Hayes, Kathy

From: Lisa Pelletier <lisa.pelletier@berkeley.edu>
Sent: Friday, June 18, 2021 3:38 AM
To: Wilson, Mike; COB
Cc: Bass, Virginia; Madrone, Steve; Bushnell, Michelle; Bohn, Rex
Subject: Stand up for us (your constituents)! PLN-12255 CUP

Dear Humboldt County Supervisors,

Thank you for considering our appeal. I've hesitated to bring this up, but considering the power you have to determine our future, I must.

Respectfully, I must be as honest as I trust you'll be with us. It's been so jarring to appeal to you (our representatives) who supposedly represents us (ordinary citizens), only to find some of you mouthing the interests of ALC/ Sun Valley.

You hold all the cards for now, but please keep in mind, this is how community activism is born. There is ample evidence of this in many communities where government has overridden the concerns of citizens.

My mom and I participated in the presentation by CEQA attorney Jason Holder, so we are well aware that the County is abrogating our rights to a full EIR required by CEQA. Why are you denying our rights to a full EIR?

Humboldt County residents deserve to know the full impacts of the largest projects coming down the pike. Unlike an MND, an EIR would require an assessment of the cumulative impacts of all these mega projects in the aggregate. Why are you denying us the right to this information?

If you truly represent us (ordinary citizens), as opposed to large corporations, why wouldn't you stand up for our right to an EIR (and full transparency)? Please think about this.

The general public and every environmental organization has called for a full environmental impact report for all of the larger projects, such as the mega cannabis grows and the proposed fish factory farm. Why are you resisting this?? Do you represent us or the interests of large corporatioms? I'm sorry but I just have to ask.

Indeed, why are you resistant to requiring EIR's, which are so much more robust (see my email on this), and beneficial to our communities?

According to CEQA attorney Jason Holder, under CEQA, there is a very low threshold for an EIR. Under CEQA, if there is even one significant impact, CEQA requires an EIR. Also, an EIR requires the most superior mitigations, including downsizing the project. Can't you see/appreciate how that is more beneficial to the people and communities you claim to represent? Don't we (your constituents) deserve that much?

As I (and others) have pointed out previously, there are numerous omissions and outright falsehoods in the MND for ALC's proposed cannabis grow. We've pointed this out to the PlanCo on numerous occasions, but so far, this has fallen on deaf ears.

Please hear us (the people who elected you)! We, the citizens of Humboldt County, deserve to know the full impacts of this project, and CEQA requires it. Please uphold our rights under CEQA by requiring a full EIR.

With all due respect, it appears that the County is abrogating our rights (the right of ordinary citizens) under CEQA. I'm aware that we need to get this on the record if we're to apply for a remedy from the courts, so I'm doing that now.

Forgive me for being so blunt. I realize that you have a very difficult decision to make and it's not easy. But please, don't forget the "little guy" in your deliberations, and your obligations under the law (CEQA).Thank you.

With respect,

Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Monica Coyne <monicoyne@gmail.com>
Sent: Friday, June 18, 2021 7:03 AM
To: COB
Subject: Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

Dear Humboldt County Board of Supervisors,

Hello, We hope your day is going well. We are writing to you because we are concerned about the proposed expansion of the Sun Valley Bulb Farm/Arcata Land Company expansion into Cannabis.
My husband and I own a farm and a well in the Arcata Bottoms. We also have a small licensed cannabis farm (under 2000sq ft) in Southern Humboldt.

We are concerned about:

The water use: We are limited to rain water catchment on our cannabis farm. We feel that water in the bottoms should be largely used for food production, especially since cannabis does not grow well naturally in that environment. Large cannabis farms should be even more responsible to save and store water. They are using more resources and making more money. Water use should also be monitored. Sun Valley has been polluting the water with herbicides and pesticides for years. This grow does not change their use of poisons it just expands their business.

Energy Use: The growers are going to need lights and heaters and fans to grow a commercial cannabis crop in the Bottoms. This is not sustainable and it is not wise. There are plenty of places in this county where cannabis will grow easily without all of the power and fuel that will be needed for this operation. It does not make sense.

Humboldt County's reputation;
Corporate indoor cannabis is not what we want Humboldt to be known for. Our small heritage farmers here in Humboldt persevered through years of prohibition only to be taken down now by our own supervisors' and planning department's support of huge corporate non-cannabis opportunists.

Thank you for your consideration.
Sincerely,

Colum and Monica Coyne

Hayes, Kathy

From: Kerry McNally <kerrym42@gmail.com>
Sent: Friday, June 18, 2021 7:58 AM
To: COB; Planning Clerk
Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

Kerry McNally
1744 Simas Court
Arcata, Calif. 95521
kerrym2@gmail.com
707-499-3799

June 16, 2021

Humboldt County Board of Supervisors
525 Fifth St.
Eureka, Calif. 95501

Dear Humboldt County Board of Supervisors,

As a long-time homeowner who would like to remain in my house and neighborhood, I am requesting that the proposed 8+-acre Arcata Land Company project be denied, as this project is entirely too close to neighboring homes and schools and with potential impacts to health and safety of the community. Although the site is zoned for industrial use, this particular use brings with it a unique set of problems that justify additional scrutiny.

The applicant's proposal is lacking important quantifiable details, such as:

- A Traffic Study quantifying impacts to Foster Avenue and 27th Street
- A Noise Study for the fans operating in the planned greenhouses
- An Odor Study that might allay concerns for those neighbors with pre-existing conditions
- A Groundwater Impacts to neighboring wells
- Quantifiable Light Pollution Data
- Security Requirements.

We put trust in your decision making. Without sufficient data, the approval of this project is risking negative impacts to these Humboldt County residents.

Sincerely,

Kerry McNally

To: Humboldt County Board of Supervisors

From: Rodi Groot, director of Sales @ the Sun Valley Floral company.

Concerning: Arcata Land Company, LLC
Record # PLN-12255-CUP

Dear Sirs,

I write this letter in support of the proposed Cannabis Project of the Arcata Land Company on the site of the old Arcata Lumber Company in the Arcata bottoms. It is, in my opinion, a good initiative to reuse and repurpose an old and degenerating industrial property into a new business.

As a 35-year floral industry veteran I can attest to the fact that Sun Valley floral farms has a renowned reputation nationwide and is well respected by its competitors and most definitely loved by its customers. I hear the compliments from customers daily.
I also see the comradery amongst fellow team members that love working at the flower farm. Humboldt county grown flowers have roots back to the late 60's and Sun Valley is also the birthplace of one of the most famous Lilies ever to be created, the Lilium Oriental "Stargazer". To this date it is still the most asked for lily and we can say it is a Humboldt County native born on the Sun Valley floral farm.

Here is a plan that recycles the old Simpson building into job and tax revenue generating venue. An existing well, recycling of water, sensible use of fertilizers, minimal use of approved chemicals, composting, no illegal power stealing and a controllable site, relatively close to our labor supply and main roads. It fits the vision of our lawmakers, the site is zoned as heavy industrial, not in the coastal zone and far enough away from all the neighbors.

I wish you much luck in making the most sensible decision that is the best fit for Humboldt County.

Yours truly,

Rodi Groot

June 17, 2021

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

RE: Case No. Arcata Land Company, LLC, record Number PLN-12255-CUP

From: Wil Franklin

Dear Board of Supervisors,

I would like to thank the Board of Supervisors for taking the time to hear all the comments by interested parties. This is a complex proposal that requires balancing the desires of many stakeholders. I would like to ask the community and commissioners to carefully consider three aspects of this proposal.

1. The character and good standing of the applicant.
2. The environmental impact of the proposed use.
3. The economic impact to the county.

Before I address these aspects in more detail, let me ask all stakeholders to look for solutions first. There is some resistance to this proposal, but there is a lot of up-side to consider. This does not have to be an "either or" dichotomy. Reasonable, reflective citizens can and should deliberate to find a win-win solution. We **can** protect the long-term health of the environment while **at the same time** we use it for agriculture. We **can** protect small family farmers **at the same time** we allow conscientious larger companies to do business. It may be difficult, but there are too many upsides to this proposal to flat out dismiss it.

First, Arcata Land Company is not Lane DeVries or the Sun Valley Floral farm. There is some ownership overlap, but let's be clear this is not about one person or one company. Furthermore, to the extent that Lane DeVries is a stakeholder, I hope the Board of Supervisors and community has noted that not one disparaging remark has come from anyone that knows Lane DeVries. To the contrary, anyone that knows Lane DeVries has spoken to his integrity, honesty, humility, and loyalty. As I have known Lane for close to ten years, I would further point out his tremendous generosity. So many people give him respect because you are only as good as you give. And Lane DeVries gives a lot. He gives his time to Rotary clubs and Chambers of Commerce, he lobbies for California Growers in Washington DC, he gives to his spiritual community, and finally, he gives his employees respect and dignity. He also gives personally and through his companies a significant amount in donations to Humboldt County non-profits and charities. To the extent that character has anything to do with this proposal, everyone should listen to those that know Lane.

But that is not actually relevant to the merits of this proposal. What really needs to be considered carefully are the environmental and economic consequences.

The environmental impact is a serious issue that needs to be carefully monitored and updated. I would like the Board of Supervisors to look at possible environmental consequences more carefully. However,

none of the issue raised to date merit denial of this proposal. At most, certain modification and assurances need to be added to insure proper monitoring and enforcement. Looked at from a historical perspective of use on this site, the proposal is actual remediation. Furthermore, under strict Cannabis growing regulations the use will be even more environmentally friendly compared to what is currently allowed for commercial flower agriculture. Again, the potential upside to this project requires that we all do our best to find a solution that **both** protects the environment **and allows** this project to proceed. Finding a solution is the work of conscientious citizens and the Board of Supervisors.

Finally, the economic impact must be rooted in facts not emotion. Many small producers are worried about the effects this large grow will have on their own economic wellbeing -much like the small beer, wine and spirit produces of the Prohibition age. They all thought the removal of prohibition would be their downfall. But since Prohibition was lifted, the alcohol industry has only grown. And recently, small craft producers in every sector has mushroomed. But we need not go back that far. It was only a few years ago the black-market cannabis industry thought legalization was going to be the economic downfall of Humboldt County. Some shifts have occurred, but the overall economic output has only grown in Humboldt and if we **do not** start instituting prohibitive business restriction, then it will only continue to grow in Humboldt. This project will **not** put any small growers or producers out of business. Nor will it lower prices. The fact is **demand** far out strips supply and will likely do so for the foreseeable future. This powerful demand will ultimately drive mega grows somewhere to fill the void. Why not here in Humboldt with conscientious locals that care about our environment and our Brand. To that end, this proposed land use will **not** water down the **"BRAND"** that is Humboldt, especially if the small growers really dedicate themselves to true sun-grown regenerative farming practices in the more suitable inland zones of Humboldt. As pointed out by several respectable professionals, the environmental/climatical conditions of the locations of this project will not result in high-quality flowers that can compete with small craft products. If anything, this should be a wake-up call to band together and lobby for appellation-style label requirements for cannabis like is done in the wine industry. Trade groups come up with the rules and they can be designed so lesser quality products will never dilute the Brand that is Humboldt.

Please do not deny this proposal. There are far too many benefits for all stockholders.

Hayes, Kathy

From: Amy Carrieri <amy.carrieri@gmail.com>
Sent: Thursday, June 17, 2021 10:00 AM
To: COB
Subject: Arcata Land Company, LLC record # PLN-12255-CUP

To Whom It May Concern,

I wanted to send my support for the Arcata Land Company LLC's approval for permits to use their AG land for a cannabis cultivation operation.

I have worked for Sun Valley Floral Farms for 18 years. Sun Valley is one of the only local AG farming companies that has offered a good paying job, allowing me to make a living to stay in Humboldt County. I have been able to support my family, and buy a house with the consistent work.

Sun Valley Floral Farms is a conscientious grower for the past 50 years in the bottoms of Arcata, CA, participating in rigorous third party independent inspections and certifications from The Rainforest Alliance, for many years.

We must support our local businesses and farmers, that have proven track records of consistently offering jobs and long term generation of dollars into Humboldt County's economy.

I have confidence you will approve Arcata Land Company LLC permit request, as a local and long standing AG farmer in Humboldt County.

Thank you,
Amy Carrieri
707.616-4250

June 17th, 2021

To: Humboldt County Board of Supervisors

Re: Supporting the Arcata Land Company, LLC PLN-12255-CUP

I have worked at Sun Valley for 36 years. That is ½ of my life so far.

During my years of working in different areas I have had the advantage of viewing internal operations.

I am writing this letter of my own free will. It is not required.

Sun Valley does not discriminate – there are employees working here from all walks of life.

I can tell you that employees at Sun Valley work very hard, many of the jobs require hard labor and sometimes long hours.

My employment has allowed me to live in Humboldt County and contribute to my community.

My children have attended schools and are now working in the County and have children of their own.

This is the cycle of life that Sun Valley provides to 450 employees.

Sun Valley continues to support many in the community with donations to hospitals, churches and schools for special fundraising events. Sun Valley continues to have many positive impacts in our community, dollars spent with local vendors and property taxes.

Sun Valley has always stressed the importance to all of us to put neighbors as a priority and we address any questions or concerns with utmost concern.

Especially with the ALC Cannabis Proposal by making all the changes due to community input.

I support Cannabis produced in a legal zoned area meeting legal requirements.

Help Sun Valley to continue to thrive doing what they do best growing beautiful ornamental flowers.

As community members let's work toward a compromise not a battle.

We will ALL reap the benefits in the long run.

Sun Valley has been a good neighbor and employer for the last 50 years.

Please let's work together and Help us continue to do so for the Next 50 years. Thank-you, Tina Uhl

Eberhardt, Brooke

From: Jo McCutchan <jomccutchan@gmail.com>
Sent: Thursday, June 17, 2021 3:53 PM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Arcata Land Company 12255

PROJECT TITLE: ARCATA LAND COMPANY, LLC COMMERCIAL CANNABIS OUTDOOR LIGHT-DEPRIVATION AND MIXED-LIGHT CULTIVATION PROJECT.

APPLICATION NUMBER; 12255, CASE NUMBER; CUP16-5

June 16, 2021

Dear County Board of Supervisors,

I am writing to express my opposition to the Arcata Land Company CUP. In addition to

odor, noise, health impacts, increased violence, and the degradation of air quality for the 900 residents living on the edge of this 8 acre industrial cannabis grow, I'm concerned about spikes in greenhouse gas emissions and Humboldt County's carbon footprint.

In May, the Board of Supervisors started working on our Climate Action Plan. Are you considering the climate impacts of this INDUSTRIAL grow? Just the grow lights will consume at least 2.4% of the county's daily average energy budget. This does not even include the need for dehumidifiers, HUGE fans, filtration equipment needed to grow cannabis in a climate not conducive to the growing of this crop. It also does not include the required 3 million BTU's/hr. needed to heat the greenhouses. These are huge energy demands that will exacerbate climate change.

Cannabis is not a crop that should be grown in a climate such as the Arcata Bottoms. Grown outdoors under the sun is how it should be grown to keep carbon emissions down. Share the wealth of the 3i acres of permits is allowed with our local cannabis farmers. They have jumped through hoop after hoop of ever-changing regulations since 2016 trying to get permitted. They provide jobs, too, and at good wages. Currently 16 acres of those permits are being given to only TWO NDUSTRIAL 8 ACRE CORPORATE GROWS. That's NOT fair to our local growers

I urge you to oppose this permit to the Arcata Land Company. The energy needed to grow cannabis in this climate is not acceptable to any Climate Action Plan.

Sincerely,

Jo McCutchan

428 Howard Heights Rd

Eberhardt, Brooke

From: Tim Crockenberg <TCrockenberg@tsvg.com>
Sent: Thursday, June 17, 2021 3:36 PM
To: COB
Subject: Arcata Land Company, LLC, record Number PLN-12255-CUP.

I moved to Humboldt County in the summer of 1995 to go to College of the Redwoods. There, I was fortunate to have the opportunity to take agriculture courses from Bert Walker and John Regli. They inspired me to pursue a career in horticulture and in the fall of 1997 while taking a tour of Sun Valley with my nursery practices class, it became clear to me that Sun Valley was where I wanted to begin my professional career.

The very next week Bert arranged a lunch meeting with Lane. He was happy to offer me an internship which I immediately accepted. That internship changed my life. I spent the next two years finishing my classwork at CR, while working through all the departments on the farm, gaining invaluable knowledge and experience in floriculture. I transferred to Cal Poly SLO where I earned my degree in Environmental Horticultural Science.

Just before graduation, I called Lane to see if there were any job openings. I wanted to come back to Humboldt, work for the farm that started me on my career path, and raise my family.

That was 20 years ago. Since that time I've had the opportunity to pay back what was offered to me by hosting countless interns from across the country and around the world, and of course, from right here in Humboldt County. Sun Valley is a world class organization that if permitted, can bring jobs, professionalism and innovation to the burgeoning cannabis industry. It could be a opportunity for internships for students at HSU where cannabis studies will be offered next fall.

As you know, the American flower industry is under immense pressure from cheap, South American imports. We have an opportunity in front of us right now that we cannot miss out on. I can't imagine having to move myself and my family out of the area to seek similar employment when the solution to saving the farm, and the 500 team members and their families, is at our fingertips.

I know Lane well and I know he cares deeply for the community. I know without a doubt that Sun Valley will work with our neighbors to address their concerns. We've done so consistently over the decades. This is a huge opportunity for the people of Humboldt County. Skilled positions will be needed, and the local work force has many people with these skills that would now be able to stay in the area, make a good living, and raise families.

Sincerely,

Tim Crockenberg

June 17th, 2021

To: Humboldt County Board of Supervisors

Re: Supporting the Arcata Land Company, LLC PLN-12255-CUP

I have worked at Sun Valley for 36 years. That is ½ of my life so far.

During my years of working in different areas I have had the advantage of viewing internal operations.

I am writing this letter of my own free will. It is not required.

Sun Valley does not discriminate – there are employees working here from all walks of life.

I can tell you that employees at Sun Valley work very hard, many of the jobs require hard labor and sometimes long hours.

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Especially with the ALC Cannabis Proposal by making all the changes due to community input.

I support Cannabis produced in a legal zoned area meeting legal requirements.

Help Sun Valley to continue to thrive doing what they do best growing beautiful ornamental flowers.

As community members let's work toward a compromise not a battle.

We will ALL reap the benefits in the long run.

Sun Valley has been a good neighbor and employer for the last 50 years.

Please let's work together and Help us continue to do so for the Next 50 years. Thank-you, Tina Uhl

Eberhardt, Brooke

From: Frank Schulze <frank@napainsurance.com>
Sent: Thursday, June 17, 2021 11:46 AM
To: COB
Subject: FW: New venture for TSVG/Arcata Land, LLC Record# Pln12255 CUPp

From: Frank Schulze
Sent: Thursday, June 17, 2021 11:20 AM
To: 'Coba@co.humboldt.ca.us' <Coba@co.humboldt.ca.us>
Cc: 'Lane DeVries' <LDeVries@tsvg.com>
Subject: New venture for TSVG

Dear Humboldt County Supervisors.
My name is Frank Schulze and I have known and done business with The Sun Valley group for over 30 years. I have never known a business, led by Lane Devries, like Sun valley that contributes so much to a community. Their contribution to the well being of the people of Humboldt County is truly monumental. Not just in the tax base it contributes to, but also the economy of the county as well. The trickle down affect I'm sure is noticeable to all. They are an Eco Friendly business that that leaves a very small foot print to the, if any, to the climate ecology of the area. It's volunteer efforts to improve the lives of the people who live there are commendable. I use them as an example to my many clients I represent of what a business should do regarding the well being of their employees and their families.
I'm originally from Humboldt County and know the economy of the area having lived there 25 years before moving to Sonoma county after teaching there in the early seventies. I fully support their effort to develop this new addition of the Cannabis operation in which they are not growing the product, but only supplying space to grow a legal product by selected producers in a secure facility of the old Simpson Warehouse that has been on that since the early 60's. I even worked for Simpson Timber when I was paying my way through Humboldt State university where I graduated from in 1970. The good thing about this new development is that it is already there and will contribute zero annoyances to the local population that they have accepted for the past 100 years. Sun Valley has only enhanced the lives of the local population since it's inception. This is compared to the illegal market operations that can be readily viewed from the air if you have ever flown around the county. Those grows show up on every ridge top or area than can accommodate an illegal grow. I know this because I have seen it for myself many times. It seems to me it would be better to have a known and respected legal entity supplying a small area for legally licensed grow operations that contribute to the local tax base, employment opportunities, is a secure site, and can be monitored very easily. Since there are so many illegal grows in Humboldt County, it would seem wise to have an operation like this. We all know that Humboldt County is the capitol of the Green Triangle and is destined to have more operations like this in the future as the Cannabis Market expands further into the health industry and food industry at a rapid rate.
I urge you to grant this very small operation and be on the leading edge of what is most certainly more to come.

Respectfully

Frank E. Schulze
Napa Valley Insurance Services. LLC
1932 Sierra Ave.
Napa, Ca, 94558
Lic.#A71993
D.L. (707) 921-1800

Hayes, Kathy

From: Lisa Pelletier <lisa.pelletier@berkeley.edu>
Sent: Thursday, June 17, 2021 6:11 AM
To: Wilson, Mike; COB; Bass, Virginia; Madrone, Steve; Bushnell, Michelle; Bohn, Rex
Subject: Energy Use, etc. (PLN-12255 CUP)

Dear Supervisor Mike Wison and Colleagues on the Humboldt County Board of Supervisors,

My mom and I would like to thank you for giving so generously of your time last week. Please note that among our chief concerns regarding the proposed ALC cannabis grow are the following:

Energy Use, Greenhouse Gas Emissions, Ozone Pollution ("smog"), and Climate Impacts

Among the most concerning impacts are energy use, greenhouse gas emissions, ozone pollution ("smog") and climate change. A 2019 study by a team of researchers from the University of Colorado, the University of North Carolina and the National Oceanic and Atmospheric Administration found that the terpenes in cannabis degrade the environment by creating more ozone or "smog". (Note: I'll send that study as a separate attachment in another email, as it's in pdf form, and I'm experiencing technical difficulties.)

As an article from the Guardian points out, "the weed industry is a glutton for fossil fuels. Producing a few pounds of weed can have the same environmental toll as driving across America seven times - harming cities' and states' plans to curb emissions."

https://amp.theguardian.com/society/2017/jun/20/cannabis-climate-change-fossil-fuels

Imagine, that's just the emissions from a few pounds of marijuana! Now multiply that by the amount of pot produced by a mega grow. At 8 acres, the ALC cannabis grow would be the largest grow in Humboldt County. Just the energy to pump the well water alone will create a significant energy demand from fossil fuels. Not to mention the grow lights, transportation, fans, dehumidifiers, boilers, etc.

Concerning the energy demands of this particular grow, I would refer you to Research Biologist Jim Cotton's letter to the BOS. Jim has done the best analysis of the project's energy demands. Please read his comments below (in italics):would just add to Jim's analysis that this project will have a huge carbon footprint that will adversely impact the County's plan to combat climate change (due to the above-mentioned reliance on fossil fuels). We are already experiencing the adverse impacts from massive wildfires and droughts due to climate change.

Downsizing this project from 22.9 acres to 8.69 acres does not necessarily decrease the energy demands. The 5.7 acres of mixed-light cultivation and the 30,000 sq. ft. nursery are the same size in both plans and hence the energy usage will be approximately the same. In the IS/MND, the estimated energy usage for the mixed-light cultivation was projected at 6,750 MWh/year. These estimates apparently do not account for the energy usage of ancillary equipment such as fans, dehumidifiers odor suppression equipment, etc. What are the energy demands for these? There is also reference to gas boilers for heating: "In addition to PG&E power, the Project proposes three natural gas boilers rated at 1 million British thermal units per hour." This quote from the IS/MND does not clarify if this rating is for all three or a single boiler. These boilers will be used to heat 8.7 acres of hoop houses. All of these energy demands will create a huge carbon footprint. In the staff report of 18 March 2021 (page 69), under Addendum No. 1 to the Operations Manual, it states that during the vegetive growth state of the plant the energy requirements will be less than 1.9 MW. 1.9 MW is the equivalent of the energy demands of 1,513 average homes in the pacific northwest.
https://www.nwcouncil.org/reports/columbia-river-history/megawat

The bottom line is that this is the wrong location to be cultivating the largest cannabis site in Humboldt County because of the cool, damp, and windy environment in the Bottom close to the ocean. This is a heat loving plant that is better suited to a warmer dryer clime. The Sun Valley Group aka Arcata Land Co. owns and operates properties in Oxnard CA, Baja California, and 120 acres in Willow Creek, all of which are better suited for growing cannabis instead of on the coast where an artificial environment has to be created and sustained. This is at a huge environmental cost added to the social cost to the nearby neighborhoods.'

It won't do to kick the can down the road by permitting even more massive cannabis grows in addition to fossil-fuel guzzling factory farms. The only way to study the cumulative impacts from all these projects in the aggregate is to conduct a full EIR, and I respectfully request that you require one for this project.

Thank you for your consideration and service to the community.

Respectfully,
Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Lisa Pelletier <lisa.pelletier@berkeley.edu>
Sent: Thursday, June 17, 2021 1:59 AM
To: Wilson, Mike; Bass, Virginia; Madrone, Steve; Bushnell, Michelle; Bohn, Rex; COB
Subject: Please heal the divide (PLN-2021-17198, Appeal of ALC, LLC PLN No. 12255)

Dear Humboldt County Supervisors,

Thank you for considering our appeal (PLN-12255 CUP). I apologize for my lengthy emails on this issue. I respect that your time is valuable, and that you can't respond to every email, but I'd like to get my comments on the record.

I'd just like to raise one last concern that I haven't addressed before (or known how to address). It seems like there's always been this divide between Humboldtians who support property rights and those who support the environment. I've always wondered why we have to be so divided, since we probably have more in common than we think.

For instance, I voted to support the legalization of marijuana, and I support the small cannabis growers (as opposed to large corporate growers), yet I also have environmental concerns.

In fact, we (appellants) have been collaborating with small cannabis farmers who complain that they have to jump through endless hoops, while the large cannabis growers sail through the permitting process. Why is that? When we (voters) decided to legalize marijuana, we had no idea that it would open the floodgates to large corporate grows. In fact, we were promised this wouldn't happen until 2023. Boy, were we misled!

Wouldn't it be more sustainable to support the small cannabis farmers and support the Humboldt "craft" brand over the large corporate growers with whom they must compete? At the same time, this would help to preserve the environment and conserve energy and resources. Wouldn't that be a "win-win" for everyone?

Is there any reason we can't join environmental concerns (protecting our green spaces) together with our support for small cannabis farmers? In this age of division, surely we can find another narrative that supports everyone's interests without completely destroying the beautiful environment here.

Do we really want to end up like Santa Barbara with its endless plastic hoop houses and particulate matter ("smog") from mega cannabis grows? The residents in SB complain that they can't even open their windows because of the odors and pollution from these mega grows. Would you really want to inflict that on your constituents?

Many of us (the appellants) could support ALC/SV's cannabis grow if the company would agree to downsize to an acre or less. We've even tried reaching out to negotiate with SV owner Lane deVries to no avail. Please help us to bridge the divide so this can be a "win-win" for all concerned.

Nordic Aquafarms decided to be a good neighbor in agreeing to the community's request for an EIR. We hope that ALC/SV will follow suit, but if not, it is within your power to require it. You were elected to represent our interests. Thank you.

Respectfully,
Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Lin Glen <glennalin@hotmail.com>
Sent: Wednesday, June 16, 2021 11:55 PM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC, Record # PLN-12255-CUP

It would be a serious mistake for the Humboldt County Planning Commission and/or the Board of Supervisors to approve the Arcata Land Company's plan to build a cannabis mega-grow operation in the Arcata bottoms.

This operation is poorly-conceived from the very start as the proposed cool and windy location would require huge amounts of artificial heat and light, as well as water sucked from a water table that is already committed to the existing homes and farm in that neighborhood.

In the past, the county has made bad decisions with severely negative impacts on our local environment. That must change. We Humboldt County citizens and voters now insist that our elected and appointed officials make policies and take actions that protect and preserve our limited land, water, and air quality.

You all know our natural resources are limited. A huge project like this, in this location, is no longer appropriate for our county. Please deny this application. Thank you.

Lin Glen
Blue Lake

Please note: 30 working days after our filling date of 4 May 2021 is **June 16, 2021,** which, according to the above code, should have been the latest possible date for hearing our appeal, a clear violation of the code.

Please note: the 10 working days prior to the June 16, 2021 hearing date would be June 2, 2021, which would be the latest date for notification of the applicants

We, the appellants, did not receive notification (see attachment) via first class mail of a hearing date until late afternoon of June 11, 2021. The delay in receiving notice was due, in part, to the Planning Department using an outside vendor, located in Arkansas (see attachment), to post the letters. All other notifications regarding the Planning Commission meeting dates were postmarked from Eureka. The Planning Department did publish the notification in the Times Standard on June 8.2021 and June 14, 2021.

In the notification, residents were told that they had until Monday June 14, 2021 at noon to provide input that would be included in the packets for the Board of Supervisors prior to the hearing. This means, in essence, that the public was provided less than one working day to send in comments. Fortunately, Supervisor Bushnell, after receiving calls from a number of residents in the Westwood neighborhood, was able to get the comment period for inclusion in the BOS packet extended to Wednesday 6/16/21. The community is grateful to her for this.

The hearing date in the notification is June 22, 2021, six days beyond the maximum allowable time to hear our appeal based on the codes.

Additionally, it is highly concerning that no Zoom link is provided in the notification. Per the codes, the Date, time, and place of the hearing are to be provided a minimum of 10 working days before the hearing. Not providing the Zoom link in the hearing is inexcusable. Per the notification, "Further instructions on how to access the Zoom meeting can be found when the agenda is posted on Friday, June 18, 2021 by using the following link: https://humboldt.legistar.com." This is akin to saying "the meeting is in a county building and we'll tell you what building and what room number 4 days before the appeal but you have to have access to the internet to find it and we're also not giving you the phone number and instructions on how to call in." All other notifications regarding the Planning Commission meeting dates regarding the ACL CUP included Zoom and telephone information for calling in during public comments.

To: Humboldt County Board of Supervisors

From: Johannes A. Meester
Mckinleyville

Concerning: Arcata Land Company, LLC
Record # PLN-12255-CUP

Mckinleyville, 16 June 2021

Dear Sirs,

I write this letter in support of the proposed Cannabis Project of the Arcata Land Company on the site of the old Arcata Lumber Company in the Arcata bottoms. It is, in my opinion, a good initiative to reuse and repurpose an old and degenerating industrial property into a new business.

Humboldt county is in desperate need of more economic activities, which supply labor opportunities and tax revenues. With other plans and projects rejected, resistance against new initiatives and more and more companies falling and fading away (look at our Bayshore mall...), we, as a county, need to grab every chance and opportunity to get more business into our area. Unfortunately, Cannabis is that huge opportunity.

I wish that we, as a society, could do without any drugs, but since the demand for Cannabis is high and still growing, we cannot deny that there are huge opportunities for production sites the produce a sustainable and quality product. Humboldt county is famous for its cannabis quality and many grow sites profit from that name alone.

It is the sustainability that worries me with those grow sites. Every week the local news mentions the bust and cleanup of an illegal grow site, somewhere in Humboldt and the list of charges frightens me every time: stream diversions, illegal chemicals, oil and gas spills, tons of waste and debris and guns and ammo. On top of that these sites are far away in the hills, with all the problems that provides logistically.

Here is a plan that tackles all the problems mentioned above. An existing well, recycling of water, sensible use of fertilizers, minimal use of approved chemicals, composting, no illegal power stealing and a controllable site, relatively close to our labor supply and main roads. It fits the vision of our lawmakers, the site is zoned as heavy industrial, not in the coastal zone and far enough away from all the neighbors.

My conclusion is that this is a good initiative aimed to profit from a hot market in a county where we desperately need more revenues and jobs.

Yours truly,

Johannes A. Meester

Damico, Tracy

From: Michelle Mahurin <michelle.mahurin@gmail.com>
Sent: Wednesday, June 16, 2021 11:36 AM
To: COB
Subject: ARCATA LAND CO APPLICATION # 12255

To: Board of Supervisors

Regarding: Sun Valley's project to locate an over-sized industrial cannabis growing operation in the Arcata Bottoms next to people's homes: ARCATA LAND CO APPLICATION # 12255

I am strongly opposed to this project. Locating a large industrial cannabis operation with industrial-sized noise, odor, and other negative impacts next to people's homes and neighborhoods is poor planning and unacceptable. Impacts to the residents would include: health impacts due to noxious odors and emissions, reduced property values, reduced ground water availability; unacceptable noise levels; increased traffic; and heavy negative impacts on the viewshed, the land, and the water.
If the Board of Supervisors allows this project to move forward, it will set a terrible precedent and be a threat to all Humboldt county residents in the unincorporated areas, knowing that our leaders find it acceptable to locate huge 8 acre cannabis grows – with all the accompanying negative impacts – next to people's homes.
PLEASE vote NO against this cannabis grow and YES to a bright, healthy, and safe future for the children of Arcata.

Michelle Ostrowski

PROJECT TITLE: ARCATA LAND COMPANY, LLC COMMERCIAL CANNABIS OUTDOOR LIGHT-DEPRIVATION AND MIXED-LIGHT CULTIVATION PROJECT.
APPLICATION NUMBER; 12255, CASE NUMBER; CUP16-583

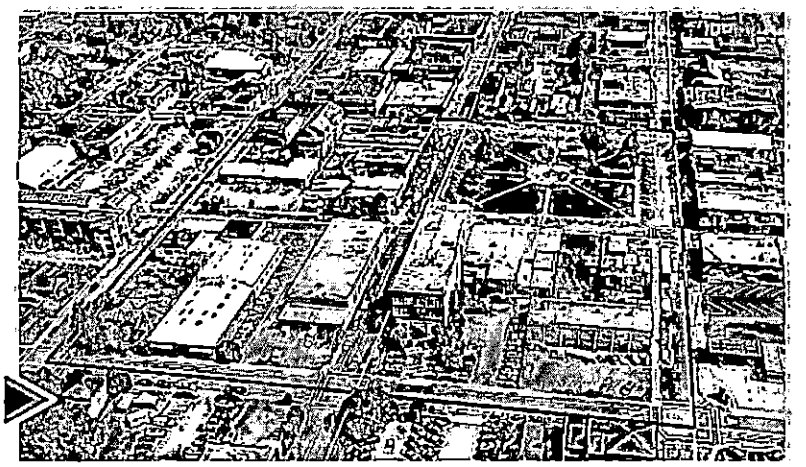
June 15, 2021

Dear Board of Supervisors,

Because of the great opposition to a grow this size, and even the POSSIBLE impact it could have on the 900+ people living in the Westwood neighborhood 14000 FEET from the proposed grow and some as close as 300 feet, I would strongly suggest that each of you take a drive down Elk River Road where there are 6 greenhouses growing cannabis. This is what Director John Ford suggests is an acceptable grow. See for yourself how only **10,000 sq feet** of cannabis crop grown in green houses smells and sounds to neighbors.

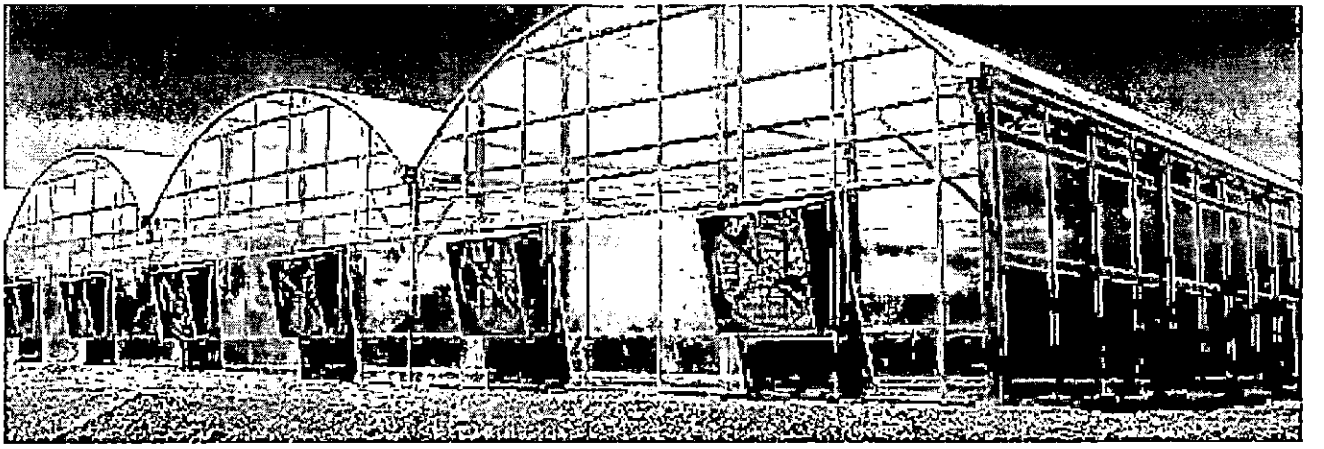
When you drive to the Elk River Road cannabis grow and open your car doors you will be blasted by a wall of skunk smell. Even if you just drive by with your windows closed, you will smell it. Now, imagine what **EIGHT** acres smells like and how far the strong winds known to the Arcata Bottoms will carry it and its allergens to vulnerable receptors within a 1/2 mile radius; schools, senior living centers, and the general population.

The red line in the below photo superimposes 8 acres over the Arcata Plaza. 8 acres is approximately 42,350 sq ft. That is 4.2 times larger than the Elk River Road grow.



Regarding noise? The person living across from this 10,000 sq ft grow says he can not spend time in his back yard because the noise from the fans is so loud it's unnerving. Imagine EIGHT acres of greenhouses with HUGE fans on both sides (and 1 fan every 200 sq ft inside) going 24/7 365 days a year near YOUR home? Near YOUR loved ones. I have been told that some of these greenhouses use jet fans and are **extremely** loud.

The below photo is taken from Arcata Land Company's operations manual.



Although a particular make and model has not been selected, an example of the type of greenhouse that will be utilized is the Growspan Series 1000 Commercial Greenhouse (https://www.growspan.com/growspan- industries/cannabis/s-1000/).

The **ONLY** reason this project is possible is because of an antiquated zoning designation. It's not fair to the people in the Westwood neighborhood for the county planners to NOW, after 25 years of agriculture of this land, decide to use the antiquated zoning designation and put in a **commercial industry** that produces huge amounts of noise and odor pollution and a multitude of other adverse effects which you, by now, are well aware of.

It was only December of 2020 that John Ford had a different opinion about putting large cannabis grows near residents. He denied the permit to the Lost Boys Ranch in Hydesville saying "there is a high degree of discretion in Community Planning Areas in allowing applicants to find an area without a lot of public controversy and where it wouldn't adversely affect the community." It should be noted there were only 25 letters opposing the project and 74 people living within a half mile of this proposed project. The difference between these 74 people opposing the project in Hydesville to the 900+ people in the Arcata Bottoms is economic status. This is an equity issue.

The county planners tried very hard to SLIP THIS PROJECT UNDER OUR NOSES EVERY STEP OF THE WAY. They seriously lack the integrity of Jeff Ragan who resigned from the Eureka Planning Commission because he was "appalled" by Eureka's lack of public engagement in the decision-making process regarding projects that would affect the people of Eureka for the next 50 years." We should have been informed in 2016 when Lane Devries applied for the permit.

Please vote **AGAINST** the Arcata Land Company's 8 acre cannabis permit and **FOR** a clean, safe and hopeful future for the children and grandchildren of Arcata.

Sincerely and with great hope,
Lee Torrence
1827 27th Street
Arcata, CA 95521

Damico, Tracy

From: Nancy <arcata51@suddenlink.net>
Sent: Wednesday, June 16, 2021 8:38 AM
To: COB; Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Appeal ALC Grow

Nancy and Warren Blinn
2655 Wyatt Lane
Arcata, CA 95521

We strongly oppose the permitting of the Arcata Land Company Cannabis Grow or any commercial grows in our neighborhood community. We are a neighborhood. We are a neighborhood of families with all ages of children who play in the neighborhood, walk, ride their scooters and bicycles to school. We are elderly with health conditions who walk daily to keep our health.
There is a community farm down the street that grows organic food for our local families.
This is not a place for commercial industry. It is a neighborhood and should remain so.
It is not an industrial zone. Families live here.
We should not have to fight so hard and write letters to be extended the basic right to keep our community safe from the effects of big business wanting to cash in on a crop that is mostly recreational in nature in a place that is environmentally sensitive. Our critical water shortage and energy crisis alone should be enough to raise the alarm of our officials to the dangers of committing to a course that is unsustainable. Please deny the permit.

Sincerely,

Nancy and Warren Blinn

Sent from my iPad

ATTENTION:
cob@co.humboldt.ca.us
rbohn@co.humboldt.ca.us
mbushnell@co.humboldt.ca.us
mike.wilson@co.humboldt.ca.us
vbass@co.humboldt.ca.us
smadrone@co.humboldt.ca.us

June 15, 2021

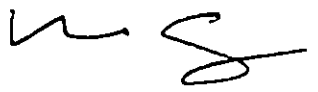
Dear Board of Supervisors,

As your constituent, I am writing to express my opposition to Arcata Land Company's proposed Commercial Cannabis Outdoor Light Deprivation and Mixed-Light Cultivation Project Application # 12255. This 8-plus acre project does not seem appropriate so close to homes, neighborhoods, parks, schools, etc. The project claims that it mitigates for air quality and for greenhouse gas emissions, but from the available information this does not seem feasible.

Regarding Air Quality and Greenhouse Gas Emissions, operation of new commercial cannabis operations under the proposed ordinance would result in an increase in particulate matter (PM10) emissions during the harvest season that would exceed North Coast Unified Air Quality Management District (NCUAQMD) thresholds and contribute to the nonattainment status of the North Coast Air Basin for PM10. No feasible mitigation is available to reduce this impact. Therefore, the impact would be significant and unavoidable (Impact 3.3-2). The project's contribution to cumulative air quality impacts involving particulate matter (PM10) emissions would be cumulatively considerable and significant and unavoidable. Operation of new commercial cannabis operations under the proposed ordinance could generate objectionable odors to nearby residents. Mitigation has been recommended to reduce this impact. However, this mitigation measure would not completely offset the odor impact. Therefore, the impact would be significant and unavoidable (Impact 3.3-4). The project's contribution to cumulative impacts from exposure of people to objectionable odors would be cumulatively considerable and significant and unavoidable.

The neighborhood and other residents in Humboldt are becoming increasingly concerned about the impacts on air quality, the noise impacts from 8 acres of hoop houses with fans, the potential impact on wells, and the impact on the viewshed. These negative externalities will affect the quality of life of residents, potentially outweighing the benefits of the project. Why is this project being allowed so close to homes and neighborhoods? How would you feel if this operation were built so close to your own home? Please do not allow this project to move forward as is and at a minimum, please require a full Environmental Impact Report so adequate community review and input can be provided.

Best regards,



Michelle Dowling
Resident of Arcata

Tracy

From: wally jr <nodk17@gmail.com>
Sent: Tuesday, June 15, 2021 8:10 PM
To: COB
Subject: Say No to sun valley weed farm

Record No: PLN-1255-cup

Hello,

My name is David Nelson I am a registered voter and 12 year citizen of Humboldt county. I love our county's beauty of the coast very much and the inner mountains with rolling hills. I think our community has a incredibly unique sense of land stewardship and promotion. That being said,

I do NOT agree with an industrial sized weed farms in the bottoms of Arcata over 1 acre. The amount of impact we have from the cattle out here in the bottoms is bad enough. I would love to merge the boundaries from the dunes and mad river beach to encompass the bottoms one day. I live on Midway court in Manila, ca and live less than 200ft away from the other proposed 8 acre industrial side grow at the old pulp mill. Please do not allow weed grows of this size as it is simply destroying the ability's for our community of growers that have been here for generations to thrive and put money back into the community. We need more promotion of local support for our local growers

Thank you for reading and have a good day.

David Nelson and the neighbor hood of 11 people directly next to the proposed pulp mill grow. Midway court, Manila, ca, 95521

Sent from my iPhone

Damico, Tracy

From: Christine Ross <chrisros_99@yahoo.com>
Sent: Tuesday, June 15, 2021 10:06 PM
To: COB
Subject: Agenda item 3, Big Sun Farms LLC Conditional Use Permit

I have some concerns in regard to this project:
1. As we look at the effects of climate change in CA, even our county is experiencing drought. Isn't water usage for this project going to be substantial? 2. The project is located close to residential neighborhoods, including churches and schools. These will have to contend with the possibility of extra traffic, in addition to health issues that could arise because of pesticide use, noise, air quality, etc.
3. Will there be a complete environmental impact study done?
Thank you.
Christine Ross

Damico, Tracy

From: Angela Edmunds <edmundsang@gmail.com>
Sent: Tuesday, June 15, 2021 10:23 PM
To: COB
Subject: Opposition to Arcata Land Co Application # 12255

Greetings,
I am email to write of my strong opposition to the proposed industrial scale cannabis grow that is proposed for the Arcata Bottoms. As an advocate for our lands, oceans, and watersheds, I do not feel that this project is within the best interest of our community. In the face of a changing climate and unpredictable future, preserving green spaces and climate resilient landscapes is our best community action for both current and future generations. Please consider the legacy of our county and community by rejecting this industrial scale project which will greatly alter the landscape of Arcata.

Approval of this project will set a precedent for large monoculture operations to use and abuse our limited shared resources which are being borrowed from future generations.

I strongly urge you to vote no on this project to help maintain climate resiliency for Arcata and Humboldt County.

Thank you for your time,
Angela Edmunds

Damico, Tracy

From: Lisa R Pelletier <lrp13@humboldt.edu>
Sent: Wednesday, June 16, 2021 1:27 AM
To: Wilson, Mike; Bass, Virginia; Madrone, Steve; Bushnell, Michelle; Bohn, Rex
Cc: COB
Subject: Please heal the divide (PLN-12255 CUP))

Dear Humboldt County Board of Supervisors,

Thank you for considering our appeal (PLN-12255 CUP). I apologize for my lengthy emails on this issue (PLN-12255). I respect that your time is valuable, and that you can't respond to every email, but I'd like to get my comments on the record.

I'd just like to raise one last concern that I haven't addressed before (or known how to address). It seems like there's always been this divide between Humboldtians who support property rights and those who support the environment. I've always wondered why we have to be so divided, since we probably have more in common than we think.
For instance, I voted to support the legalization of marijuana, and I support the small cannabis growers (as opposed to large corporate growers), yet I also have environmental concerns.

In fact, we (appellants) have been collaborating with small cannabis farmers who complain that they have to jump through endless hoops, while the large cannabis growers sail through the permitting process. Why is that? When we (voters) decided to legalize marijuana, we had no idea that it would open the floodgates to large corporate grows. In fact, we were promised this wouldn't happen until 2023. Boy, were we misled!

Wouldn't it be more sustainable to support the small cannabis farmers and support the Humboldt "craft" brand over the large corporate growers with whom they must compete? At the same time, thiscwould help to preserve the environment and conserve energy and resources. Wouldn't that be a "win-win" for everyone?

Is there any reason we can't join environmental concerns (protecting our green spaces) together with our support for small cannabis farmers? In this age of division, surely we can find another narrative that supports everyone's interests without completely destroying the beautiful environment here.

Do we really want to end up like Santa Barbara with its endless plastic hoop houses and particulate matter ("smog") from mega cannabis grows? The residents in SB complain that they can't even open their windows because of the odors and pollution from these mega grows. Would you really want to inflict that on your constituents?

Many of us (the appellants) could support ALC/SV's cannabis grow if the company would agree to downsize to an acre or less. We've even tried reaching out to negotiate with SV owner Lane deVries
to no avail. Please help us to bridge the divide so this can be a "win-win" for all concerned.

Nordic Aquafarms decided to be a good neighbor in agreeing to the community's request for an EIR. We hope that ALC/SV will follow suit, but if not, it is within your power to require it. You were elected to represent our interests. Thank you.

Respectfully,
Lisa Pelletier
Arcata, CA

Damico, Tracy

From: Terrence McNally <arcata.mcnally@gmail.com>
Sent: Wednesday, June 16, 2021 6:09 AM
To: COB
Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP
Attachments: Letter to BOS - Appeal of Arcata Land Company LC Record # PLN-12255-CUP, .pdf

Terrence McNally
1744 Simas Court
Arcata, Calif. 95521
arcata.mcnally@gmail.com
707-407-5627

June 15, 2021

Humboldt County Board of Supervisors
525 Fifth St.
Eureka, Calif. 95501

Dear Humboldt County Board of Supervisors,

As a 23-year neighbor to the proposed 8+-acre Arcata Land Company project, I'm requesting that it be denied. The parent company Sun Valley Group and CEO Lane DeVries certainly have the right to explore new business opportunities, but this one is entirely too close to neighboring homes and schools and with potential impacts to health and safety of the community.

But we don't really know. I use "potential impacts" because the applicant's proposal is lacking in specifics. Among other data not provided to be studied and reviewed by the Board of Supervisors and the public:

- A Traffic Study quantifying impacts to Foster Avenue and 27th Street
- A Noise Study for the fans operating in the planned greenhouses
- An Odor Study that might allay concerns for those neighbors with pre-existing conditions
- A Groundwater Impacts to neighboring wells
- Quantifiable Light Pollution Data
- Security Requirements.

There remain too many unknowns. Case in point: the applicant has stated that the impact from the project's odor releases is not "anticipated" to be great. That's very little to go on.

After a difficult pandemic year spent by Humboldt County residents continually worried for their families' health and safety, please don't also force them to shoulder the potential negative effects of Sun Valley's hoped for expansion into the cannabis industry.

Thanks very much for your time and service to Humboldt County residents.

Sincerely,

Terrence McNally

Damico, Tracy

From: cindy shaw <cindyshaw7@gmail.com>
Sent: Wednesday, June 16, 2021 8:09 AM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Appeal of Arcata Land Company LLC

To whom it may concern:
I am a resident of Arcata and live close by the proposed mega grow that Sun Valley is trying to slip through. I am honored to be neighbors with Team 27th and their hard work at getting the science and facts of this grow out to the public; its devastating effects from noise, sound, and odor pollution, not to mention the obscene use of water it will take and this during a drought. There should be no cannabis grow in the Foggy Bottom period. They've done their homework and it's so obvious to see that this should not be permitted there. Science and Facts. How can you dispute this?

Do your job and do not permit this obscene mega grow to happen. This is our community! The negative effects of this grow are astounding and can't be ignored. Science and Facts show that this is true.

Cindy Shaw
Arcata

Sharp, Ryan

From: Lisa Pelletier <lisa.pelletier@berkeley.edu>
Sent: Tuesday, June 15, 2021 4:41 PM
To: Wilson, Mike; Madrone, Steve; Bass, Virginia; Bushnell, Michelle; Bohn, Rex
Cc: COB
Subject: Re: Questions concerning Labor Peace Agreements (PLN-12255 CUP)

P.S. I apologize for the flurry of lengthy emails. In a project of this size and complexity, there are so many impacts that it's difficult to be succinct. Of course, you don't have to answer every email (or any). I'm sure you're all very busy this week, and I appreciate your time. I do hope you will consider my comments. Also, I want them on the record.
Note: I raised issue because Sun Valley claims to be doing this (project) for its workers - i.e. to protect their jobs. But are these worthwhile jobs or just another opportunity for SV to exploit its workers? (as documented by Centro del Pueblo)
Also, I probably should have left out that bit of conjecture in question #3, but I'm confused as to why SV decided to set up a shell company (ALC). It will have the same owner, same set of workers (from various media accounts). Are they trying to cordon off the industry with fewer labor protections (big ag) from the nascent cannabis industry that appears to have stronger labor regulations, however weak?
A bit of history: When Congress passed the National Labor Relations Act in the thirties, the law excluded farm workers. Racism played a large part in that decision, because of the largely Black agricultural workforce.

https://soundcloud.com/kmudnews/sun-valley-seeks-cannabis-permit-raises-human-rights-concerns

On Tue, Jun 15, 2021, 4:38 PM Lisa Pelletier <lisa.pelletier@berkeley.edu> wrote:

> P.S. I apologize for the flurry of lengthy emails. In a project of this size and complexity, there are so many impacts that it's difficult to be succinct. Of course, you don't have to answer every email (or even any). I'm sure you're all very busy this week. I do hope you will consider my comments. Also, I want them on the record.
> Note: I raised issue because Sun Valley claims to be doing this (project) for its workers - i.e. to protect their jobs. But are these worthwhile jobs or just another opportunity for SV to exploit its workers? (as documented by Centro del Pueblo)
> Also, I probably should have left out that bit of conjecture in question #3, but I'm confused as to why SV decided to set up a shell company (ALC). It will have the same owner, same set of workers (from various media accounts). Are they trying to cordon off the industry with fewer labor protections (big ag) from the nascent cannabis industry that appears to have stronger labor regulations, however weak?
> A bit of history: When Congress passed the National Labor Relations Act in the thirties, the law excluded farm workers. Racism played a large part in that decision, because of the largely Black agricultural workforce.

On Tue, Jun 15, 2021, 4:00 PM Lisa Pelletier <lisa.pelletier@berkeley.edu> wrote:

> Thanks Steve!
>
> On Tue, Jun 15, 2021, 10:16 AM Madrone, Steve <smadrone@co.humboldt.ca.us> wrote:
>
> > Thanks for sharing.
> >
> > Steve Madrone
> > County of Humboldt
> > Supervisor, District 5
> > (707) 476-2395
> >
> > ---
> >
> > **From:** Lisa Pelletier <lisa.pelletier@berkeley.edu>
> > **Sent:** Monday, June 14, 2021 10:35 PM
> > **To:** Wilson, Mike <Mike.Wilson@co.humboldt.ca.us>

Cc: Bass, Virginia <VBass@co.humboldt.ca.us>; Madrone, Steve <smadrone@co.humboldt.ca.us>; Bushnell, Michelle <mbushnell@co.humboldt.ca.us>; Bohn, Rex <RBohn@co.humboldt.ca.us>; COB <COB@co.humboldt.ca.us>
Subject: Questions concerning Labor Peace Agreements (PLN-12255 CUP)

Dear Mike,

My mom and I would like to thank you for giving so generously of your time last week when we spoke on the phone. We greatly appreciate it.

If you recall, one of the concerns we discussed concerns Sun Valley Floral Farms (SV) alleged history of human rights abuses against its undocumented workers. Centro del Pueblo, a local advocacy group, has compiled a long list of these abuses.

So I was glad to hear about the Labor Peace Agreements (LPA), and I did google it. Still, I have some questions. You don't have to come with the answers, but if you could consider the following questions during your deliberations, I'd very much appreciate it:

1) Sun Valley maintains that it doesn't want to get into the cannabis business. It will lease the site for the grow, and continue growing flowers. So which company would be required to enter into an LPA agreement: Sun Valley or the (unnamed) company which leases the site from SV?

2) Sun Valley has intimated to several news outlets that its flower workers will be employed in the cannabis operation. That would appear to indicate that it has some skin in the operation (not just as a landlord), and therefore a responsibility towards at least some of the workers at the cannabis site, no?

3) According to Centro del Pueblo, Sun Valley has never stopped employing undocumented workers, despite its claim that it has. It appears to have set up a shell company (ALC) to make it look like these are two separate companies, but the land is still owned by deVries. The workers are still SV workers, as far as I can tell.
The company has been raided by the feds several times in the past. Could it be that it's trying to create the appearance that the companies (SV and ALC) are separate entities, in order to conceal its ongoing practice of hiring undocumented workers in the flower operation? Of course, this is just conjecture. I know you can't answer this, but it's something to consider.

4) Undocumented workers have a hard enough time organizing, much less forming a union. Brenda says the workers who attempt to do so are often deported. How will the LPA agreements benefit them, if the company doesn't even want people to know they exist? She says most of the workers have never seen the beach, gone to parks or the forests around here. They rely on the company for everything from food to transportation to housing. Some are indigenous peoples who don't speak either Spanish or English. They are transient and it is likely that some of them are trafficked here from Mexico. How is an LPA agreement going to benefit them?

5) Is the employer required to enter a collective bargaining agreement with a union, or just make an effort in good faith? From what I've been able to ascertain from a quick online search, it appears the latter is true.

6) Do the employees get to choose the union or does the employer have discretion over which union to negotiate with? If the latter, what is to stop "sweetheart deals" between the employer and the union "representing" the employees?

7) Is the employer required to enter into a collective bargaining agreement? From what I've read, no, they're not. And if no bargaining agreement can be reached, are union organizers still allowed to come on company property to talk with the workers (say a different union)?

8) The Good and the Bad: On the one hand, organizers can obtain lists of non-supervisory workers from the company and go on company property to talk to them. That's great. But it appears that the workers have their leverage cut out from under them. (Cesar Chavez had two dogs named "Huelga" (Strike) and "Boycott".) What happens when negotiations break down? Are they just left high and dry with no bargaining agreement and no leverage to pressure employers (strikes, boycotts, slow downs, etc.)?

In short, are these LPA agreements really all that beneficial for workers (especially undocumented workers)? I don't know. I'm just asking. Again, it's just something to consider.

I suppose they could be in some instances, where the employer is willing to negotiate. But I don't see how this helps undocumented workers. SV doesn't even want to acknowledge these folks exist, so the company is certainly not going to agree to enter into any agreements with them.

Still, if you have another perspective, Mike, I'd like to hear your thoughts. I'm trying to find out how workers labor organizers view these agreements (LPA's). They're fairly new, aren't they?

Anyway, for the benefit of your colleagues whom I've copied in this email, here's the context of our conversation:

On March 18, Brenda Perez, an organizer for Centro del Pueblo, was interviewed on KMUD, along with Greg King of the Siskiyou Land Conservancy (SLC) and Jennifer Kalt of Humboldt Baykeepers. Brenda said that Centro del Pueblo has documented a long list of human rights abuses by Sun Valley against its undocumented workers (whom they still employ), including their living/working conditions, injuries, health issues, food, etc.

She said at one point, 90% of the workers came down with COVID, and many of them were deported. Despite COVID-19, the workers are crowded together within their living quarters. The company provides their food and board, and a monotonous diet which is not very nutritious.

Centro has also compiled a long list of women, mostly grandmothers, with dislocated shoulders from carrying heavy objects. They are forced to keep on working or lose their jobs. And, of course, they live in constant fear of being deported.

Brenda said she couldn't see much difference between SV's working/living conditions and those in the detention centers. She also said she doesn't believe ALC/SV's cannabis operation will do anything to improve the conditions for its workers. And that it would be better for the workers if the grow wasn't approved.

Greg King said that Sun Valley (partially) broken an agreement with the Siskiyou Land Conservancy when it sprayed a field within a half mile of five schools and day-care centers. It had agreed not to spray so close to the schools. (This field was just as close.) Afterwards, the company sent its workers into the field directly after spraying (likely) carcinogenic pesticides which also cause reproductive harm.

Now I recognize that the pesticide use isn't as much an issue with cannabis crops because of the laws governing that. But it's an issue of trust. SV has a terrible record when it comes to honoring its agreements and treating its workers with dignity.

So this leaves us (the workers and the community) having to trust a company with a very bad record of honoring its agreements. How will this play out when it comes to honoring the requirement for mitigations? (e.g. what happens if the drift of pesticides from the flower operation ends up in the cannabis?)

The law is only good if it's enforced. According to Greg King, Humboldt County's agricultural commissioner appears to have too much on his plate to properly monitor and enforce the laws around pesticide use.

In sum, why should a company with a record of human rights abuses and bad faith negotiating be rewarded with a permit to commit further abuses?

The interview is only 20 minutes and well worth you time.

https://soundcloud.com/kmudnews/sun-valley-seeks-cannabis-permit-raises-human-rights-concerns

Thanks again for your time and service to the community.

Respectfully,
Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Joan Edwards <johoda63@gmail.com>
Sent: Tuesday, June 15, 2021 12:35 PM
To: Madrone, Steve; Bass, Virginia; Wilson, Mike; Bushnell, Michelle; Bohn, Rex; COB
Subject: Arcata Land Company industrial grow

I urge the five of you to think very carefully about the long term ramifications of this proposal. You are stewards of our county's future. The following are the red flags that I see so clearly:

Climate: In our current times we are faced with a climate crisis that is of astronomic proportions and every one of us needs to search deep in our hearts to adjust our behaviors to limit our energy use. This plan to create one of the biggest grows in Humboldt county in the least favorable location for the crop is almost laughable. The proposal has a 50% risk of failure d/t the damp, foggy, cool conditions alone. To force it into this space because of a loophole in the old antiquated zoning shows the ultimate in poor planning. And then to ramp up the energy use to attempt to control the natural environment is counterintuitive to the direction we as a county, as a state, as a country should be going

Equity: No other applicant has ever been allowed to enter the permit process with a grow of this size in this county. To allow it d/t a loophole in the zoning that conflicts with the use of the land for the past 30 years is truly surprising and disappointing. Every other applicant seeking permits has been forced to start with 10,000 sf. This favor being granted a person with name recognition goes against the very principles of fairness on which our laws and regulations stand.

Environmental impact: The limited studies performed by the applicant were conducted over a very brief amount of time and did not take into account seasonal changes to wildlife populations. The water table that Arcata land company intends to access is the life blood of the entire bottom area. To diminish that table to the extent that this grow will require will risk salt water intrusion from the bay and further diminish the available water to the many in the area who rely on wells.

Proximity to neighborhoods: As you are all aware, there is a burgeoning neighborhood very close to this proposed grow. It is not a "high end" neighborhood but it is vibrant and growing. We are extremely concerned about the potential sound that will be generated by the required fans, dehumidifiers, and heaters that will be necessary to control this damp, cold, foggy environment. At present we have a rich population of native birds and frogs and on occasion we can hear the ocean! I expect that will be a memory if this project is approved. And the long term effects on those native populations is yet to be determined.
Secondarily, several of my neighbors have asthma that is especially triggered by the smell of marijuana. It is quite disappointing to me that these neighbors rights to fresh air are somehow less important than the potential (might I say temporary?) tax revenue from this proposed project. What is their back up plan? Where do they go for fresh air? What happens when they develop problems triggered by this project? Is a neighborhood the appropriate place for a grow of this size? How do you correct the problems once it has been approved? Is it the old adage, " It's easier to say I'm sorry than to ask for permission?" This is the biggest investment of every one of these neighbor's lives. They do not have any other options for living.

Outside investors: Given that outside investors are planning these large projects our goal of keeping our investments local is being eroded. That money gained, aside from the tax revenue, will be funneled out of the area. And it does not link in to the many ancillary services linked to the industry that are local and work with the large cannabis network already here. This project erodes the current structure of the local industry and if your goal is to "get it out of the hills" I cannot imagine how this project will convince the many mom and pop farms out there to quit their livelihood.

This is a very bad idea. The concept "design with nature" describes planning projects suitable for a particular environment rather than forcing the environment to support an inappropriate project. Success thus follows

appropriate planning. To force this project into an inappropriate setting goes against all intelligent design thought. It is your responsibility to make decisions that promote a healthy future for our county and to work towards the greater good. I urge you to vote no on this project. Please consider the hundreds of families who will be negatively impacted by this development.

Sincerely, Joan Edwards

Re: Arcata Land Company's proposed Commercial Cannabis Outdoor Light Deprivation and Mixed-Light Cultivation Project Application # 12255.

June 14, 2021

Dear Supervisors,

We recommend a full Environmental Impact Report (EIR) for Arcata Land Company's proposal to grow cannabis in the Arcata Bottoms. The Initial Study/Mitigated Negative Declaration is inadequate. At a minimum, this needs a full EIR to address the numerous shortcomings in the Initial Study, such as inadequate energy calculations (only the mixed light was included, did not include ancillary support equipment such as dehumidifiers, fans, filtration equipment, etc.), an inadequate biological assessment (for example, no bat study, which is required by CEQA, was done), cumulative impacts were missing from all sections of the study), inadequate water calculations (no data on number of plants and number of rotations are provided which are necessary for an accurate assessment of water usage), etc. Throughout the study, statements are made without any supporting evidence or data. An EIR would address the gross shortcomings in the Initial Study. Please require a full EIR for this project.

It also increases the carbon footprint of the cannabis industry by growing the plants in a locale ill-suited to growing cannabis, which will require an enormous amount of energy.

Additionally, the cumulative impacts associated with this and other proposed projects that are near by must be considered- the combined cumulative impacts were not addressed in the Initial Study/ Mitigated Negative Declaration (IS/MND)

WATER: The amount of water to be used is estimated at 36-acre feet (11,736,000 gallons) per year. These numbers are suspect because calculations of water usage are dependent on the number of plants grown and the number of crop rotations, None of these data were disclosed in the IS/MND. The cultivation period was not disclosed in the latest staff report.

ENERGY DEMANDS: In the IS/MND, the estimated energy usage for the mixed-light cultivation was projected at 6,750 MWh/year. These estimates apparently do not account for the energy usage of ancillary equipment such as fans, dehumidifiers odor suppression equipment, etc. What are the energy demands for these? There is also reference to gas boilers for heating: "In addition to PG&E power, the Project proposes three natural gas boilers rated at 1 million British thermal units per hour." This quote from the IS/MND does not clarify if this rating is for all three or a single boiler. These boilers will be used to heat 8.7 acres of hoop houses. All of these energy demands will create a huge carbon footprint. In the staff report of 18 March 2021 (page 69), under Addendum No. 1 to the Operations Manual, it states that during the vegetative growth state of the

plant the energy requirements will be less than 1.9 MW. 1.9 MW is the equivalent of the energy demands of 1,513 average homes in the Pacific-Northwest. https://www.nwcouncil.org/reports/columbia-river-history/megawatt.

BIOLOGICAL ASSESSMENT AND IMPACTS: This section of the IS/MND illustrates one of the many inadequacies of the IS/MND and thus supports the need for an EIR.

The sample size, only two partial days in the field collecting data, was far too small to be statistically significant. **No night-time survey for bats or owls was conducted as required by CEQA**. No methodology was presented in the study.

*The dominant bird species, Canadian and Aleutian Geese, that utilize this project site during their migration period, (January – April) were not accounted for in the study because the limited survey days occurred outside their migration period.

*Despite a literature review to identify potential bird species within the study, there are at least the following 16 species missing from the IS/MND, among many others: Peregrine falcon, Marsh hawk, Red-shouldered hawk, White tailed kite, Allen's Hummingbird, Rufous Hummingbird, Raven, Crow, Barn owl, Killdeer, Western meadowlark, Egrets, Great Blue Heron, White Crowned Sparrow, Canadian Geese, Aleutian Geese, and Song Sparrow.

*The study states that no migratory corridors were detected. In fact, the entire county coastline is a migration corridor.

To understand the impact on birds and mammals, an EIR should be required.

An EIR would address the gross shortcomings in the Initial Study. Please require a full EIR for this project.

Thank you.

Sincerely,

Robie Tenorio

Citizens for a Sustainable Humboldt

Hayes, Kathy

From: Bill Morris <ridgecabin@gmail.com>
Sent: Tuesday, June 15, 2021 9:18 AM
To: COB
Subject: Arcata Land Co. Plan for Cannabis Grow

Dear Board of Supervisors,

We have real concerns over the plan for the Cannabis site in Arcata by the Arcata Land Co.

First of all this site is near family homes, schools and Churches. This grow would increase the amount of traffic, noise, use of wells and electricity for the surrounding neighborhood. The odor alone coming from the grow devalues the surrounding area. We have property in the mountains in Humboldt County, and as we travel to our cabin the stench of Cannabis grows permeates the air along the way. Even though you do not visibly see the gardens - you know they are there.

To add to all of this, as you know, the State of California is experiencing a horrible drought. The amount of water needed for irrigation could be much better spent for healthy food that would benefit families, or some other essential needs for the whole community.

Thank you for the attention to this letter. Please pass it on to make sure each Supervisor receives it.

Sincerely,

Bill & Allison Morris

Hayes, Kathy

From: Andrew Hooper <ahooperold@gmail.com>
Sent: Tuesday, June 15, 2021 9:02 AM
To: COB
Subject: Arcata Bottom Grow

I write this with concerns about proposed large scale cannabis operation in the Arcata Bottoms. My goal is to describe my personal experience and present ground level issues that affect not just my neighborhood but Arcata and Humboldt county as well.

Sun Valley Neighbors

I have lived for 30 yrs surrounded by Sun Valley Floral farm in a home generally downwind and within 1/2 mile of proposed large cannabis grow. Our neighborhood is mildly mixed with scattered old farmhouses some nice but not upscale tract housing. Not important . The Sun Valley land around us has been worked in many ways over the years , the people employed almost universally respectful and good neighbors. The practices are not on same level. " Hey dad why are those workers over there wearing spacesuits and masks spraying under the tarps" That was years prior when bromides were used on fields around our house. Recently we rebooted a well on our property and tested for Roundup. Our well sample showed positive . A neighbor describes yellow "roundup" fields visible from his window. I have had multiple interactions with Lane DeVies over the years. He s a smart businessman that lives far away from proposed 23 now 8 acre project. I have seen many of his workers over the years professionally. I do think they are cared for but the work can be and is hard. Our current neighbors are about 15 young men workers from Mexico in a 3 bedroom house. Our concerns about problems have not occurred but many other questions remain.

Downwind Considerations

Marijuana odors are usually from Terpenoids which are considered Biologic Volatile Organic compounds (BVOC) . BVOC can have complex interaction with other air pollutants and
high concentration can lead to formation of Ozone and secondary VOC's (aldehyde alcohols and other organic aerosol agents) Ground level ozone is a strong oxidizing agent that can damage respiratory organs. In his thesis " Emissions from the Cultivation of Cannabis and their impact on Regional air quality " Chi-Tsan Wang 2019 states " Thus the increasing peak hourly ozone rate by VOC from the oil and gas industry is ...one tenth of the ozone sensitivity by the Cannabis industry in Denver" " Although there is no direct evidence to explain those BVOC's will have the acute and chronic effects on human health, other volatile organic solvent usage and secondary products ...can have the potential effect on a human's health" People live downwind, a large residential facility has been proposed downwind, low wage people are to work in the facility but the people who decided to propose and approve the project live far away. Unhealthy land use practices were used until proven hazards in the past.

If you can smell it then there is a problem.

The subject of smell is becoming more mainstream and the science behind odor (and thus BVOC minimization) is expanding . Reading industry literature gives me the impression that odor control is possible and that it is not "necessary " to produce odor to grow indoor cannabis. In early material from Arcata Land company it was stated that the project would be immune to Nuisance Law and Health and Safety codes as odor was necessary for the growing. It is not necessary to have odor to grow in door cannabis. It just takes money and outside oversight to prevent.

Community Images

I am a Family Practice Doc who has worked in Humboldt county for 30 years in multiple medical positions, By Family Practice definition I am not an authority on anything but have seen (live) a slow deterioration of our medical system. We have replaced Internists with Family Practitioners and Family Practitioners with Midlevel providers. Many of our Specialists are now Doctors who live out of town and come to Humboldt as Locums. To attract Practitioners, especially specialists, we as a community must project an image that attracts people of talent and principle. Rural Practice recruitment relies more on community image than money. Tax base on corporate level cannabis grows will not interest many physicians for long term participation. The opportunity to work in an environment where emphasis is on innovation in land resource, education, and natural beauty will attract people who would be much more likely to stay. I know many good practitioners who came attracted by our healthy environment, surfing, rivers. HSU , and good schools but no real lasting" get out of jail free " 215 doctors.

Soulless Corporate Cannabis

I look around and think that this area is just not the place to grow Cannabis. We are fortunate to have local community farm that seems vibrant and impressive to walk by. Greenhouses yes but no electronic sound. Water from local wells is used but for environmently appropriate crops. . We must consider the energy needed to thoroughly bend the growing process into an manipulated product that may be potent but lack something like the contribution of mother nature. A product made in an extremely controlled environment in Humboldt County will be no different than that grown anywhere else. Another small time corporate weed that will get killed when the large scale cannabis industry gets going in areas where the overhead will much less. No Sun, no enthusiasm, no magic, no true name recognition. Soulless Corporate Cannabis.

Some things just don't make sense

I have not been as involved as many of my neighbors resisting this project. One argument I have heard in favor of this project is that it will " bring people out of the hills" and decrease unhealthy growing practices. Although I appreciate the attention to unhealthy grows I doubt there are many that are going to give up their livelihood because of this project. Seems like mildly magical thinking. Also I hear that Lane DeVies gives public talks about the dangers of cannabis yet he is creating the path to mass produce it . I agree with Lane that there are true pitfalls in Cannabis use (especially high THC consumption) but it seems like a mixed message at best.

Alternatives

Sun Valley is a major employer in Humboldt county and many families are supported by their presence. The financial viability of Sun Valley is obviously important to Humboldt county. To approve quick buck large scale cannabis grows seems like the least imaginative plan to come up with. I don't think I am alone but am surprised that there are no other ideas on how Sun Valley can use it's land assets to create jobs and improve our community. I would much rather hear the sounds of an intelligently designed neighborhood than electronic hum of fans, heaters, dehumidifiers, deodorizers in an area surrounded by 8 foot fences and security guards. Much better image and potential for long term development . There really needs to be a larger perspective.

Andrew Hooper MD

Hayes, Kathy

From: Arlene Schneider <arl3n3schneider@gmail.com>
Sent: Tuesday, June 15, 2021 8:01 AM
To: COB
Subject: Cannabis in Arcata

cob@co.humboldt.ca.us

June 14, 2021
TO: Humboldt County Supervisors
RE: Cannabis proposal

Humboldt County Supervisors:
I am concerned about the proposal to allow cannabis to be grown in the Arcata Bottoms,and other areas close to residential areas for the following reasons:

Most important, we are now being told we are facing a severe drought. Fish in the Klamath are at risk, the Northern California lakes are already low. For years, our local rivers have faced low flow levels in the summer. This year, our rivers are already low and the snow pack is non-existent. How can cannabis business expand when the plants
requires a large amount of water to mature. Water that is needed to sustain our current
forests and wild life.

Also, the air quality is compromised. Not just that the smell its offensive to
many people, but the the air can also effect the air quality and compromise the health
and safety of medically fragile individuals with asthma, allergies, and other pulmonary weaknesses.
Finally, I believe allowing large cannabis grows near residential neighborhoods (where schools, hospitals, and churches may also be located) can compromise and may even destroy our neighborhoods. The huge, loud fans as well as the bright lights used in the grow houses alone are noisy and disruptive. When faced with these changes, families may be forced to decide if they can live in their neighborhood
Respectfully,
Arlene Schneider
Eureka, 95503

Humboldt co Supervisors and planning dept.
6-14-21

Re Arcata Land Co

I am writing to voice my support for the facility Proposed by the Arcata land Co at their Arcata Bottoms site. I believe the Cannabis Ordinance was written with the idea of getting grows out of the hills and into Ag land, hence the requirement for Prime Ag soils.

While I understand the angst that some of the neighbors may feel, I believe that the Sun Valley group has shown themselves to be good neighbors and good Stewarts of the land. I believe that they will be one of the top end operators in the business and will strive to always take into account the concerns of their neighbors and to take all reasonable efforts to accommodate those concerns. It is for these reason that i ask you to deny the appeal of the planning commission's decision and move forward with the project.

Rob McBeth

Eureka

Hayes, Kathy

From: Heart Bead <heartbead3@gmail.com>
Sent: Monday, June 14, 2021 8:56 PM
To: COB
Cc: Yandell, Rodney; Planning Clerk; Bohn, Rex; Wilson, Mike; Bass, Virginia; Madrone, Steve; mbushnell@humboldt.ca.us
Subject: This voter does NOT approve of the Sun Valley Mega Cannabis Grow

Greetings Board of Supervisors et al,

I am a business owner and resident of Arcata. I vote in every election, have a teen child, and have many reasons to oppose this gigantic grow operation in the Arcata Bottoms.

There are so many reasons to halt this project, I am unsure where to start my list. The odor from such a huge farm will be unbearable, not only to the neighborhood close by, but on Summer days, when the wind blows from the north and northwest, the entire atmosphere of Arcata will be bathed in the smell of marijuana. Gross.

The security needed for such a grow will severely impact the sweet family community of the Arcata bottoms, impacting many folk who walk, ride bicycles and watch sunsets and cows through those fields. Those quiet country roads are an asset to our small community. The agrarian part of Humboldt is part of our culture and will be negatively impacted by armed security and ugly hoop tents sprawling across a huge amount of now open, pastoral, visually appealing farmland.

I strongly oppose this specific type of corporate farming practices for many reasons. Excessive electricity use for heating the 'greenhouses' and the wasteful use of non-re-usable and unrecyclable plastic hoops, ground cover, tenting etc. impacts our future through plastic waste and more greenhouse gases. This is not only a visible blight to the landscape, but creates a huge amount of waste. This is an enormous contribution to global warming and exacerbates the risk of future flooding of the location itself due to ocean rise.

Also, the fertilizers, weed control, rooting hormones and mold suppressing agents that are used in such a huge cannabis grow, so close the the water table, will seep into our groundwater, and run off into the bay. This could affect our local groundwater, oyster production in Humboldt Bay, affect cattle and wildlife, amphibians, fish (such as salmon in small creeks and sloughs) and even create poisonous algal blooms around the sloughs which could sicken cattle and housepets.

This kind of grow is not what we are about. It does not seek to better our community, it is pure greed and overuse of our county and city resources. Large industrial type agriculture does not move Arcata and Humboldt County towards a future of less waste, it does not lower greenhouse gases, and does not preserve our local beauty as a pastoral small family farm community. It is a waste of energy, and seeks to put money only into the pockets of Arcata Land Company (operating as a subsidiary of Sun Valley Floral Farms), not necessarily into the wallets of current Arcata residents.

I ask that you please do NOT approve this blight of a project.

Thank you for your consideration,
Kimberly Mallett Alvarez

Owner of Heart Bead, on the Plaza
Resident of Arcata, 21 years

Hayes, Kathy

From: Debbie Kawas <kawas64@gmail.com>
Sent: Monday, June 14, 2021 3:32 PM
To: COB
Subject: Arcata Land Co. Cannabis Grow Project.

Dear Board of Supervisors,

I strongly oppose the Cannabis Grow Project on the old Simpson's property that now belongs to Sun valley . I live and own a home in Westwood village on Hilfiker Drive and have for over 30 years.
The idea of cannabis growing so close to our small city and neighborhood is disturbing . I do not like to think I will have to tolerate the smell of marijuana . And a grow this size close to schools just doesn't seem right to me.

Arcata has always been a city wanting to not have big business in or near its city limits. This is no way what's best for Arcata.
Our community has worked hard to break up drug houses and clean up our neighborhoods. I acknowledge the difference between drug houses and legal cannabis grows but it still does not set well with me at all .

Arcata is home to Humboldt State University and a big grow in its backyard is not an asset parents are going to want to send their college students to.
Humboldt State is Arcata's biggest financial asset since the fall of the timber industry. Humboldt State University is also a big asset to our county.

I really question if anyone is thinking about the impact on Arcata! And the county.
In closing here are a few other concerns:
Increase Oder , increase water, increase energy , maybe even increase of noise

As a longtime resident I believe we Should all have a vote .
I vote NO!!!
Please distribute to all supervisors .
Thank you very much for hearing my voice.

Sincerely

Debbie Kawas
Arcata
Sent from my iPhone

Hayes, Kathy

From: Sommers/Day <leapsomeday@gmail.com>
Sent: Monday, June 14, 2021 3:32 PM
To: COB
Subject: Arcata Land Company PLN-2021-17198

Arcata Land Company and Water Use

Is the well on the Arcata Land Company's land an Artesian Well? If not, its use may affect groundwater use and supply.

Are they acquainted with the 2014 Groundwater Act?

Thank you,
Marisa Day

Hayes, Kathy

From: Joyce Jonte <joycejonte@gmail.com>
Sent: Monday, June 14, 2021 3:17 PM
To: COB
Subject: Arcata Bottoms

Hello,

I am writing to express my concern about the plan to expand Sun Valley Bulb Farm into a large industrial cannabis farm. I urge you to not permit this project. The water and power usage would be excessive and our county does not need any more industrial cannabis farms.

Thank you,
Joyce Jonte
Local artist

Hayes, Kathy

From: Easton Connell <eastonconnell@gmail.com>
Sent: Monday, June 14, 2021 11:57 AM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject: Comments on Proposal by Arcata Land Company, LLC, record Number PLN-12255-CUP

Good morning,

I live on 27th Street in Arcata and would like to comment on Sun Valley's plans to build an enormous cannabis facility down the street from my house. I work in the cannabis industry and generally support the growth of one of our county's most valuable industries, but must file a complaint about this proposed facility.

My street is not prepared to handle the increased traffic this project would bring. 27th Street is narrow, poorly maintained, and has essentially no sidewalks for pedestrians. Dozens of folks walk their dogs up and down this street throughout the day (myself among them) and the only thing making that remotely safe is the limited traffic on 27th Street. There are also children that ride their bikes, walk, and play in this street as well. Increased traffic without additional planning and infrastructure will make this situation dramatically more hazardous for pedestrians and the children of my neighborhood. If Sun Valley ends up moving forward with this project, local government must improve the road and add sidewalks to mitigate the hazards posed by a dramatic increase in traffic on 27th Street.

I also feel compelled to file a complaint about this project based on the company that is proposing it. Sun Valley has a terrible reputation for labor rights violations and for abusing the undocumented workers they employ. I have many friends in our community who have worked at Sun Valley when they had no other option and I've heard terrible stories of the working conditions and work environment. Sun Valley's labor abuse has even made it into the news on more than one occasion. In the recent Lost Coast Outpost article about the proposed project, the CEO of Sun Valley goes on record complaining about having to pay minimum wage and provide health insurance to his employees. I support job creation in our community, but these are not the kind of jobs that will enrich the lives of our community members and genuinely support our local economy. Moreover, Sun Valley and their terrible track record of labor abuse is not the face we want to put on Humboldt cannabis. Humboldt's reputation is built on craft farmers who care for the plant and cultivate some of the best cannabis on the planet. The poor quality of cannabis that will inevitably come out of a poorly located (the dense fog in the Bottoms will ensure any cannabis grown in greenhouses will be riddled with mold and powdery mildew) large scale operation run by people motivated only by profit, paired with Sun Valley's terrible reputation and track record of labor rights violations, will be a blight on Humboldt cannabis, and can damage the integrity and value of cannabis produced in our entire region.

Also, I firmly believe the size and scope of this project should require a full Environmental Impact Report before the Planning Commission or Board of Supervisors can make a reasonable decision on whether or not to approve the project.

Moving forward with Sun Valley's proposed projection will not benefit the members of my neighborhood, the cannabis community, our local economy, or the citizens of Humboldt. It seems to me it will only benefit Lane DeVries. We must make planning decisions based on the needs of our community, not the needs of a single person.

Thank you,

-Easton

Easton Connell
707-497-4744

Hayes, Kathy

From:	jim cotton <jimcotton47@gmail.com>
Sent:	Monday, June 14, 2021 11:58 AM
To:	Madrone, Steve; COB; Wilson, Mike; Bass, Virginia; Bushnell, Michelle; Bohn, Rex
Subject:	Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

Dear Board of Supervisors,
I am forwarding this letter that I prepared for the Planning Commission meeting on 4/22 so that it will be included in the Administrative Record and to allow you to have time to read it prior to our Appeal Hearing on 6/22/21. This letter summarizes what I believe are major concerns, although it is not inclusive of all the issues.
Sincerely,
Jim Cotton

Re: ARCATA LAND COMPANY, LLC COMMERCIAL CANNABIS OUTDOOR LIGHT-DEPRIVATION AND MIXED-LIGHT CULTIVATION PROJECT. APPLICATION NUMBER; 12255

The red box in this photo defines 8.69 acres, the proposed size of the Arcata Land Company cannabis cultivation. This is the area that would be covered by plastic hoop houses if this were to be allowed in downtown Arcata.

Dear Planning Commissioners,
Thank you for taking the time to read my comments on this project and for your community service. I recognize the Planning Commission has an important role in the community and that it's an unpaid position.

I apologize for sending this directly to you instead of through normal channels but I wanted you to have time to read my comments prior to the April 22nd meeting. My comments were not bundled with the Staff Report as that comment period closed prior to the new staff report being issued and I wanted to base my comments on the staff report which was not available for the public until late afternoon Friday 4/16.

Overview and Summary:
The proposed Arcata Land Company, aka The Sun Valley Group, project will be the largest permitted cannabis cultivation in Humboldt County. The environmental and social impact of locating this project on the western edge of the city of Arcata and within their "Sphere of Influence" cannot be overstated. There are over 900 people, three schools, two playgrounds, two childcare centers, and one proposed senior housing unit/care facility located downwind and within ½ mile of this project. Cannabis is a crop that is better suited to warmer/dryer climes where the growing environment does not have to be manipulated in such an extreme manner as is needed in the Arcata Bottom. Sun Valley would be advised to move their cannabis operation inland where they currently farm 120 acres (or to their property in Oxnard) and where the social and environmental cost would be considerably less. Additionally, the cumulative impacts associated with this and other projects must be considered-they were basically not addressed in the Initial Study/ Mitigated Negative Declaration (IS/MND)

My Ask:
I respectfully request that you **do not approve** this project and instead require the applicant to submit an EIR prior to any CUP being issued.

Facts supporting the need for an EIR:
The IS/MND was poorly conducted and many false or misleading statements were made that were not supported by evidence. There were also omissions (such as no bat study). The major concerns of our neighborhood, and many people throughout the community, center around the environmental impacts of air quality and odor, water impacts, energy demands, biological/wildlife impacts, light pollution, noise, and cumulative impacts. Each of these is discussed below.

1. AIR QUALITY AND ODOR:
The (IS/MND) asked the following questions on page 31: *"Would the project:*
-Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
-Expose sensitive receptors to substantial pollutant concentrations
-Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?"
For all the above, the county checked the box "less than significant impact". This is a direct contradiction to the findings in the Final Environmental Impact Report (FEIR) *which stated under* ***5.1:*** **MAJOR CONCLUSIONS OF THE ENVIRONMENTAL ANALYSIS.** The FEIR identified the following significant impacts related to the project: **"Air Quality and Greenhouse Gas Emissions:** Operation of new commercial cannabis operations under the proposed ordinance would result in the increase in particulate matter (PM10) emissions during the harvest season that would exceed North Coast Unified Air Quality Management District (NCUAQMD) thresholds and contribute to the nonattainment status of the North Coast Air Basin for PM10. **No feasible mitigation is available to reduce this impact. Therefore, the impact would be significant and unavoidable (Impact 3.3-2). The project's contribution to cumulative air quality impacts involving particulate matter (PM10) emissions would be cumulatively considerable and significant and unavoidable."** Humboldt County Cannabis Program Final EIR 60mb (PDF)

Sensitive receptors include residences, schools, playgrounds, childcare centers, long-term health care facilities, rehabilitation centers, convalescent centers, and retirement homes. The **IS/MND falsely states** "With the exception of scattered rural residential, there are no sensitive land uses within the vicinity." According to Parks for California there is a total population 922 people living within ½ mile of the cultivation site. (https://www.parksforcalifornia.org/communities/) Additionally, there are three schools, two childcare centers, two parks and the proposed Creekside Annexation which will house seniors along with a long-term care facility all of which are downwind from the cultivation site.

The EIR goes on to say: "Operation of new commercial cannabis operations under the proposed ordinance could generate objectionable odors to nearby residents. Mitigation has been recommended to reduce this impact. However, **this mitigation measure would not completely offset the odor impact. Therefore, the impact would be significant and unavoidable (Impact 3.3-4). The project's contribution to cumulative impacts from exposure of people to objectionable odors would be cumulatively considerable and significant and unavoidable."** Humboldt County Cannabis Program Final EIR 60mb (PDF)

The wind at the project site often exceeds 10 miles per hour (NWS data) and many days is well above 20 mph. The Volatile Organic Compounds (VOCs) venting and escaping from the hoop houses will be transported downwind toward the Westwood and Bloomfield neighborhoods. These VOCs are especially dangerous to people that have respiratory illnesses (including at least three people I know of personally with severe asthma living within 800 feet). https://www.tandfonline.com/doi/full/10.1080/10962247.2019.1654038

Note: There is a device (the Nasal Ranger) that can quantify the concentration of odors but the county does not have one. Odor complaints investigations should be objectively quantified with this or a similar device.

I recognize that the FEIR was published in January of 2018 and that there **might** have been technological advances in filtration systems since then. This is all the more reason to require the applicant to do an EIR for this project to prove that a more advanced filtration system (if available) might work to reduce odors.

2. WATER:

The amount of water to be used in the scaled down version of this application is estimated at 36-acre feet (11,736,000 gallons) per year. These numbers are suspect because calculations of water usage are dependent on the number of plants grown and the number of crop rotations, none of these data were disclosed in the IS/MND. The cultivation period was not disclosed in the latest staff report. Is the cultivation period still April thru October?

3. ENERGY DEMANDS:

Downsizing this project from 22.9 acres to 8.69 acres does not necessarily decrease the energy demands. The 5.7 acres of mixed-light cultivation and the 30,000 sq. ft. nursery are the same size in both plans and hence the energy usage will be approximately the same. In the IS/MND, the estimated energy usage for the mixed-light cultivation was projected at 6,750 MWh/year. These estimates apparently do not account for the energy usage of ancillary equipment such as fans, dehumidifiers odor suppression equipment, etc. What are the energy demands for these? There is also reference to gas boilers for heating: "In addition to PG&E power, the Project proposes three natural gas boilers rated at 1 million British thermal units per hour." This quote from the IS/MND does not clarify if this rating is for all three or a single boiler. These boilers will be used to heat 8.7 acres of hoop houses. All of these energy demands will create a huge carbon footprint. In the staff report of 18 March 2021 (page 69), under Addendum No. 1 to the Operations Manual, it states that during the vegetive growth state of the plant the energy requirements will be less than 1.9 MW. 1.9 MW is the equivalent of the energy demands of 1,513 average homes in the pacific northwest. https://www.nwcouncil.org/reports/columbia-river-history/megawatt.

The bottom line is that this is the wrong location to be cultivating the largest cannabis site in Humboldt County because of the cool, damp, and windy environment in the Bottom close to the ocean. This is a heat loving plant that is better suited to a warmer dryer clime. The Sun Valley Group aka Arcata Land Co. owns and operates properties in Oxnard CA, Baja California, and 120 acres in Willow Creek, all of which are better suited for growing cannabis instead of on the coast where an artificial environment has to be created and sustained. This is at a huge environmental cost added to the social cost to the nearby neighborhoods.

4. BIOLOGICAL ASSESSMENT AND IMPACTS:

This section of the IS/MND illustrates one of the many inadequacies of the IS/MND and thus supports the need for an EIR. As a Wildlife Research Biologist with over 4 decades of experience in the field conducting bird and mammal survey data for the federal government, I believe the study is inadequate for the following reasons:

a. The sample size, only two partial days in the field collecting data, was far too small to be statistically significant. **No night time survey for bats or owls was conducted as required by CEQA.** (*Mitigation Measure 3.4-1ki: Preconstruction bat survey and exclusion. The following shall be included as performance standards in the proposed ordinance for the protection of the pallid bat and Townsend's big-eared bat from new development related to cannabis activities.) Before commencing any new development related to cannabis activities, a qualified biologist shall conduct surveys for roosting bats. If evidence of bat use is observed, the species and number of bats using the roost shall be determined. Bat detectors may be used to supplement survey efforts. If no evidence of bat roosts is found, then no further study will be required.)

b. No methodology was presented in the study.

c. The dominant bird species, Canadian and Aleutian Geese, that utilize this project site during their migration period (January – April) were not accounted for in the study because the limited survey days occurred outside their migration period. On a personal note, I have observed, from my living room widow, flocks of 500 -1000 geese foraging daily on the study site over the past three months.

d. Despite a literature review to identify potential bird species within the study, there are at least the following 16 species missing from the IS/MND, among many others: Peregrine falcon, Marsh hawk, Red-shouldered hawk, White tailed kite, Allen's Hummingbird, Rufous Hummingbird, Raven, Crow, Barn owl, Killdeer, Western meadowlark, Egrets, Great Blue Heron, White Crowned Sparrow, Canadian Geese, Aleutian Geese, and Song Sparrow.

e. The study states that no migratory corridors were detected. In fact, the entire county coastline is a migration corridor.

f. If Red-legged frogs are found in the storm water drainage basins, what will the mitigation measures be? There are none in the IS/MND.

g. To understand the impact on birds and mammals, an EIR should be required.

5. LIGHT POLLUTION:

The staff report for 22 April 2021, page 13 states "The project is consistent with the Conservation and Open Space Scenic Resources policies as the only applicable policy is related to restricting light and glare. The project involves mixed-light cultivation. The CMMLUO requires that mixed light cultivation comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1 and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). The project is required to follow International Dark Sky Association Standards that exceed the requirements of Scenic Resources Standard SR-S4, Light and Glare, that lighting be fully shielded, and designed and installed **to minimize off-site lighting** and direct light within the property boundaries. Comments have been raised by the public regarding lighting impacts, however compliance with the ordinance will ensure that there are no adverse impacts to adjacent populations from nighttime lighting."

On the other hand, the Staff Report 18 March 2021, page 10 states "Lighting will be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare, **and light will not escape at a level that is visible from neighboring properties between sunset and sunrise.** The project would comply with all CMMLUO performance standards for lighting, and new structures, including lighting plans, would be subject to approval by the Humboldt County Building Department."

Please note the difference in the wording of the two staff reports. Which standard will be followed? Again, this requires an EIR.

6. NOISE:

Per the **FEIR**, pages 2-11: The County has also updated the proposed ordinance's performance standards for noise at cultivation sites that now prohibit noise from cultivation and related activities from increasing the

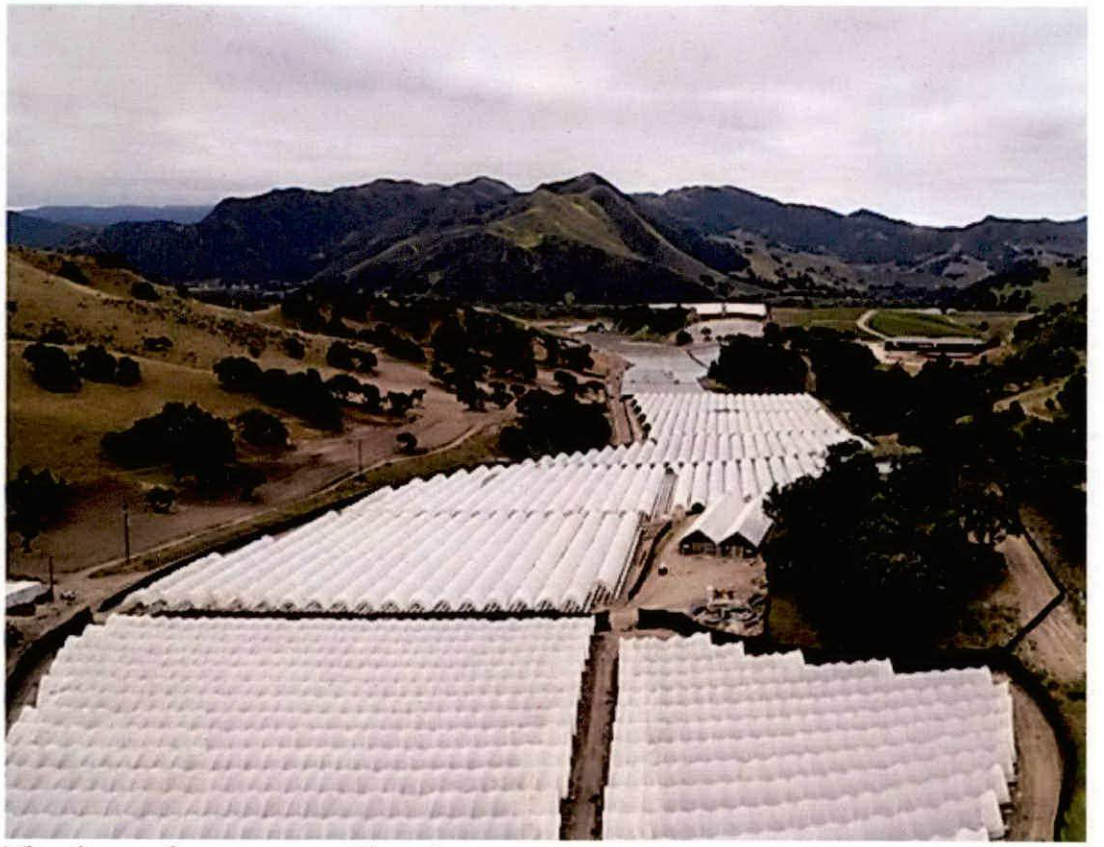
ambient **noise level at any property line by more than 3 dB**. As identified on DEIR page 3.10-2, the human ear can begin to detect sound level increases at 3dB above existing noise levels.

The **Staff repor**t for 22 April 2021, page 14 states "Comments have been raised regarding the potential of the project to create substantial noise which will adversely affect adjacent property owners and residents. The project will be consistent with the CNEL standards of the Humboldt County General Plan which will require the project to be demonstrated **to not contribute more than 60 decibels as measured at the property lines.** This will ensure that noise levels at any sensitive receptor are below the noise threshold established in the General Plan as suitable for sensitive receptors. If the findings of the investigation show that noise levels do not meet the CNEL standard, an appropriate noise study shall be conducted at the applicant/operators' expense. If the findings of the noise study show that noise levels do not meet the CNEL standard, the applicant/operator shall have a minimum of 10 days to PLN-12255-CUP Arcata Land Company, LLC April 22, 2021 Page 14 develop a plan to bring noise levels into compliance."

There seems to be a discrepancy between the staff report and the FEIR. The staff report describes < 60 decibels as being acceptable while the FEIR prohibits noise from cultivation and related activities from increasing the ambient noise level at any property line by more than 3 decibels. Which standard will be applied to this project?

7. CUMULATIVE IMPACTS

While this current permit may seem inconsequential to some, the impact on the bucolic nature of the Arcata bottom lands is significant when combined with current and future cannabis applications that have been applied for. According to the IS/MND there are four applications within a one-mile radius of this project. Two of these are adjoining parcels with one permit already approved for manufacturing, processing and distribution. If approved, this permit may have the domino effect that will eventually cover the Arcata bottom in a sea of plastic hoop houses the likes of which is already occurring in Santa Barbara as evidenced by this photo.



Thank you for your consideration.

Respectfully,

Jim Cotton

Arcata, CA

Hayes, Kathy

From: lee torrence <ltwish@hotmail.com>
Sent: Monday, June 14, 2021 12:01 PM
To: COB
Subject: Arcata Land Company Cannabis grow

Dear Board of Supervisors,

I will write a more thoughtful letter later. I was just informed this letter had to be in by 12pm today. It is 11:20.

First, a project this size needs an EIR. Due to its close proximity to over 1000 residents, 3 schools, etc. Even that there MIGHT BE significant impacts is reason enough.

I will send you hardcopy of an article about a class action suit against large cannabis growers in Carpenteria (where Tristen Strauss is from and who is supposedly going to be in charge of the growing).
Hundreds of complaints of SCRATCHY THROATS, migraines, shortness of breath, nausea, and general asthmatic symptoms worsened, and have been registered with the city and is part of the lawsuit. Cannabis can spark asthma attacks in sensitive individuals. MANY CHILDREN HAVE ASTHMA THESE DAYS. Imagine 8 acres of it near 1000 residents?

Hundreds of fans and filtrations systems can have an impact on wildlife and running 24/7 could very well affect the health of humans. EIR! If a bald eagle's nest were on this property that would be enough to not issue a permit. But the health and well being of 1000 people? Apparently not important. It is zoned heavy industrial, but would you allow a smoke spewing factory there? There is proof that it increases pollution that is harmful to populations, yet no EIR?

I hear the Board of Supervisors has discussed a Climate Action Plan at a meeting in May. Yet, cannabis grown in a climate not conducive to growing the crop requires huge amounts of energy. How can we ask individuals to cut back on energy usage, water, etc because our very survival depends on it when our county is giving permits to companies that use over 2% of the total county's energy usage. And that's just for lights. That doesn't include 2000 fans. This is not an essential crop for the community.

Most growers give growing this crop in the bottoms a 50/50 change of success. What happens with all the build out if this fails? Will we be dealing with another abandoned building like Kmart or Ray's in McKinleyville. Prime agricultural land will be lost permanently.

Please keep in mind the zoning of Heavy Industrial was almost 60 years ago. If you had thought that you might have more heavy industry happening in the future, why did you allow an entire residential area to be built so close to it? Changing gears on that decision 60 years later doesn't seem fair to the people who bought into the bottoms who thought they were living near agricultural land. The current LAND USE DESIGNATION is AGRICULTURAL EXCLUSIVE.
If you go by that, I believe Sun Valley would be allowed a total of 1 acre?

I am out of time.
Thank you for your patience reading my thoughts on this. I think and EIR is in order if you do not just plain out deny this permit to Sun Valley Bulb Farm. (Arcata Land Company).

Sincerely,
Lee Torrence
1827 27th Street
Arcata, Ca 95521

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April 30, 2021

VIA EMAIL AND U.S. MAIL

Humboldt County Board of Supervisors
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John Ford, Director
Humboldt County Planning and Building Department
3015 H Street
Eureka, California 95501
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Re: **Pattern of Inaccurate Characterizations of CEQA's Standards and Requirements**

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

On behalf of Northcoast Environmental Center ("NEC") and Citizens for a Sustainable Humboldt ("CSH"), we respectfully submit the following general comments with the intention of fostering improved adherence to and compliance with established standards and mandatory requirements of the California Environmental Quality Act ("CEQA").[1] Over the course of several recent Planning Commission and Board of Supervisor meetings, where proposed large development projects have been considered for approval, NEC and CSH members have observed repeated inaccurate characterizations of CEQA's standards and requirements. The inaccurate characterizations – advanced by planning staff, project applicants' counsel, and, occasionally, even by Commissioners and Supervisors – have tended to:

- downplay the important procedural and substantive differences between an Environmental Impact Report ("EIR") and a Mitigated Negative Declaration ("MND");

[1] Public Resources Code ("PRC") §§ 21000, et seq.; CEQA Guidelines, 14 CCR §§ 15000, et seq. The 2021 CEQA statute and CEQA Guidelines are available to download at: https://www.califaep.org/statute_and_guidelines.php.

- portray the "fair argument" test under CEQA, which establishes the low threshold for requiring an EIR, as a higher burden of proof for project challengers than it actually is under the statute and controlling caselaw;

- advance a double standard, where County planning staff and project applicants are permitted to present absolute conclusions dismissing the potential for significant environmental impacts that are nothing more than unsubstantiated opinion while at the same time staff and applicant's criticize substantiated comments from the public, other agencies, and County planners concerning potentially significant impacts that may be caused by proposed projects as lacking sufficient evidentiary and expert support; and

- imply that County decision-makers have discretion to decide to prepare an MND instead of an EIR based on practical considerations, such as whether more in-depth environmental impact analysis would change the outcome, rather than on the required factual and legal basis.

The above inaccurate characterizations appear to be based on several fundamental misunderstandings of the CEQA statute and CEQA Guidelines and their application to discretionary project approvals. NEC and CSH submit the following general comments with the hope of improving understanding of CEQA's standards and requirements as they apply to important land use decisions with substantial environmental implications. NEC and CSH seek to inform decision-makers and the public about CEQA's substantive and procedural requirements in order to foster improved public participation and help ensure decisions with major long-term implications for the environment are based on an accurate understanding of these important legal concepts.

At the most recent Planning Commission meeting on Thursday, April 22, 2021, in response to a question from Commissioner Noah Levy concerning the criteria the Planning Department uses when determining whether an MND rather than an EIR should be prepared, Planning Director John Ford made several inaccurate statements concerning CEQA's requirements for EIRs and MNDs.[2] For example, Director Ford falsely claimed that the two types of documents "do very much the same thing," provide essentially the "same analysis," and the level of study is "very similar."[3] The primary distinguishing feature between the two documents, according to the Director, is that, with an EIR, the identified potentially significant impacts do not all have to be mitigated to less-than-significant levels – for impacts that are not fully mitigated, the lead agency can make "findings of overriding considerations" and approve the project anyway. In addition to falsely equating an MND and an EIR, the Planning Director did not mention that, even with an EIR, all feasible mitigation measures must be adopted

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[2] See video of Planning Commission meeting for April 22, 2021, hearing re Arcata Land Company, LLC, Conditional Use Permit (PLN-12255-CUP), at hour mark 2:03 to 2:10, available at: http://humboldt.granicus.com/MediaPlayer.php?view_id=5&clip_id=1489.

[3] *See id.* at approximately 2:07, 2:09, 2:10 marks of the video.

before a lead agency can adopt a Statement of Overriding Considerations. Also, by omitting any mention of the "fair argument" standard – CEQA's "low threshold requirement for preparing an EIR,"[4] the Planning Director side-stepped the Commissioner's direct question on the criteria used by staff to determine whether an EIR should be prepared. We address the implications of each of these problematic issues below.

The explanation provided by the Director in response to Commissioner Levy's question is unresponsive, inaccurate, and potentially misleading in several respects. For example, the Director's statements (1) do not address the Commissioner's question of what criteria the Planning Department uses to determine whether an EIR, as opposed to an MND, is required (see video at 2:03 mark) and (2) inaccurately characterize the substantive requirements for both types of CEQA documents as equivalent, when they most assuredly are not.

With respect to the first point above, the Director did not acknowledge that, pursuant to the mandatory language of the CEQA statute and CEQA Guidelines, an MND is only allowed when the Initial Study demonstrates with substantial evidence that, after incorporating mitigation measures, a proposed project will "clearly" not cause "any significant effect on the environment."[5] In contrast, an EIR is required when there is a fair argument, based on substantial evidence, that a project "may" cause one or more potentially significant impacts.[6] In other words, when an MND is prepared, the burden is on the lead agency (here the County) to demonstrate with supporting evidence and transparent analysis that, with incorporated mitigation measures and project design changes, there is no possibility that the proposed project may cause significant impacts. If commenters present any substantial evidence supporting a fair argument that the project may cause significant impacts, then an EIR is required – even if there is also substantial evidence that the project may not cause significant

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[4] *See Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal. App. 4th 370, 380, quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84 and citing *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309–310.

[5] *See* PRC, §§ 21064.5, 21080(c); *see* CEQA Guidelines, §§ 15070 and 15369.5; *see also* Exhibit A: Excerpts from Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (11th ed. 2007), pp. 249-256, 262-263, 312-313, 329.

*Note: While the Guide to CEQA has not been republished since 2007, this painstakingly thorough treatise on the substantive and procedural requirements of CEQA remains an authoritative reference resource, repeatedly cited by appellate courts, concerning California's most important environmental statute. (*See, e.g., RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201, 1207, 1211, quoting Guide to CEQA; *see also Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139, same; *see also California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1336, fn. 3, same.) The thoughtful explanations in the Guide to CEQA concerning CEQA's general structure and requirements remain relevant and informative. However, all citations to the statute and to caselaw in this treatise should be double-checked to ensure accurate and up-to-date information.

[6] *See id.* at p. 329; *see also*, e.g., *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320, citing *No Oil, supra*, 13 Cal.3d at p. 75 and *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505.

impacts. An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[7] According to the Guide to CEQA, "credible expert testimony that a project may have a significant impact, even if contradicted, is generally dispositive and under such circumstances an EIR must be prepared. [Citation.] Indeed, an EIR is required precisely in order to resolve the dispute among experts."[8]

The Director's conspicuous omission of any reference to the "fair argument" standard is potentially misleading to both the decision-makers and to the public because it ignores altogether the central threshold question placed directly at issue in Commissioner Levy's question. Unfortunately, the pattern of mischaracterizing CEQA's standards and requirements goes deeper and further back. Several weeks ago, a project applicant's attorney went further by actually misrepresenting the "fair argument" standard when defending the Planning Commission's approval of a large commercial cannabis project in remote McCann.[9] During that meeting, counsel for the applicant quoted non-controlling dicta in an outlying appellate court decision as support for his argument that, under the "fair argument" test, project challengers must present substantial evidence showing that a project "will" have a significant impact on the environment.[10] As the undersigned pointed out at the time and again after the hearing, this characterization of the applicable standard is inconsistent with the language of the CEQA statute, the CEQA Guidelines, and controlling caselaw.[11] The applicant's characterization of the standard would improperly shift the burden to project opponents to analyze a proposed project's impacts. No one from the County – not planning staff or county counsel – corrected this blatant mischaracterization of a central legal principle.[12] On the contrary, planning staff's

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[7] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318.

[8] *See* Exh. A – Guide to CEQA, p. 262.

[9] *See* video of Board of Supervisors meeting on March 9, 2021, concerning the Rolling Meadow Ranch appeal, hour mark: 4:59; available at: http://humboldt.granicus.com/MediaPlayer.php?view_id=5&clip_id=1479, accessed April 27, 2021.

[10] *See id.* at approximately 5:00 hour mark; stating "Under the fair argument standard, an environmental impact report is required if there is substantial evidence that a project will have a significant effect on the environment, even if there is also substantial evidence to the contrary", emphasis in the original, quoting *Friends of the Sierra R.R. v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643, 661 [holding transfer or land to tribe not a "project" under CEQA], citing CEQA Guidelines, § 15064(f)(1) [guideline provision using the word "may"].

[11] *See* Public Resources Code, §§ 21064.5, 21080(c)(1)-(2), 21080(d), 21082.2; *see also* CEQA Guidelines, §§ 15002(f), 15002(k), 15063, 15064(b)(1), 15064(f), 15064(g); *see also, e.g., Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310 ["The test is whether 'it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact"], emphasis added, quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75. The undersigned sent a letter to counsel for the applicant, the Planning Director, and County Counsel the day after the appeal hearing, requesting correction of this mischaracterization.

[12] During the appeal hearing, Director Ford did address the "fair argument" test but only insofar as to claim that the substantial evidence cited by appellants and other commenters, including CDFW, concerning the project's potential to cause significant impacts, was not sufficiently substantial to meet the "fair argument" test. *See id.* at hour mark: 5:08 – 5:09.

internally inconsistent characterizations of (1) the expert opinion and agency comments supporting project challenger's arguments in support of an EIR as insufficient and (2) unsupported conclusions by planning staff and unqualified third parties (e.g., a well driller) as sufficient reveal a blatant double-standard that is inconsistent with CEQA's definition of "substantial evidence." These instances where the "fair argument" standard has been disregarded, misrepresented, and/or misapplied have the potential to mislead the public and undermine sound decision making.

With respect to the second point, contrary to the Planning Director's characterization of the MNDs and EIRs providing the "same analysis," CEQA imposes heightened substantive requirements for an EIR that do not apply to an MND. These requirements, specific to an EIR, tend to result in a much more robust analysis of environmental impacts and a more comprehensive consideration of the ways those impacts can be reduced through mitigation or avoided through alternatives and project design changes.

For example, the CEQA statute and CEQA Guidelines provide that an EIR must provide an analysis of project alternatives that can avoid or reduce a project's potentially significant impacts.[13] An MND need not address alternatives to a proposed project. As a consequence, decision makers have no opportunity to consider a project alternative for approval, rather than the project as proposed by the applicant. MND's constrain the opportunities for impact minimization and avoidance.

As an illustration, if an EIR had been prepared for the Rolling Meadow Ranch project, as opposed to the adopted MND, an analysis of a reasonable range of feasible project alternatives would have been required. County decision-makers could have considered this range of project alternatives for approval – such feasible alternatives could have included (as suggested by Supervisor Madrone on March 9th) a fully sun-grown, in the ground, cannabis cultivation project alternative with improved road access for fire safety and increased rainwater catchment and seasonal groundwater pumping forbearance – an alternative that, in connection with natural cycles, is seasonally closed during the winter when the McCann Bridge on the Eel River is submerged.

Further, under Public Resources Code, section 21081, when an EIR has been prepared, the lead agency is required to make specific findings of fact that are not required when an MND is the operative CEQA document.[14] This is the area where the Board has some discretion and limited latitude to find that overriding considerations make a project worth approving, despite its unavoidable significant impacts. But in order to make this finding, the board must first do all

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[13] PRC sections 21002.1(a), 21061, and 21153, and CEQA Guidelines, sections 15082, 15083, 15121, 15124, 15126, 15126.6; *see also* Exh. A – Guide to CEQA, pp. 413, 494-495.

[14] *See* PRC, § 21081; CEQA Guidelines, § 15093; *see also* Exh. A – Guide to CEQA, p. 411.

it feasibly can to mitigate and avoid the significant impact.[15] The Planning Director's recent explanation of "findings of significant impacts" suggested that, when proceeding with an EIR, the lead agency may have less of a responsibility to fully mitigate impacts than when adopting an MND, and this is simply not the case. With either document, the lead agency has a mandatory duty to adopt feasible mitigation measures for every identified significant environmental impact.

Preparing an EIR is an iterative multi-step process, where the lead agency (or an applicant's consultant with staff direction) conducts preliminary review or prepares an initial study to determine the potential for significant environmental impacts, conducts scoping in consultation with responsible and trustee agencies, and prepares a draft EIR covering a number of mandatory issues.[16] Public and responsible agencies are provided an opportunity to comment on the draft EIR, and, pursuant to Public Resources Code, section 21091(d)(2), the lead agency is required to respond to public and agency comments and revise the analysis, if necessary, in a final EIR.[17] In contrast, the lead agency is not required to respond to public and agency comments on an MND. The practical result of this requirement, where the lead agency is required to answer – in real time – for its Draft EIR analysis, is that the Final EIR is typically both more thorough in its initial evaluation of potentially significant environmental impacts and, through a process of disclosure, comments, responses, and revisions, is better grounded in factual and scientific information.

NEC and CSH acknowledge that, for smaller projects located in already developed areas, an MND may be sufficient to provide the appropriate level of impact analysis. With these projects, it is more likely that the Initial Study can determine, after completion of a thorough investigation in an Initial Study, that "clearly" the project will not cause any significant environmental impacts. However, for larger projects and projects proposed for undeveloped "greenfield" sites in remote areas of the County, an EIR may be necessary to fully analyze the project's potentially significant impacts and identify feasible mitigation measures and alternatives that can minimize and avoid impacts. This is especially true for projects that have garnered significant public controversy over clearly legitimate factually-grounded concerns. No matter which CEQA document is prepared for individual projects, it is incumbent on County

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[15] *See King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 852 ["'Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.' [Citation] Stated another way, 'if the County were to approve a project that did not include a feasible mitigation measure, such approval would amount to an abuse of discretion'"], quoting *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 525-526.

[16] *See* CEQA Guidelines, §§ 15060, 15063, 15064, 15080-15097 [EIR Process], 15120- 15132 [EIR Contents]; *see also* Exh. A – Guide to CEQA, pp. 329, 413.

[17] *See* PRC, §§ 21091(d)(2), 21092.5; CEQA Guidelines, § 15088, 15088.5(f); *see also* Exh. A – Guide to CEQA, p. 371-374, 411.

decision makers to ensure that the appropriate level of analysis is performed, based on sound investigation of the facts and faithful application of the correct legal standards.

NEC and CSH appreciate the opportunity to provide these general comments to County planning staff and to the County's elected decision-makers. We sincerely hope that the explanations and clarifications herein – supported by the attached treatise experts and citations to the CEQA statute, CEQA Guidelines, and caselaw – provide helpful information that will lead to improved public participation, more robust environmental review for projects that have the potential to cause significant environmental impacts, and sound decision-making.

Please contract us if you have any questions, concerns, or other responses to the issues raised in these general comments.

Very truly yours,

Jason W. Holder
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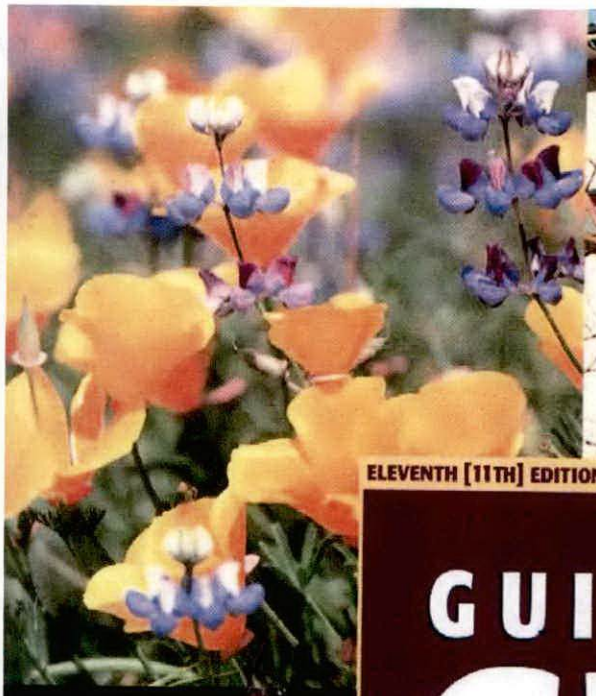
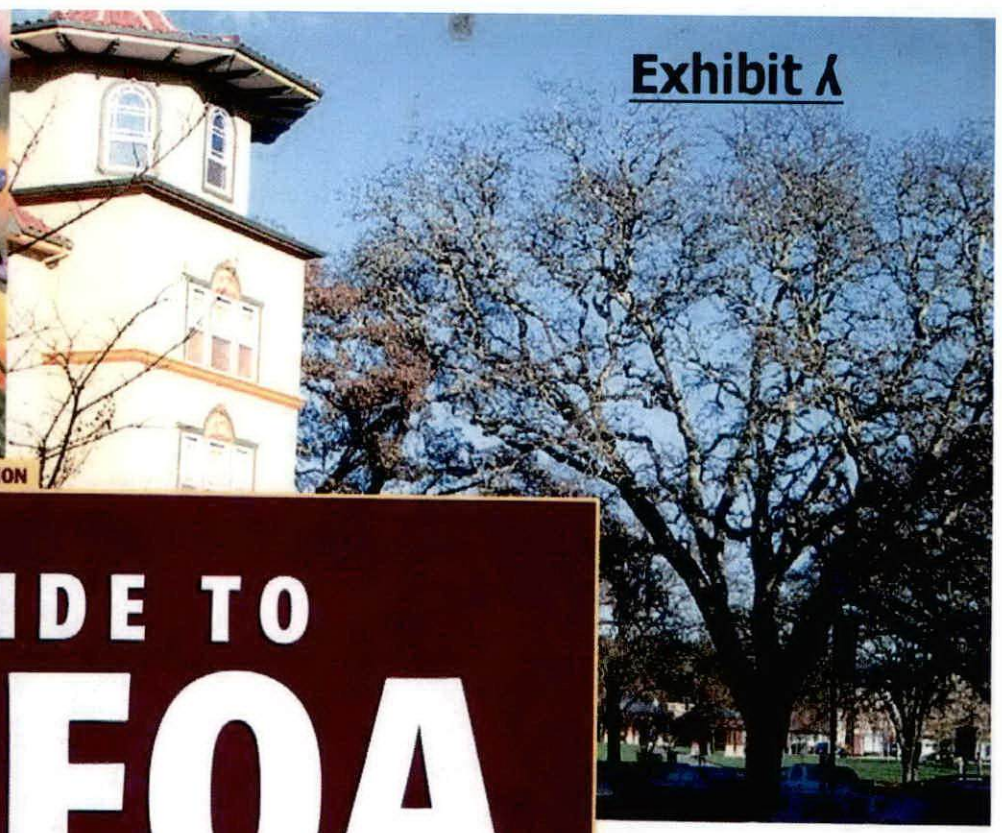
Attachments:

Exhibit A – Relevant excerpts from Guide to the California Environmental Quality Act (Remy, et al., 2007), with highlighted text.

Exhibit A

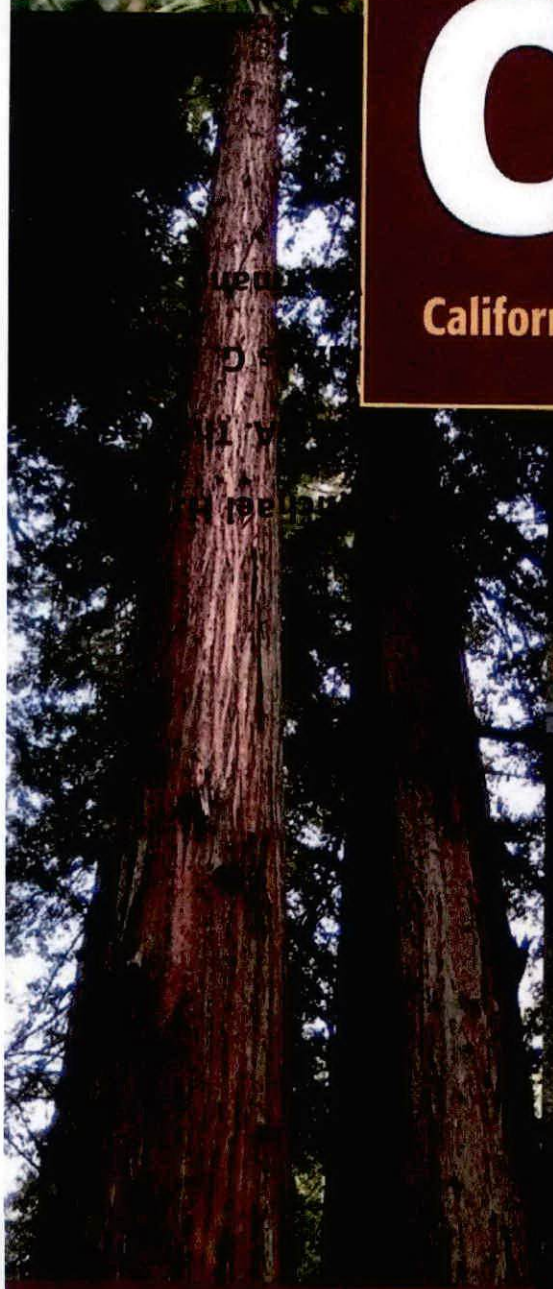


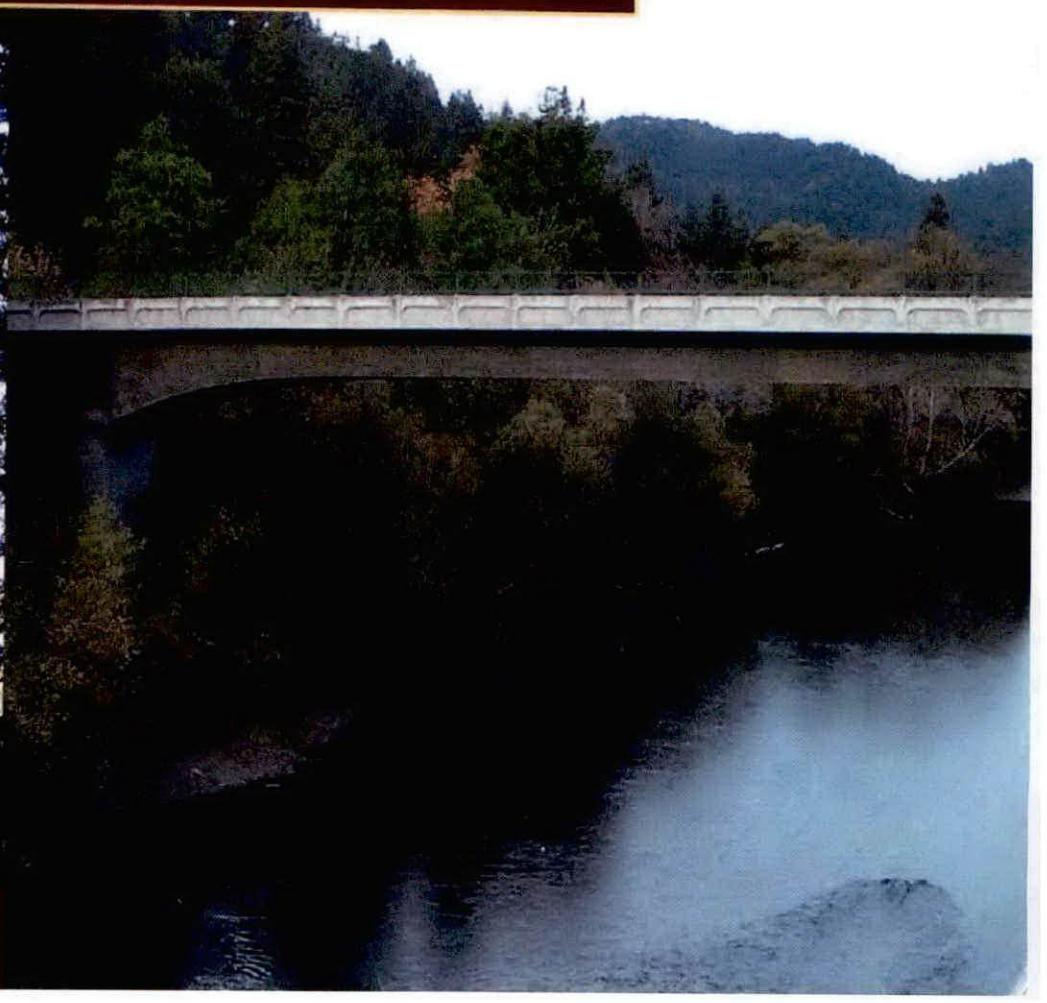


ELEVENTH [11TH] EDITION

GUIDE TO CEQA

California Environmental Quality Act





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at a glance...

CHAPTER VIII

The Initial Study

In General

The initial study is the preliminary analysis that the lead agency prepares in order to determine whether to prepare a negative declaration or an EIR and, if necessary, to identify the impacts to be analyzed in the EIR.

CEQA = California Environmental Quality Act
EIR = Environmental impact report

Under CEQA, it is the responsibility of the lead agency to determine whether an EIR shall be required. Initially, "[t]he task of the lead agency is not to determine whether the project will have a significant effect on the environment, but only whether it might have such an effect." *Friends of Davis v. City of Davis* (3d Dist. 2000) 83 Cal. App. 4th 1004, 1016 [100 Cal. Rptr. 2d 413]. Accordingly, the initial study is the "preliminary analysis" that the lead agency prepares in order to determine whether to prepare a negative declaration or an EIR and, if necessary, to identify the impacts to be analyzed in the EIR. CEQA Guidelines, § 15365.[1] "The initial study is largely a creature of the Guidelines [citation omitted]; CEQA refers to it only glancingly (*e.g.*, [Pub. Resources Code.] § 21080, subd. (c)(2)." *Gentry v. City of Murrieta* (4th Dist. 1995) 36 Cal. App. 4th 1359, 1376 [43 Cal. Rptr. 2d 170].

When the agency determines that an EIR is unnecessary, the study serves the purpose of "[p]rovid[ing] documentation of the factual basis" for concluding that a negative declaration will suffice. CEQA Guidelines, § 15063, subd. (c)(5). Any person may submit any information in any form to assist a lead agency in preparing an initial study. *Id.* at subd. (e). "An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail required in an EIR." *Id.* at subd. (a)(3).

At least in some situations, a lead agency may defer the preparation of an initial study until the agency has developed a project description based on preliminary consultants' reports, staff recommendations, public input, and/or direction from appointed or elected decisionmakers. *Uhler v. City of Encinitas* (4th Dist. 1991) 227 Cal. App. 3d 795, 799–804 [278 Cal. Rptr. 157], disapproved on other grounds in *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1603 [35 Cal. Rptr. 2d 470].[2]

CHAPTER IX

Negative Declarations

at a glance...

CEQA = California Environmental Quality Act

EIR = Environmental impact report

A. The "Fair Argument" Standard

A "negative declaration" is "a written statement by the lead agency briefly describing the reasons that a proposed project...will not have a significant effect on the environment and therefore does not require the preparation of an EIR." CEQA Guidelines, § 15371.[1]

An EIR is required, in contrast, whenever substantial evidence in the record supports a "*fair argument*" that significant impacts *may* occur. Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75 [118 Cal. Rptr. 34] (*No Oil I*); *Friends of "B" Street v. City of Hayward* (1st Dist. 1980) 106 Cal. App. 3d 988, 1000–1003 [165 Cal. Rptr. 514].[2]

The "fair argument" standard creates a "low threshold" for requiring preparation of an EIR. *Citizens Action to Serve All Students v. Thornley* (1st Dist. 1990) 222 Cal. App. 3d 748, 754 [272 Cal. Rptr. 83]; *Sundstrom v. County of Mendocino* (1st Dist. 1988) 202 Cal. App. 3d 296, 310 [248 Cal. Rptr. 352] (*Sundstrom*) (quoting *No Oil I, supra*, 13 Cal. 3d at p. 75). The standard is founded upon the principle that, because adopting a negative declaration has a "terminal effect on the environmental review process" (*Citizens of Lake Murray Area Assn. v. City Council* (4th Dist. 1982) 129 Cal. App. 3d 436, 440 [181 Cal. Rptr. 123]), an EIR is necessary to "substitute some degree of factual certainty for tentative opinion and speculation" and to resolve "uncertainty created by conflicting assertions" (*No Oil I, supra*, 13 Cal. 3d at p. 85 (quoting *County of Inyo v. Yorty* (3d Dist. 1973) 32 Cal. App. 3d 795, 814 [108 Cal. Rptr. 377])). As one court recently put it, "[t]hese legal standards reflect a preference for requiring an EIR to be prepared." *Mejia v. City of Los Angeles* (2d Dist. 2005) 130 Cal. App. 4th 322, 332 [29 Cal. Rptr. 3d 788].

The CEQA Guidelines define a "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." CEQA

Guidelines, § 15382. The determination of whether an impact is "significant" "calls for careful judgment on the part of the agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not always possible because the significance of an activity may vary with the setting." CEQA Guidelines, § 15064, subd. (b); *see City of Orange v. Valenti* (4th Dist. 1974) 37 Cal. App. 3d 240, 249 [112 Cal. Rptr. 379] (analysis of project's traffic impacts necessarily depends on existing environmental setting).

In some instances, the Legislature has directed that the lead agency must find an impact significant.

In some instances, the Legislature has directed that the lead agency *must* find an impact significant. Pub. Resources Code, § 21083, subd. (a); CEQA Guidelines, § 15065. For a discussion of these "mandatory findings of significance," *see* chapter VII (Application of CEQA), section E. In other instances, the Legislature has directed that, for certain types of projects, the lead agency must always prepare an EIR. For a discussion of these sorts of projects, *see* chapter VII (Application of CEQA), section F.

In the absence of an impact necessarily deemed significant, the lead agency has discretion to adopt standards for determining whether an impact is significant.

In the absence of an impact necessarily deemed significant, the lead agency has discretion to adopt standards for determining whether an impact is significant. In recent years, interest has focused on encouraging agencies to develop standardized "thresholds of significance," rather than to continue making ad hoc determinations in the context of particular projects. CEQA provides agencies with authority to develop and formally adopt such thresholds. CEQA Guidelines, § 15064.7; Pub. Resources Code, § 21082. Such thresholds provide a benchmark for measuring a project's impacts, and thus serve an important function in determining whether the agency must prepare an EIR. For a discussion of the development and use of thresholds of significance, including standards formally adopted for the purpose of environmental protection, *see* chapter VII (Application of CEQA), section D.

1. Evolution of the "Fair Argument" Standard

a. The First District Court of Appeal's Articulation of the "Fair Argument" Rule in *Friends of "B" Street* and Its Progeny. Perhaps the most influential Court of Appeal case articulating the so-called "fair argument" standard is *Friends of "B" Street v. City of Hayward* (1st Dist. 1980) 106 Cal. App. 3d 988, 1000–1103 [165 Cal. Rptr. 514] (*Friends of "B" Street*), in which the First District Court of Appeal required an EIR for a proposed road improvement project, despite the respondent city's insistence that a negative declaration sufficed. Although in recent years *Friends of "B" Street* has been cited with decreasing frequency, the decision spawned a thriving line of cases adopting its approach. *Friends of "B" Street* and its progeny are discussed in detail below.

i. *Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988 [165 Cal. Rptr. 514]. In *Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988 [165 Cal. Rptr. 514], the court applied a variant of the traditional "substantial evidence" standard of review. Under the traditional rule as applied in most administrative law contexts, a reviewing court typically defers to an agency's factual determinations where they are supported by credible evidence–even where the administrative record includes equally or more credible contrary evidence. Under such a standard of review, agencies' findings of fact are difficult to challenge successfully. *See* 2 Longtin, California Land Use (2d ed. 1987) §§ 12.03[3], pp. 1062–1063, 12.04[4], pp. 1069–1070; *id.* (2005 Supp.), §§ 12.03[3], pp. 857–859, 12.04[4], pp. 866–868.

Under the *Friends of "B" Street* approach, however, reviewing courts are not so deferential to agency decisions. Where the question before the agency is whether a proposed project may cause significant environmental effects, the obligation to prepare an EIR may exist even where the agency can point to substantial evidence indicating that no such effects will occur. Where the record includes some substantial evidence supporting a "fair argument" that significant effects may occur, it does not matter whether the agency finds such evidence persuasive. The agency's task is not to weigh competing evidence and to determine whether, in fact, a significant impact on the environment *will* occur; rather, the proper task is to determine whether the record before the agency contains substantial evidence supporting a fair argument that a significant impact *may* occur. The agency need not find such evidence compelling; the agency must simply find that the "fair argument" has been presented, and is supported by substantial evidence. Thus, a reviewing "trial court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed '*fair argument*' could be made." 106 Cal. App. 3d at p. 1002 (italics added).[3]

Although this approach ostensibly requires a court to determine whether substantial evidence supports the *agency's* assessment of whether a fair argument can be made, in practice reviewing courts have often exercised their own judgment in searching the record:

> Stated another way, if the *trial court* perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed "in a manner required by law."

Id. at p. 1002 (italics added)

After the Court of Appeal issued its decision in *Friends of "B" Street*, the Legislature codified the "fair argument" rule. Pub. Resources Code, §§ 21080, subds. (c), (d), 21100, subd. (a). The CEQA Guidelines also incorporate this standard. CEQA Guidelines, § 15064, subd. (f)(1).

ii. ***Lucas Valley Homeowners Association v. County of Marin*** **(1st Dist. 1991) 233 Cal. App. 3d 130 [284 Cal. Rptr. 427].** In reviewing an agency's application of the "fair argument" standard, a court must undertake an independent review of the record. The purpose of such review is to determine whether substantial evidence supports the agency's conclusion regarding whether the record supports a "fair argument" that the project may have a significant impact on the environment. *Lucas Valley Homeowners Association v. County of Marin* (1st Dist. 1991) 233 Cal. App. 3d 130, 142 [284 Cal. Rptr. 427] (*Lucas Valley*).[4] Thus, in *Lucas Valley*, the Court of Appeal both independently reviewed the record to determine whether it contained substantial evidence that a synagogue would induce future growth, and otherwise "comb[ed] the record for substantial evidence supporting a fair argument of significant effects on the environment." *Id.* at pp. 161–162. The court then dismissed the evidence relied upon by the petitioners as mere opinions and generalized concerns. *Id.* at pp. 163–164.

In reviewing an agency's application of the fair argument standard, a court must undertake an independent review of the record.

iii. ***Sierra Club v. County of Sonoma*** **(1st Dist. 1992) 6 Cal. App. 4th 1307 [8 Cal. Rptr. 2d 73].** In *Sierra Club v. County of Sonoma* (1st Dist. 1992) 6 Cal. App. 4th 1307 [8 Cal. Rptr. 2d 473] (*Sierra Club*), the Court of Appeal for the First District explained that a court

reviewing an agency's decision as to whether a "fair argument" has been made is presented with an issue of "law," as opposed to one of "fact":

> A court reviewing an agency's decision not to prepare an EIR in the first instance must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact; in such a case, the agency has not proceeded as required by law. [Citation.] Stated another way, *the question is one of law, i.e., "the sufficiency of the evidence to support a fair argument."* [Citation.] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.

6 Cal. App. 4th at pp. 1317–1318 (italics added)[5]

The court went on to hold that, in the case at hand, expert testimony that expanded gravel operations might have a significant impact on the environment constituted substantial evidence supporting a "fair argument," notwithstanding the contrary opinions of other experts. 6 Cal. App. 4th at pp. 1322–1323.

iv. Other First District Decisions Following *Friends of "B" Street*. In addition to *Lucas Valley Homeowners Association v. County of Marin* (1st Dist. 1991) 233 Cal. App. 3d 130 [284 Cal. Rptr. 427] and *Sierra Club v. County of Sonoma* (1st Dist. 1992) 6 Cal. App. 4th 1307 [8 Cal. Rptr. 2d 473], other decisions of the First District Court of Appeal have cited and followed *Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988 [165 Cal. Rptr. 514] in cases involving the propriety of agencies' reliance on negative declarations rather than EIRs:

- *City of Livermore v. Local Agency Formation Commission* (1st Dist. 1986) 184 Cal. App. 3d 531, 540–542 [230 Cal. Rptr. 867] (EIR was required for a proposed revision to respondent LAFCO's "sphere of influence guidelines")
- *City of Antioch v. City Council* (1st Dist. 1986) 187 Cal. App. 3d 1325, 1330–1331 [232 Cal. Rptr. 507] (EIR was ordered for a road and sewer construction project, even in the absence of specific development proposals)
- *Heninger v. Board of Supervisors* (1st Dist. 1986) 186 Cal. App. 3d 601, 605–607 [231 Cal. Rptr. 1[illegible]] (EIR was required for enactment of an ordinance allowing the use of "alternative sewage disposal systems")
- *Cathay Mortuary, Inc. v. San Francisco Planning Commission* (1st Dist. 1989) 207 Cal. App. 3d 275 [254 Cal. Rptr. 778] (even under the "fair argument" standard, no EIR was required for the condemnation of a funeral parlor site for development of a public park)
- *Citizen Action to Serve All Students v. Thornley* (1st Dist. 1990) 222 Cal. App. 3d 748 [272 Cal. Rptr. 83] (EIR was not required for a school closure plan); and
- *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1st Dist. 1997) 52 Cal. App. 4th 896, 904–905 [60 Cal. Rptr. 2d 821] (negative declaration was inappropriate for a project involving the demolition of an historical resource)

b. **Other Appellate Interpretations of the "Fair Argument" Standard.** The other five appellate districts have also embraced the standard articulated by the First District Court of Appeal in *Friends of "B" Street v. City of Hayward* (1st Dist. 1980) 106 Cal. App. 3d 988, 1000–1003 [165 Cal. Rptr. 514]:

The other five appellate districts have also embraced the standard articulated by the First District Court of Appeal in Friends of "B" Street v. City of Hayward.

- *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (2d Dist. 1982) 134 Cal. App. 3d 491, 504 [184 Cal. Rptr. 664] (if an agency does not prepare an EIR despite substantial evidence that the project may have environmental impacts, the agency has abused its discretion)
- *Pistoresi v. City of Madera* (5th Dist. 1982) 138 Cal. App. 3d 284, 288 [188 Cal. Rptr. 136] (if there is substantial evidence the project might have a significant environmental impact, "evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR…because it could be 'fairly argued' the project might have a significant environmental impact")
- *Christward Ministry v. Superior Court* (4th Dist. 1986) 184 Cal. App. 3d 180, 187 [228 Cal. Rptr. 868] ("[o]n a claim an EIR rather than a negative declaration should have been prepared, the courts look to see if there was substantial evidence to support the agency's conclusion it could not be 'fairly argued' the project would have a significant environmental impact")
- *Schaeffer Land Trust v. San Jose City Council* (6th Dist. 1989) 215 Cal. App. 3d 612, 621 [263 Cal. Rptr. 813] (a reviewing court must uphold the agency's decision not to prepare an EIR if "substantial evidence supports a conclusion that it cannot be fairly argued on the basis of substantial evidence that the project may have significant environmental impact")
- *Oro Fino Gold Mining Corp. v. County of El Dorado* (3d Dist. 1990) 225 Cal. App. 3d 872, 881 [274 Cal. Rptr. 720] ("[i]f the initial study reveals the project 'may' have a significant environmental effect, an EIR must be prepared; the word 'may' connotes a reasonable possibility")
- *Leonoff v. Monterey County Board of Supervisors* (6th Dist. 1990) 222 Cal. App. 3d 1337, 1348 [272 Cal. Rptr. 372] ("[a] public agency should not file a negative declaration for a project if it can be fairly argued that the project might have a significant environmental impact")
- *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1603 [35 Cal. Rptr. 2d 470] (in applying the appropriate standard of review, courts must "review the record and determine whether there is substantial evidence in support of a fair argument the [project] may have a significant environmental impact, while giving the City the benefit of the doubt on any legitimate, disputed issues of credibility")[6]
- *Gentry v. City of Murrieta* (4th Dist. 1995) 36 Cal. App. 4th 1359, 1400 [43 Cal. Rptr. 2d 170] (lead agency's determination under "fair argument" standard is "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")
- *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (5th Dist. 1995) 33 Cal. App. 4th 144, 151 [39 Cal. Rptr. 2d 54] (when reviewing an

agency's determination that an EIR is not required, the court's application of the applicable standard of review "is a question of law and deference to the agency's determination is not appropriate")

- *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (5th Dist. 1996) 42 Cal. App. 4th 608, 617–618 [49 Cal. Rptr. 2d 494] ("[w]hen a challenge is brought to an agency's determination an EIR is not required, 'the reviewing court's "function is to determine whether substantial evidence supported the agency's conclusion as to whether a 'fair argument' could be made"'"); and
- *The Pocket Protectors v. City of Sacramento* (3d Dist. 2004) 124 Cal. App. 4th 903, 929–932 [21 Cal. Rptr. 3d 971] (court holds that fair argument can be made where project opponents adduce substantial evidence that a proposed project would conflict with a land use plan, policy, or regulation "adopted for the purpose of" environmental protection (citing CEQA Guidelines, appen. G, § IX, subd. (b)))

2. Judicial Review of the "Substantiality" of Evidence in Support of a Fair Argument

Under CEQA, the question of whether an agency's administrative record contains substantial evidence supporting the agency's decision is one of law.

Under CEQA, the question of whether an agency's administrative record contains substantial evidence supporting the agency's decision is one of law. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 570–574 [38 Cal. Rptr. 2d 139] (*WSPA*). This principle–as applied to the evidence purporting to support the need for an EIR–is reflected in decisions such as:

- *Sierra Club v. County of Sonoma* (1st Dist. 1992) 6 Cal. App. 4th 1307, 1317–1318 [8 Cal. Rptr. 2d 473] (review of an agency's decision not to prepare an EIR is a question of law, "i.e., 'the sufficiency of the evidence to support a fair argument[ ]'"; "[u]nder this standard, deference to the agency's determination is not appropriate")
- *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1603 [35 Cal. Rptr. 2d 470] (when reviewing an agency's decision not to prepare an EIR, the court applies a "hybrid, quasi-independent standard of review")
- *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (5th Dist. 1995) 33 Cal. App. 4th 144, 151 [39 Cal. Rptr. 2d 54] (when reviewing an agency's determination that an EIR is not required, the court's application of the applicable standard of review "is a question of law and deference to the agency's determination is not appropriate")
- *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1st Dist. 1997) 52 Cal. App. 4th 896, 904–905 [60 Cal. Rptr. 2d 82] (the question of whether a fair argument can be made such that an EIR must be prepared is one of law, "i.e., 'the sufficiency of the evidence to support a fair argument'" (quoting *Bowman v. City of Petaluma* (1st Dist. 1986) 185 Cal. App. 3d 1065, 1073 [230 Cal. Rptr. 413]))
- *Silveira v. Las Gallinas Valley Sanitary District* (1st Dist. 1997) 54 Cal. App. 4th 980, 986–987 [63 Cal. Rptr. 2d 244] ("the applicable standard of review appears to involve a question of law requiring a certain degree of independ-

review of the record, rather than the typical substantial evidence standard which usually results in great deference being given to the factual determination of an agency" (quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602 [35 Cal. Rptr. 2d 470]))

According to the logic of *WSPA* and these other cases, a reviewing court, applying the fair argument standard, must independently scrutinize the record to determine whether substantial evidence supports a fair argument. That inquiry is legal, rather than factual.[7] This formulation implies that a reviewing court should not defer to an agency's assessment of whether a fair argument exists that a project may have a significant effect on the environment.

Even under the non-deferential approach identified in Friends of "B" Street v. City of Hayward *and its progeny, a reviewing court should carefully examine the evidence on which a petitioner bases its demand for an EIR.*

a. **To Require Preparation of an EIR, Evidence Supporting a Fair Argument That the Project May Result in a Significant Environmental Impact Must Be "Substantial" When Viewed "in Light of the Whole Record."** Even under the non-deferential approach identified in *Friends of "B" Street v. City of Hayward* (1st Dist. 1980) 106 Cal. App. 3d 988, 1000–1003 [165 Cal. Rptr. 514] and its progeny, a reviewing court should carefully examine the evidence on which a petitioner bases its demand for an EIR. Importantly, evidence that, if viewed in isolation, might seem to give rise to a "fair argument" may ultimately prove insubstantial after all if other information in the record shows that the "evidence" is merely speculation or unsubstantiated opinion, or is inaccurate or misleading. As the Court of Appeal recently observed, the "fair argument" threshold is low, but it is not so low as to be non-existent. *See Apartment Association of Greater Los Angeles v. City of Los Angeles* (2d Dist. 2001) 90 Cal. App. 4th 1162, 1173–1176 [109 Cal. Rptr. 2d 504]. Speculative possibilities do not constitute substantial evidence, and "pure speculation with no evidentiary support" cannot trigger environmental review requirements:

> We do not believe an expert's opinion which says nothing more than "it is reasonable to assume" that something "potentially...may occur" constitutes... substantial evidence.... "Substantial evidence" is defined in the CEQA guidelines to include "expert opinion supported by facts." It does not include "[a]rgument, speculation, unsubstantiated opinion or narrative."

90 Cal. App. 4th at p. 1176

Like the court in the *Apartment Association of Greater Los Angeles* case, the authors of this book believe that both the law and common sense preclude uncritical acceptance of opinions or testimony offered–whether by experts or by lay persons–as "substantial evidence" of the alleged significant adverse environmental effects of a project. Agencies often receive such opinions or testimony at the eleventh-hour of the project approval process from opponents of controversial development proposals; in situations where the testimony "is inherently improbable or if the witness is biased," or is "unsupported by the facts from which it is derived," such testimony does not constitute "substantial evidence." *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (2d Dist. 1982) 134 Cal. App. 3d 491, 504 [184 Cal. Rptr. 664]. Thus, the decisionmaker properly may disregard it and adopt a negative declaration. *Ibid.*

That said, agencies and project proponents should be aware that appellate courts in recent years seem to have been looking with an increasingly skeptical eye at negative declarations and mitigated negative declarations, especially in the context of controversial projects. Of the nine substantive challenges to negative declarations

set out in the published opinions in 2004 and 2005, only three negative declarations withstood judicial review. *Compare The Pocket Protectors v. City of Sacramento* (3d Dist. 2004) 124 Cal. App. 4th 903 [21 Cal. Rptr. 3d 791 (found mitigated negative declaration inadequate); *Architectural Heritage Association v. County of Monterey* (6th Dist. 2004) 122 Cal. App. 4th 1095 [19 Cal. Rptr. 3d 469] (same); *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water District* (2d Dist. 2004) 116 Cal. App. 4th 396 [10 Cal. Rptr. 3d 451] (same); *Mejia v. City of Los Angeles* (2d Dist. 2005) 130 Cal. App. 4th 322 [29 Cal. Rptr. 3d 788] (same); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (6th Dist. 2005) 131 Cal. App. 4th 1170 [31 Cal. Rptr. 3d 901] (found negative declaration inadequate); *County Sanitation Dist. No. 2 v. County of Kern* (5th Dist. 2005)127 Cal. App. 4th 1544 [27 Cal. Rptr. 3d 28] (same); *with Bowman v. City of Berkeley* (1st Dist. 2004) 122 Cal. App. 4th 572 [18 Cal. Rptr. 3d 814] (upheld mitigated negative declaration); *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (3d Dist. 2004) 122 Cal. App. 4th 1591 [20 Cal. Rptr. 3d 224] (same); *Sierra Club v. The West Side Irrigation Dist.* (3d Dist. 2005) 128 Cal. App. 4th 690 [27 Cal. Rptr. 3d 223] (same). For this reason, when undertaking a project involving public controversy of any significant level, agencies and applicants would be prudent to exercise caution in proceeding with a negative declaration or mitigated negative declaration.

When undertaking a project involving public controversy of any significant level, agencies and applicants would be prudent to exercise caution in proceeding with a negative declaration or mitigated negative declaration.

Principles regarding the assessment of the substantiality of evidence supporting a "fair argument" that a project may result in significant adverse environmental effects are discussed in detail in the following sections.

Non-CEQA case law describes substantial evidence in two ways: first, as evidence of ponderable legal significance–reasonable in nature, credible, and of solid value; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

i. **"Substantial" Evidence.** Non-CEQA case law describes "substantial evidence" in two ways: first, as evidence of "ponderable legal significance... reasonable in nature, credible, and of solid value"; and second, as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion[.]" *County of San Diego v. Assessment Appeals Board No. 2* (4th Dist. 1983) 148 Cal. App. 3d 548, 555 [195 Cal. Rptr. 895] (citations and internal quotations omitted).[8] As discussed below, these general principles also apply in the CEQA context.

(A) Definition. CEQA expressly defines "substantial evidence," as that term is used in the context of a decision whether to prepare a negative declaration or an EIR:

> [S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. [¶] Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

Pub. Resources Code, § 21080, subds. (e)(1)–(2)[9]

Similarly, the CEQA Guidelines define the term "substantial evidence" as:

> [E]nough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.... [¶] Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

CEQA Guidelines, § 15384, subds. (a), (b)[10]

The court reasoned that the "positive effects of the project do not absolve the public agency from the responsibility of preparing an EIR to analyze the potentially significant negative environmental effects of the project, because those negative effects might be reduced through the adoption of feasible alternatives or mitigation measures adopted in the EIR." *Id.* at p. 1558; *see also* CEQA Guidelines, § 15063, subd. (b)(1) (fair argument test requires EIR where substantial evidence indicates the project may have significant impacts "regardless of whether the overall effect of the project is adverse or beneficial").[17]

Expert testimony that a project would not have a significant impact, if uncontradicted, constitutes substantial evidence in support of the agency's decision to adopt a negative declaration.

(C) Expert Testimony May Constitute Substantial Evidence. Expert testimony that a project would not have a significant impact, if uncontradicted, constitutes substantial evidence in support of the agency's decision to adopt a negative declaration. *Uhler v. City of Encinitas* (4th Dist. 1991) 227 Cal. App. 3d 795, 805 [278 Cal. Rptr. 157], disapproved on other grounds by *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1603 [35 Cal. Rptr. 2d 470] (*Quail Botanical Gardens*).

Credible expert testimony that a project may have a significant impact, even if contradicted, is generally dispositive; and under such circumstances, an EIR must be prepared.

At the same time, credible expert testimony that a project *may* have a significant impact, even if contradicted, is generally dispositive; and under such circumstances, an EIR must be prepared. *See City of Livermore v. Local Agency Formation Com.* (1st Dist. 1986) 184 Cal. App. 3d 531, 541–542 [230 Cal. Rptr. 867]. *But see Bowman v. City of Berkeley* (1st Dist. 2004) 122 Cal. App. 4th 572, 582, 583 [18 Cal. Rptr. 3d 814] (lead agency is entitled to discount expert testimony that lacks credibility). Indeed, an EIR is required precisely in order to resolve the dispute among experts. In *City of Carmel-by-the-Sea v. Board of Supervisors* (6th Dist. 1986) 183 Cal. App. 3d 229 [227 Cal. Rptr. 899] (*City of Carmel-by-the-Sea*), for example, the existence of disagreement among experts was a factor in the court's decision to require an EIR. Experts disagreed as to the extent of the wetlands that would be affected by the development project made possible by the proposed rezone. The experts in question applied differing definitions of "wetlands" and offered substantially different estimates of the amount of wetlands on the subject site. Faced with such contention, the court reasoned that "[t]he very uncertainty created by the conflicting assertions made by the parties...underscores the necessity of the EIR to substitute some degree of factual certainty for tentative opinion and speculation." *Id.* at pp. 247–249 (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 85 [118 Cal. Rptr. 34] (*No Oil I*)).[18]

Substantial evidence relevant to the agency's conclusions regarding the existence of a fair argument may come–perhaps unwittingly–from the lead agency itself.

(1) The Agency's Initial Study or Other Statements May Constitute Substantial Evidence Supporting a Fair Argument. Substantial evidence relevant to the agency's conclusions regarding the existence of a fair argument may come–perhaps unwittingly–from the lead agency itself. For example, in *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (5th Dist. 1995) 33 Cal. App. 4th 144 [39 Cal. Rptr. 2d 54] (*Stanislaus Audubon Society*), the Court of Appeal invalidated a negative declaration adopted by the respondent county in approving a project consisting of a golf course and club house. The court found that the record contained "overwhelming" evidence that the project would have significant, adverse, growth-inducing impacts. *Id.* at p. 152. In reaching this conclusion, the court noted that "[m]uch of the evidence of the potential growth-inducing impact of the proposed country club was generated by the County itself[,]" and included, among other things, an initial study prepared by the county "unequivocally" concluding that the "proposed project may act as a

talyst to residential development," as well as statements from the county's air llution control district, a member of the Planning Commission, and the California partment of Conservation to the effect that the project would be "growth-induc-g." *Id.* at pp. 153–156.

The real party in interest argued that a revised initial study pre-red by the county, which concluded that the analysis of residential development ould be deferred into the future, "relegated the first initial study to oblivion." *Stanis-us Audubon Society, supra*, 33 Cal. App. 4th at p. 154. According to the real party, the vised study demonstrated that the county planning department had ultimately con-uded that the project would not have a growth-inducing impact. In rejecting these guments, the court stated that "[t]he fact that a *revised* initial study was later pre-red does not make the first initial study any less a record entry nor does it diminish significance, particularly when the revised study does not conclude that the project ould not be growth inducing but instead simply proceeds on the assumption that aluation of future housing can be deferred until such housing is proposed." *Ibid.* alics in original).[19]

As in *Stanislaus Audubon Society*, the respondent county in *Archi-tural Heritage Association v. County of Monterey* (6th Dist. 2004) 122 Cal. App. 4th 1095 9 Cal. Rptr. 3d 469] sought to disassociate itself from the substantial evidence placed the record by agency staff in support of a fair argument, arguing that the expert opin-ns of its own staff were "subordinate to [those of] agency decision makers" and thus d not constitute substantial evidence because they were contradicted by the opinions agency decisionmakers. *Id.* at p. 1115. Arguments of this nature are more typical in e context of an EIR, when agency staff and decisionmakers disagree over how to solve conflicts in the evidence. In that context, the agency decisionmakers have the al word on how to resolve such conflicts. This sort of argument, however, is not typ-ally advanced in the context of a negative declaration where the fair argument stan-rd is at play, and for good reason–because it is unpersuasive. Under the fair argument ndard, an agency must prepare an EIR whenever substantial evidence in the record pports a fair argument that a proposed project may have a significant effect on the vironment. If such evidence is found, it cannot be overcome by substantial evidence the contrary. Thus, under the fair argument standard, the decisionmakers are not ked to resolve conflicts in the evidence, but merely to determine whether substantial idence exists to support a fair argument. In this case, the court concluded that the inions of staff were substantial evidence supporting a fair argument, even where the ency's decisionmakers ultimately disagreed with those opinions.

Under the fair argument standard, the decisionmakers are not asked to resolve conflicts in the evidence, but merely to determine whether substantial evidence exists to support a fair argument.

Similarly, in *The Pocket Protectors v. City of Sacramento* (3d Dist. 04) 124 Cal. App. 4th 903, 934 [21 Cal. Rptr. 3d 971], the court found that the dings of the planning commission constituted substantial evidence in support of a r argument, even when the findings were later overruled by the city council. The anning commission denied a project and declined to adopt a negative declaration ter finding that the project would cause previously unidentified significant land use pacts. The planning commission was later overruled in all respects by the city uncil. Nevertheless, the Court of Appeal held that the planning commission's con-usions, when supported by findings of fact in the record, were substantial evidence a fair argument.

things the trier of fact is entitled to consider in passing on the credibility of witnesses are their motives and interest in the result of the case...and the inherent improbability of their testimony"); *Hamilton v. Abadjian* (1947) 30 Cal. 2d 49, 53 [179 P. 2d 304] ("[i]n passing on the credibility of a witness, the jury is entitled to consider his interest in the result of the case, his motive, the manner in which he testifies, and contradictions appearing in the evidence").

iii. Judicial Deference to Agency Credibility Determinations. Under the cases discussed in this chapter, section A.2.c, if the lead agency concludes that evidence that a project may have a significant environmental impact is insubstantial because it is unreliable, incredible, or inherently improbable, then a reviewing court may accord that determination some deference. In the authors' view, to qualify for such deference the lead agency should take care to identify the evidence in question with particularity, document the existence of a disputed issue of credibility with respect to the evidence, and explain why the agency regards the evidence as insubstantial. Absent this information, a reviewing court might have an inadequate basis for deferring to the agency's determinations regarding the substantiality of that evidence.

If the lead agency concludes that evidence that a project may have a significant environmental impact is insubstantial because it is unreliable, incredible, or inherently improbable, then a reviewing court may accord that determination some deference.

The need for limited deference in this context presents a conceptual problem: namely, how to square such deference with the normal lack of deference appropriate on the purely legal question of whether an administrative record includes substantial evidence supporting a "fair argument" that a project may cause significant environmental effects. This seeming anomaly can be resolved through a recognition that, in assessing the credibility of evidence, a lead agency engages in a limited form of "fact-finding," as to which judicial deference is appropriate. Thus, although a lead agency normally does not engage in any real fact-finding when it simply receives evidence submitted by members of the public or by sister agencies, the agency may cease to be passive, and instead act as a fact-finder, when, of its own volition or in reaction to the prompting of others, the agency chooses to assess whether particular items of evidence for some reason lack credibility, either in whole or in part.

3. Public Controversy

The lead agency must provide the public with an opportunity to review a proposed negative declaration.

The lead agency must provide the public with an opportunity to review a proposed negative declaration. CEQA Guidelines, § 15073, subd. (a). Before the lead agency adopts a proposed negative declaration and approves a project, the agency must consider comments received during the public review process. CEQA Guidelines, § 15074, subd. (b).

Until 1997, the CEQA Guidelines, in recognition of earlier case law, stated further that in "marginal cases" the existence of serious public controversy over a project could tip the scales in favor of preparing a full EIR. Former CEQA Guidelines, § 15064, subd. (h)(1); *see No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 85–86 [118 Cal. Rptr. 34] (*No Oil I*) ("the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable") (footnote omitted); *Brentwood Assn. for No Drilling v. City of Los Angeles* (2d Dist. 1982) 134 Cal. App. 3d 491, 505–506 [184 Cal. Rptr. 664] (noting in dicta that EIR should be prepared when there is a serious public controversy regarding the environmental effects of a project); *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (6th Dist. 1986) 183 Cal. App. 3d 229, 245–247 [227 Cal. Rptr. 899]

(pointing to existence of substantial opposition to proposed project as one factor supporting court's decision to require an EIR).[34]

The existence of public controversy over the environmental effects of a project does not require preparation of an EIR if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

In subsequent years, however, the Legislature retreated from this principle. CEQA now provides: "The existence of public controversy over the environmental effects of a project shall *not* require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment." Pub. Resources Code, § 21082.2, subd. (b) (italics added); *see also* CEQA Guidelines, § 15064, subd. (f)(4) (same). Under CEQA Guideline amendments approved in 1997, the lead agency must "*consider* the views held by members of the public in all areas affected as expressed in the whole record before the lead agency." CEQA Guidelines, § 15064, subd. (c) (italics added). Prior to 1997, however, this same section of the Guidelines had stated that, if the lead agency expected a "substantial body of opinion that considers or will consider the effects to be adverse," then the agency "shall regard the effect as adverse." CEQA Guidelines, § 15064, subd. (c). The 1997 amendment thus suggests that public opinion is no longer determinative.[35]

Absent any substantial evidence of potentially significant environmental effects, the public controversy surrounding a project does not preclude a negative declaration.

a. ***Leonoff v. Monterey County Board of Supervisors* (6th Dist. 1990) 222 Cal. App. 3d 1337 [272 Cal. Rptr. 372].** In *Leonoff v. Monterey County Board of Supervisors* (6th Dist. 1990) 222 Cal. App. 3d 1337, 1359 [272 Cal. Rptr. 372], the court held that, "absent any substantial evidence of potentially significant environmental effects, the public controversy" surrounding a proposed contractor's service center "did not preclude a negative declaration." Citing Public Resources Code section 21082.2,[36] the court stated that "[p]ublic controversy unsupported by substantial evidence of environmental effects does not require an EIR. [Citation omitted.] In other words, feelings are not facts to govern environmental decisions." *Id.* at p. 1359.[37]

b. ***Meridian Ocean Systems, Inc. v. California State Lands Com.* (2d Dist. 1990) 222 Cal. App. 3d 153 [271 Cal. Rptr. 445].** In *Meridian Ocean Systems, Inc. v. California State Lands Commission* (2d Dist. 1990) 222 Cal. App. 3d 153 [271 Cal. Rptr. 445], the court upheld an agency's decision to require an EIR in connection with permits authorizing underwater geophysical testing. The court rejected the claim that no serious *environmental* controversy had been raised because of the apparent partial economic motivation of fishermen who pointed to evidence that the underwater testing in question was harming fisheries. "While those whose livelihood depends upon being able to catch fish may have pecuniary motivations to bring the matter to public attention, the fact [that] marine and fish life is being threatened is surely a legitimate environmental concern." *Id.* at pp. 170–171.

c. ***Perley v. County of Calaveras* (3d Dist. 1982) 137 Cal. App. 3d 424 [187 Cal. Rptr. 53].** In *Perley v. County of Calaveras* (3d Dist. 1982) 137 Cal. App. 3d 424, 436 [187 Cal. Rptr. 53], the court held that "the opposition of a few neighbors" did not rise to the level of a "serious public controversy," because the neighbors had merely expressed "their fears and desires" without any "objective basis for challenge." This decision thus implies that, to trigger the requirement to prepare an EIR, the controversy must have a substantial evidentiary basis. Though *Perley* was decided before the enactment of statutory language essentially eliminating mere public controversy as a basis for requiring EIRs, this implication is consistent with the current state of the law.

4. Disagreement Among Expert Opinion

"[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, . . . [i]f there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, [then] the Lead Agency shall treat the effect as significant and shall prepare an EIR." CEQA Guidelines, § 15064, subd. (g); *see City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (6th Dist. 1986) 183 Cal. App. 3d 229, 245 [227 Cal. Rptr. 899] (*City of Carmel-by-the-Sea*) (EIR required to resolve conflicting expert testimony regarding extent of wetlands on project site).

Conflicting expert testimony may take different forms. Experts may disagree regarding whether an impact will occur, or regarding the scope or extent of the impact. *City of Carmel-by-the-Sea, supra*, exemplifies this sort of dispute. In this case, the experts disagreed regarding the extent of wetlands on the site, and thus on the amount of wetlands that the project would disturb. The court held that the agency had to prepare an EIR to resolve this factual dispute. 183 Cal. App. 3d at pp. 247–249.[38]

Alternatively, experts may agree on the scope or extent of the impact, but disagree regarding whether the impact is significant. In other words, the focus of the experts' dispute may be not on *facts*, but on how to *characterize* those facts—i.e., the lead agency's determination regarding the appropriate standard of significance for the impact at issue.[39] In these instances, it is less clear whether such a dispute triggers the duty to prepare an EIR. *Citizen Action to Serve All Students v. Thornley* (1st Dist. 1990) 222 Cal. App. 3d 748 [272 Cal. Rptr. 83] suggests that disputes of this sort do not trigger the duty to prepare an EIR. There, the record showed that closing a high school would increase traffic at an already congested intersection by approximately two percent. The only point of contention was whether such an increase was "significant." The petitioner cited to expert testimony that any increase over one percent was, in the expert's opinion, significant. The city responded by pointing to a traffic study stating that any increase of less than ten percent was insignificant.[40] Notwithstanding this dispute, the court upheld the city's adoption of a negative declaration. 222 Cal. App. 3d at pp. 755–756. *But see* CEQA Guidelines, § 15064, subd. (g) (in "marginal cases," "[i]f there is a disagreement among expert opinion supported by facts over the *significance* of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR") (italics added).[41]

5. The "Fair Argument" Standard and Certified Regulatory Programs

An agency with a certified regulatory program may, under appropriate circumstances, use a short-form environmental analysis that is functionally equivalent to a negative declaration.

An agency with a certified regulatory program may, under appropriate circumstances, use a "short-form" environmental analysis that is functionally equivalent to a negative declaration. *See* CEQA Guidelines, § 15252, subd. (a)(2); Discussion following CEQA Guidelines, § 15252.[42]

In *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1st Dist. 1997) 52 Cal. App. 4th 1383 [61 Cal. Rptr. 2d 297], the court held that the "fair

Board of Supervisors (1981) 116 Cal. App. 3d 265, 273–274 [171 Cal. Rptr. 875] (a notice of exemption was ineffective because it did not substantially comply with guidelines).

If the lead agency is a state agency, the agency must file the NOD with the Governor's Office of Planning and Research within five working days after approval.

If the lead agency is a state agency, the agency must file the NOD with the Governor's Office of Planning and Research (OPR) within five working days after approval. CEQA Guidelines, § 15075, subd (c). If the lead agency is a local agency, then the agency must file the NOD with the county clerk(s) of the county or counties in which the project will be located and, if the project requires discretionary approval from any state agency, with OPR; the NOD must be filed with the clerk and OPR within five working days after approval. Pub. Resources Code, § 21152, subd. (a); CEQA Guidelines, § 15075, subd. (d). The Guidelines encourage, but do not require, agencies to post their NODs on the internet. CEQA Guidelines, § 15075, subd. (h).

OPR = Governor's Office of Planning and Research

When a local agency files an NOD with the county clerk,[96] the clerk must post the NOD within 24 hours of receipt. Pub. Resources Code, § 21152, subd. (c); CEQA Guidelines, § 15075, subd. (e). Because this requirement carries no sanctions, however, it appears to be merely "directory" rather than mandatory.[97] *Cf. Meridian Ocean Systems, Inc. v. California State Lands Com.* (2d Dist. 1990) 222 Cal. App. 3d 153, 168 [271 Cal. Rptr. 445] (no penalty for failure to comply with directory provision requiring lead agency to decide whether to prepare an EIR within 30 days after receiving a complete application for a proposed project).

State and local agencies must send copies of their NODs to "any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, with the director of the agency." Pub. Resources Code, § 21092.2. The agencies may charge the recipients of such documents a fee "reasonably related to the costs of providing this service." *Ibid.*

Once the notice is posted for public inspection, the 30-day statute of limitation period begins to run.

Once the notice is posted for public inspection, the 30-day statute of limitation period begins to run. *Citizens of Lake Murray Assn. v. San Diego City Council* (4th Dist. 1982) 129 Cal. App. 3d 436, 440–441 [181 Cal. Rptr. 123]; Pub. Resources Code, § 21167, subds. (b), (c), (e); CEQA Guidelines, §§ 15075, subd. (g), 15094, subd. (g), 15112, subd. (c)(1). If a local agency decides to file two NODs, even if only one was required, then the statute of limitation begins to run on the posting of the second NOD. *El Dorado Union School District v. City of Placerville* (3d Dist. 1983) 144 Cal. App. 3d 123, 129–130 [192 Cal. Rptr. 480]. If separate NODs are filed for successive phases of the same overall project, then the 30-day statute of limitation to challenge the subsequent phase begins to run when the second NOD is filed and posted. *Chamberlain v. City of Palo Alto* (6th Dist. 1986) 186 Cal. App. 3d 181, 188 [230 Cal. Rptr. 454].

The date of posting of the NOD is crucial in determining whether a petition for writ of mandate has been filed within the applicable statute of limitation.

The date of posting of the NOD is crucial in determining whether a petition for writ of mandate has been filed within the applicable statute of limitation. For this reason, agencies or persons with an interest in a project would be prudent to obtain a conformed copy of the NOD showing the date the clerk or OPR posted the document.

E. Mitigated Negative Declarations

As explained earlier in this chapter, sometimes an initial study will reveal substantial evidence that significant environmental effects might occur, but the project proponent can modify the project so as to eliminate all such possible signific-

mpacts or to reduce them to a level of insignificance. In such instances, a lead agency an satisfy its CEQA obligations by preparing and circulating a so-called "mitigated egative declaration." Pub. Resources Code, § 21064.5.

1. Public Resources Code Section 21064.5

Public Resources Code section 21064.5 provides:

> "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) 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.

ub. Resources Code, § 21064.5[98]

2. Application of the "Fair Argument" Test in Situations Involving Mitigated Negative Declarations

a. *San Bernardino Valley Audubon Society v. Metropolitan Water District* (4th Dist. 999) 71 Cal. App. 4th 382 [83 Cal. Rptr. 2d 836]. In *San Bernardino Valley Audubon Society v. Metropolitan Water District* (4th Dist. 1999) 71 Cal. App. 4th 382 [83 Cal. Rptr. 2d 36], petitioner argued that an EIR should have been prepared to analyze the potenially significant adverse effects of adopting a "Multiple Species Habitat Conservation lan and Natural Community Conservation Plan" for approximately 6,000 acres in iverside County. The Metropolitan Water District (MWD) owned the land affected y the habitat conservation plan and had approved the proposal based on a mitiated negative declaration.

ESA = Endangered Species Act
MWD = Metropolitan Water District

According to the public notice issued in connection with the mitigated egative declaration, the habitat conservation plan would create a "Multiple Species eserve" and "would serve as the basis for the issuance of incidental take permits ursuant to the provisions of Section 10 of the federal Endangered Species Act ESA) to authorize the take of 6 currently listed species and 59 additional species hat may become listed." *Id.* at p. 387. The mitigated negative declaration further xplained that the plan had the potential to result in significant adverse impacts reated to biological and cultural resources, but that mitigation measures had been ncorporated into the plan to avoid such effects or reduce them to a level of insignificance. Such mitigation included the creation of a mitigation bank to be comrised of lands owned by MWD and the Riverside County Habitat Conservation gency. On the basis of the conclusion that all impacts to biological resources ould be mitigated, the agencies would receive take authorization "now for future rojects that may take endangered species." *Id.* at p. 388.

Petitioner challenged the plan, contending that, because the plan was ntended to serve as the basis for take authorization, it might have significant effects on he 65 species it attempted to address, and that "such a comprehensive project dealing

with so many endangered and threatened species requires the preparation of an environmental impact report." *Ibid.* According to petitioner, the habitat conservation plan was "a thinly disguised method to allow MWD to take, i.e., destroy or kill, endangered and threatened species in the course of its future construction activities throughout Southern California over the next 50 years." *Ibid.*

MWD maintained, on the other hand, that the plan was not a development project, but "primarily a mitigation bank that will provide important environmental mitigation for potential biological impacts resulting from existing and planned [projects]." *Ibid.* As such, MWD asserted, "the program will result in a cumulative net benefit for conservation of species in western Riverside County. The impacts on the species from future projects would be mitigated by designating habitat land in the mitigation bank as compensation for species or habitat which is taken by future construction." *Ibid.*

In reviewing the dispute as to whether an EIR, rather than a mitigated negative declaration, should have been prepared to evaluate the plan, the court stated that the "fair argument" standard applied, as follows:

If the initial study identifies potentially significant effects on the environment but revisions in the project plans would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and there is no substantial evidence that the project as revised may have a significant effect on the environment, a mitigated negative declaration may be used.

> If the initial study identifies potentially significant effects on the environment but revisions in the project plans "would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur" and there is no substantial evidence that the project as revised may have a significant effect on the environment, a mitigated negative declaration may be used. (§ 21064.5.) As the comment to the Guidelines explains: "A Mitigated Negative Declaration is not intended to be a new kind of document. . . . [¶] [It] provides efficiencies in the process where the applicant can modify his project to avoid all potential significant effects. The applicant can avoid the time and costs involved in preparing an EIR and qualify for a Negative Declaration instead. The public is still given an opportunity to review the proposal to determine whether the changes are sufficient to eliminate the significance of the effects." [Citations.]
>
> Thus, "[u]pon the issuance of [a mitigated negative declaration], the project opponent must demonstrate by substantial evidence that the proposed mitigation measures are inadequate and that the project as revised and/or mitigated may have a significant adverse effect on the environment." [Citation.]

71 Cal. App. 4th at p. 390 (quoting Discussion following CEQA Guidelines, § 15070 and *Citizens' Com. to Save Our Village v. City of Claremont* (4th Dist. 1995) 37 Cal. App. 4th 1157, 1167 [44 Cal. Rptr. 2d 288])

The parties did not disagree as to the standard of review; petitioner argued, therefore, that substantial evidence in the record supported a fair argument that the proposed plan might have significant adverse environmental effects, "even after mitigation." 71 Cal. App. 4th at p. 390.

The court agreed with petitioner. The court noted that, having prepared a mitigated negative declaration for the plan, MWD acknowledged that "[t]he Project will clearly have potentially significant impacts on the environment." *Id.* at p. 391. The question for the court was whether the plan's acknowledged impacts would "be mitigated to a level of insignificance," such that adoption of a mitigated negative

declaration was appropriate. *Id.* at p. 392. The court explained that, under the applicable standard, it must consider "whether there is substantial evidence in the record to support a fair argument that the stated mitigation measures may not achieve this goal." *Ibid.*

In the court's view, petitioner had identified at least five defects in the agency's mitigation program that constituted a fair argument that the project, as mitigated, could result in significant adverse impacts. First, the agency's proposed mitigation bank would allow MWD "to set aside habitat land now so that future projects could use the bank as mitigation, thus ensuring that the future construction projects could proceed with take and construction no matter how many of the listed endangered or threatened plant or animal species were found on a future construction project site." *Id.* at pp. 393–394.

"The second, and most troublesome" aspect of the proposed mitigation scheme involved "outside projects," which provided that some mitigation bank credits—and the associated take permits issue for the mitigation bank—could be sold to third parties, "and that no further permits will be required, no matter what effect the outside project will have on threatened or endangered species." *Id.* at pp. 394–395, fns. 4 and 5. "It therefore appears," the court explained, "that [petitioner's] interpretation is the correct one. Obviously, the effective elimination of the requirement of a take permit for outside projects may have a significant effect on the threatened or endangered species." *Id.* at p. 394, fn. 4.

Third, the court reasoned, petitioner "could fairly argue that it is improper and ineffective to allow *actual* take to be mitigated by *potential* habitat." *Id.* at p. 396 (italics added). The court explained that, under MWD's proposed mitigation banking framework, "an animal with limited range, such as the western spadefoot toad, would be taken in an outside project and the mitigation bank would provide mitigation for the take merely because it is potentially suitable habitat, not because any toads actually live there." *Ibid.*

The court further found that petitioner "could fairly argue that calculations under the habitat value formula will have a significant effect on the endangered and threatened species," because the mitigation ratios embodied in the "complex" formula had not been sufficiently analyzed to determine whether mitigation banking as proposed would "allow for a result different from an acre-for-acre or specie-by-specie exchange." *Id.* at p. 397.

Fifth, the court concluded that petitioner "could fairly argue that the Plan may have significant cumulative impacts." *Id.* at p. 398. The court was persuaded by petitioner's complaint that "[t]here is no evidence in the administrative record that the take of 65 targeted species for the next 50 years will not have negative cumulative impacts on endangered species, therefore [Public Resources Code] section 21083 and Guidelines section 15065 mandate an EIR be prepared." *Id.* at p. 398. Finding that the mitigated negative declaration prepared for the project provided only a "summary discussion of cumulative effects," the court expressed concern that the proposed habitat conservation plan was "so inclusive and far-reaching, especially with regard to outside and third party projects, that it is at least potentially possible that there will be incremental impacts to the various species that will have a cumulative effect on the survival of one or more of the species." *Id.* at p. 399.

Arguably, petitioner in this case provided only speculation and unsubstantiated opinion as to the alleged defects in MWD's mitigation program. The court rejected this contention, however, on the basis that:

> The fair argument is not speculative or hypothetical because the [agency's] documents themselves" reveal at least a fair argument that (1) mitigation bank credits can be sold to outside developers of future projects in Southern California, thus allowing for future take of endangered and threatened species throughout the region; (2) the mitigation measures stated in the mitigated negative declaration are inadequate to compensate for the take of endangered and threatened species; (3) allowing actual take to be mitigated by potential habitat is insufficient; (4) use of the habitat value formula, which provides for mitigation banking on habitat rather than specie basis, may have a significant effect on the endangered and threatened species; (5) the Plan may have significant cumulative effects on the 65 threatened, endangered and presently unlisted species; and (6) these cumulative effects should be considered and discussed in an EIR. [¶] Since the documents can be read in the manner advocated by [petitioner], we are constrained to agree with its conclusion that there is at least a fair argument that establishment of the mitigation bank will have a potentially significant unmitigated effect on a substantial number of endangered and threatened species, as well as other species that may be listed as endangered or threatened in the future.

Id. at pp. 400–401

The court therefore found that the record supported a fair argument that the potentially significant effects of the project identified in the mitigated negative declaration had not been mitigated into insignificance. *Id.* at p. 401. "Most troubling in this regard," the court explained:

> [I]s the mandatory finding of significance in the environmental checklist that the Project will have the potential to reduce habitat, cause a wildlife population to drop below self-sustaining levels, or reduce the number or restrict the range of a rare or endangered plant or animal. [Footnote omitted.] The Guidelines provide that, if such a finding is made, the lead agency "shall find that the project may have a significant effect on the environment and thereby require an EIR to be prepared for the project...." (Guidelines, § 15065.) [¶] Despite the contrary claim in the mitigated negative declaration, our attention has not been directed to any part of the record which shows that these effects can be mitigated into insignificance, especially for the outside projects. Thus, the proper procedure for such a far-reaching project is to prepare an EIR, with the requisite public participation, and to approve it only after making findings that changes have been made which mitigate or avoid the significant effects on the environment. (§ 21081.)

71 Cal. App. 4th at pp. 401–402

Because the *San Benardino* court repeatedly emphasized that, by mitigating some of the biological impacts of future development, the mitigation bank would essentially facilitate that development and its attendant impacts, the authors of this book interpret the case as strongly implying that EIRs should generally be prepared

the lead agency has prepared an initial study.[100] In such cases, under Public Resources Code section 21064.5, a project modification permitting the use of a mitigated negative declaration must be made before the agency has issued a proposed negative declaration for public review. *See also* CEQA Guidelines, § 15071, subd. (e) ("[a] negative declaration circulated for public review shall include... [m]itigation measures, if any, included in the project to avoid potentially significant effects").

The statutory definition of "mitigated negative declaration" supports the notion that the public must have an opportunity to review a negative declaration that describes the proposed project as modified, rather than as originally proposed, so that comments can be made on the project in its changed form. The language of both Public Resources Code section 21080, subdivision (c)(2), and CEQA Guidelines section 15070, subdivision (b)(1), and the holdings of *Perley v. County of Calaveras* (3d Dist. 1982) 137 Cal. App. 3d 424, 431, fn. 3 [187 Cal. Rptr. 53], and *Plaggmier v. City of San Jose* (1st Dist. 1980) 101 Cal. App. 3d 842, 853–854 [161 Cal. Rptr. 886] all support this view. Indeed, in *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1606 fn. 4 [35 Cal. Rptr. 2d 470], the court stated:

> [W]e note the City cannot rely on post-approval mitigation measures adopted during the subsequent design review process. Such measures will not validate a negative declaration. As one court stated, "There cannot be meaningful scrutiny of a mitigated negative declaration when the mitigation measures are not set forth at the time of project approval." [Citations omitted.] Further, we note the CEQA Guidelines require project plans to be revised to include mitigation measures "before the proposed negative declaration is released for public review...." ([CEQA Guidelines,] § 15070, subd. (b)(1).) [101] Thus, any necessary mitigation measures must be specifically set forth at the time of publication of a mitigated negative declaration in advance of the City's adoption of it. [Citations omitted.]

See also Gentry v. City of Murrieta (4th Dist. 1995) 36 Cal. App. 4th 1359, 1393 [43 Cal. Rptr. 2d 170] (finding that the City of Murrieta improperly added mitigation conditions after it released its proposed mitigated negative declaration for public review)[102]

For further information regarding the circumstances under which an agency must recirculate a negative declaration, *see* this chapter, section E.4, *infra*.

4. Recirculation

To qualify for a mitigated negative declaration, the lead agency must add mitigation measures needed to render environmental impacts less than significant before the agency circulates the document.

To qualify for a mitigated negative declaration, the lead agency must add mitigation measures needed to render environmental impacts less than significant before the agency circulates the document. Pub. Resources Code, §§ 21064.5, 21080, subd. (c)(2); CEQA Guidelines, § 15070, subd. (b)(1). By implication, if the agency adds such measures in response to comments on a proposed negative declaration, then the agency must revise and recirculate the document. *See Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (4th Dist. 1994) 29 Cal. App. 4th 1597, 1605 fn. 5 [35 Cal. Rptr. 2d 470] ("any necessary mitigation measures must be specifically set forth at the time of publication of a mitigated negative declaration"); *Perley v. County of Calaveras* (3d Dist. 1982) 137 Cal. App. 3d 424, 431, fn. 3 [187 Cal. Rptr. 53] (implying that public has a right to review a project in its changed form); *Plaggmier*

City of San Jose (1st Dist. 1980) 101 Cal. App. 3d 842, 853 [161 Cal. Rptr. 886] (emphasizing the "terminal effect" on the CEQA process of the use of a negative declaration); *cf. Friends of the Old Trees v. Department of Forestry & Fire Protection* (1st Dist. 1997) 52 Cal. App. 4th 1383, 1395 [61 Cal. Rptr. 2d 297] (noting Department of Forestry and Fire Protection's concession that a timber harvesting plan modified to incorporate mitigation measures is subject to public review and comment).[103]

If the agency adds mitigation measures that address an impact that is already less than significant even without the new measures, then the agency need not recirculate the proposed negative declaration.

If, however, the agency adds mitigation measures that address an impact that is already less than significant even without the new measures, then the agency need not recirculate the proposed negative declaration. *See Leonoff v. Monterey County Board of Supervisors* (6th Dist. 1990) 222 Cal. App. 3d 1337, 1357 [272 Cal. Rptr. 372] (*Leonoff*) (no need to recirculate a proposed negative declaration where an agency added new conditions addressing effects that would not be significant even without the new measures); *Citizen Action to Serve All Students v. Thornley* (1st Dist. 1990) 222 Cal. App. 3d 748, 759 [272 Cal. Rptr. 83] (no recirculation required where measures were added to reduce impacts that were not otherwise significant); *Long Beach Savings & Loan Association v. Long Beach Redevelopment Agency* (2d Dist. 1986) 188 Cal. App. 3d 249, 263–264 [232 Cal. Rptr. 772] (negative declaration that already had been circulated for public review did not require recirculation because of addition of two minor mitigation measures); *Gentry v. City of Murrieta* (4th Dist. 1995) 36 Cal. App. 4th 1359, 1392–1393 [43 Cal. Rptr. 2d 170] ("conditions which do not address an otherwise significant environmental effect need not be publicly circulated"); *cf. El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (3d Dist. 2004) 122 Cal. App. 4th 1591, 1603 [20 Cal. Rptr. 3d 224] (recirculation was unnecessary after measures were added to a reclamation plan to address the impacts of past mining activities; the new measures were an "added bonus" for the environment and were not needed to address the impacts of the reclamation project at hand).

If the agency determines that it must recirculate the proposed negative declaration, then the agency must provide notice in accordance with CEQA Guidelines sections 15072 and 15073.

If the agency determines that it must recirculate the proposed negative declaration, then the agency must provide notice in accordance with CEQA Guidelines sections 15072 and 15073. CEQA Guidelines, § 15073.5.

a. CEQA Guidelines Section 15073.5. Section 15073.5 provides that the agency must recirculate a negative declaration whenever the agency must "substantially revise[]" the document after the agency has issued public notice of the document's availability but before the agency adopts the negative declaration. CEQA Guidelines, § 15073.5, subd. (a). A "[s]ubstantial revision" of a proposed negative declaration can take one of two forms. First, the lead agency may identify a new avoidable significant effect, and add new measures or revisions to reduce the effect to a less than significant level. *Id.* at subd. (b)(1). Second, the lead agency may add new measures or revisions to address a previously-identified effect because the original measures or revisions did not reduce the effect to a less than significant level. *Id.* at subd. (b)(2).

In contrast, the agency need not recirculate the proposed negative declaration if: (1) the agency, pursuant to section 15074.1 (discussed below), eliminates measures and substitutes others that are equally or more effective; (2) the project is revised in response to comments on the project's effects, where the effects at issue "are not new avoidable significant effects"; (3) measures or conditions of approval are added to the project, but those measures or conditions are not required by CEQA, do

CHAPTER X

The EIR Process

at a glance...

A. Decision to Prepare an EIR

CEQA requires an EIR whenever the initial study has produced, or the record otherwise includes, substantial evidence supporting a fair argument that the proposed project may produce significant environmental effects. Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, § 15064, subd. (f)(1).[1] For a full discussion of the law governing an agency's decision whether to adopt a negative declaration or to prepare an EIR, see chapter IX (Negative Declarations), section A.

CEQA requires an EIR whenever the initial study has produced, or the record otherwise includes, substantial evidence supporting a fair argument that the proposed project may produce significant environmental effects.

B. Time of Preparation

"EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." CEQA Guidelines, § 15004, subd. (b).[2] EIR preparation and review also "should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively." CEQA Guidelines, § 15004, subd. (c).[3]

CEQA = California Environmental Quality Act
EIR = Environmental impact report

The lead agency must commence EIR preparation well in advance of the target date for approving a project, since approval cannot occur until the public and every responsible agency has had an opportunity to examine and comment on the document. CEQA Guidelines, § 15004, subd. (a); Pub. Resources Code, § 21061; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 266 [104 Cal. Rptr. 761]. Project "approval" is "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval." CEQA Guidelines, § 15352, subd. (a). "With private projects, approval occurs upon the earliest commitment" of the public agency

The lead agency must commence EIR preparation well in advance of the target date for approving a project, since approval cannot occur until the public and every responsible agency has had an opportunity to examine and comment on the document.

p. 130 (citing CEQA Guidelines, § 15126.4, subd. (a)(1)(D)). Interestingly, the court did not invoke the already-established principle that "significant new information" includes a disclosure showing that "[a] feasible...mitigation measure considerably different from others previously analyzed would clearly lessen the significant impacts of the project, but the project's proponents declined to adopt it." CEQA Guidelines, § 15088.5, subd. (a)(3). Since the project proponent in *Save Our Peninsula Committee*, far from declining to adopt the measure, had in fact proposed it, perhaps the court did not apply the quoted principle because it was not evident from the record that the offset measure could "clearly lessen" the proposed project's impacts on groundwater pumping. *But compare Laurel Heights II, supra*, 6 Cal. 4th at p. 1135 (court should uphold decision not to recirculate draft EIR where such decision is supported by substantial evidence).

CEQA Guidelines section 15088.5, subdivision (a)(1), requires recirculation when a new mitigation measure proposed to be implemented has its own significant effects.

CEQA Guidelines section 15088.5, subdivision (a)(1), requires recirculation where a new mitigation measure proposed to be implemented has its own significant effects. Although the court did not expressly find evidence that the new mitigation measure proposed by the applicants had associated significant impacts, the court seemed swayed by the arguments by agencies and the lay public that the mitigation measure might induce growth and displace agriculture, and that such impacts needed further analysis. The county, for its part, apparently failed to cite to substantial evidence that this new mitigation measure would not be accompanied by significant environmental effects. Thus, the authors of this book suggest that where a new mitigation measure is added after circulation of the draft EIR, the agency should consider recirculation of the draft EIR unless the agency has substantial evidence that the mitigation measure will not in fact have its own potentially significant impacts.

As to its holding that a new draft EIR should include a detailed discussion of the applicant's asserted riparian right to extract water from a subterranean stream, the court in *Save Our Peninsula Committee* could be understood to have found flaws in the portions of the draft EIR dealing with "environmental setting," "mitigation measures," and "significant environmental effects" (*see* CEQA Guidelines, §§ 15125, 15126.2, and 15126.4). The court was concerned that the exercise of such a right, if it existed, could adversely affect other water users, especially during droughts; cause growth-inducement by setting a precedent that could facilitate new development; be inconsistent with local policies limiting water for new development; or prompt the need for addition mitigation measures. 87 Cal. App. 4th at p. 134. Thus, *Save Our Peninsula Committee*, like *Cadiz*, can be understood to interpret CEQA Guidelines section 15088.5, subdivision (a)(4), to require recirculation when "critical" parts of an EIR are significantly and fundamentally flawed, even though the document as a whole is not "fundamentally and basically inadequate and conclusory in nature." The authors note as well that *Save Our Peninsula Committee*, like *Cadiz*, involved problems with establishing an appropriate baseline for environmental review for what the court termed "critical" water issues. The *Save Our Peninsula Committee* court, like the court in *Cadiz*, seemed to feel strongly that the information at issue—involving water use controversies in areas where water supply is particularly scarce—was simply too important and too complex to come into play for the first time after completion of formal public review. Moreover, because this court interpreted the

problem as involving the environmental "baseline," the court seemed to infer that this problem undermined the entire underpinnings of the EIR. The *Save Our Peninsula Committee* court, for instance, "underscored" the "importance of an adequate baseline description, for without such description, analysis of impacts, mitigation measures and project alternatives becomes impossible." *Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at p. 124.

In sum, in holding that the Draft EIR should have been recirculated pursuant to CEQA Guidelines section 15088.5, subdivision (a), the court in *Save Our Peninsula Committee*, like the court in *Cadiz*, clearly focused on what it believed was necessary for "meaningful public review and comment," and applied a low threshold for finding draft EIRs to be "fundamentally and basically inadequate and conclusory in nature." In finding new information to be significant, the courts examined the complete administrative records presented to them, and seemed to grapple with factors such as the following: (i) the complexity of the new information at issue; (ii) the extent to which such information implicated possible harm to the environment; (iii) the possible severity of any such harm; (iv) the degree of demonstrated public interest in the subject matter; (v) the extent to which the party presenting the information (*e.g.*, an applicant or a project opponent) might have had an incentive to portray the information without complete objectivity; (vi) the extent to which additional public scrutiny was likely to refine and improve the quality of the information, or lead to improved mitigation; and (vii) the extent to which such information, and public responses to it, was necessary to informed agency decisionmaking.

I. Evaluation and Response to Comments

"The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project." Discussion following CEQA Guidelines, § 15088.[87] In the final EIR, the lead agency must evaluate and respond to all the environmental comments on the draft EIR it receives within the public review period. Pub. Resources Code, § 21091, subd. (d)(2)(A). The agency may, but need not, respond to comments received after that period ends. Pub. Resources Code, § 21091, subd. (d)(2)(A); CEQA Guidelines, § 15088, subd. (a). The lead agency must provide its draft responses to comments received from public agencies to those agencies at least 10 days before certifying the EIR. Pub. Resources Code, § 21092.5, subd. (a); CEQA Guidelines, § 15088, subd. (b).

In the final EIR, the lead agency must evaluate and respond to all the environmental comments on the draft EIR it receives within the public review period.

The written responses must describe the disposition of the "significant environmental issues" raised in the comments (*e.g.*, suggestions for revising the proposed project to mitigate anticipated impacts). Pub. Resources Code, § 21091, subd. (d)(2)(B); CEQA Guidelines, § 15088, subd. (c). The lead agency must specifically explain its reasons for rejecting suggestions received in comments and for proceeding with the project despite its environmental impacts. "There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." CEQA Guidelines, § 15088, subd. (c).[88]

The written responses must describe the disposition of the significant environmental issues raised in the comments.

In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2d Dist. 2003) 106 Cal. App. 4th 715 [131 Cal. Rptr. 2d 186], for example, petitioners'

comments on the draft EIR questioned calculations regarding water supply for a large southern California residential development. *Id.* at p. 722. The responses to such comments explained that water supply calculations assumed that the responsible water district would receive 100 percent of its contract "entitlement" from the Department of Water Resources (DWR) in wet years, and 50 percent of its entitlement for periods of extreme drought. The Court of Appeal found the county's response to petitioners' concerns to be inadequate. The court criticized the response because it "contain[ed] no estimates from the DWR... as to how much water it can deliver, whether in wet years, average years and in periods of drought." *Id.* at p. 722. "It may be that no such reliable estimates are available[, but, i]f that is the case, the EIR should say so." *Ibid.* The court concluded that "[t]he requirement of a detailed analysis in response [to comments] ensures that stubborn problems or serious criticism are not swept under the rug." *Id.* at p. 732 (citations and internal quotation marks omitted).

DWR = Department of Water Resources

Where the responses make important changes in the information contained in the text of the draft EIR, the lead agency should either revise the relevant text or add marginal notes showing that the information is revised in the response to comments.

The responses may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the responses make important changes in the information contained in the text of the draft EIR, the lead agency should either revise the relevant text or add marginal notes showing that the information is revised in the response to comments. CEQA Guidelines, § 15088, subd. (d). "Either of these approaches will make the final EIR more useful and informative to the decision-makers when they consider the EIR with the project." Discussion following CEQA Guidelines, § 15088.

Public Resources Code section 21092.5, subdivision (a), provides that, at least ten days before certifying a final EIR, a lead agency "shall provide a written proposed response to a public agency on comments made by that agency" in conformance with CEQA standards.

If the approving agency holds a hearing on the final EIR, project opponents should voice any complaints about the adequacy of the agency's responses, to avoid having the agency argue in court that they failed to exhaust their administrative remedy.

If the approving agency holds a hearing on the final EIR, project opponents should voice any complaints they have about the adequacy of the agency's responses to comments, in order to avoid having the agency argue in court that they failed to exhaust their administrative remedy on that issue. *Towards Responsibility in Planning v. City Council* (6th Dist. 1988) 200 Cal. App. 3d 671, 682 [246 Cal. Rptr. 317].[89]

1. Agency Discretion to Determine Extent of Response

When comments suggest that further data be gathered, it is not "mandatory for an agency to conduct every test and perform all research, study and experimentation recommended to it to determine true and full environmental impact, before it can approve a proposed project." *Society for California Archaeology v. County of Butte* (3d Dist. 1977) 65 Cal. App. 3d 832, 838 [135 Cal. Rptr. 679]. "Just as an agency has the discretion for good reason to approve a project which will admittedly have an adverse environmental impact, it has discretion to reject a proposal for additional testing or experimentation." *Id.* at pp. 838–839.[90]

In *Twain Harte Homeowners Association, Inc. v. County of Tuolumne* (5th Dist. 1982) 138 Cal. App. 3d 664, 678–687 [188 Cal. Rptr. 233], the Court of Appeal upheld an EIR against attacks on various responses to comments. In doing so, the court suggested some principles of potentially broad application. One such precept

appears to be that, where an agency's responses to comments, viewed "as a whole[,] evince good faith and a reasoned analysis" and "adequately serve the disclosure purpose which is central to the EIR process," the fact that, in certain respects, "the responses are not exhaustive or thorough" need not be fatal to the agency. *Id.* at p. 686. The court also stated generally that "[t]he determination of the sufficiency of [the lead agency's] responses to comments... turns upon the detail required in such responses." *Ibid.* In *Twain Harte*, because the challenged project was a general plan, the court required less detail in responses than it might have done if the project at issue involved a site-specific construction project. *Id.* at pp. 677, 681.

Where a particular response adequately addresses an environmental issue raised by one commenter, additional responses to that same issue, as identified by other commenters, may refer the reader to the prior response.

Notably, the court indicated that, where a particular response adequately addresses an environmental issue raised by one commenter, additional responses to that same issue, as identified by other commenters, may refer the reader to the prior response. *Id.* at pp. 680–681, 683–684; *compare Cleary v. County of Stanislaus* (1981) 118 Cal. App. 3d 348, 359–360 [173 Cal. Rptr. 390] (in upholding a response that referred the commenter to the draft EIR but did not add new analysis, the court described the comment in question as "general," and as raising "no new issues," and found the response adequate "when considered in conjunction with the draft EIR"). The *Twain Harte* court also indicated that, where a response is imprecise, and even arguably misleading, such imperfection need not be prejudicial where the record as a whole is not misleading on the subject at issue. 138 Cal. App. 3d at p. 682. Finally, the court described *People v. County of Kern* (5th Dist. 1974) 39 Cal. App. 3d 830, 841–842 [115 Cal. Rptr. 67] as holding that "letters received from individuals which raised no new environmental issue which the draft EIR had not recognized or which was not noted in the comment of the state agencies did not require response." *Id.* at p. 679 (citing 118 Cal. App. 3d at p. 360).

2. Responding to Mitigation Proposals

In determining how to respond to a comment proposing a new or modified mitigation measure, agencies must first ascertain whether the impact to which it is addressed would otherwise be significant and unavoidable, and then assess whether the proposed measure may be feasible.

In determining how to respond to a comment proposing a new or modified mitigation measure, agencies must first ascertain whether the impact to which it is addressed would otherwise be significant and unavoidable, and then assess whether the proposed measure may be feasible. In *Los Angeles Unified School District v. City of Los Angeles* (2d Dist. 1997) 58 Cal. App. 4th 1019, 1028–1030 [68 Cal. Rptr. 2d 367], a school district, in commenting on a draft EIR for a specific plan covering a 1.5 square mile portion of the San Fernando Valley, suggested that development-related air pollution impacts near a school could be feasibly mitigated by the installation of air conditioning and filtration within the school, thereby allowing it to close its windows to protect its students. *Ibid.* The responses to comments within the final EIR had not directly responded to this suggestion. *Id.* at p. 1029. In finding the response deficient, the Court of Appeal offered the following principles and observations:

> [A]n EIR need not analyze every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects. [Citation.] Under the CEQA statute and guidelines a mitigation measure is 'feasible' if it is 'capable of being accomplished in a successful manner within a reasonable

> period of time, taking into account economic, environmental, social, and technological factors.' ([Public Resources Code,] § 21061.1; and *see* [CEQA] Guidelines, § 15364.) [¶] In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. [Citations.] While the response need not be exhaustive, it should evince good faith and a reasoned analysis. [Citations.]

Id. at pp. 1029, 1030 (italics in original; footnote deleted; internal quotation marks deleted)

J. Preparation of Final EIR

Before approving any nonexempt proposed project that may have a significant environmental effect, the lead agency must prepare a final EIR.

Before approving any nonexempt proposed project that may have a significant environmental effect, the lead agency must prepare a final EIR. CEQA Guidelines, § 15089, subd. (a). The final EIR incorporates by reference the contents of the draft EIR, and, in addition, includes the following: the comments received, either verbatim or in summary; the lead agency's responses thereto; and a list of persons, organizations, and public agencies that submitted comments. CEQA Guidelines, §§ 15132, 15362, subd. (b).

The lead agency under CEQA may, but need not, provide an opportunity for the public to review an final EIR. CEQA Guidelines, § 15089, subd. (b). As noted in the previous section, however, Public Resources Code section 21092.5, subdivision (a) provides that, at least ten days before certifying a final EIR, a lead agency "shall provide a written proposed response to a public agency on comments made by that agency" in conformance with CEQA standards. Such responses may be offered separately from the final EIR, or made part of that document. If the lead agency chooses, however, to simply send a commenting agency a copy of a final EIR, the latter document cannot be certified until ten days later.

K. Certification of Final EIR

Before approving the project analyzed in the EIR, the lead agency must certify the final EIR.

Before approving the project analyzed in the EIR, the lead agency must "certify" the final EIR. According to the CEQA Guidelines, "certification" consists of three separate steps. The agency's decision-making body must conclude, first, that the document "has been completed in compliance with CEQA"; second, that the body has reviewed and considered the information within the EIR prior to approving the project; and third, that "the final EIR reflects the lead agency's independent judgment and analysis." CEQA Guidelines, § 15090, subd. (a).[91] The certification of a legally inadequate EIR is a prejudicial abuse of discretion. Pub. Resources Code, § 21168, subd. (a); *Citizens to Preserve the Ojai v. County of Ventura* (2d Dist. 1985) 176 Cal. App. 3d 421, 428 [222 Cal. Rptr. 247].[92]

1. *Environmental Council of Sacramento v. Board of Supervisors* (3d Dist. 1982) 135 Cal. App. 3d 428 [185 Cal. Rptr. 363]

One Court of Appeal opinion suggests that, after certifying an EIR but prior to approving the project in question, the lead agency decision-making body can

CHAPTER XI

Substantive Requirements of Environmental Impact Reports

at a glance...

A. Lead Agencies' Duties with Respect to EIRs

An environmental impact report, or "EIR," is "a detailed statement prepared under CEQA describing and analyzing the significant effects of a project and discussing ways to mitigate or avoid the effects." CEQA Guidelines, § 15362.[1] Although the lead agency must consider the information in an EIR, the document's conclusions do not control the lead agency's discretion to approve or disapprove a proposed project. CEQA Guidelines, § 15121, subd. (b).[2] The EIR can force certain other kinds of actions, however. Before approving a project, a lead agency must respond to each significant effect identified in the EIR by making one or more of the following findings:

Although the lead agency must consider the information in an EIR, the document's conclusions do not control the lead agency's discretion to approve or disapprove a proposed project.

- That the project has been changed to avoid or substantially lessen the significant effects;
- That the necessary changes are within the responsibility and jurisdiction of another public agency, and have been or can and should be adopted by that agency; and/or
- That, due to specific economic, legal, social, technological, or other considerations, including consideration for the provision of employment opportunities for highly trained workers, the mitigation measures or project alternatives recommended in the final EIR are infeasible.

CEQA = California Environmental Quality Act
EIR = Environmental impact report

Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a)

These findings must be supported by substantial evidence. Pub. Resources Code, § 21081.5; CEQA Guidelines, § 15091, subd. (b).

B. Format and Substance of an EIR

EIRs must be "organized and written in a manner that will be meaningful and useful to decision makers and to the public." Pub. Resources Code, § 21003,

subd. (b). Public Resources Code section 21100 describes the mandatory content of EIRs, and states that "[w]henever feasible, a standard format shall be used for" EIRs. Pub. Resources Code, § 21100, subd. (a).[3] The degree of specificity required in an EIR depends on the specificity of the underlying activity described in the EIR. CEQA Guidelines, § 15146.[4] The text of draft EIRs should normally be less than 150 pages, or, for projects of unusual scope or complexity, less than 300 pages. CEQA Guidelines, § 15141.

The degree of specificity required in an EIR depends on the specificity of the underlying activity described in the EIR.

EIRs should:

- Embody "an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors." CEQA Guidelines, § 15142
- "Omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects." Pub. Resources Code, § 21003, subd. (c)
- Follow a "clear format" and be written in "plain language." CEQA Guidelines, §§ 15006, subds. (q), (r), 15120, 15140[5]
- Be "analytic rather than encyclopedic." CEQA Guidelines, §§ 15006, subd. (o), 15142
- Include summarized technical data, maps, plot plans, diagrams, and similar relevant information. Highly technical and specialized analysis should be attached in appendices, rather than in the body of the document. CEQA Guidelines, § 15147
- Use graphics to enhance the understanding of decisionmakers and the public. CEQA Guidelines, § 15140

If a lead agency's approval of a project is challenged in court, the information in the EIR constitutes substantial evidence on which the agency is entitled to rely.

If a lead agency's approval of a project is challenged in court, the information in the EIR constitutes substantial evidence on which the agency is entitled to rely. CEQA Guidelines, § 15121, subd. (c); *Karlson v. City of Camarillo* (2d Dist. 1980) 100 Cal. App. 3d 789, 801 [161 Cal. Rptr. 260]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1st Dist. 1977) 71 Cal. App. 3d 84, 94 [139 Cal. Rptr. 214]

1. Lead Agencies Should Focus on Potentially Significant Effects

Public Resources Code section 21002.1, subdivision (e), provides that, in order "[t]o provide more meaningful public disclosure, reduce the time and cost required to prepare an [EIR], and focus on potentially significant effects on the environment of a proposed project, lead agencies shall...focus the discussion in the [EIR] on those potential effects on the environment...which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant."

This language underscores the importance of devoting the bulk of an EIR to those impacts that are or may be significant. Public Resources Code section 21100 also provides that each EIR must contain "a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the [EIR]." Pub. Resources Code, § 21100, subd. (c).[6]

2. Mandatory Contents of a Draft EIR

The draft EIR must include the following:

- A table of contents;
- A brief summary of the proposed project and its consequences in language as clear and simple as is reasonably practical;
- The proposed project's location; a description of the environmental setting, both local and regional, in which the proposed project will occur;
- A discussion of any inconsistencies between the proposed project and applicable general and/or regional plans;
- A description of the significant environmental effects of the proposed project, explaining which, if any, can be mitigated;
- A statement of the measures, if any, proposed to mitigate such environmental impacts;
- An analysis of a range of reasonable alternatives to the proposed project; an analysis of the proposed project's "growth-inducing impacts";
- A statement explaining why impacts identified as insignificant were determined to be such;
- A list of all federal, state, and local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and
- The persons, firm, or agency preparing the document, by contract or other authorization; and an analysis of the proposed project's cumulative impacts.

CEQA Guidelines, §§ 15122–15130; *see also* Pub. Resources Code, § 21100

The following kinds of projects have an additional content requirement: the adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency; the adoption by a local agency formation commission of a resolution making determinations; and any project that will require an environmental impact statement pursuant to NEPA. For such projects, EIRs must address any significant irreversible environmental changes that would be involved in the proposed action should it be implemented. CEQA Guidelines, §§ 15127, 15126.2, subd. (c).

Prior to 1995, the EIRs for such projects were also required to include a section addressing "[t]he relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity," but this requirement was deleted from Public Resources Code section 21100 in 1994. *See* Stats. 1994, ch. 1230, § 9. Because NEPA documents must still address this subject, however, a "joint EIR/EIS" must still address the topic. 40 C.F.R. § 1502.16. The rules governing the preparation of "joint documents" are addressed in chapter XIII (Means of Avoiding Redundancy in Preparing EIRs), section H.

a. **Brief Summary.** Each draft EIR must contain a brief summary of the proposed project and its consequences. The language used should be as clear and simple as is reasonably practical; and the length of the section normally should not exceed fifteen pages. The summary must identify the following: each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect; areas of controversy known to the lead agency, including issues

Each draft EIR must contain a brief summary of the proposed project and its consequences.

raised by other agencies and the public; and issues to be resolved, including the choice among alternatives and whether or how to mitigate the significant effects. CEQA Guidelines, § 15123.

Because the content requirements are mandatory, while the 15-page limit on page length is only recommended, agencies should not feel constrained to limit their summaries to 15 pages at the cost of omitting mandatory contents.

The authors of this book note that, in practice, lead agencies often find it difficult, if not impossible, to include within the "brief summary" all of the required contents within a 15-page format. Because the content requirements are *mandatory*, while the 15-page limit on page length is only *recommended*, agencies should not feel constrained to limit their summaries to 15 pages at the cost of omitting mandatory contents.

b. Project Description

i. General Principles–Contents. The project description should include the following:

- A map, preferably topographical, depicting the project's precise location and boundaries. CEQA Guidelines, § 15124, subd. (a)
- A statement of the objectives sought by the proposed project; and a general description of the proposed project's technical, economic, and environmental characteristics. CEQA Guidelines § 15124, subd. (b), (c). "A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decisionmakers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project." *Id.* at subd. (b)[7]
- A statement describing the intended uses of the EIR. CEQA Guidelines, § 15124, subd. (d)
- A list of related environmental review and consultation requirements mandated by federal, state, or local laws, regulations, or policies. CEQA Guidelines, § 15124, subd. (d) (1) (c). The statement describing the uses of the EIR must include, to the extent the lead agency knows such information, a list of the agencies expected to use the EIR in their decisionmaking and a list of approvals for which the document will be used. *Id.* at subds. (d)(1)(A), (d)(1)(B). This list, along with the list of other federal, state, and local environmental review and consultation requirements, is important because "[t]o the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements." *Id.* at subd. (d)(1)(C)

If a public agency must make more than one decision on a project, the project description should include a list of all such decisions subject to CEQA, preferably in the order in which they will occur.

If a public agency must make more than one decision on a project, the project description should include a list of all such decisions subject to CEQA, preferably in the order in which they will occur. On request, the Governor's Office of Planning and Research (OPR) will assist agencies to identify state permits needed for a project. CEQA Guidelines, § 15124 subd. (d)(2).

OPR = Governor's Office of Planning and Research

ii. General Principles–Consistency, Accuracy, and Completeness. The project description must be accurate and consistent throughout an EIR. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal. App. 3d 185, 193 [139 Cal. Rptr. 396] (*County of Inyo*) (italics in original); *Kings County Farm Bureau*

v. City of Hanford (5th Dist. 1990) 221 Cal. App. 3d 692, 738 [270 Cal. Rptr. 650] (*Kings County*); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (5th Dist. 1994) 27 Cal. App. 4th 713, 730 [32 Cal. Rptr. 2d 704] (*San Joaquin Raptor I*); *Santiago Water District v. County of Orange* (4th Dist. 1981) 118 Cal. App. 3d 818, 830 [173 Cal. Rptr. 602] (*Santiago Water District*); *Christward Ministry v. County of San Diego* (4th Dist. 1993) 13 Cal. App. 4th 31, 45 [16 Cal. Rptr. 2d 435] (*Christward II*); *Dusek v. Anaheim Redevelopment Agency* (4th Dist. 1986) 173 Cal. App. 3d 1029, 1040 [219 Cal. Rptr. 346] (*Dusek*).[8]

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance.

County of Inyo, supra, 71 Cal. App. 3d at pp. 192–193[9]

At the same time, however, the CEQA process, if working properly, will often result in project changes reducing the severity of environmental effects. "The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.'" *Kings County, supra,* 221 Cal. App. 3d at pp. 736–737 (quoting *County of Inyo, supra,* 71 Cal. App. 3d at p. 199); *see also River Valley Preservation Project v. Metropolitan Transit Development Board* (4th Dist. 1995) 37 Cal. App. 4th 154, 168, fn. 11 [43 Cal. Rptr. 2d 501]. "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.' [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process." *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal. 3d 929, 936 [231 Cal. Rptr. 748].

The CEQA process, if working properly, will often result in project changes reducing the severity of environmental effects.

Furthermore, if an agency, after completing an EIR, ultimately chooses to approve only a portion of the larger "project" analyzed in the EIR, such action does not retroactively invalidate the project description. *Dusek, supra,* 173 Cal. App. 3d at p. 1041 ("CEQA does not handcuff decisionmakers in the manner proposed by the" petitioners).

If an agency, after completing an EIR, ultimately chooses to approve only a portion of the larger project analyzed in the EIR, such action does not retroactively invalidate the project description.

(A) *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal. App. 3d 185 [139 Cal. Rptr. 396]. In *County of Inyo v. City of Los Angeles* (3rd Dist. 1977) 71 Cal. App. 3d 185 [139 Cal. Rptr. 396] (*County of Inyo I*) an EIR drafted by the City of Los Angeles referred to the project in question differently in different parts of the document. The project that the city was supposed to be analyzing, pursuant to a court order (*see County of Inyo v. Yorty* (3d Dist. 1973) 32 Cal. App. 3d 795 [108 Cal. Rptr. 377]), was a proposal to increase the city's extraction of groundwater from the Owens Valley for export to Los Angeles. The document that resulted, however, did not focus its analysis on that proposal. The EIR first incorrectly defined the project

If such information is not found in the EIR, it must be added to the record in some manner in order to be cited in findings. CEQA Guidelines, § 15131, subd. (c).[94]

C. Contents of a Final EIR

The final EIR consists of the contents of the draft EIR, with some revisions if necessary, and the addition of the following: (1) comments and recommendations received, either verbatim or in summary; (2) a list of persons, organizations, and public agencies commenting on the draft EIR; and (3) the lead agency's responses to significant environmental points raised in the review and consultation process. CEQA Guidelines, § 15132.

As is explained at length in chapter X (The EIR Process), section H, if the lead agency adds "significant new information" or makes substantial changes to the project after receiving comments on the draft EIR, the documents must be recirculated for additional public review. Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.[95]

D. What Constitutes an Adequate EIR—A Summary

"[T]he determination of EIR adequacy is essentially pragmatic. Whether an EIR will be found in compliance with CEQA involves an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision. Preparing an EIR requires the exercise of judgment, and the court in its review may not substitute its judgment, but instead is limited to ensuring that the decision makers have considered the environmental consequences of their action." *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners* (1st Dist. 2001) 91 Cal. App. 4th 1344, 1355 [111 Cal. Rptr. 2d 598].

In general, a reviewing court will not expect perfection, but will focus instead on adequacy, completeness, and a good faith effort at full disclosure.

In general, a reviewing court will not expect perfection, but will focus instead on adequacy, completeness, and a good faith effort at full disclosure. Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible. The document should provide a sufficient degree of analysis to allow decisionmakers to make intelligent judgments. CEQA Guidelines, § 15151. "[T]he adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project." CEQA Guidelines, § 15204, subd. (a).[96]

1. Sufficiently Detailed Analysis

Although the analysis in an EIR "need not be exhaustive" (CEQA Guidelines, § 15151), nevertheless, "the courts have favored specificity and use of detail in EIRs." *Whitman v. Board of Supervisors* (2d Dist. 1979) 88 Cal. App. 3d 397, 411 [151 Cal. Rptr. 866].[97] "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with

the proposed project and the difficulties involved in the alternatives.'" *People v. County of Kern* (5th Dist. 1974) 39 Cal. App. 3d 830, 841–842 [115 Cal. Rptr. 67], quoting *Silva v. Lynn* (1st Cir. 1973) 482 F. 2d 1282, 1285.

"A legally adequate EIR...'must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.'" *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692, 733 [270 Cal. Rptr. 650]. The EIR "must reflect the analytic route the agency traveled from evidence to action." *Ibid.* "The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." *Santiago Water District v. County of Orange* (4th Dist. 1981) 118 Cal. App. 3d 818, 831 [173 Cal. Rptr. 602].

In *City of Coronado v. California Coastal Zone Conservation Commission* (4th Dist. 1977) 69 Cal. App. 3d 570, 583 [138 Cal. Rptr. 241], the court rejected a two-page environmental document, stating that "[t]his document resembles an EIR as mist resembles a Colorado cloudburst."[98] Some courts, however, have been less demanding of specificity than others. In *Karlson v. City of Camarillo* (2d Dist. 1980) 100 Cal. App. 3d 789, 805–806 [161 Cal. Rptr. 260] (*Karlson*), for example, the court held adequate an EIR that failed to conduct a "point by point analysis" of the degree to which proposed general plan amendments conformed with the goals of the existing general plan. Said the court: "[t]here is nothing in the law or the Guidelines which requires such a specific consideration." *Id.* at p. 806.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in an EIR.

Readers should not take *Karlson* as authority to prepare analyses less specific than is possible with available or obtainable data. "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in an EIR." CEQA Guidelines, § 15146. Thus, "[a]n EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." CEQA Guidelines, § 15146, subd. (a). Conversely, EIRs for general legislative actions such as the adoption or amendment of general plans or comprehensive zoning ordinances should focus on the secondary effects caused thereby. CEQA Guidelines, § 15146, subd. (b); *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (2d Dist. 1993) 18 Cal. App. 4th 729, 745–746 [22 Cal. Rptr. 2d 618]; *Rio Vista Farm Bureau Center v. County of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 371–374 [7 Cal. Rptr. 2d 307]. Still, every EIR will "be reviewed in light of what is reasonably feasible." CEQA Guidelines, § 15151; *Kings County Farm Bureau, supra,* 221 Cal. App. 3d at pp. 723, 733–734.

a. ***Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376 [253 Cal. Rptr. 426].** The leading California Supreme Court case on EIR adequacy is *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376 [253 Cal. Rptr. 426] (*Laurel Heights I*), which involved a proposal to relocate ongoing biomedical research activities into an unoccupied building near a residential area. In its decision, the court held (i) that the respondent

agency prejudicially failed to assess the impacts of a foreseeable future phase of the challenged project, (ii) that the alternatives analysis within the EIR was defective, and (iii) that substantial evidence supported the respondent's conclusions regarding the effectiveness of adopted mitigation measures.

An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.

In reaching its holdings, the Supreme Court emphasized that "[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." 47 Cal. 3d at pp. 404–405. At the same time, however, the court also stressed that "a court's proper role in reviewing a challenged EIR is not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence and whether the EIR is sufficient as an informational document." *Id.* at p. 407. Furthermore, although "[t]he often technical nature of challenges to EIR's... requires particular attention to detail[,]" the "proper judicial goal... is not to review each item of evidence in the record with such exactitude that the court loses sight of the rule that the evidence must be considered as a whole." *Id.* at p. 408.

b. *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692 [270 Cal. Rptr. 650]. Another important decision addressing the standards governing EIRs is *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692] [270 Cal. Rptr. 650], in which the Court of Appeal held inadequate an EIR prepared for a proposed coal-fired cogeneration power plant. The substance and tenor of the decision indicate that reviewing courts may closely scrutinize EIRs to assess their legal adequacy. The opinion addresses the following important issues:

- The need, in some instances, to support with rigorous analysis and concrete substantial evidence the conclusion that impacts will be insignificant; the requirement to analyze both "on-site" and "secondary" air pollution emissions in assessing the overall significance of air quality impacts;
- The proper method by which to assess cumulative impacts in the context of an already degraded environment; the proper geographic scope of cumulative impact analysis;
- The requirement, at least under some circumstances, to provide comparative, quantitative analysis in assessing the environmental merits of project alternatives; and
- The fact that analysis of alternatives should not be unduly narrowed by investments made by applicants prior to the commencement of environmental review.

c. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (5th Dist. 1994) 27 Cal. App. 4th 713 [32 Cal. Rptr. 2d 704]. The Court of Appeal also set high standards for an EIR in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (5th Dist. 1994) 27 Cal. App. 4th 713 [32 Cal. Rptr. 2d 704], in which the court invalidated an EIR for a 154-acre mixed use development. Stating that "[t]he record demonstrates what only can be characterized as grudging and pro forma compliance with CEQA[,]" the court described the EIR as "a mass of flaws." *Id.* at p. 741, 742. The opinion addresses the following issues: the need to include within the

"environmental setting" portion of an EIR a full and fair description of adjacent properties that would be affected by a project, as well as sensitive resources within the project site (*id.* at pp. 722–729); the need to include, within the "project description," a discussion of any infrastructure improvements necessitated by a project (*id.* at pp. 729–735); the need to address project alternatives in detail, and to include "alternative sites" within the alternatives analysis, in some circumstances(*id.* at p. 722–729); and the need to adequately address cumulative impacts (*id.* at pp. 739–741).

d. ***Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (2d Dist. 1994) 24 Cal. App. 4th 826 [29 Cal. Rptr. 2d 492].** In *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (2d Dist. 1994) 24 Cal. App. 4th 826 [29 Cal. Rptr. 2d 492], which involved the approval of a new elementary school, the Court of Appeal repeatedly emphasized the limitations on an agency's obligations in preparing an EIR. The court stated, for example, that "[a]n EIR need not contain discussion of specific future action that is merely contemplated nor a gleam in a planner's eye." *Id.* at p. 838. Similarly, the court noted that "'CEQA does not require analysis of every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects.'" *Id.* at p. 841 (italics in original). Finally, the court added that "[a]n EIR does not have to contain the results of unfruitful investigations or pursuits down blind alleys, but only 'an analysis of those alternatives necessary to permit a reasoned choice.'" *Id.* at p. 845.

CEQA does not require analysis of every imaginable alternative or mitigation measure; its concern is with feasible means of reducing environmental effects.

e. ***Stanislaus Natural Heritage Project v. County of Stanislaus* (5th Dist. 1996) 48 Cal. App. 4th 182 [55 Cal. Rptr. 2d 625].** In *Stanislaus Natural Heritage Project v. County of Stanislaus* (5th Dist 1996) 48 Cal. App. 4th 182 [55 Cal. Rptr. 2d 625] (*Stanislaus*), the Court of Appeal invalidated an EIR for a specific plan because it had not adequately dealt with the environmental consequences associated with acquiring a long-term water supply for the proposed development. *Id.* at p. 187.[99] The specific plan would allow 5,000 residential units on 29,500 acres, to be built in four phases over 25 years. *Id.* at p. 186. The EIR evaluated the effects related to providing water during the first five years of the 15-year first phase, but did not address impacts that would occur beyond that initial period. *Id.* at pp. 194–195. Instead, the document treated the potential long-term water supply shortfall as a significant and unavoidable impact, but identified as "mitigation" a commitment that further construction, beyond the first increment, could not occur unless adequate water supplies could be found. *Id.* at p. 195. The EIR also stated that additional environmental review would be required in connection with future water acquisition projects serving the development. *Ibid.*

In finding the EIR deficient, the court rejected the respondent's argument that, because the EIR was only a "first tier" document, to be augmented in the future with additional negative declarations or EIRs, the county was not required to analyze long-term water supply impacts to the degree advocated by the petitioners. The court explained that:

> [A] decision to "tier" environmental review does not excuse a governmental entity from complying with CEQA's mandate to prepare, or cause to be prepared, an environmental impact report on any project that may have a

CHAPTER XVI

Judicial Review

A. Statutes of Limitations

"CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act."[1] CEQA Guidelines, § 15112, subd. (a). "The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired." CEQA Guidelines, § 15112, subd. (b).

As is explained in chapter V (Exempt Activities), section C.1.b.ii and chapter X (The EIR Process), section P, the filing and posting of "notices of determination" (NODs) or "notices of exemption" (NOEs) commence the limitations periods for filing lawsuits invoking CEQA. Pub. Resources Code, §§ 21108, 21152, 21167; CEQA Guidelines, §§ 15062, 15075, 15094; *Citizens of Lake Murray Association v. San Diego City Council* (4th Dist. 1982) 129 Cal. App. 3d 436, 440–441 [181 Cal. Rptr. 123].

Sample forms for NODs and NOEs are included as appendices D and E to the CEQA Guidelines.

1. Notices of Determination Trigger a 30-Day Limitations Period

The limitations period, triggered by the filing and posting of a Notice of Determination, is 30 days for the following agency actions:

- Approval of a project for which an environmental impact report (EIR) or a negative declaration was prepared. Pub. Resources Code, §§ 21167, subds. (b), and (c), 21152, subds. (a), (c); CEQA Guidelines, § 15112, subd. (c)(1)
- Approval of a project based on a form of CEQA compliance other than adoption of negative declaration or certification of an EIR. Pub. Resources Code, §§ 21108, subd. (a), 21152, subd. (a), 21167, subd. (e), 21152, subd. (c)[2]

at a glance...

Hayes, Kathy

From: jim cotton <jimcotton47@gmail.com>
Sent: Monday, June 14, 2021 12:02 PM
To: COB; Wilson, Mike; Madrone, Steve; Bass, Virginia; Bushnell, Michelle; Bohn, Rex
Subject: Fwd: Letter from NEC and CSH to Board of Supervisors and Planning Director re CEQA
Attachments: NEC and CSH Letter to County BOS and Planning Director re CEQA w Exh A 043021.pdf

Dear Board of Supervisors,
I am forwarding the attached letter from the Holder Law Group because it is the basis of our appeal regarding the Arcata Land Company permit #12255

Thank you for your time and consideration,
Jim Cotton

Hayes, Kathy

From: lee torrence <ltwish@hotmail.com>
Sent: Monday, June 14, 2021 12:03 PM
To: COB
Subject: Re: Arcata Land Company Cannabis grow

This letter is one minute late due to internet connection!

From: lee torrence
Sent: Monday, June 14, 2021 12:01 PM
To: cob@co.humboldt.ca.us <cob@co.humboldt.ca.us>
Subject: Arcata Land Company Cannabis grow

Dear Board of Supervisors,

I will write a more thoughtful letter later. I was just informed this letter had to be in by 12pm today. It is 11:20.

First, a project this size needs an EIR. Due to its close proximity to over 1000 residents, 3 schools, etc. Even that there MIGHT BE significant impacts is reason enough.

I will send you hardcopy of an article about a class action suit against large cannabis growers in Carpenteria (where Tristen Strauss is from and who is supposedly going to be in charge of the growing).
Hundreds of complaints of SCRATCHY THROATS, migraines, shortness of breath, nausea, and general asthmatic symptoms worsened, and have been registered with the city and is part of the lawsuit. Cannabis can spark asthma attacks in sensitive individuals. MANY CHILDREN HAVE ASTHMA THESE DAYS. Imagine 8 acres of it near 1000 residents?

Hundreds of fans and filtrations systems can have an impact on wildlife and running 24/7 could very well affect the health of humans. EIR! If a bald eagle's nest were on this property that would be enough to not issue a permit. But the health and well being of 1000 people? Apparently not important. It is zoned heavy industrial, but would you allow a smoke spewing factory there? There is proof that it increases pollution that is harmful to populations, yet no EIR?

I hear the Board of Supervisors has discussed a Climate Action Plan at a meeting in May. Yet, cannabis grown in a climate not conducive to growing the crop requires huge amounts of energy. How can we ask individuals to cut back on energy usage, water, etc because our very survival depends on it when our county is giving permits to companies that use over 2% of the total county's energy usage. And that's just for lights. That doesn't include 2000 fans. This is not an essential crop for the community.

Most growers give growing this crop in the bottoms a 50/50 change of success. What happens with all the build out if this fails? Will we be dealing with another abandoned building like Kmart or Ray's in McKinleyville. Prime agricultural land will be lost permanently.

Please keep in mind the zoning of Heavy Industrial was almost 60 years ago. If you had thought that you might have more heavy industry happening in the future, why did you allow an entire residential area to be built so close to it? Changing gears on that decision 60 years later doesn't seem fair to the people who bought into the bottoms who thought they were living near agricultural land. The current LAND USE DESIGNATION is AGRICULTURAL EXCLUSIVE.
If you go by that, I believe Sun Valley would be allowed a total of 1 acre?

I am out of time.
Thank you for your patience reading my thoughts on this. I think and EIR is in order if you do not just plain out deny this permit to Sun Valley Bulb Farm. (Arcata Land Company).

Sincerely,
Lee Torrence
1827 27th Street
Arcata, Ca 95521

Hayes, Kathy

From: Cathy Rigby <cathyrigby56@gmail.com>
Sent: Monday, June 14, 2021 12:43 PM
To: COB
Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC, Record #PLN-12233-CUP

I am writing to express my opposition to the corporate mega-grow in the Arcata Bottom. In addition to the devastating effects on the environment, neighborhoods, schools, churches and the City of Arcata, it is unconscionable to allow this mega-grow in a time of severe drought. We do not need water going to a product that has almost no value and the growing of which benefits only a few already wealthy people. People need food, not drugs. People need safe, quiet neighborhoods, not 24/7 sounds of fans, the glare of lights, the noxious smell. That you would approve a grow right next to existing neighborhoods is horrifying. At the very least an environmental impact report should be done. You cannot trust the planning dept. nor this company to speak the truth about the effects of this project on the environment.

In addition to my opposition to the project itself I am angered at the way in which the county has handled it. The rudeness of that awful Alan Bongio and his disrespect to speakers at the planning meeting at which this project was approved is appalling. He should not be in a position to treat members of the public that way. The county also waited until the last possible minute to send the letter with the date of the appeal, giving people so little time to comment, using a server though Arkansas; not including the Zoom link with the official notification; essentially trying to ensure that this project would proceed forward as secretly as possible.

Please do not approve this project. It will set a precedent that means no neighborhood is safe from the corporate greed exemplified by the Arcata Land Company.

Cathy Rigby
Eureka, CA

Hayes, Kathy

From: Bridget McGraw <bridget.mcgraw.fc@gmail.com>
Sent: Monday, June 14, 2021 11:37 AM
To: COB
Subject: Public Comment, Arcata Land Company, LLC, record Number PLN-12255-CUP

Hello,

I live on 27th Street in Arcata and wish to reiterate my extreme concern about Arcata Land Company LLC, record Number PLN-12255-CUP, i.e. the enormous cannabis facility down the street from my house. My partner and many friends work in the cannabis industry and we all generally support the growth of one of our county's most valuable industries, but I must continue to object to this proposed facility, even considering the proposed amendments.

My street is not prepared to handle the increased traffic this project would bring. 27th Street is narrow, poorly maintained, and has essentially no sidewalks for pedestrians. Dozens of folks walk their dogs up and down this street throughout the day (myself among them) and the only thing making that remotely safe is the limited traffic on 27th Street. There are also children that ride their bikes, walk, and play in this street as well. Increased traffic without additional planning and infrastructure will make this situation dramatically more hazardous for pedestrians and the children of my neighborhood. If Sun Valley ends up moving forward with this project, local government must improve the road and add sidewalks to mitigate the hazards posed by a dramatic increase in traffic on 27th Street.

I also feel compelled to file a complaint about this project based on the company that is proposing it. Sun Valley has a documented terrible reputation for labor rights violations and for abusing the undocumented workers they employ. I have many friends in our community who have worked at Sun Valley when they had no other option and I've heard terrible stories of the working conditions and work environment. Sun Valley's labor abuse has even made it into the news on more than one occasion. In the recent Lost Coast Outpost article about the proposed project, the CEO of Sun Valley goes on record complaining about having to pay minimum wage and provide health insurance to his employees. I support job creation in our community, but these are not the kind of jobs that will enrich the lives of our community members and genuinely support our local economy. Moreover, Sun Valley and their terrible track record of labor abuse is not the face we want to put on Humboldt cannabis. Humboldt's reputation is built on craft farmers who care for the plant and cultivate some of the best cannabis on the planet. The poor quality of cannabis that will inevitably come out of a large scale operation run by people motivated only by profit in a location that is not suitable for this kind of crop, paired with Sun Valley's terrible reputation and track record of labor rights violations, will be a blight on Humboldt cannabis, and can damage the integrity and value of cannabis produced in our entire region.

I also have concerns around the actual impact of this proposed plan being significantly more invasive than they suggest, in terms of environmental impact, air quality, noise and light pollution, as well as the many corners that seem to be getting cut to get this pushed through for the benefit of the company owner and no one else.

Moving forward with Sun Valley's proposed projection will not benefit the members of my neighborhood, the cannabis community, our local economy, or the citizens of Humboldt. It seems to me it will only benefit Lane DeVries. We must make planning decisions based on the needs of our community, not the needs of a single person.

I would like to ask you what additional actions my neighbors and I can take to make our voices heard and to prevent this sordid project from moving forward.

Thank you,
Bridget

Hayes, Kathy

From:	Kim Puckett <kimleepuckett@gmail.com>
Sent:	Monday, June 14, 2021 11:45 AM
To:	COB
Cc:	Wilson, Mike; Madrone, Steve; Bass, Virginia; Bushnell, Michelle; Bohn, Rex
Subject:	Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

I am writing this to state my vehement opposition to the proposed Arcata Land Company (ACL) Project. At a bare minimum, an Environmental Impact Report (EIR) should be required. There are a number of reasons this should be denied, including numerous errors with the IS/MND but I will focus on just a few related to equity in this letter. I will note that noise from fans and dehumidifiers are a huge concern, as are odors and air quality degradation (prevailing winds often exceed 15 MPH on the Bottom and are usually from the West, NW, or SW meaning neighborhoods and homes are in direct line), traffic concerns on Foster Avenue, the fact that this puts small farmers at a distinct disadvantage, and the fact that cumulative impacts of this and other grows haven't been considered (there is a permit pending for 3 acres on an adjacent parcel and two other permits within 1 mile).

This project, very close to homes and neighborhoods, is only possible due to a loophole in the cannabis ordinance and an outdated zoning designation based on how this parcel was used over a quarter of a century ago. This antiquated zoning designation is problematic for many reasons but there are two I will highlight in this email.

First, the Planning Department denied a permit to the Lost Boys Ranch in Hydesville in December 2020. At the Planning Commission meeting of 12/3/20 about this project, Director Ford said that there is a "high degree of discretion in Community Planning Areas in allowing applicants to find an area without a lot of public controversy and where it wouldn't adversely affect the community." Later in that same meeting, Mr. Ford stated that the denial of the Hydesville project had "everything to do with the fact that this is in a Community Planning Area and there is significant neighborhood opposition." It was noted by the assigned planner that there were upwards of 25 letters of opposition to this project. There are, according to California State Parks Community Fact Finder data, 74 people living within a half mile of this site and 12.9% live in poverty**. How does this pertain to the ACL Project?** Well, due to that antiquated zoning designation, the Community Planning Area (of which this is a part) isn't even considered. It would be considered on an adjoining parcel but not this one due to that antiquated zoning that is at odds with the General Plan designation of AG Exclusive. Additionally, there is indeed significant community opposition to the ACL project as evidenced by the 260 plus letters of opposition submitted to the Planning Department as of 4/21/21, the numerous commenters during both meetings where this was discussed, and the 600 plus "wet" petition signatures submitted by 4/20/21. It should be noted that there are well over 900 people living within a half-mile of this site and 40.9% of them live in poverty (California State Parks Community Fact Finder https://www.parksforcalifornia.org/communities/?overlays=parks)

Second, if the parcel was zoned according to the land use code in the General Plan (AG Exclusive), and according to its actual use for the past almost 25 years, this size project would not be allowed. Like other AG areas, they would be limited to growing, at most, one acre of cannabis. **If the project site were zoned consistent with its general plan designation and surrounding areas, it would be limited to one acre of cultivation under Ordinance 1.0. If you were to allow this project to move forward, I implore you in the name of fairness to limit it to no more than 1 acre and**

phase it in 10,000 sq. ft. increments. Limiting it to 1 acre also promotes equity in ownership, in line with Ordinance #2623.

To illustrate just how large this project is, the red box in this photo defines 8.69 acres, the proposed size of the Arcata Land Company cannabis cultivation. This is the area that would be covered by plastic hoop houses if this were to be allowed in downtown Arcata.

There is no other cannabis grow in Humboldt located in such close proximity to so many people, homes, neighborhoods, and schools. Please say no to this ill-conceived project or require an EIR.

Thank you,

Kim Puckett

Arcata, CA

Hayes, Kathy

From: Lisa Pelletier <lisa.pelletier@berkeley.edu>
Sent: Monday, June 14, 2021 9:21 AM
To: COB
Cc: Bass, Virginia; Wilson, Mike; Madrone, Steve; Bushnell, Michelle; Bohn, Rex
Subject: 2019 Study on Ozone Production ("smog") from Cannabis (PLN-12255 CUP)
Attachments: Atmospheric Environment 2019 Wang.pdf

Dear Humboldt County Board of Supervisors,

Thank you for your consideration of our appeal of the PlanCo's decision to grant the permit for Arcata Land Company's proposed cannabis grow (PLN-12255 CUP). I am one of the appellants.

A 2019 study by a team of researchers from the University of Colorado, the University of North Carolina, and the National Oceanic and Atmospheric Administration concluded that the terpenes in cannabis (which cause the odor) degrade the environment by creating more ozone, aka "smog" (see attached).

As I mentioned yesterday (in a separate email to the BOS), among the most concerning impacts are energy use, greenhouse gas emissions, ozone pollution ("smog") and climate change. I addressed those impacts in more detail then, but was unable to attach the link to the study due to technical difficulties. Here is that study (see attached).

Thank you for considering our appeal, and for taking the time to peruse the attached study.

Respectfully,
Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Lisa B. <mingobaby@gmail.com>
Sent: Monday, June 14, 2021 9:34 AM
To: COB
Cc: Wilson, Mike; Bushnell, Michelle; Bohn, Rex; Bass, Virginia; Madrone, Steve
Subject: Record #PLN-2021-17198, Appeal of Arcata Land Company, LLC Record # PLN-12255-CUP

To the Humboldt County Board of Supervisor's.

The size, location and application of the Sun Valley Bulb Farm's proposed cannabis operation warrants an EIR. An EIR will explore alternatives that will help to minimize/alleviate impacts to the agricultural resources, water resources and adjacent residential communities including odors, lights, and noise.

The existing MND is not sufficient and has not provided adequate mitigations for reducing probable adverse impacts to the environment or property values close to the proposed site.

I have concerns for the historic treatment of the prime agricultural resources found on the site and hope that more environmentally sensitive practices will be identified through the EIR process. I think that we can all agree that the Sun Valley properties would be Coastal Zone properties if not for historic political decisions and it is important to scrutinize the intensification of industrial agricultural practices on these lands.

The City of Arcata has requested an EIR on behalf of their residents and I believe it is important for the County to be respectful to their governing partners, not dismissive.

Thank you for your attention.

Lisa Brown

Arcata

Hayes, Kathy

From: Nancy E Pelletier <nep5@humboldt.edu>
Sent: Monday, June 14, 2021 8:56 AM
To: COB
Cc: Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve; spereira@cityofarcata.org; BWatson@cityofarcata.org; Emily Goldstein; Stacy Atkins-Salazar; sschaefer@cityofarcata.org; dloya@cityofarcata.org
Subject: Please vote in favor of the Appeal (PLN-12255)

Dear members of the Humboldt County Board of Supervisors,

I respectfully request that you do not approve this project and instead require a Full Environmental Impact Report (EIR) prior to any permit being issued.

Among the many problems that the Arcata Land Company's proposed 8 acre cannabis grow in the Arcata Bottoms presents is its Carbon Footprint.

ELECTRICITY:

The climate of the Arcata Bottoms is Not conducive to the growing of Marijuana. With the cool, damp and often foggy conditions, an enormous amount of energy will be required to heat and dehumidify the greenhouses in addition to the electricity needed for the "mixed light" houses, security lighting, etc.

The Operations Plan states that all electricity will be provided by PG&E "through an existing PG&E service line and "no generator is anticipated".

What happens during a Power Outage as happens frequently during fire season? If a generator is needed and used, in addition to the extreme noise, Fuel will be needed (and burned) to run the generators!

TRANSPORTATION:

Adding to the Carbon Footprint of this grow is the transportation of workers to and from work. The Operations Plan says there is no planned on-site housing.

Plus the need for large trucks to deliver supplies and to transport harvested plants to processing sites.

MORATORIUM:

I realize it is not in the scope of this hearing, but I would like to call once again for a Moratorium on issuing new permits for Cannabis grows and other large Water and Energy usage projects. We are in the second year of a severe Drought and expected historically high Fire danger season.

The cumulative effect of multiple grows on both Water and Energy usage is enormous!
John Ford stated at your meeting regarding the Drought that the Planning Commission has " 500 applications for pre-existing sites and 700 more for new sites."

Thank you for your careful attention to all the many problems that the Arcata Bottoms poses as stated in the Appeal (PLN-12255) and I join the others in asking for an EIR prior to Any permit being issued.

Respectfully,

Nancy Pelletier
Arcata

Hayes, Kathy

From: Michael Proctor <mmhmm2@icloud.com>
Sent: Monday, June 14, 2021 6:33 AM
To: COB
Subject: PLN-12255-CUP

Members of the Board of Supervisors,

I am one of the appelants of the Arcata Land Company's (ALC) PLN-12255-CUP. I have sent you my opinions on the project in the past, which I hope that you have all read. In short, I am opposed to this 8 acre grow, so very close to neighborhoods. It will prove to use a tremendous amount of energy, water and remove precious agricultural land which is in Arcata's sphere of influence.

There has been no proof from the ALC in regards to mitigation of cannabis odors which are noxious to many people. Noise from industrial fans will be bothersome to those who live in proximity to the proposed project. Growers from, what is considered, a state of the art cannabis grow have stated that there is virtually no way to mitigate for noise nor odor on a grow of the proposed size due to the growing conditions on the Arcata Bottom.

An Environmental Impact Report is a must for this project as as members of our neighborhood has proven, with facts and science, that the ALC has not done their homework completely. Please take the time to read through the information that has been sent to you before and you will find that this statement is correct.

Finally, after our appeal was submitted, we were informed that they were required to notify us a MINIMUM of 10 days before the BOS hearing (that date for notification would have been 6/2 based on the 30 working days from filing the appeal which was filed on 5/4). We did not receive a letter until 6/11 and per the letter " documentation to be filed on this matter for the official record is to be submitted ....by noon on June 14, 2021...". I am astounded that we would be given such little time to prepare for the hearing.

Sincerely,

Paula Proctor

Hayes, Kathy

From:	Lisa R Pelletier <lrp13@humboldt.edu>
Sent:	Sunday, June 13, 2021 7:54 PM
To:	COB
Cc:	Bass, Virginia; Wilson, Mike; Madrone, Steve; Bushnell, Michelle; Bohn, Rex
Subject:	Please vote in favor of the appeal (PLN-12255)

Dear Humboldt County Supervisors,

Thank you in advance for taking the time to read my email and consider our appeal. [Disclosure: I am one of the appellants contesting the decision to permit Arcata Land Company's proposed cannabis grow (Record Number PLN-12255).]

Our Main "Ask:

We respectfully request that you do not approve this project and instead require the applicant to submit an environmental impact report (EIR) prior to any permit (CUP) being issued. We also request that, should you approve this project, you downsize this grow considerably (to 1 acre or less) to lessen its impacts.

In a separate email, I will request a number of mitigations that we (the appellants) have agreed would be optimum to lessen the impacts.

I've already addressed the need for a full EIR in a separate email. Now, I would like to draw your attention to some of the project's cumulative impacts, including air quality, energy use, greenhouse gas emissions, ozone pollution ("smog"), noise, odors, light, water use, transportation, sea water intrusion, sea level rise, impacts to health and safety, worker's rights, aesthetics, pesticides (drift), and harm to small cannabis farmers.

For reasons of time and space, I cannot address every issue of concern in one email. So I will attempt to focus on a few of the more substantial impacts.
That said, I share the concerns of the public and other appellants (i.e. the opposition). Due to the project's complexity, massive size, multiple and cumulative impacts, there are bound to be impacts that are significant, and which cannot be mitigated. I hope to make the case for that here.

Energy Use, Greenhouse Gas Emissions, Ozone Pollution ("smog"), and Climate Impacts

Among the most concerning impacts are energy use, greenhouse gas emissions, ozone pollution ("smog") and climate change. A 2019 study by a team of researchers from the University of Colorado, the University of North Carolina and the National Oceanic and Atmospheric Administration found that the terpenes in cannabis degrade the environment by creating more ozone or "smog". (Note: I'll send that study as a separate attachment in another email, as it's in pdf form, and I'm experiencing technical difficulties.)

As an article from the Guardian points out, "the weed industry is a glutton for fossil fuels. Producing a few pounds of weed can have the same environmental toll as driving across America seven times - harming cities' and states' plans to curb emissions."

https://amp.theguardian.com/society/2017/jun/20/cannabis-climate-change-fossil-fuels

Imagine, that's just the emissions from a few pounds of marijuana! Now multiply that by the amount of pot produced by a mega grow. At 8 acres, the ALC cannabis grow would be the largest grow in Humboldt County. Just the energy to pump the well water alone will create a significant energy demand from fossil fuels. Not to mention the grow lights, transportation, fans, dehumidifiers, boilers, etc.

Concerning the energy demands of this particular grow, I would refer you to Research Biologist Jim Cotton's letter to the BOS. Jim has done the best analysis of the project's energy demands. Please read his comments below (in italics):

'Downsizing this project from 22.9 acres to 8.69 acres does not necessarily decrease the energy demands. The 5.7 acres of mixed-light cultivation and the 30,000 sq. ft. nursery are the same size in both plans and hence the energy usage will be approximately the same. In the IS/MND, the estimated energy usage for the mixed-light cultivation was projected at 6,750 MWh/year. These estimates apparently do not account for the energy usage of ancillary equipment such as fans, dehumidifiers odor suppression equipment, etc. What are the energy demands for these? There is also reference to gas boilers for heating: "In addition to PG&E power, the Project proposes three natural gas boilers rated at 1 million British thermal units per hour." This quote from the IS/MND does not clarify if this rating is for all three or a single boiler. These boilers will be used to heat 8.7 acres of hoop houses. All of these energy demands will create a huge carbon footprint. In the staff report of 18 March 2021 (page 69), under Addendum No. 1 to the Operations Manual, it states that during the vegetive growth state of the plant the energy requirements will be less than 1.9 MW. 1.9 MW is the equivalent of the energy demands of 1,513 average homes in the pacific northwest.
https://www.nwcouncil.org/reports/columbia-river-history/megawatt.

'The bottom line is that this is the wrong location to be cultivating the largest cannabis site in Humboldt County because of the cool, damp, and windy environment in the Bottom close to the ocean. This is a heat loving plant that is better suited to a warmer dryer clime. The Sun Valley Group aka Arcata Land Co. owns and operates properties in Oxnard CA, Baja California, and 120 acres in Willow Creek, all of which are better suited for growing cannabis instead of on the coast where an artificial environment has to be created and sustained. This is at a huge environmental cost added to the social cost to the nearby neighborhoods.'

I would just add to Jim's analysis that this project will have a huge carbon footprint that will adversely impact the County's plan to combat climate change (due to the above-mentioned reliance on fossil fuels). We are already experiencing the adverse impacts from massive wildfires and droughts due to climate change.

It won't do to kick the can down the road by permitting more mega cannabis grows in addition to fossil-fuel guzzling factory farms. The only way to understand the cumulative impacts from all these projects in the aggregate is to conduct a full EIR, and I respectfully request that you require one for this project.

BIOLOGICAL ASSESSMENT AND IMPACTS:

Since I am not a scientist and cannot afford to hire outside experts (unlike a major corporation), I am relying heavily on Biologist Jim Cotten's expertise as evidence. As he points out, the environmental and biological impacts will be significant and cannot be fully mitigated.

Mr. Cotten is a wildlife research biologist "with over 4 decades of experience in the field conducting bird and mammal survey data for the federal government" (quoting his letter). He explains that that the Arcata Bottoms is a sensitive eco-system for many species of bats, birds and frogs, etc. The MND that was prepared (for the ALC grow) entirely omits a bat study, underestimates the number and variety of birds, and falsely states that no migratory corridors were detected.

Please give thoughtful consideration to his comments (in italics):

This section of the IS/MND illustrates one of the many inadequacies of the IS/MND and thus supports the need for an EIR. As a Wildlife Research Biologist with over 4 decades of experience in the field conducting bird and mammal survey data for the federal government, I believe the study is inadequate for the following reasons:

1. The sample size, only two partial days in the field collecting data, was far too small to be statistically significant. ***No night time survey for bats or owls was conducted as required by CEQA.*** *(*Mitigation Measure 3.4-1ki: Preconstruction bat survey and exclusion. The following shall be included as performance standards in the proposed ordinance for the protection of the pallid bat and Townsend's big-eared bat from new development related to cannabis activities. ψ Before commencing any new development related to cannabis activities, a qualified biologist shall conduct surveys for roosting bats. If evidence of bat use is observed, the species and number of bats using the roost shall be determined. Bat detectors may be used to supplement survey efforts. If no evidence of bat roosts is found, then no further study will be required.)*

2. No methodology was presented in the study

3.The dominant bird species, Canadian and Aleutian Geese, that utilize this project site during their migration period (January – April) were not accounted for in the study because the limited survey days occurred outside their migration period. On a personal note, I have observed, from my living room widow, flocks of 500 -1000 geese foraging daily on the study site over the past three months.

4.Despite a literature review to identify potential bird species within the study, there are at least the following 16 species missing from the IS/MND, among many others: Peregrine falcon, Marsh hawk, Red-shouldered hawk, White tailed kite, Allen's Hummingbird, Rufous Hummingbird, Raven, Crow, Barn owl, Killdeer, Western meadowlark, Egrets, Great Blue Heron, White Crowned Sparrow, Canadian Geese, Aleutian Geese, and Song Sparrow.

5. The study states that no migratory corridors were detected. In fact, the entire county coastline is a migration corridor.

6. If Red-legged frogs are found in the storm water drainage basins, what will the mitigation measures be? There are none in the IS/MND.

7.To understand the impact on birds and mammals, an EIR should be required.

Support the Small "Craft" Cannabis Growers

We (the appellants) have been developing relationships with some of the small cannabis farmers who are also opposed to the large corporate growers with whom they have to compete. They complain that they are forced to jump through all kinds of hoops to receive their permits while the large corporate cannabis permits sail through. Then they must compete with these mega growers and the glut of marijuana that is saturating the market.

Please know that we are not simply **against** this project, but are **for** protecting the small cannabis farmers from competition by large corporate pot growers. We urge the County to do more to help the small "craft" cannabis farmers of Humboldt County through the permitting process, and place a moratorium on the mega cannabis grows.

Some of the small cannabis farmers we've been communicating with have expressed doubt that this company (ALC) can succeed in the business, as there is already a glut of cannabis on the market. Even more reason to protect the Humboldt "craft" brand which is the only way that the market for the "Humboldt Gold" can stay sustainable.

You can most effectively accomplish this by downsizing the large cannabis grows that put the small "craft" farmers out of business. Better yet, please consider denying permits to large corporate grows until the proper studies (EIR's) are conducted to discern their impacts.

When the voters voted to legalize cannabis, we were led to believe that the small cannabis growers would be protected from competition with the large corporate grows until at least 2023. It was only through loopholes in the law that major corporations managed to get a foot in the door. So the voters were misled. In the spirit of the law which the voters passed, please limit all cannabis grows to 1 or 2 acres, both to lessen the impacts and to protect the small cannabis farmers.

Pesticide Use and Human Rights Violations by Sun Valley Floral Farms

I am also concerned for Sun Valley's workers. Brenda Perez is an organizer for Centro del Pueblo, which advocates for the Latino community. On March 18, Brenda was interviewed on KMUD along with Greg King of the Siskiyou Land Conservancy (SLC) and Jennifer Kalt of Humboldt Baykeepers.

In her interview, Brenda said that Centro del Pueblo has documented many human rights abuses by Sun Valley towards its undocumented workers (whom they still employ), including their living conditions and food.

Despite COVID-19, the workers are crowded together in their living quarters. She said at one point, 90% of the workers came down with COVID, and many of them were deported. Centro has also compiled a long list of grandmothers with dislocated shoulders from carrying heavy objects. Yet, they are forced to keep on working or lose their jobs.

Brenda said she couldn't see much difference between SV's working/living conditions and those in the detention centers. And when asked, she said she doesn't believe ALC/SV's cannabis operation will do anything to improve the conditions for its workers.

Greg King said that Sun Valley broke an agreement with the Sisiyou Land Conservancy when it sprayed a field within a half mile of five schools and day-care centers. Right afterwards, the company sent its workers into the field directly after spraying (likely) carcinogenic pesticides which can also cause reproductive harm.

Now I realize that pesticide use won't be as much an issue with cannabis crops because of the laws governing that. But it's an issue of trust: This company has a terrible record when it comes to honoring agreements and in its treatment of its workers.

Also, the law is only good if it's enforced. Humboldt County's agricultural commissioner appears to have too much on his plate to properly monitor and enforce the laws around pesticide use. So that leaves us (the community) having to trust a company with a very bad record of honoring its agreements. How will this play out when it comes to the mitigations required by the County? And why should a company with a record of human rights abuses and bad faith with the community be rewarded with a permit to do more of the same?

The interview is only 20 minutes and well worth your time. Here's the link:

https://soundcloud.com/kmudnews/sun-valley-seeks-cannabis-permit-raises-human-rights-concerns

Cumulative Impacts

I am also concerned about the cumulative impacts of this project in the aggregate, including air quality, energy use, greenhouse gas emissions, ozone pollution ("smog"), noise, odors, water use, transportation, sea water

intrusion, sea level rise, light pollution, impacts to health and safety, worker's rights, aesthetics, pesticides (drift), and harm to small cannabis farmers.

This project does not belong in an area so close to a neighborhood with 900 people, many of whom are "sensitive receptors". There are five schools and day centers within a half mile of the grow, and a planned residential facility for seniors. I am concerned about the health impacts on the most vulnerable (kids and seniors, and those with severe asthma, etc.) from all the particulate matter - whether from the cannabis itself, the energy use, or from the additional cars and trucks on the road.

Request for More Time

I don't have time to address every impact, but that doesn't mean they aren't equally important to me. I wasn't informed of the hearing date even though I am one of the appellants. In fact, I just learned that the comment period is closing on Monday at noon from a neighbor who did get a letter from the Planning Department. Her letter arrived just this past Friday, which is not in accordance with the requirement for ten days notice.

So we are all having to scramble to get our comments in on time. When people aren't properly informed of hearings, it engenders mistrust from the public that the process is fair. I respectfully request an extension of time until July so that everyone who wants to has a chance to weigh in.

Summing Up

Finally, I would like to close with Jim Cotten's final comment to the Planning Commission regarding the cumulative impacts, since he sums it up best:

While this current permit may seem inconsequential to some, the impact on the bucolic nature of the Arcata bottom lands is significant when combined with current and future cannabis applications that have been applied for. According to the IS/MND there are four applications within a one-mile radius of this project. Two of these are adjoining parcels with one permit already approved for manufacturing, processing and distribution. If approved, this permit may have the domino effect that will eventually cover the Arcata bottom in a sea of plastic hoop houses the likes of which is already occurring in Santa Barbara as evidenced by this photo.

You can find the photo in Jim's email to the PlanCo. The entire letter is worth reading. I request that you pay close attention to any emails from Jim in your deliberations. He is our expert witness on environmental and biological matters. You can find his email on the Save the Arcata Bottoms web site (under "Letters"). It should be on record with the Planco, too.

Like Jim, we are all for preserving the greenbelt in the Arcata Bottoms and the Eureka plains. These are sensitive biological habitats for many species. It has been used as ag land for nearly 25 years, and should be preserved for sustainable agriculture and as a wetlands habitat.

The aesthetics are important as well as preserving the biological diversity (for birds, bats, frogs, etc.). We don't want to end up like Santa Barbara with its endless hoop houses, which are such an eyesore. Yes, we have a few of those already, but with lots of green space that should be preserved.

According to CEQA attorney Jason Holder, evidence is *not* required for complaints about aesthetics, but do take a look at the above-mentioned photo in Jim's email to the PlanCo. Is that what we want for our future: to end up looking like Santa Barbara?

I don't know about you but whenever I come back to Humboldt County after driving south, I am always struck by the beauty of this place. It's why I moved here and why so many of us have sunk our life's savings into buying houses here. We don't have the option to move.

People went to a lot of trouble to protect the Humboldt environment for future generations, and it's why we enjoy it today. Please think seven generations ahead, and help us preserve the beauty and biodiversity of this place. Please vote to uphold our appeal.

Thank you for your consideration and your service to the community.

Respectfully,

Lisa Pelletier

Arcata, CA

Hayes, Kathy

From: Janet Neebe <jkneebe@hotmail.com>
Sent: Sunday, June 13, 2021 8:08 PM
To: COB
Subject: Public Comment PLN-2021-17198 Appeal (Arcata Land Company, LLC PLN- 12255-CUP)

---------- Forwarded message ----------
From: Janet Neebe <jkneebe@hotmail.com>
Date: Jun 13, 2021 11:00 PM
Subject: Public Comment PLN-2021-17198 Appeal (Arcata Land Company, LLC PLN- 12255-CUP)
To: cob@humboldt.ca.gov
Cc:
smadrone@co.humboldt.ca.us,Mike.Wilson@co.humboldt.ca.us,rbohn@co.humboldt.ca.us,mbushnell@co.humboldt.ca.us,vbass@co.humboldt.ca.us

Public Comment PLN-2021-17198 Appeal (Arcata Land Company, LLC PLN- 12255-CUP)

Dear Supervisors,

We are writing to express our concern about and opposition to the proposed Arcata Land Company, LLC Commercial Cannabis Outdoor Light-Deprivation and Mixed-Light Cultivation Project .

We live in the unincorporated neighborhood of "Pacific Manor," near the Arcata Bottom.

We are concerned about the prospect of increasing industrial development and industrial agriculture in Humboldt County's Bottom land. The Arcata and Ferndale Bottoms provide open space for traditional/open air agriculture, pastures, wetlands, wildlife, and recreation. Not just Bottom residents and neighbors, but community members at large, rely on the Bottoms for food, recreation (such as biking, walking, and birdwatching), and preservation of wildlife.

The current zoning of this parcel as Heavy Industrial is inaccurate and dated. This parcel for decades has been used for outdoor agriculture of food crops, and should not be paved over with greenhouses and hoop houses. ALC, as Sun Valley Group, already had acres of green houses on the Arcata Bottom; why didn't they propose using some of this space for cannabis cultivation?

Indoor cultivation will use too much energy and precious ground water.

ALC has been less than forthright in it's proposal and communication with you and the community. Why did the Planning Department staff recommend approval in March of the original 23 acre proposal when County ordinance limits cannabis cultivation licenses to 8 acres? Why did ALC, the Planning Department and your appointees on the Planning Commission in April pass off the reduction to 8 acres as a "concession," when it was in fact a legal requirement? Why is the WE corporation now seeking a cultivation permit adjacent to this project?

The studies ALC presented to the County in pursuit of a MND were minimal, lacking in scientific integrity, simplistic, and wholly inadequate.

What is the County doing to preserve and restore agricultural, wetlands, wildlife, and green space in the coastal areas of Humboldt County? How do indoor cannabis cultivation projects fit into County goals and priorities for appropriate land and resource use in the 21st century?

Thank you for your attention and consideration. Please consider how best to use our County's land and resources and deny this CUP.

Sincerely,

Janet Neebe
Benjamin Duff
Arcata

June 13, 2021

Dear Board of Supervisors;
From: Pamela J. Smith, Arcata, CA

Regarding: Sun Valley's project to locate an over-sized industrial cannabis growing operation in the Arcata Bottom next to people's homes: ARCATA LAND CO APPLICATION #12255

As a Humboldt County resident, I am concerned about the impact this industrial cannabis grow will have on the public health and well being of our neighborhoods near this grow. This project, at 8 plus acres, does not belong on the edges of the City of Arcata close to homes, neighborhoods, parks, schools. Etc.

I have a friend that lives on Elk River Road where a cannabis grow was approved. When I visited him recently, I was very disturbed that he had to endure the constant noise and smell coming from the few greenhouses across the street from him. I can't even imagine what we will have to live with from the Arcata Land Co. cannabis grow, as the prevailing winds come onshore and are swept over the Arcata Bottom.

The neighborhood and other residents in Humboldt are very concerned about the impacts on air quality, the noise impacts from 8 acres of hoop housed with fans, the potential increased in crime related to this high-value crop, the potential impact on wells, and the impact on the viewshed. All these things will negatively affect the quality of life. Please do not allow this project to move forward. This grow does not belong here. It would be better suited in a warmer/dryer climate where growing environment does not have to be manipulated in such an extreme manner as is needed in the Arcata Bottom.

Please consider a <u>NO</u> vote on this project.

Sincerely,

Pamela J. Smith
2888 Wyatt Lane
Arcata, CA 95521
707-499-6282

June 13, 2021

Dear Board of Supervisors;
From: Duane E. Smith, Arcata, CA

Regarding: Sun Valley's project to locate an over-sized industrial cannabis growing operation in the Arcata Bottom next to people's homes: ARCATA LAND CO APPLICATION #12255

As a home-owner in Arcata for 36 years and a resident in Humboldt County for 75 years, I am strongly opposed to this project. Locating a large industrial cannabis operation with industrial-sized noise, ordor, and other negative impacts next to people's homes and neighborhoods is poor planning and unacceptable. Impacts to the resident would include: health impacts due to noxious ordors and emissions, reduced property values, reduced ground water availability; unacceptable noise levels; increased traffic; and heavy impacts on viewshed, the land and water.

If the Board of Supervisors allows this project to move forward, it will set a terrible precedent and be a threat to all Humboldt County residents in the unincorporated areas, knowing that our leaders find it acceptable to locate enormous cannabis grows-with all the accompanying negative impacts-next to people's homes. I ask you, "Would you want to live next to this cannabis grow that Arcata Land Co. is planning?"

Worried in Arcata,

Duane E. Smith
2888 Wyatt Lane
Arcata, CA 95521
707-499-6282

Hayes, Kathy

From:	Lisa R Pelletier <lrp13@humboldt.edu>
Sent:	Monday, June 14, 2021 12:09 AM
To:	COB
Cc:	Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Bass, Virginia; Madrone, Steve
Subject:	Mitigations requested for ALC cannabis grow (PLN-12255)

Dear Humboldt County Board of Supervisors,

Thank you in advance for taking the time to read my email and consider our appeal (Record Number PLN-12255). I am one of the appellants.

As I'm sure you're aware, we have requested that you do not approve this project and instead require the applicant to submit an environmental impact report (EIR) prior to any permit (CUP) being issued.

But should you ultimately decide to approve the permit, I would respectfully request the following mitigations:

[Note: I disagree with rerouting truck traffic to Upper Bay Road, as some have suggested. There is an elementary school (Pacific Union), a hospital and fire station on Jane's Road which connects with Upper Bay Rd. Excessive truck traffic could interfere with ambulances and fire engines getting through, and make the street more dangerous for the children.]

Top Mitigations:

1. 10,000 sq ft (Median permitted area in the Eureka Plain), promotes equity in ownership.
2. Carbon neutral – renewable energy sources, and carbon sequestration
3. Type of greenhouse – NexGen type or similar: Please see highlight below on this--not so much into this as a mitigation now
    a. Fewer employees (less traffic)
    b. More efficient resource use – energy, water, etc.
    c. Jim to follow up on other features we want in a greenhouse_FYI-the WC growers told Jim this morning there is virtually no way to mitigate for noise or

odor on something this size given the growing conditions in the Bottom. They also think that the lights WILL be an issue based on their experience

4. Less ground disturbance – redo greenhouses in existing greenhouse location, move office to off site (into the big warehouse-Jim mentioned this to Lane already)
5. Noise, ensure no offsite noise.
6. Traffic:
   a. Foster Ave Bike lanes (all the way to 255? Other mitigations within City) – road improvements for employees

   b. Require car pooling, perhaps by vans, for employees heading to and from work.

   [Note: I disagree with rerouting truck traffic to Upper Bay Road. There is a school (Pacific Union), a hospital and fire station on Jane's Road which connects with Upper Bay Rd. Excessive truck traffic would interfere with ambulances and fire engines getting through, and make the street more dangerous for the children. It would be better to route the traffic south towards Samoa and the freeway entrance there.]

7. Organic conservation easement on land not used for cannabis grows
8. Strict parameters on how compliance is addressed
9. Portion of taxes to the City of Arcata? Roads, safety
10. Include all parcels in the project for which the project depends.
11. Rainwater storage
12. No high-pressure sodium lights for growing. They will be outlawed soon. LEDs should be used instead
13. Well water needs to be monitored. It is likely underestimated as it's also being used for other crops.

Thank you for your consideration and for your service.

Respectfully,
Lisa Pelletier
Arcata, CA

Hayes, Kathy

From: Lisa R Pelletier <lrp13@humboldt.edu>
Sent: Monday, June 14, 2021 12:18 AM
To: COB

Please require an EIR for ALC cannabis grow
Inbox

Lisa R Pelletier
to vbass, mike.wilson, smadrone, +2
5 days ago
Details
Dear Humboldt County Supervisors,

Thank you in advance for taking the time to read this letter. We appreciate your service to the community. We offer the following information for your consideration. This includes evidence on the substantial difference between an environmental impact report (EIR) and a mitigated negative declaration (IS/MND) from a CEQA attorney.

Our main "ask":

We respectfully request that you do **not** approve this project and instead require the applicant to submit an environmental impact report (EIR) prior to any permit (CUP) being issued. [Full disclosure: I (Lisa Pelletier), among others, am an applicant listed on the appeal of Arcata Land Company's (proposed) cannabis grow.]

Regardless of whether you decide to go ahead and approve this project, we request that an EIR be required as a condition for approval.

Presentation by CEQA attorney Jason Holder:

We recently attended a workshop with CEQA attorney Jason Holder of the Holder Law Group in order to better understand what CEQA requires. Mr. Holder has been practicing CEQA and land use law for 17 years. He is the attorney representing the plaintiffs (neighbors) in the Rolling Meadows Ranch cannabis grow lawsuit. I believe his remarks are on the record, as he spoke to the BOS hearing during the appeal of the Planco decision.

The following is from the careful notes we took during Mr. Holder's presentation:

Mr. Holder explained that there are substantial and procedural differences between an MND and an EIR (we'll address that shortly). Please pay particular attention to the fact that there is a very low threshold for requiring a full EIR. If there is a "fair argument" that it (an aspect of the project) **may** cause a significant impact, then an EIR is **required.** (Note the word "may" to mean "even a possibility").

Basic Purposes of CEQA:

CEQA falls under administrative law and has three basic purposes:

1) Make sure that the environment is considered during decision making.

2) Encourage public participation and accountability.

3) Improve quality of public decision making, and achieve aims in a manner which is less harmful.

How does an EIR differ from an MND?:

An EIR has to analyze alternatives to the impacts, such as reduced size, and **must** choose the environmentally superior alternative. As such, the analysis is more robust and grounded than it would be with an MND. In other words, "the EIR cannot be just some vague determination by decision holders" (to quote Mr. Holder), but based on substantial evidence that is grounded in fact. And for every impact, the EIR requires findings of fact.

Moreover, an EIR requires a cumulative impact analysis. That is, it looks at every single impact to see if they are cumulative, and it asks: How does this project fit with other projects? Do other projects exacerbate the impacts with this project? And how does it contribute to the overall problem?

The cumulative impacts of all these projects (mega grows and large factories) in the aggregate can have significant impacts. An EIR would reveal the full extent of the impacts and provide us with the information which is lacking in the MND.

Also, agencies must respond to questions and concerns by the public. And again, this must be based in fact and substantial evidence.

Fair Argument Standard:

If a fair argument **may** cause even a single significant impact, then an EIR is required. (Note: The word "shall" means "shall" and the word "may" means "may", according to the CEQA attorney.) All things being equal in arguments either way, courts have ruled that it goes in favor of an EIR.

Why is this important?

At one point, Planco Director John Ford made the claim that there is little difference between an MND and a full EIR (paraphrasing). Nothing could be further from the truth! As CEQA attorney Jason Holder explained, and as we've attempted to point out, there are substantive and procedural differences between the two.

The Planco's misinterpretation of EIR's and what CEQA requires is harmful to the public interest. We hope this is just ignorance of the law and that they can be educated. But if they are trying to get around the CEQA law with shoddy MND's (see link), then that is both negligent and a dereliction of duty to the residents/taxpayers/voters of Humboldt County.

https://kymkemp.com/2021/05/04/nec-and-csh-call-out-planning-department-for-what-they-claim-is-a-pattern-of-inaccurate-characterizations-of-ceqas-standards-and-requireme

If NEC, CSH and CEQA attorney Holder are correct, by going with an MND instead of an EIR, the Planco is abrogating our lawful right to a full environmemtal impact review under the law (CEQA). We request that you correct this situation by requiring a full EIR from the applicant for the CUP (i.e. ALC).

It is an issue of substantial harm to have our rights abrogated by the Planning Commission's refusal to abide by CEQA and require an EIR. Please remedy this oversight.

Moreover, the IS/MND that was prepared for the ALC (proposed) cannabis grow was poorly prepared and contains many omissions and misrepresentations that are not supported by the facts. I offer biologist Jim Cotten's letter to the Board of Supervisors as evidence. Mr. Cotten is a wildlife research biologist "with over 4 decades of experience in the field conducting bird and mammal survey data for the federal government" (quoting the letter). He explains that that the Arcata Bottoms is a sensitive eco-system for many species of bats, birds and frogs, etc. The MND that was prepared (for the ALC grow) entirely omits a bat study, underestimates the number of birds, and falsely states that no migratory corridors were detected. In fact, "the entire county coastline is a migration corrider" (quoting the letter).

There are a number of other false and misleading statements like this throughout the document (i.e. the IS/MND that was prepared). Since it is part of the record, I urge you read Jim Cotton's letter to the BOS again. He and others went through the MND with a fine-tooth comb, and found numerous errors relating to many aspects of the (proposed) ALC project. You can also find his letter on the Save the Arcata Bottoms web site.

(Note: We cannot afford to hire outside experts, but fortunately we have Mr. Cotton and Mr. Holder who are qualified professionals in their respective fields. We offer their expertise as evidence.)

We, the residents of Arcata and Humboldt County, deserve full transparency and accountability regarding the cumulative impacts (in the aggregate) of this project and other major projects coming down the pike, and indeed CEQA requires it. Only a full EIR can provide that assurance.

The County already has one lawsuit on its hands over its failure to require an EIR (the suit by the Rolling Meadows Ranch neighbors). We fully support that, as it may be the only remedy we have to get the County to do the right thing by its citizens and start requiring EIR's for massive projects with multiple cumulative impacts.

On a more positive note, the Nordic Aquafarms fish factory has decided to be a good neighbor by agreeing to conduct an EIR. We hope Arcata Land Company/SV can be encouraged to do the same, and would be grateful to you if you could require them to follow suit. It would be a "win-win" for all concerned.

Right now, we are perusing the operational manual for the (proposed) ALC grow which Jim Cotten received from Planco Commissioner Rodney Yarnell. When we have finished analyzing that, we will write another email regarding our main issues of concern.

Thank you for your service and your consideration of our request for an EIR.

Respectfully,

Lisa Pelletier
Nancy Pelletier
Arcata, CA

Hayes, Kathy

From: Michael Proctor <mmhmm2@icloud.com>
Sent: Monday, June 14, 2021 6:32 AM
To: COB
Subject: PLN-12255-CUP

Members of the Board of Supervisors,

Re: Arcata Land Company's (ALC) PLN-12255-CUP.

I am urging you to consider the potential impacts resulting an industrial grow. ALC cannot be allowed to move forward in such a reckless manner. For example why did ALC hire a well digging company to assess the capacity of ground water instead of a scientific consultant? There is no mitigation regarding oder, light and noise pollution.

I am one of the appelants of the Arcata Land Company's (ALC) PLN-12255-CUP Please do not consider me a NIMBY! An industrial grow should not be in anyones back yard! I urge a hard no to all industrial cannabis grows. Until we can fully understand the impacts of Cannabis grows on the Arcata Bottom and surrounding areas the size of Cannabis grows must be limited to less than one acre and they must be held accountable if they cannot fully comply with mitigations.

Sincerely,

Michael Proctor

Sharp, Ryan

From: Elizabeth Madrone <elizabethwillowmadrone@gmail.com>
Sent: Friday, June 11, 2021 2:17 PM
To: COB
Subject: Opposition to PLN-12255-CUP/Public Hearing PLN-2021-17198

June 11, 2022

Dear Humboldt County Supervisors,

I am writing to you in Opposition of the the cannabis grow/s proposed for the Arcata Bottom, Record Number PLN-12255-CUP and to also Support the Appeal, Record Number PLN-2021-17198 to said development.

Also, the proposed project should Definitely require an EIR before being considered;
Please see my following comments about the many issues involved.

It's another beautiful day out in the Bottom. When was the last time you were out in the area/s enjoying a walk, bike ride, etc.? It's a very special area and well worth preserving from over development and industry.

There are So Many reasons to Not allow cannabis mega grows in the Arcata Bottom:

*Antiquated Zoning (Things have greatly changed since the days of the old lumber mills.
Neighborhoods have grown, schools have grown & been created, people from the area utilize & enjoy a more peaceful rural place just out of town to walk, bike, run, etc.
Children & their families go to and from school. Folks walk their pets & animals. Birdwatchers and artists set up to paint landscapes. People raising farm animals & growing food for the community)

*Terrible place to grow cannabis! (The amount of Electricity used to create an environment in the foggy bottom vs somewhere more hospitable, ie: in the sun. Plus huge amounts of gas to run boilers, use of toxic pesticides & fungicides)

*Negative effect on the Aquifer and water use. (California is in a mega drought, as you know, and the amount of water used to create a finished cannabis product vs growing healthy food for families is absurd. Plus how will you assure the protection of people in the community that depend on well water for all of their household needs? What about reduction in available water and saltwater intrusion in an extreme drought year? Run off polluting the aquifer and household wells? Also toxic runoff into the Liscom Slough)

*Traffic Impact (With an already approved housing subdivision in the same area, plus a growing community, HSU, etc.- the negative traffic impact would be huge)

*Noise & Light Pollution (This would have a greatly negative impact on neighboring residents and wildlife)

*Noxious Odors (There are SO MANY examples of neighborhoods being ruined and people literally needing to move from their home/s because of the extreme odors & allergies caused from large cannabis grows)

*Health & Safety (How can you assure that the communities in the area will be safe from all of the above negative impacts Plus the added shadow side of potential/probable crime that would be associated with a big money industrial cannabis grow?)

For the record, I am not personally against cannabis per se; I, and So Many of your constituents just agree that it should be grown in a location & climate that is better suited for it.
The negative issues around this project and its effects on the community are Many.
Can you provide any positive ones?? Sun Valley can utilize already existing greenhouse/areas without adding more, if they truly want to grow cannabis.
*What I've heard many times is that If the project is allowed, once finalized, it will then be sold to the highest bidder (yes, big tobacco, whatever!)
This is Not about 'saving local jobs'. How can you protect your communities & natural environment if you allow this to happen?

*At the Very Least, Sun Valley needs to do an EIR before this project goes any further.

I know that a lot of people in this community have spent countless hours & energy working on opposing this project. I hope that you can appreciate that and also give it the attention it deserves. You have a responsibility to the citizens of Humboldt county-all of them, not just Big Business.

Thank you,
Elizabeth W. Madrone