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February 2, 2021

VIA EMAIL AND HAND DELIVERY

John Ford, Director
Humboldt County Planning and
Building Department
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Humboldt County Board of Supervisors
Attn: Clerk of the Board
825 5th Street, Room 111
Eureka, CA 95501
Email: cob@co.humboldt.ca.us

Re: **Notice of Appeal of Planning Commission Approval of Rolling Meadow Ranch, LLC Conditional Use Permits** (PLN-12529-CUP; SCH# 2020070339)

Dear Director Ford and Honorable Members of the Humboldt County Board of Supervisors:

On behalf of Fran Greenleaf, John Richards, and Patty Richards (collectively, "Appellants" or "Petitioners"), we hereby appeal the January 21, 2021 Planning Commission decision to approve the Rolling Meadow Ranch, LLC Conditional Use Permits (the "Project"),¹ for failure to comply with the California Environmental Quality Act ("CEQA"),² mandatory provisions of the Humboldt County Code, and other applicable laws. Appellants file this Appeal within the statutory time period and have paid the appeal fee and, therefore, request a hearing before the Board of Supervisors ("Board") on the issues presented and, after such hearing, for an order reversing the decision of the Planning Commission and either denying the application or finding that an Environmental Impact Report ("EIR") is required for the Project.³

The Planning Commission adopted a Mitigated Negative Declaration ("MND") for the Project despite substantial evidence in the administrative record supporting a fair argument that the Project may have significant environmental impacts. Because commenters have presented a fair argument concerning the Project's multiple potentially significant impacts, CEQA mandates an EIR for the Project to analyze the full scope of impacts prior to approval.

Apart from CEQA, the police powers of the County to protect the public are implicated by the Project. Appellants have demonstrated that the Project will have detrimental effects on the health, safety, and welfare of the residents of the area. Accordingly, the Board should exercise its considerable discretion to deny the Project on this ground or to impose additional protective conditions on the Project.

The Project will be located in the remote community of McCann, adjacent to and immediately upslope from the main stem of the Eel River. The applicant proposes 249,739 square feet (5.73 acres) of new mixed-light cannabis cultivation in sixteen (16) greenhouses and more than 50,000 square feet of associated processing facilities, for a total development of 8.50 acres, with use of approximately 4,628,200 gallons of groundwater annually, extension of electrical power infrastructure by PG&E and the use propane generators in the event of a power shut off.

The proposed primary access route to the Project site is via Dyerville Loop Road, over the intermittent low water single lane McCann Bridge across the Eel River, across the undeveloped gravel river bar, down the partially paved and narrow McCann Road to its public road terminus, and along unpaved one-way private ranch roads to several isolated clusters of greenhouses and processing facilities. This primary route does not provide adequate access for a cannabis project of this magnitude, which will involve dozens of daily employee trips along with construction and delivery traffic. Alternate access is proposed via miles of narrow, unpaved, and frequently very steep, private ranch roads to Alderpoint Road, an approved major collector road for cannabis projects.

The Project would be located in the rural McCann area, where habitat and biodiversity exists in large part because the area generally, and Rolling Meadows Ranch specifically, have, thus far, been unaffected by industrialized cannabis cultivation and other significant development. The California Department of Fish and Wildlife ("CDFW") expressed serious concern about the Project's impacts to aquatic resources and special status species. Friends of the Eel River ("FOER"), Redwood Regional Audubon Society ("RRAS"), the North Coast Chapter of the California Native Plant Society ("CNPS"), Northcoast Environmental Center ("NEC"), and Environmental Protection Information Center ("EPIC") all either submitted their own comment letters concerning deficiencies in the IS/MND and corresponding potentially significant impacts or joined in Petitioners' final comments to the Planning Commission.⁴

The Project requires six conditional use permits. The authority to issue CUPs for this intensive land use vests the County with discretion to determine whether the proposed Project should be permitted at all and under what conditions. The Project should be denied due to its unanalyzed and unmitigated significant impacts, inconsistencies with applicable County Code requirements, and the significant changes and risks it would introduce to this undeveloped area adjacent to the Eel River. Intensified land use, increased traffic, heightened noise, periodic fossil fuel generator consumption, year-round groundwater extraction, the expansion of utility infrastructure, safety and security concerns, and heightened fire danger in a high fire risk area located far from public safety resources would all fundamentally and forever change the character of the area and pose a danger to public welfare.

For example, of particular concern is a change to the Project indicated by memorandum from the applicant's consultant, dated January 15, 2021 -- less than one week prior to the Planning Commission hearing date. The memo proposes that stored rainwater previously designated for fire suppression would be depleted by cannabis irrigation in the fall during high

fire season.⁵ Appellants had no opportunity to comment on this proposal, which is counter to public safety and appears to contradict prior required conditions of approval.

For all of these reasons, and as explained below and in prior comments on the IS/MND,⁶ Appellants urge that the Board reverse the Planning Commission’s decision to approve this Project and either deny the application or order the preparation of an EIR.⁷ Alternatively, if the Board approves the Project, Petitioners request that the Board exercise its discretion to impose additional conditions of approval that will assist in reducing the Project’s potentially significant impacts, detriment to health, safety, and public welfare, and nuisance to the neighborhood.

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I. The Project Improperly Relies on a Mitigated Negative Declaration Where There is a Fair Argument Based on Substantial Evidence That the Project May Result in Multiple Potentially Significant Environmental Impacts.

A. The “Fair Argument” Test is a Low Threshold Favoring Preparation of an EIR.

The Project relies upon an MND, and as such is subject to the “fair argument” test. This non-deferential standard of judicial review stems from the structure of CEQA itself and the requirement for more strenuous environmental review when there is evidence that a proposed project may cause a significant environmental effect. An MND is only allowed “where clearly no significant effect on the environment would occur” and “there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.”⁸ Conversely, an EIR is required if there is any substantial evidence in light of the whole record that the Project may have a significant effect.⁹

“The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR.”¹⁰ To the extent there is a conflict in the substantial evidence concerning the possibility of a significant impact, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”¹¹ “The lead agency’s determination is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.”¹²

In September 2020, Petitioners submitted supplemental comments on the original IS/MND that explained how the “fair argument” standard of judicial review, when applied to the facts and evidence concerning the Project, compels the preparation of an EIR.¹³ Nevertheless, the Planning Commission approved the Project and certified the IS/MND.

B. Petitioners Previously Presented Substantial Evidence Supporting Their Comments Concerning the Project’s Potentially Significant Impacts, Thereby Satisfying the “Fair Argument” Test.

Petitioners, CDFW, CNPS, RRAS, EPIC, McCann residents, and others have submitted comments on the IS/MND, supported by substantial evidence, concerning multiple potentially significant impacts. Substantial evidence supporting these comments, includes:

- two expert reports: one from geologists concerning potentially significant impacts to water supply and water quality and one from a registered civil engineer concerning the adequacy of McCann Road to serve as the Project’s proposed primary access road under applicable County Code requirements;
- a letter from the County’s senior planner concerning required information and analysis in the IS/MND;

- two memoranda prepared by the County’s peer review consultant, Transcon Environmental, concerning errors and omissions in an early draft of the IS/MND;
- CDFW comments on an early draft of the IS/MND and its comments on the original and revised IS/MND;
- two USGS reports concerning the availability of groundwater in Humboldt County and methods to scientifically evaluate and measure potential hydrologic connectivity between groundwater and surface waters, respectively;
- referenced County environmental review documents relevant to the analysis, including the IS/MND prepared for the CMMLUO and the EIR prepared for the CCLUO;
- descriptions of the narrow, windy access roads and the associated traffic hazards from residents of McCann who are intimately familiar with the roads; and
- other information available at referenced websites.¹⁴

All of these categories of evidence have been held to constitute “substantial evidence”¹⁵ for purposes of satisfying CEQA’s “fair argument” standard.¹⁶

In response to all of this evidence, the County’s planning staff and the applicant’s attorney and consultant (1) attempted to dismiss the evidence as “outdated” and irrelevant, (2) supplemented the analysis in the revised IS/MND with additional information and analysis in staff reports that was either not made available to the public (e.g., Part B road evaluation report, dated January 14, 2021, from Northpoint Consulting Group, Inc.) or made available one week before the scheduled Planning Commission meeting (e.g., memorandum dated January 15, 2021 from Northpoint Consulting and Department of Public Works memorandum, dated January 14, 2021), and (3) mischaracterized the “fair argument” standard as somehow as deferential as the “substantial evidence” standard that applies when an EIR is prepared.

C. CDFW, Environmental Organizations, and Other Commenters Presented a Fair Argument of Possible Significant Environmental Effects.

Petitioners present below a non-exhaustive summary of several major issues that have remained problematic throughout the environmental review process.¹⁷ These issues – concerning access roads, groundwater wells, and natural resources — relate to the Project’s potential to cause significant impacts.

1. The Project Access Roads do not Satisfy Minimum Fire Safe and Emergency Access Standards, Potentially Causing Traffic Safety Risks and Significant Impacts to Public Services.

The IS/MND acknowledges that the Project must satisfy Fire Safe Regulations, but it assumes that the County’s Category 2 road requirements apply to Project access roads and that these roads can be modified to satisfy these standards.¹⁸ These unfounded assumptions are

not accurate. The County Code generally requires a Category 4 access road, or its functional equivalent, for a new commercial cannabis project that is subject to the CCLUO.¹⁹ Projects subject to the CMMLUO must satisfy the Fire Safe Regulations, which generally require a Category 4 access road but can allow a Category 3 access road in “mountainous areas.”²⁰

The Category 2 standard that has been applied to this Project’s access roads are substantially narrower than the County regulations allow. Neither the IS/MND nor the applicant’s and staffs’ supplemental information and analysis address the glaring discrepancies between access road requirements and the condition of the primary access road (McCann Rd.) and the internal ranch roads to the four remote clusters of Project facilities and to Alderpoint Road. If the Category 3 standards were applied to this Project, as is appropriate, substantially more roadway improvements would be required, causing additional environmental impacts.

Even though McCann Road is proposed as the Project’s primary access road, the road evaluations prepared by the Project applicant’s consultants did not evaluate the adequacy of McCann Road from the McCann Bridge to the intersection with a private ranch road just outside of the gate.²¹ County Public Works previously identified McCann Road, past P.M. 1.0 to the end of the publicly maintained portion at the gate to Rolling Meadow Ranch, to not be the equivalent of a Category 4 road and not approved for cannabis development projects.²² This finding comports with the conclusions reached by the civil engineer retained by Appellants to evaluate this same section of McCann Road.²³

Because necessary improvements to Project access roads were not described in the IS/MND, and because the associated environmental impacts were not analyzed, the IS/MND is deficient in a number of critical respects. As explained by numerous commenters, these deficiencies have major implications for the Project’s potentially significant impacts to traffic safety and public services.²⁴ Necessary improvements to these roads implicate impacts to water quality and biological resources. Because access roads do not conform to performance standards established in the County’s regulations, there is substantial evidence supporting a fair argument that the Project may cause significant impacts.

2. Groundwater Withdrawal from the Project’s Wells Has the Potential to Cause Significant Impacts to Aquatic Resources and Water Quality.

The intensive reliance on groundwater for this Project has long been an issue of concern to the County, CDFW, and commenters. Rather than present the qualified substantiation and documentation for the position that the three Project wells are not hydrologically connected to surface waters, as County planners and consultants previously requested, the IS/MND relies upon conclusory letters from a well drilling company, with no proof of qualifications or the methods employed to make this complex determination.²⁵ The staff reports to the Planning Commission provide an inconsistent justification, an unsupported blanket assertion that an “examination of the well logs indicates that the depth and screening intervals are such that the wells are not connected to any surface water features.”²⁶

The potential for the Project's groundwater supply to be hydrologically connected has major implications for Project permitting, environmental review, and Project impacts. Under CEQA, "[i]f the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences."²⁷ For these reasons, Petitioners and others have presented sufficient substantial evidence raising a fair argument that the Project's intensive use of groundwater may cause significant impacts to surface water features, and other aquatic and biological resources.²⁸

3. The Investigation of the Project's Potentially Significant Impacts to Biological Resources is Incomplete and Inadequate.

CDFW has repeatedly commented that surveys for biological resources and wetlands are incomplete and that Project-related roadway and drainage improvements are subject to its permitting authority.²⁹ The IS/MND acknowledges that a Lake & Streambed Alteration Agreement may be required for the Project, pursuant to Fish & Game Code, § 1602.³⁰ However, upon close examination, the IS/MND indicates that the required surveys for botanical resources were not conducted along the "Winter Access Road" to Alderpoint Road – even though improvements, such as road widening, will be necessary at several locations.³¹ The staff report to the Planning Commission admits that no surveys for biological resources and wetlands have been conducted along the Winter Access Road.³²

Because CDFW must rely upon the County's environmental review document when approving an LSAA, CDFW's comments concerning its adequacy deserve attention and warrant inter-agency coordination.³³ However, instead of heeding CDFW's admonition that the surveys were incomplete, County staff and the applicant's consultant have insisted the surveys were adequate. CDFW's comments concerning the inadequate investigation of baseline resources is substantial evidence supporting a fair argument that the Project may impact these resources.

D. The Project Description is Unstable, Inconsistent, and Uncertain.

Under CEQA, an accurate, finite, stable project description is the cornerstone of any adequate environmental impact review document, including an MND.³⁴ In fact, courts have held that an MND "is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis."³⁵ As CDFW and County planners commented early on, the IS/MND must accurately describe the "whole of the project."³⁶

The description of the Project in the IS/MND, as later modified by supplemental information provided in the staff reports and later introduced documents, is inconsistent with how it describes several important Project characteristics, including *inter alia*:

- improvements to access roads and adjacent drainage culverts and water crossings;³⁷

- the amount of groundwater the Project is anticipated to require annually and expanded uses for captured rainwater, including cultivation;³⁸
- the location and design of project facilities and whether they encroach on wetlands, buffer areas, or the 100-year floodplain;³⁹ and
- the number of growing cycles per year.⁴⁰

As explained at length in Petitioners' comments on the IS/MND, these unstable and inaccurate aspects of the Project implicate and influence the Project's environmental impacts. An accurate description of the whole of the Project, including bringing access roads up to minimum standards, would indicate additional (unanalyzed) significant environmental impacts.

E. Additional Conditions of Approval Can Further Reduce the Project's Potentially Significant Impacts.

Conditions of approval can be imposed to avoid detrimental impacts to public health, safety and welfare and further reduce the Project's potential to cause environmental impacts.⁴¹ Appellants have developed a number of proposed additional conditions of approval that, if imposed, could further reduce the impacts to health, safety, and welfare, in addition to reducing the Project's potentially significant impacts. Those proposed conditions are attached hereto as Exhibit D.

II. The Project is Inconsistent with Humboldt County Land Use Regulations Applicable to Commercial Cannabis Projects and New Developments in High Fire Risk Areas.

Under the California Planning and Zoning Law, a development project must be consistent with the applicable general plan and local zoning regulations.⁴² As discussed above, when reviewing an MND for CEQA compliance, a reviewing court will apply the "fair argument" standard. In contrast, when reviewing an agency's planning or zoning decisions, the more deferential "substantial evidence" standard applies. Under this standard, a local agency's interpretation of its own land use regulations "carries a strong presumption of regularity." As such, the agency's determination can be overturned only if the agency abused its discretion — that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. A determination of conformity with local land use regulation will be reversed only if, based on the evidence before the local governing body, a reasonable person could not have reached the same conclusion."⁴³

Here, even under this more deferential standard of review, the Project is clearly not consistent with the County's land use regulations and, with respect to inconsistencies identified below and cited evidence in the record, no reasonable person could conclude that it is.

A. Inconsistency with the CMMLUO.

The Project applicant has asserted, and the Planning Commission found when approving the Project, that the CMMLUO (a.k.a., “Ordinance 1”) and not the CCLUO (a.k.a. “Ordinance 2”) applies to the Project. Appellants have urged the County to instead process the Project under the CCLUO due to the numerous changes to the Project since the incomplete and inaccurate application was submitted to the County in late December 2016. Nevertheless, the applicant and County continued to process the application under the CMMLUO. The Project, however, is inconsistent with both the spirit and the letter of the CMMLUO.

When the CMMLUO was adopted, the stated intent was to discourage cannabis cultivation in remote mountainous areas and encourage cultivation in more appropriate flat agricultural land.⁴⁴ Indeed, when adopting Resolution 16-14 approving the CMMLUO, the Board specifically found that, under the ordinance:

New operations are focused towards areas explicitly zoned for agricultural uses that are host to level terrain and prime soils. Since these sites are typically either equipped for or already host to agricultural uses, this helps ensure that runoff from site development and irrigation is controlled and contained, while the lack of steep slopes prevent the possibility of soil erosion and sediment runoff. A documented current water right or non-diversionary source of irrigation water is also required. The amount of prime agricultural soils on the parcel that may be used for cultivation are limited to 20% of those on the parcel to discourage the complete conversion of all prime ag lands to cannabis cultivation, thus helping to preserve and maintain land for existing conventional agricultural activities. Additionally, all grows must comply with the performance standards and conditions contained in the ordinance.⁴⁵

The Project is inconsistent with many of the assumptions made in the above finding.⁴⁶ The Project will be located on mountainous terrain in the few interspersed relatively flat grasslands that can potentially be classified as “prime agricultural soil.”

This understanding of the unintended consequence of the “Prime Agricultural Soil Loophole,” as some commenters have referred to it, has persisted.⁴⁷ When the Board recently heard the Appeal of the decision to approve the Adesa project, staff reported the following frank discussion among the Planning Commissioners:

During the three Planning Commission meetings there was considerable debate among the commissioners over whether the provisions of the CMMLUO for parcels over 320 acres in size was intended to allow for new cultivation in remote rural portions of the county such as Maple Creek. Specifically, most commissioners agreed that requirement for new cultivation to be located on prime soils was intended to keep new cultivation limited to the more fertile bottomland areas. Commissioners appeared to agree that the identification of

prime soils by soils scientists in various rural portions of the county was an unintended byproduct of the CMMLUO as written⁴⁸

During the Planning Commission meeting where this Project was approved, the Commissioners' did not address whether the Project is inconsistent with the intent of the CMMLUO even though Petitioners and others raised this issue.⁴⁹

In addition to being fundamentally inconsistent with a major purpose of the CMMLUO, the Project directly conflicts with several provisions of this ordinance. For example, this Project is located on a parcel with both TPZ and AE zoning and the Project grow sites are located on islands of AE zoned areas. This conflicts with the restriction in the CMMLUO that "no new outdoor, mixed light or indoor medical marijuana cultivation is permitted in Timberland zones...."⁵⁰

Further, the Planning Commission granted the applicant six (6) conditional use permits when arguably, the applicant is only entitled to a maximum of four (4) permits of any type.⁵¹ There is a unity of interest between the Rolling Meadow Ranch, Inc. and its president.

B. Inconsistency with Fire Safe Regulations.

The Project is subject to the SRA Fire Safe Regulations and all other County land use regulations.⁵² The County's Fire Safe Regulations require that "Road and street networks, whether public or private, unless exempted under Section 3111-3(b), shall provide for safe access for emergency wildland fire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with Sections 3112-2 through 3112-13."⁵³

In spite of the above mandatory requirements, the Project utilizes a primary access road that does not satisfy minimum requirements of the County's Fire Safe Regulations. For example, County Code section 3112-2 generally requires all access roads for commercial developments to be rated as Category 4 or its functional equivalent. As explained by Appellants previously, the Fire Safe Regulations would require, at a minimum, expansion of McCann Road and internal ranch access roads to Category 3 standards.⁵⁴ Instead of the Category 2 standard 12-foot width, as proposed, these roads would need to be at least 16 feet wide. In order to avoid this requirement, the internal ranch roads were most recently classified as "driveways."⁵⁵

The Project is also inconsistent with the 75,000-pound threshold for roads and bridges established in Fire Safe Regulations, HCC § 3112-4. The County and its peer review consultant specifically directed the applicant to "[s]how that each road, including its water crossings, are able to support a 75,000-pound apparatus."⁵⁶ In spite of this early request, the IS/MND never provided this information.⁵⁷ At the Planning Commission hearing concerning the Project, the public learned, for the first time, that the McCann Bridge has a weight bearing rating of 60,000 pounds.⁵⁸ The 60,000-lb. weight bearing rating for the bridge does not satisfy the minimum 75,000 capacity specified in the Fire Safe Regulations.

The gate entrance to the Project site is also narrower than allowed under the Fire Safe Regulations. This gate entrance is currently only 12 feet wide.⁵⁹ The revised IS/MND states that the improvements to Category 2 standards include widening this gate opening to 14 feet.⁶⁰ If McCann Road were expanded to meet the Category 3 standard as required for the Project, then this gate entrance would need to be at least 18 feet wide (or 4 feet wider than proposed) with pullouts.⁶¹ The gate entrance is also inconsistent with these mandatory code requirements.

The SRA Fire Safe Regulations include a mechanism for requesting exceptions from the applicable requirements.⁶² There is no evidence in the revised IS/MND and in staff reports that the applicant requested such an exception or that the County or CalFire processed an exception request. Instead, the findings adopted by the Planning Commission incorrectly assert that the Project is consistent with the requirements.⁶³

C. Inconsistency with the County General Plan

As explained above, the Project does not conform with the regulatory standards applicable to a new commercial cannabis project in a difficult-to-access forested area. The nonconforming access roads and intensive industrial operations within a Very High Fire Severity area are inconsistent with County General Plan Safety Element, Policies S-P1, S-P19, and S-S9. Because the County did not timely coordinate an exception to the SRA Fire Safe Regulations, in consultation with CalFire, the Project is also inconsistent with Safety Element, Policy S-IM5. The Project's heavy, year-round, reliance on groundwater that may divert surface water underflow, thereby affecting both the quantity and quality of surface waters, is inconsistent with Water Resources Element, Policy WR-P1.

III. Conclusion: The Project's Potentially Significant Impacts Require the Preparation of an EIR, its Inconsistencies with County General Plan and Code Provisions Require Redesign.

The Board should not approve the Project with this IS/MND. As the extensive, factually-supported, agency and public comments demonstrate, an EIR is necessary in order to satisfy CEQA's requirements. Compliance with mandatory requirements of the Humboldt County Code and General Plan concerning access roads requires significant Project design changes.

If you have any questions regarding the above, please feel free to contact me at the phone number written above or via email at jason@holderecolaw.com.

Very Truly Yours,



Jason Holder

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

Enclosures and Exhibits

Endnotes [following pages]

Check for \$1,648 payable to Humboldt County.

- Exh. A. Completed Fees and Charges Worksheet
- Exh. B. Planning Application Form, completed 01/26/2021
- Exh. C. Dept. of Public Works memo with attached lists of Category 4 or equivalent roads and roads that are not the equivalent of a Category 4 road, dated Feb. 27, 2018
- Exh. D. Proposed Additional Conditions of Approval

Endnotes:

¹ Application Number 12529, Assessor's Parcel Numbers (APNs): 217-201-001, 217-181-027, 217-181-028, 217-182-001, 217-024-011, 217-024-006, 217-024-010, 217-024-003, 217-025-001.

² Public Resources Code ("PRC") §§ 21000, et seq.; *see also* CEQA Guidelines, 14 CCR §§ 15000, et seq.

³ *See* Humboldt County Code ("HCC"), § 312-13.1, 13.2. Please let this letter serve as the requisite notice of appeal of the above referenced decision pursuant to HCC, § 312-13.1. Enclosed herewith is a check in the amount of \$1,648 representing the balance of the applicable appeal fees in this matter (see Exhibit A completed Fees and Charges Worksheet and Exhibit B completed Planning Application Form). Accordingly, Appellants respectfully request that an appeal hearing be granted in accordance with the appeal procedures outlined in HCC, § 312-13 and that the Planning Department begin processing this appeal pursuant to HCC, § 312-13.4. Likewise, Appellants request a copy of the transcript of the hearing for review in preparation for the appeal.

Note: Appellants requested through counsel notice of the Planning Commission decision to approve the Project, pursuant to Humboldt County Code Section 312-6.7, which notice has not been provided. Appellants have not received any notice consisting of the written findings of the Planning Commission and the conditions of approval. The failure to provide the required notice has prejudiced Appellants in prosecuting this appeal as there are no written findings and conditions of approval from which Appellants can base further issues on appeal.

⁴ *See* Exh. A to Petitioners' letter to Planning Commission, dated Jan. 20, 2021, List of Environmental Organizations Joining in Petitioners' Final Comments.

⁵ *See* staff Report to Planning Commission for Jan. 21, 2021 meeting, pp. 70-81 [Northpoint Consulting memo, dated Jan. 15, 2021, re Cultivation Water Management Plan Rolling Meadow Ranch, LLC].

⁶ Please note: Petitioners' prior comments on the original and revised IS/MND, dated August 17, September 10, and December 30, 2020, respectively, as well as their comments on supplemental information provided in staff reports to the Planning Commission for hearings on January 7 and January 20, 2021, respectively, are hereby incorporated by reference. Rather than attach duplicate copies of these materials, Appellants request that all prior public and agency comments concerning the Project be furnished to the Board before the requested hearing.

⁷ *See Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal. App. 4th 837, 849 [authority to deny project]; Gov. Code § 65800 ["counties and cities may exercise the maximum degree of control over local zoning matters"].

⁸ *See Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 183-184, quoting PRC § 21064.5.

⁹ *See Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1112 (*Berkeley Hillside*)

¹⁰ See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928 [“It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is *de novo*, with a preference for resolving doubts in favor of environmental review”]; see also *Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370, 381 [the “fair argument” test “is a low threshold for the preparation of an EIR, reflecting a preference to resolve doubts in favor of full-blown environmental review”]; see also *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579.

¹¹ *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 689-690, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 and CEQA Guidelines § 15064(f)(1).

¹² *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1400, quoting 1 Kostka & Zischke, Practice Under [CEQA] (Cont.Ed.Bar 1993), § 6.29, at pp. 273-274.

¹³ See Petitioners’ Supplemental comments on IS/MND, dated Sept. 10, 2020, pp. 4-6.

¹⁴ See generally Petitioners’ comments on revised IS/MND, dated Dec. 30, 2020; see also Exh. A to Petitioners’ letter to Planning Commission, dated Jan. 20, 2021 – Summary of Major Unresolved Issues; see also generally public comments submitted to Planning Commission.

¹⁵ See PRC § 21080 (e)(1) [“[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact”]; see also CEQA Guidelines, § 15384(b); PRC § 21080(e)(2) [Substantial evidence “is not argument, speculation, unsubstantiated opinion or narrative”]; see also CEQA Guidelines, § 15384(a).

¹⁶ See, e.g., *Pocket Protectors, supra*, 124 Cal.App.4th at pp. 928, 931 [“expert opinion if supported by facts, even if not based on specific observations as to the site under review,” and the comments of planning staff concerning project’s inconsistencies with planning regulations both qualify as substantial evidence supporting a fair argument], citing *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1398–1399 & fn. 10; see also *Sierra Club v. Calif. Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370, 382 [expert opinion based on facts may satisfy fair argument test]; see also *Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 9-10 [long-time resident comments and agency official comments satisfied fair argument test]; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 730, 735 [neighboring owners’ comments concerning current traffic conditions and prior accidents may satisfy fair argument test]; see also *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1153 [holding fair argument test satisfied based on residents’ fact-based comments]; see also *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 375-377 [lay commentary on nontechnical matters can satisfy fair argument test].

¹⁷ The issues summarized herein were described in greater detail in prior comments. See Exh. B to Petitioners’ letter to Planning Commission, dated Jan. 20, 2021 – Summary of Major Unresolved Issues; see also Public Comments attachment to staff report for January 21, 2021 Planning Commission meeting.

¹⁸ See Revised IS/MND, pp. 12-13, 190, 220, 223 [McCann road can meet Category 2 requirements with specified improvements]; see also Appendix C to Revised IS/MND, p. 3.

¹⁹ See HCC §§ 314-55, 55.4, et seq.; see *id.* at § 55.4.12.1.8.2 [Standard 2 – Functional Capacity].

²⁰ See HCC, Title III, Div. 11, §§ 3112-3 [the Category 4 standard, which requires a minimum 20-foot wide two-lane travelled way, generally applies]; see *id.* at § 3112-3(b)(c) [exceptions for areas in mountainous terrain, where Category 3 standards may be deemed sufficient].

²¹ See Appendix C to Revised IS/MND, Access Assessment for Compliance with Fire Safe Regulations (Oct. 2020), Appendix A: Access Assessment Drawings.

²² See Exh. C - Dept. of Public Works memo with attached lists of Category 4 or equivalent roads and roads that are not the equivalent of a Category 4 road, dated Feb. 27, 2018. Because McCann Road from Dyerville Loop Road to the Project site is largely unpaved, as narrow as 10 feet wide in places, and is subject to seasonal closure due to the McCann Bridge, no portions of McCann Road can qualify as Category 4 or its functional equivalent.

²³ See Exh. C to Petitioners' comments on Revised IS/MND, Steve Salzman letter re Evaluation of the McCann Road, dated Dec. 26, 2020.

²⁴ See Fruitland Ridge Volunteer Fire Protection District comments on revised IS/MND, dated Dec. 30, 2020, pp. 1-2; see also Petitioners' comments on Revised IS/MND, pp. 18-22.

²⁵ See Revised IS/MND, p. 197 [citing "letters" from Fisch Drilling].

²⁶ See staff Report to Planning Commission for Jan. 21, 2021 meeting, pp. 4, 12 [omitting any reference to letters from Fisch Drilling]; see also staff report for the August 20 Planning Commission meeting, p. 4 [citing solely the Fisch Drilling letter dated February 15, 2018].

²⁷ *County Sanitation Dist. No. 2, supra*, 127 Cal.App.4th at p. 1597, quoting *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311.

²⁸ See Exh. C to Petitioners' comments on Revised IS/MND, memo from PWA, pp. 3-4; see also CDFW email to planner dated Sept. 10, 2020; see also CDFW comments on revised IS/MND, dated Dec. 30, 2020, pp. 8-9.

²⁹ See CDFW comments on original IS/MND, dated August 17, 2020, p. 2; see also CDFW comments on revised IS/MND, dated Dec. 30, 2020, pp. 2-7.

³⁰ See Revised IS/MND, p. 6.

³¹ See Revised IS/MND, p. 49 [mentioning that surveys were performed at RPs, but providing no detailed information concerning the areas surveyed]; see also Appendix I to Revised IS/MND, Botanical Survey Report (rev. Oct. 2020), Figures 1 through 6 [depicting limits of study area], and Assessment of Road Improvement and Maintenance Activity Impacts to Botanical Resources (Oct. 2020), Figure 1 (Depicting RPs where surveys were conducted); see also Appendix C to Revised IS/MND, Access Assessment for Compliance with Fire Safe Regulations (Oct. 2020), p. 8 (Table 2, identifying two areas where roadway will need to be widened to 12' and several areas with grades exceeding 16%).

³² See staff Report to Planning Commission for Jan. 21, 2021 meeting, pp. 10, 15, 42, 43.

³³ See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 936 [integration of permitting process required].

³⁴ See Petitioners have already described CEQA's requirements for a project description in prior comments. See Petitioners' supplemental comments on original IS/MND, dated Sept. 10, 2020, p. 6; see also Petitioners' comments on the revised IS/MND, dated Dec. 30, 2020, pp. 7-8.

³⁵ See *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406, citing *Sundstrom, supra*, 202 Cal. App. 3d at p. 311.

³⁶ See Letter from County Supervising Planner to Project applicant, dated January 15, 2018, p. 2-3; see also CDFW Referral Checklist, dated Jan. 24, 2018, p. 2; see also Exh. G to Petitioners' comments on Revised IS/MND Transcon Peer Review Memorandum, dated July 23, 2018, p. 1-3; Petitioners' supplemental comments on original IS/MND, dated Sept. 10, 2020, pp. 6-8; see also Petitioners' comments on revised IS/MND, dated Dec. 30, 2020, pp. 7-15.

³⁷ Compare original IS/MND, pp. 9-10, 171, 176, 179 [describing McCann Rd. as "meeting fire safe standards" and internal ranch roads as "private driveways" not needing improvements], with revised IS/MND, pp. 11-13, 146, 190, 194, 220, 223 [describing roadway and drainage improvements to McCann Rd. necessary to satisfy the (improper) Category 2 standard] and with staff report to Planning Commission for Jan. 7 meeting, p. 6 [stating that road improvement work performed in 2019 brought internal ranch roads up Fire Safe standards] and with staff report to Planning Commission for Jan, 21 meeting, pp. 18, 38 [acknowledging undescribed access road "improvements"].

³⁸ Compare original IS/MND, pp. 12, 183 [describing "landscaping, dust control, and fire defense" uses for captured rainwater] with revised IS/MND, pp. 15, 196, 215 [same] and with staff report to Planning Commission for January 7, 2021 meeting, p. 4 [same] and with staff report to Planning Commission for January 21, 2021 meeting, pp. 3-4, 49, 80-81 [inconsistently stating that rainwater will generally be used for landscaping, dust control, and fire defense uses but will also now also be used for cultivation].

³⁹ Compare original IS/MND, p. 150 [describing “The project proposes to locate three greenhouses, Facility #1, #2 and #3, and one processing building within the 100 year flood plain”] with revised IS/MND, p. 41-44, 194 [describing Facilities #1 and #2 within 100-year floodplain and relocated processing facilities] and with staff report to Planning Commission for Jan. 21, 2021 meeting, pp. 11, 17, 38 [describing 10-foot retaining wall that will elevate Facilities #1 and #2 out of floodplain].

⁴⁰ Compare original IS/MND, p. 11, 65, 69 [describing two to three cycles per year with no winter season use until the McCann Bridge is replaced] with revised IS/MND, pp. 13, 95 [describing three to four cycles per year, with use of Alderpoint Road during the winter when the McCann Bridge is closed] and with staff report to Planning Commission for Jan. 21, 2021 meeting, p. 2 [“there will be a maximum of four cultivation cycles annually”].

⁴¹ See, e.g., Appeal package for Adesa project, for 10/27/20 BOS meeting, p. 4 [“The project has been designed to minimize the impacts of new development on the surrounding area, including the use of a van pool to limit traffic to no more than ten trips per day and the placement of the new greenhouses in a location where they will not be visible from surrounding properties or any public vantage point”].

⁴² See Gov. Code §§ 65009, 65850.

⁴³ *Georgetown Preservation Society, supra*, 30 Cal.App.5th at pp. 371-372.

⁴⁴ See Humboldt County Bd. of Supervisors, Resolution 16-14, General Plan Consistency Analysis and Findings, p. 2; see also *id.*, Substituted Mitigation Measure Analysis and Findings, p. 8 [finding that a substituted mitigation measure prohibiting new cultivation operations in TPZ zoned parcels “does not allow new cannabis cultivation in forest lands....”].

⁴⁵ See *id.*, Substituted Mitigation Measure Analysis and Findings, p. 4.

⁴⁶ For example, the Project site is characterized by steep slopes with few relatively flat areas. See Revised IS/MND, p. 8 [Figure 1, topographic map of Project site]. The applicant has not documented a water right, even though the Project wells could divert surface water through underflow. Because the potential hydrologic connection between groundwater and nearby surface water resources has not been studied by a qualified expert and documented, a water right may be required. The access roads do not comply with applicable performance standards.

⁴⁷ See, e.g., comments by Friends of the Marbled Murrelet on the revised IS/MND, dated Dec. 30, 2020 [stating “the county never analyzed the impacts of a loophole in the ordinance that creates a path for developers to hire consultants that map ‘new’ prime ag soils. This loophole has been exploited throughout the county, where questionable methods and consultants have produced soil reports miraculously finding new prime ag soils in places that were never analyzed under the CMMLUO and its MND.”].

⁴⁸ See Appeal package for Adesa project, for 10/27/20 BOS meeting, p. 3.

⁴⁹ See Petitioners’ comments on revised IS/MND, dated Dec. 30, 2020, pp. 34-35; see also Exh. A to Petitioners’ letter to Planning Commission, dated Jan. 20, 2021 – Summary of Major Unresolved Issues.

⁵⁰ See Humboldt County Bd. of Supervisors, Resolution 16-14, General Plan Consistency Analysis and Findings, p. 2, citing CMMLUO § 55.4.8.2 in both coastal and inland regulations.

⁵¹ See HCC §§ 55.4.8.2.1.1 [allowing up to 12 permits on land zoned AE and AG], 55.4.8.10 [“No more than four commercial cannabis activity permits of any type enumerated in Sections 55.4.8.2 through 55.4.8.7 of this ordinance may be issued to a single person, as defined herein”], 55.4.7 [definition of “person”].

⁵² See CMMLUO, HCC, §§ 55.4.3.3, 55.4.8.1; see also SRA Fire Safe Regulation, HCC §§ 3111-1, 3111-2, 3111-3(a)(3).

⁵³ HCC, § 3112-1. Notably, none of the exemptions for access road requirements enumerated in HCC § 3111-3(b) apply to the Project.

⁵⁴ See Petitioners’ comments on revised IS/MND, dated Dec. 30, 2020, p. 10, citing HCC § 3112-3(b).

⁵⁵ See Exh. A to Petitioners' letter to Planning Commission, dated Jan. 20, 2021 – Summary of Major Unresolved Issues, p. 2, citing staff report to Planning Commission for Jan. 21, 2021 meeting, p. 8.

⁵⁶ See Exh. G to Petitioners' comments on revised IS/MND, dated Dec. 30, 2020, p. 1.

⁵⁷ See Access Assessment for Compliance with Fire Safe Regulations included in Appendix C to the Revised IS/MND inaccurately describes the McCann Bridge as 13.5' wide (the travelled way is slightly over 10' wide) and "structurally sufficient to carry loads imposed by emergency vehicles" (p. 9); see also Internal Access Road Evaluation, dated Jan. 14, 2019, included in Appendix C to the Revised IS/MND, p. 1 [inaccurately stating that bridge and culverts must be "built to carry a minimum load of 40,000 lbs." when 75,000 pounds is the correct standard under the Fire Safe Ordinance].

⁵⁸ Statement of Deputy Director of Public Works, Bob Burkell at Planning Commission meeting, Jan. 21, 2021.

⁵⁹ See Exh. C to Petitioners' comments on revised IS/MND, p. 6 [Photo No. 8, showing 12' gate and cattle guard]. The Access Assessment for Compliance with Fire Safe Regulations included in Appendix C to the Revised IS/MND inaccurately describes this gate as already being 14 feet wide and does not describe any required widening (see pp. 5 [Table 1a], 9).

⁶⁰ See revised IS/MND, p. 220 ["The improvement consists of modifying a cattle guard/ currently unused gate to achieve a 14 foot width"].

⁶¹ See HCC § 3112-13 [Gate entrances shall be at least two (2) feet wider than the width of the traffic lane(s) serving the gate, and have pull outs in both directions"]

⁶² See HCC § 3111-9.

⁶³ See Planning Commission Resolution 21-11, p. 11.



DEPARTMENT OF PUBLIC WORKS
COUNTY OF HUMBOLDT
 MAILING ADDRESS: 1106 SECOND STREET, EUREKA, CA 95501-0579
 AREA CODE 707

Exhibit C

ARCATA-EUREKA AIRPORT TERMINAL
 MCKWILEYVILLE
 FAX 839-3399 839-5401

PUBLIC WORKS BUILDING
 SECOND & L ST., EUREKA
 FAX 445-7429

CLARK COMPLEX
 HARRIS & H ST., EUREKA
 FAX 445-7358 445-7265

ADMINISTRATION	445-7491	NATURAL RESOURCES	445-7741
BUSINESS	445-7652	NATURAL RESOURCES PLANNING	267-9540
ENGINEERING	445-7377	PARKS	445-7051
FACILITY MAINTENANCE	445-7493	ROADS & EQUIPMENT MAINTENANCE	445-7421

LAND USE DIVISION INTEROFFICE MEMORANDUM

TO: Michelle Nielsen, Senior Planner, Planning & Building Department

FROM: Kenneth M. Freed, Assistant Engineer *KMF*

DATE: 2-07-2018

RE:

Applicant Name	MICHAEL HOFFMAN
APN	108-161-034
APPS#	11752



The Department has reviewed the above project and has the following comments:

- The Department's recommended conditions of approval are attached as **Exhibit "A"**.
- Additional information identified on **Exhibit "B"** is required before the Department can review the project. Please re-refer the project to the Department when all of the requested information has been provided.
- Additional review is required by Planning & Building staff for the items on **Exhibit "C"**. No re-refer is required.
- Road Evaluation Reports(s)* are required; See **Exhibit "D"**. No re-refer is required.

*Note: Exhibits are attached as necessary.

Additional comments/notes:

// END //

Exhibit "D"

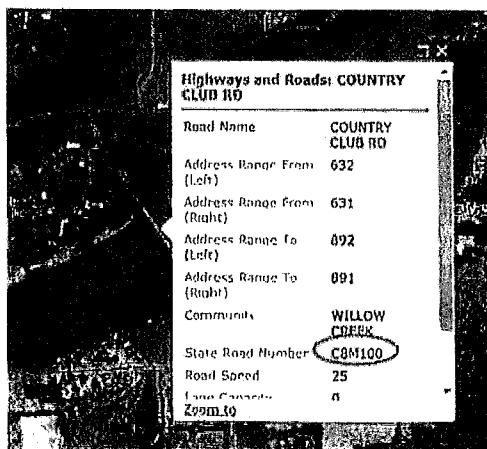
Road Evaluation Reports

1. **ROADS – Road Evaluation Reports.** Planning and Building Department staff shall request that the applicant provide *Road Evaluation Reports* for the project. The particular roads that require a *Road Evaluation Report* is to be determined by following the guidance shown below.

The Department has developed a *Road Evaluation Report* form so that an applicant can address the adequacy of the various roads used by their project. Most projects will require that a *Road Evaluation Report* form be completed.

When viewing the project site on google earth, if the County maintained road (or other publicly maintained road) has a centerline stripe, the road is adequate. If there is no centerline stripe, then the roads leading from the nearest publicly maintained road with a paved centerline stripe (or a known category 4 road) must be evaluated. A separate *Road Evaluation Report* form is needed for each road. This applies to all roads regardless if they are publicly or privately maintained. The Department has prepared a "approved list" of known County maintained roads that are category 4 (or are equivalent to category 4) standards for cannabis projects. The Department has also prepared a list of roads that are known to not meet road category 4 of equivalent. Both of these lists will be updated as the County information regarding the County maintained roads becomes available.

The *Road Evaluation Report* form needs to be provided to applicants to complete. It is important that Planning and Building Department staff provide the applicant with a map that has the roads to be evaluated highlighted. This will most likely include a combination of County maintained roads and non-County maintained roads. This will give the applicant clear direction on which roads need to be evaluated.



Above: screenshot from the WebGIS showing County Road Number circled in RED.

A County maintained road will have a 5 or 6 character identifier. The general format is ABCDDD where:

- A is an optional identifier for the functionality of the road (A=Arterial, C=Collector, F=Federal Aid)
- B is a grid identifier number for the X-axis of a "battleship" style grid that was drawn on a county map to divide the county into a series of squares.
- C is a grid identifier letter for the Y-axis for the grid.
- DDD is a three digit road identification number within a particular grid. Each grid can have up to 999 roads in them

Examples:

ABCDDD
A3M020 Murray Road
F6B165 Alderpoint Road
6C040 Thomas Road

Exhibit "D"

Road Evaluation Reports

The Department is working towards identifying which County maintained roads meet (or are equivalent to) Road Category 4 standards for cannabis projects. Two lists are being prepared: the first list with the green heading shows which roads (or portions thereof) meet or are equivalent to Road Category 4 standard (AKA "Approved List"); and the second list with the red heading shows which roads (or portions thereof) that do not meet or are not equivalent to Road Category 4 standards. These lists will be updated as information becomes available. **This list will be updated frequently. Make sure you are using the most up to date list.**

On occasion there may be more than one road that has the same name; in these instances check the road number to ensure that you are referencing the correct road. Until such time as the GIS roads layer has been proofed by the Department, the GIS is not to be used for this task. Use the paper road maps to check road numbers.

If the subject property takes direct access from a road on the "approved list", no further road evaluation needs to be done.

"APPROVED LIST"		
List of County Maintained Roads that meet (or are equivalent to) Road Category 4 standards for Cannabis Projects		
Road Name	Road Number	Range (or equivalent to) Road Category 4 standard
Alderpoint Road	F6B165	All
Benbow Drive	6B180	Oakcrest Dr to State Hwy 101
Blue Slide Road	F2G100	All [Grizzley Bluff Rd to City limits of Rio Dell]
Brannon Mountain Road	7M100	State Hwy 96 to Creekside Lane
Briceland Thorne Road	F5A010	All
Cathy Road	6D050	State Park to P.M. 0.87 [End of County maintained]
Fickle Hill Road	C5J040	Arcata city limits at PM ____ to PM ____ (end of centerline stripe)
Fieldbrook Road	C4L760	All
Freshwater Road	F6F060	All
Friday Ridge Road	8L100	State Hwy 299 to PM 3.37[End of County maintained] then becomes USFS Road
Greenwood Heights Drive	C4K160	All
Grizzley Bluff Road	F2G100	All [City limits of Ferndale to Blue Slide Rd]
Jacoby Creek Road	C4K230	Old Arcata Road to P.M. 2.50
Jacoby Creek Road	4K230	From P.M. 2.5 to P.M. 2.69
Kneeland Road	F6F060	Freshwater Road to Mountain View Road
Maple Creek Road	5L100	All
Mattole Road	F3D010	All
Mattole Road	F3C010	All
McCann Road	6D090	Dyerville Loop Road to P.M. 1.0
McClellan Mtn Road	7F010	State Hwy 96 to P.M. 3.57[End of County maintained]
Murray Road	C3M020	All
Old Three Creeks	6L250	State Hwy 299 to P.M. 2.8 [End of County maintained]
Panther Gap Road	4D010	Mattole Road to P.M. 1.83[End of County maintained] continues as a non- County maintained road
Patterson Road	C3M130	All
Salmon Creek Road	6C030	Hwy 101 to P.M. 5.39 [End of County maintained]
Shelter Cove Road	C4A010	All
Sprawl Creek Road	C6B095	PM 0.0 to PM 2.11
Sprawl Creek Road	6B095	PM 2.11 to PM 4.00
Thomas Road	6C040	Salmon Creek Road to P.M. 4.03 [End of County maintained] continues as a non- County maintained rd
Titlow Hill Road	7K100	Hwy 299 to PM 4.7[End of County maintained] then becomes USFS Road
West End Road	5L010	PM 0.0 at Arcata City Limits to Warren Creek Road
Wilder Ridge Road	C5B010	All

Exhibit D

Proposed Additional Project Modifications and Conditions of Approval

Appellants recommend modifications to the Conditions of Approval for the Project. Deleted text is shown in ~~strikeout~~ and added text is shown in underline.

A. Traffic / Roads / Site Access:

If McCann Road continues to serve as the Project's primary access route, add the following language to Conditions of Approval #5 and #7 and add new Conditions of Approval #36, #37 and #38:

5. The applicant shall obtain an encroachment permit from the Department of Public Works to (1) pave a minimum width of 20 feet and a length of 50 feet where the County-maintained portions of McCann Road and Alderpoint Roads meet the privately-maintained portion the project access roads, (2) pave or apply an alternative surface coat to minimize fugitive dust emissions on any portions of McCann Road and Dyerville Loop Road that are not already paved (except the portion of McCann Road that crosses the river gravel bar adjacent to McCann Bridge, and for that portion, the applicant shall water down the gravel bar during construction trips and employee trips during the dry season) and (3) complete the required improvements. A letter or similar communication from the Department of Public Works stating this work is completed to DPW's satisfaction will complete this condition.
7. The applicant shall operate an employee shuttle bus that will transport all employees to the site from the intersection of Highway 101 and Dyerville Loop Road to the parking lot adjacent to Facilities #1 and #2. Project-related traffic using Dyerville Loop Road and McCann Road shall be limited to less than ten (10) trips per day. Prior to commencing operations, the applicant shall install an automatic security gate at the Alderpoint Road (outside of the County Right-of-Way). The applicant shall provide proof (e.g., photographs) that the gate is installed. A sign-off from the Planning Department will satisfy this condition.
36. The applicant shall upgrade the culvert on McCann Road near Road Point 4 (identified in the Access Assessment) to increase its size to accommodate a 100-year storm flow and the road approaches adjacent to this culvert shall be re-designed to be hydrologically disconnected in order to prevent long lengths of road related runoff and sediment delivery. A sign-off from the County Department of Public Works on the upgraded culvert and drainage design will satisfy this condition.
37. Under no circumstances shall any portion of private roads not owned by the applicant be used for Project site access, unless the applicant has secured an easement that allows such use.

38. Prior to issuance of any building or grading permits for the Project, the applicant shall retain a civil engineer to confirm the adequacy and weight rating of McCann Bridge and all Project access roadways and water crossings to satisfy the 75,000-lb. weight rating requirement from the Humboldt County Fire Safe Regulations (HCC § 3112-4). If McCann Bridge does not satisfy minimum weight bearing requirements, Alderpoint Road shall be used as the primary access road.

Alternatively, to avoid impacts associated with Project-related use of McCann Road, add the following language to Condition of Approval #7:

7. All access for Project construction and for cannabis cultivation and processing operations is required exclusively via Alderpoint Road, described as the "Winter Access Road" in Project documents. During Project operation, use of McCann Road shall be restricted to emergency purposes only. Prior to commencing operations, the applicant shall install an automatic security gate at the Alderpoint Road (outside of the County Right-of-Way). The applicant shall provide proof (e.g., photographs) that the gate is installed. A sign-off from the Planning Department will satisfy this condition.

B. Fire / Safety:

To prevent the depletion of stored rainwater in the months leading up to and including California's "fire season" add the following language to Condition of Approval #4:

4. Rainwater collection systems shall be installed at each greenhouse, with a collective estimated capacity of 320,000 gallons, to capture and store rainwater. At all times, Aa minimum of 50% of the stored water shall be reserved for fire suppression purposes. In the months of June through November, 100% of stored water shall be reserved for fire suppression purposes. The applicants shall install meters at all storage tanks and make the logs available to county staff upon inspection.

To improve protection against wildfire, add the following language to Conditions of Approval #21 and #32:

21. The applicant shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel(s) on a form provided by the Humboldt County Planning Division. All employees of the Project shall be required to take a certified basic fire safety training course, and be provided ongoing fire fighting awareness and education as part of their employment.

32. The permit holder is responsible to place sufficient water storage at each structure to provide firefighting water. The applicant shall provide a "water tender" (as defined, see: https://en.wikipedia.org/wiki/Water_tender) at each of the four clusters of structures for firefighting and response. The minimum gallon capacity requirements of these

water tenders and the amount of storage needed shall be approved by the Planning Director in consultation with either Cal Fire, or the Alderpoint Fire district, and the Fruitland Ridge Fire Protection District.

To ensure the safety of McCann area residents in the event of a wildfire, add a new Condition of Approval #39:

39. Prior to obtaining any building and grading permits for the project, the applicant shall record a fire safety easement granting to all residents of McCann (1) the right of ingress and egress access to the river bar at the end of McCann Road from the Rolling Meadow Ranch property to Frances Greenleaf's property and (2) the right of ingress and egress on private ranch roads across the Rolling Meadow Ranch property to Alderpoint Road in the event of an emergency (e.g., fire, McCann road failure, etc.). A legal description of the easement area and a description of allowed uses will be provided to the applicant for this purpose.

C. Site Design and Permitting:

To avoid impacts to wetlands and streams, add the following language to Condition of Approval #3:

3. The applicant shall secure permits for all proposed structures (including greenhouses and processing facilities) and grading related to the cannabis cultivation and other commercial cannabis activity. The plans submitted for building permit and grading permit approval shall be consistent with the project description and approved project site plan, unless such plans show encroachments into wetlands, riparian areas, or the 100-year floodplain, in which case the plans shall be modified in order to avoid any and all such encroachments. A letter or similar communication from the Building Division verifying that all structures related to the cannabis cultivation are permitted consistent with these requirements will satisfy this condition.

To avoid impacts to cultural resources located on the Project site, add the following Condition of Approval #40:

40. To avoid potentially significant impacts to cultural resources, the applicant shall consult with Oral Whitlow, a lifelong resident of the McCann area, regarding his concerns that the Project negatively impacts and desecrates the graves of his family members and ancestors as well as a Native American burial site. Changes to the Project's design shall be made to avoid impacts to these cultural resources, subject to consultation with the appropriate Native American tribe and Planning Department review and approval.

To avoid potential growth inducing impacts, add the following Condition of Approval #41:

40. To avoid potentially significant growth inducing impacts, the County shall impose a moratorium on all parcels within the Rolling Meadow Ranch, prohibiting further development, including residential uses, during the life of this Project.

C. Electricity Supply:

To ensure the Project will be served by 100% renewable energy, add the following language to Condition of Approval #18:

18. The Project applicant shall obtain a will serve letter from PG&E and provide a copy of this letter to the County before any building permits may be issued. Any and all electricity infrastructure shall be placed underground within the road prism of the access road leading to each of the Project facilities. The applicant shall record a development plan or similar document approved by the Planning Department that the electric service developed for the project is only to be used for the cannabis cultivation areas and associated structures that support the cultivation operation. The development of the electric service is not intended to be growth inducing and/or new facilitate new residential development

D. Water Supply and Water Quality:

To avoid and minimize impacts to potentially hydrologically connected surface water features and aquatic resources, add the following language to Condition of Approval #23:

23. The Applicant shall install and utilize a water meter to demonstrate that there is sufficient water supply to meet the demands of the project. The water use for cultivation is limited to the use of the well and amount of water available in storage tanks and shall be provided annually prior to or during the annual inspection. As part of the annual inspection process, the operator shall provide the County with groundwater monitoring data for on-site well facilities that documents well production and changes in groundwater levels during each month of the year. Should this monitoring data identify potential drawdown impacts to adjacent surface waters and indicate a connection to operation of the on-site wells, the operator, in conjunction with the County, shall develop adaptive management measures to allow for recovery of groundwater levels. Adaptive management measures may include forbearance (e.g., prohibition of groundwater extraction from the months of May to October), water conservation measures, reductions in on-site cannabis cultivation, alteration of the groundwater pumping schedule, or other measures determined appropriate. Adaptive management measures will remain in place until groundwater levels have recovered based on annual monitoring data provided to the County as part of subsequent annual inspections.

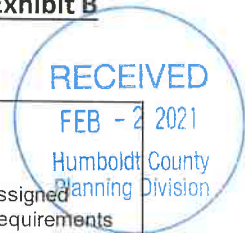
To avoid potential water quality impacts, add the following Condition of Approval #42:

42. To avoid potentially significant impacts to water quality, the Project shall utilize organic cultivation practices. When replacing growing medium (i.e., soil) used for cannabis cultivation in the sixteen (16) greenhouses, the applicant shall transport all waste medium offsite and properly dispose of it in accordance with applicable regulations.



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

Exhibit B



INSTRUCTIONS:

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

SECTION I

APPLICANT (Project will be processed under Business name, if applicable.)	AGENT (Communications from Department will be directed to agent)
Business Name: _____	Business Name: Holder Law Group
Contact Person: Fran Greenleaf, John Richards, Patty Richards	Contact Person: Jason Holder
Mailing Address: [Private information -- available upon request]	Mailing Address: 317 Washington St., #177
City, St, Zip: _____	City, St, Zip: Oakland CA 94607
Telephone: _____ Alt. Tel: _____	Telephone: (510) 338-3759 Alt. Tel: _____
Email: _____	Email: jason@holderecolaw.com
OWNER(S) OF RECORD (If different from applicant)	
Owner's Name: Andrew Machata	Owner's Name: _____
Mailing Address: [refer to PLN-12529-CUP]	Mailing Address: _____
City, St, Zip: _____	City, St, Zip: _____
Telephone: _____ Alt. Tel: _____	Telephone: _____ Alt. Tel: _____
LOCATION OF PROJECT	
Site Address: 2189 & 2487 McCann Road	Assessor's Parcel No(s): 217-201-001, 217-181-027, 217-181-028, 217-182-001, 217-024-011, 217-024-012
Community Area: McCann	Parcel Size (acres or sq. ft.): Approx. 7,110
Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

SECTION II

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

Appeal from Planning Commission approval of Rolling Meadow Ranch Commercial Cannabis Project (PLN-12529-CUP)

SECTION III

OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT

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

February 2, 2021

 Applicant Signature

 Date

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

 Owner of Record Signature

 Date

 Owner of Record Signature

 Date

PLN-2021-16987

