Environmental Services,
Geosciences, Planning & Permitting, Surveying
www.shn-engr.com (707) 822-5785

Cumulative Impacts to Big Bend Mad River Golden Eagle Territory



Cannabis Cultivation Applications*** submitted to Humboldt County Planning in Vicinity of Big Bend Mad River Golden Eagle Territory

| Apps# | Project Description | Within 1 mile | Within 3.2 km | Within 2.5 miles |
|-------|--|------------------|------------------|---------------------|
| 11683 | New 10,000 sf mixed light | X | X | X |
| 11685 | New 10,000 sf mixed light | X | X | X |
| 11687 | New 300,000 sf mixed light & 20,000 sf outdoor | X | X | X |
| 11688 | New 10,000 sf mixed light | X | X | X |
| 12346 | New 4 acres mixed light | X | X | X |
| 12560 | New 300,000 sf mixed light & 20,000 sf outdoor | X | X | X |
| 12775 | New 56,000 sf mixed light/outdoor & 5,000 sf nursery | X | X | X |
| 12511 | New 2 acres cultivation | X | X | X |
| 11923 | New 83,000 sf mixed light | X | X | X |
| 11924 | New 10,000 sf mixed light | | X | X |
| 11110 | Existing 20,000 sf mixed light | X | X | X |
| 12765 | Existing 30,000 sf outdoor, new 5,000 sf indoor | | X | X |
| 12236 | Existing 10,000 sf outdoor | | X | X |
| 11898 | New 18,000 sf outdoor | | X | X |
| 11899 | Existing 10,000 sf mixed light | | X | X |
| 11796 | New/existing 10,000 sf mixed light/outdoor | | X | X |
| 11616 | New 3.88 acres mixed light | | X | X |
| 11621 | New 43,560 sf outdoor | | X | X |
| 11623 | New 43,560 sf outdoor | | X | X |
| 11627 | New 43,560 sf outdoor | | X | X |
| 11629 | New 43,560 sf outdoor | | X | X |
| 12745 | Unknown | | X | X |
| 11015 | Unknown | | | X |
| 11982 | New 10,000 sf mixed light | | | X |
| 11984 | New 10,000 sf mixed light | | | X |
| 11988 | New 10,000 sf mixed light | | | X |

***Additional cannabis cultivation or other land development applications may be pending that were not evaluated from available data

Brian Woodbridge Brief CV

Brian Woodbridge is recently retired after a 40-year career in wildlife management and research with the US Forest Service and US Fish and Wildlife Service. His research has focused primarily on threatened and endangered species and forest management in the Pacific Northwest, migratory raptors, and Golden Eagles. In 2013 he was selected to lead the US Fish and Wildlife Service's Western Golden Eagle Conservation Team, and was responsible for conducting conservation-related research on Golden Eagles throughout the western US. Brian has authored over 45 scientific publications pertaining to ecology and conservation of birds of prey; 21 on Golden Eagles. He remains engaged in field studies of Golden Eagle movement, breeding ecology, and conservation.

Sharp, Ryan

From: Daniel Chandler <dwchandl@suddenlink.net>
Sent: Monday, October 19, 2020 9:52 AM
To: COB
Subject: Adesa Appeal, 10/27/19

Dear Board of Supervisors,

Please deny the Adesa application for industrial scale marijuana growing in the rural Maple Creek area. When legalization of marijuana occurred, I didn't imagine that there would be attempts to turn growing into a large scale industry similar to what we might find in central California. Presumably the reason is the added price that marijuana growing in Humboldt County can secure because of the craft marijuana reputation. (Though if this grow becomes a precedent, Humboldt's reputation won't last for long.) The map is really depressing that shows the cumulative effects on this basically wild area of multiple adjacent grows that are either already permitted or for which applications have been submitted. Central California *is* the right place for this type of marijuana cultivation.

Aside from this general principle, there are many specific problems with the application. As a member of 350 Humboldt, I am concerned that the permittees feel the need to run diesel generators, with the pollution, global warming, and noise that come with generators. If generators are needed, then the land is not suitable for this activity.

Neighbors are opposed, and for good reasons. The narrow country roads will be impacted by truck and auto traffic. It will have deleterious effects on wildlife, including Golden Eagles. There are fire risks—which is the last thing we should be permitting at this time when it is clear global warming is threatening even normally fire-safe areas in Humboldt.

Please vote no on Adesa and all industrial marijuana in Humboldt.

Daniel Chandler

Daniel Chandler
436 Old Wagon Road
Trinidad, CA 95570
dwchandl@suddenlink.net
Phone: 707 677 3359
Mobile: 707 601 6127

Damico, Tracy

From: Damico, Tracy
Sent: Wednesday, October 21, 2020 1:33 PM
To: Bohm, Rex; Fennell, Estelle; Mike Wilson; Bass, Virginia; Steve Madrone
Cc: Ford, John; Hayes, Kathy; Sharp, Ryan; Eberhardt, Brooke
Subject: FW: Adesa

FYI

-----Original Message-----

From: Gail Coonen <gailmail@reimnet.com>
Sent: Wednesday, October 21, 2020 1:23 PM
To: COB <COB@co.humboldt.ca.us>
Subject: Adesa

To whom it may concern,

I am appalled this potential cannabis farm is still a possibility in this remote part of Humboldt. I know this area, and the road to the site.

It is a fire prone area and with the diesel, it could catch the whole area on fire. You can't guarantee there will be water available in drought

years, it will disturb wifeless and neighbors.

Do you want Humboldt county to turn into another Napa and Sonoma counties?

Turn the Adesa project down.

Thank you,

Gail Coonen

Damico, Tracy

From: Damico, Tracy
Sent: Wednesday, October 21, 2020 7:44 AM
To: Bohn, Rex; Fennell, Estelle; Mike Wilson; Bass, Virginia; Steve Madrone
Cc: Hayes, Kathy; Sharp, Ryan; Eberhardt, Brooke; Ford, John; Lippre, Suzanne
Subject: FW: Adesa Appeal:Denial of Conditional Use Permits, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004

FYI...

From: Howard Russell <uncahowa@gmail.com>
Sent: Wednesday, October 21, 2020 6:54 AM
To: COB <COB@co.humboldt.ca.us>
Subject: Adesa Appeal:Denial of Conditional Use Permits, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004

Art Wilson
Neighboring landowner to Adesa
10/15/20

TO: Humboldt County Supervisors
RE: Adesa LLC Appeal October 27, 2020
Adesa Appeal:Denial of Conditional Use Permits, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004

If we were smart

We welcome into our neighborhood legitimate agricultural activity that respects and is compatible with the wild land that we love, wildlife, and forests and neighbors, and to be good neighbors.

What we are talking about here though is something that most people would agree that, if we were smart, we would require to be located somewhere less inappropriate; not in never-been-trashed-by-marijuana growers wild land.

We are supposed to believe that all negative impacts of this industrial style grow are to be mitigated. Mitigation assumes that nothing will go wrong. Things inevitably go wrong. Human error, negligence, or unethical behavior can nullify the cleverest engineering.

If we are smart we will require industrial marijuana grows to be located where the consequences of things going wrong will be minimal.

So the potential cost of things going wrong are immense to the natural landscape, wildlife, forests and neighbors. Chemical, fuel, light and noise pollution concerns are worrisome but what we are really paranoid about is the risk of fire in this tinder dry wild land. Shouldn't we ask ourselves is this really a smart thing to do to bring equipment, vehicles, buildings and questionable people into these tender dry wildlands? Wilson Ranch in particular is immediately downwind of this site and fire fighting crews are a long ways away. Recent conditions should tell us that if we were smart we should locate unnecessary wildfire risks away from tinder dry wildlands.

What about cleanup? What happens when they are done? Will the land be restored? Will the infrastructure be removed? Marijuana people don't have a very good track record of cleaning up after themselves. Might it not be smart to not make a mess in the first place?

What about the big picture as in shouldn't we be making choices as if survival of life on the planet mattered? Far, far more greenhouse gases will be put out by operating in this very remote location as opposed to an appropriate location close to workers and infrastructure. Perhaps thousands of trips will have to be made over this very long, very windy, narrow poorly maintained Mountain Road. Here is the opportunity to do the smart thing for the planet and put our industrial grows in appropriate locations.

We should also ask ourselves: is a legitimate business even viable considering the immense cost of doing this operation to the required standards. *Why is this extremely remote location with minimal scrutiny so important?*

These folks may be fine people who would make great neighbors, even though they haven't made meaningful efforts to connect. I totally respect you supervisors and admire your ability to take on a lot of difficult choices especially these days. If you do decide that it is the smart, wise, ethical and right thing to do to approve this project, we at Wilson Ranch will respect that decision, and will make every effort to live harmoniously with what is happening on the other side of the fence, and hope they feel the same about us.

Respectfully,
Art Wilson

REDWOOD REGION AUDUBON SOCIETY

P.O. BOX 1054, EUREKA, CALIFORNIA 95502

October 18, 2020



Humboldt County Board of Supervisors
825 5th Street,
Eureka, CA 95501

Re: Appeal of Planning Commission Approval of Adesa Organic, LLC, Conditional Use Permits, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004

Dear Chair Fennel and Supervisors:

Redwood Region Audubon Society (RRAS) advocates for the protection of wildlife, especially birds, by supporting local conservation efforts to protect wildlife and their habitats. We consider the proposed Adesa Organics operation to be in conflict with our mission statement, as well as principles of good planning. RRAS therefore opposes the project and supports the appeal of its approval by the Planning Commission.

Although this project would be on Agriculture Exclusive (AE) zoned land, we have referred to it as industrial. This is because, other than the fact that plants would be grown and harvested, energy usage, greenhouse gas emissions, haulage, and the projected labor force more closely resemble what would be commonly considered as "light industry". We are referring to the project type based on the reality of its proposed operation rather than an inaccurate portrayal based on zoning regulations.

Foremost among the reasons for our position is insufficient evaluation of significant impacts to birds that depend on the oak savannah and woodland habitat:

1. Golden eagles typically range ten or more miles from nest sites and their territories would typically extend beyond the visual range from the project site. SHN biologist Gretchen O'Brien surveyed the project site for Golden Eagles (GOEA) on two occasions in May and June 2018 for a total of 7.5 hours and found no GOEA. Given the large foraging area of GOEA, this could be expected. While cited research on GOEA in the area does establish GOEA nest sites within two miles of the project site are not in line of sight of the project, we are not convinced that the project and related activity would not exclude GOEA from foraging areas near the project. (See report by Brian Woodbridge)
2. The Grasshopper Sparrow (*Ammodramus saviarum*) is a ground-nesting songbird of rank grasslands. Once common and widespread in California, it is becoming increasingly rare due to habitat loss and is now listed as a Species of Special Concern in the state. The prairies on both sides of the Mad River from Kneeland to Bridgeville (including Maple Creek) support one of only four populations in Humboldt County. Development of grassland habitat combined with forest encroachment, loss of native grasses, and overgrazing by cattle, threatens the continued existence of this species in the region.
3. California condor (*Gymnogyps californianus*) a both Federally and State endangered species, is planned for future reintroduction in the Bald Hills area and the Adesa project area is well within its range. Oak savannah is the Condor's primary foraging habitat.

Evaluation of the impact from water use of the project is not correctly scaled. Project water use was considered relative to the main stem of the Mad River without adequate consideration of the impact of tributaries, especially Cowan Creek. Cowan Creek is one of many tributaries that may not provide passage to salmonids but certainly supplies insect larvae and other food material for fish in the main stem.

Unlike traditional sunlight and native soil based agriculture that tend to be close to carbon neutral, the industrial nature of this project would emit over 600 tons of carbon dioxide from diesel generators for the two years before fully renewable energy is required. This does not include greenhouse gas (GHG) emissions generated from hauling fuel, soil, and personnel to and from the project site for the life of the

project. The source of renewable energy is a proposed 10,000 to 12,000 square foot photovoltaic array that will be combined with battery storage. This solar energy component of the project would add to the physical footprint of the project and must be included in the environmental evaluation of the project.

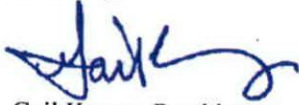
Climate change and development are increasing the probability and severity of fire to our rural forests and grasslands. Regardless of precautions, this industrial project would increase that probability. Future wildland fire management will likely increase the intentional use of controlled burning and the probability of unplanned fire could interfere with these efforts.

The rural areas of Humboldt County are working landscapes that also provide extensive wildlife habitat and watershed values. Fragmenting this landscape with industrial installations would reduce these values.

RRAS has information that indicates that at least eight more similar industrial cannabis growing facilities are planned for the middle Mad River watershed. The cumulative impacts of the potential "build out" need to be fully analyzed before this and similar projects are considered for approval. Better still, Humboldt County must recognize that these types of industrial cannabis production operations amount to sham agriculture that threatens to blight our rural landscape with industrial sprawl. If not, the environmental quality of Humboldt County and the value of Humboldt branded cannabis will be reduced.

Redwood Region Audubon Society urges you to overturn the decision of the Planning Commission to approve this project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gail Kenny", with a stylized flourish at the end.

Gail Kenny, President
Redwood Region Audubon Society

From:

Ronald Wilson

Interest holder parcels:

315-211-002-000, 315-212-003-000, 315-144-002-000, 315-214-001-000

Re:

Adesa Organics, PLN-11923-CUP

Dear Commission members,

I urge you to uphold the appeal filed by The Friends of the Mad River. This project just does not fit the area. The face of the entire region will be negatively impacted if not by the project itself, by the tone it sets for the future of the entire region. I cannot see this being what the board intended by making a way for commercial grows. It certainly is not in the public good to place this here. At least not for this public.

The Wilson / Sudori Families have been owners of the parcels immediately adjacent to the project site since the 1870's. We are the longest continuous owners of any properties in the region. We care what happens to this area. The planning department approved Adesa Organics' special use permit is based on documentation supporting a mitigated negative declaration. The preparers of that document appear to have done as they were hired to do, check all the boxes and find mitigations weather realistic to the site or not.

The early proposals for the project at "full buildout" included 86,000 sq ft of green house, or an undisclosed amount of hoop houses. 3,000,000 gallons of rain runoff was anticipated to be stored and used as irrigation, and as and a way to mitigate storm water discharges. The restriction of generators raises the question, can a solar powered system deal with 3,000,000 gallons pushed uphill to the pond, in winter during low solar periods? The proposal provides no information for a backup drainage plan. The placement of this project is close to Cowan Creek and a property boundary, it offers little space to deal with the runoff. Their planned Mitigation may be "dead in the water" without more specifics. I would like to see a review of those specifics.

The fire risk to people or structures is listed as LESS THAN SIGNIFICANT. Can you really say that these days? The plan itself states the site is considered a Very High Severity fire zone. While fire prevention measures properly maintained provide a defensible space against wildfire, no plans are offered to control a fire originating on the site, other than hope someone else eventually shows up to put it out. Should not the same requirement for fire equipment to be on site as required for logging operations? If the 3,000,000 gallons of water to be moved off the green house roofs is not stored, little water will be in storage other than that planned for irrigation, especially late in the season. So much for the fire plug. This is not a once every 40 years harvest like logging. It is every year after year, daily activity. I guess it will take a fire starting for it to be more than a "less than significant risk". With a crew of up to 20 on site most of the year, the odds of accidents or neglect will skyrocket.

I have not studied wildlife in collage and do not have a degree in wildlife, but I have observed the wildlife at this location for 60 years. This site could hardly have been placed in a more disruptive location for local game movements. Spanning both sides of Cowan Creek and at a bottleneck of available cover, human activity will be present for a major part of the year. This site severs the only continuous cover up or down the hillside for ½ mile or more to the east or west.

Traffic is a large concern, especially wear and tear during the wet months. The proposed mitigated traffic level likely doubles the use of that road. Who decides what level of use is or is not acceptable? Like other Mitigations they seem to be picked out of the air because it sounds good rather than based on expert data supported opinion. Any increase in wear needs to be offset by an increase in maintenance that is already in short supply. Those who tend the grows throughout our county have a reputation for not being the most considerate of other road users.

When I received the notice from the planning commission that this project was being brought before it, I was caught off guard. During the years of planning and study, no contact was made from the applicants or anyone working on their behalf. The interest of neighbors does not seem to be of value to the applicants. This is concerning. Ethics of the operators will be a key ingredient to good relations. Transparency, adherence to water use, noise, pollution, and accepting the responsibility of land ownership are vital. If Permitted to continue, Ethics are essential.

Whether or not the mitigations prove adequate, are entirely implemented, fully adhered to, and weather onsite inspections are dutifully performed is the governments roll. Annual inspections seem hardly adequate given the potential environmental harm. I urge the county to review the schedule of inspections. If the project goes in the county and state are our shield from unethical operation. Should the project be allowed to continue, the county also needs to step up the level of law enforcement. Even legal gardens are an attractant to crime, some violent. Occasional drive throughs by game wardens are hardly a deterrent. I have not seen a sheriff vehicle out there in years. If the county is not willing to provide a presence, please keep the crime attractant elsewhere.

Thank you for your time.

Ronald Wilson
Eureka Ca.

Hayes, Kathy

From: Mowgli Ji <mowgliji108@gmail.com>
Sent: Thursday, October 22, 2020 6:53 PM
To: COB; Bohn, Rex; Fennell, Estelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Greetings

Dear members of the Board of Supervisors,

I write in support of the Adesa project, which was approved by the Planning Commission and appealed by "Friends of the Mad River." I ask that the appeal be denied.

First, the project applicant, Laura Borusas, is committed to this community. She is on the school board and Scott and her are welcome and wanted members of Maple Creek. They have been and will continue to be good neighbors. The only people fighting this project don't live anywhere near this community.

Second, Laura has repeatedly demonstrated her willingness to address all reasonable concerns about the Adesa project. For example, Laura paid for multiple golden eagle studies in order to successfully address earlier concerns by CDFW. As another example, Laura did not appeal and instead accepted the Planning Commission's last-minute decision to require 100 percent renewable energy after two years. In fact, she worked to submit plans to the Board of Supervisors demonstrating how she intended to comply with this revision to her project. These project revisions include planting in-ground, using 80% solar power from year one, and removing a secondary pond. They have always been flexible with the requests of the County and we believe will continue to follow the guidelines set by regulatory agencies.

The Adesa project is a great project, they followed all the regulations we have here for commercial cannabis in Humboldt. It deserves to go forward. I urge you to deny the appeal.

Thank you.

Hayes, Kathy

From: Patricija Zil <patricijazil@gmail.com>
Sent: Thursday, October 22, 2020 9:45 PM
To: COB; Bohn, Rex; Fennell, Estelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Adesa project appeal denial

Dear members of the Board of Supervisors,

I write in support of the Adesa project, which was approved by the Planning Commission and appealed by "Friends of the Mad River." I ask that the appeal be denied.

First, the project applicant, Laura Borusas, is committed to this community. She is on the school board and Scott and her are welcome and wanted members of Maple Creek. They have been and will continue to be good neighbors. The only people fighting this project don't live anywhere near this community.

Second, Laura has repeatedly demonstrated her willingness to address all reasonable concerns about the Adesa project. For example, Laura paid for multiple golden eagle studies in order to successfully address earlier concerns by CDFW. As another example, Laura did not appeal and instead accepted the Planning Commission's last-minute decision to require 100 percent renewable energy after two years. In fact, she worked to submit plans to the Board of Supervisors demonstrating how she intended to comply with this revision to her project. These project revisions include planting in-ground, using 80% solar power from year one, and removing a secondary pond. They have always been flexible with the requests of the County and we believe will continue to follow the guidelines set by regulatory agencies.

The Adesa project is a great project, they followed all the regulations we have here for commercial cannabis in Humboldt. It deserves to go forward. I urge you to deny the appeal.

Thank you.

Patricija Zilinskaite

October 23, 2020

Dear Humboldt County Supervisors:

We are writing as partners in Iaqua Springs Ranch on the Mad River to oppose the Adesa cannabis project in Maple Creek. The Planning Commission narrowly approved this project over strenuous objections from Ca Fish and Wildlife, the Humboldt Bay Municipal Water District, neighbors and ranchers on the Mad River, and 3 Planning Commissioners.

An industrial grow taking place on the main water source for 80,000 people is just a bad idea. It's tempting fate. The Mad River supplies drinking and irrigating water to most if not all of Humboldt Bay residents. We can't afford a truck carrying diesel to Adesa generators to spill into the river, or runoff from this gigantic grow itself. This area of Humboldt County is home to small, family sized grows, not industrial sized ones that run three cycles each year, with Adesa employees commuting 9-10 months out of the year. Our roads were not built for this kind of traffic.

California Department of Fish and Wildlife strenuously opposes this project due to its proximity to Golden Eagle nests. The noise from construction, generators, traffic and commerce will disturb this important nesting habitat.

Finally, there are huge fire risks at a time when fire in our woodlands are becoming more and more common. We don't have the fire protection capacity to effectively deal with raising the risk profile.

Please consider this letter of protest as you think about and discuss your decision. We are not anti-grow, or anti growth, but we do oppose this project, and others like it, for our area where it is not a good fit. We don't want to end up like Honeydew and what has happened to the Mattole.

Sincerely,

Denise Vanden Bos and Peter Pennekamp
Leslie and Bruce Silvery
Iaqua Springs Ranch
475 Jack Shaw Rd.
Kneeland, Ca 95549