



August 28, 2019

Mr. John Ford, Director and
Planning Commissioners
Humboldt County Planning and Building
3015 H Street
Eureka, CA 95501

Director Ford and Commissioners,

On behalf of Humboldt Baykeeper's board, staff, and members, I submit these comments on the Glendale Cannabis Facility's Initial Study and Mitigated Negative Declaration, Conditional Use Permits, and Special Permits for APN 516-111-064, located at 1691 Glendale Drive in unincorporated Humboldt County near Blue Lake (Case Nos. CUP 16-1096, CUP 16-1127, SP 16-868, SP 16-870, SP 16-871, and SP 16-872; App Nos. 13312, 13319, 13328, 13339, 13346, and 13360).

Humboldt Baykeeper works to safeguard our coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community, and is a member of the California Coastkeeper Alliance and the international Waterkeeper Alliance.

One of Humboldt Baykeeper's priorities is remediation of former industrial sites that are contaminated with dioxins, which are extremely long-lived chemicals that bind to sediment and soil. Dioxins are some of the most toxic compounds ever manufactured. They are powerful carcinogens and reproductive toxins that magnify as they move up the food web. In aquatic and marine environments, dioxins accumulate in fish, birds, marine mammals, and other fish-eating wildlife - and humans. Lumber mills, boatyards, and other industrial sites that operated from the 1940s until the late 1980s frequently used a wood preservative called pentachlorophenol (known as "penta") which contained dioxins. Due to the hazards to human health and the environment from these dioxins, the U.S. EPA banned the use of penta in lumber treatment and most other uses in the late 1980s (today it is restricted to use on power poles). Potential dioxin contamination near important waterways poses a risk to human health and the environment, and must be fully characterized and remediated prior to ground-disturbing activities, including well construction and grading.

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Humboldt Baykeeper believes an EIR and Phase II Site Assessment should be prepared to address contamination related to former lumber mill operations on the site, which is poorly addressed in the Phase I Environmental Site Assessment. *See, City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (“The negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis.”) The Mitigated Negative Declaration fails to disclose and analyze impacts to water quality, biological resources, and human health related to ground-disturbing activities that would be approved by the permits before you.

Any disturbance of contaminated soil cause by grading, excavation, and other heavy equipment use in or near an unremediated contamination site has the potential to have significant negative impacts to water quality, biological resources, and human health, which has not been adequately assessed, or mitigated to less than significant, in the MND.

The potential for contaminated groundwater to move off-site is especially concerning because of its proximity to the Mad River, which is the source of drinking water supplies for more than 80,000 people in Eureka, Arcata, McKinleyville, Blue Lake, Manila, Glendale, and Fieldbrook. The Mad River is also considered critical and/or essential habitat for salmonids, candlefish, and other aquatic species.

Pursuant to CEQA §15070(a), a Lead Agency shall prepare, or have prepared, a negative declaration or a Mitigate Negative Declaration when the Initial Study shows there is no substantive evidence, in light of the whole record before the agency, supporting a fair argument that the Project may have a significant effect on the environment.

Humboldt Baykeeper believes that the evidence clearly supports a fair argument that significant adverse impacts may occur due to the proposed Project, which is likely to substantially degrade the quality of the environment and cause substantial adverse effects on human beings, either directly or indirectly [CEQA Mandatory Findings of Significance §15065 (a)(1) and (a)(4)]. For these reasons, Humboldt Baykeeper strongly recommends that the Lead Agency prepare an EIR, and opposes the use of an MND for this proposed Project.

Humboldt Baykeeper believes that to avoid or mitigate potential impacts to groundwater, surface water, the Mad River, and human health and safety, it is necessary to conduct further analysis for the reasons enumerated below. Given the contaminants likely to be present on the site, the MND fails to ensure that construction and project-related ground disturbances will not result in the further spread of contamination. *See, Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200 (“It is the *possibility*, of a significant effect . . . which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR” [italics in original].)

The Mitigated Negative Declaration for this project is inadequate due to the failure to identify potential significant impacts to the environment, specifically impacts to water quality, biological resources, and human health and safety related to hazards and hazardous materials associated with the site history as described above.

In addition, the project as proposed fails to comply with Humboldt County's Commercial Cannabis Land Ordinance, which states that for proposed development of commercial cannabis facilities on existing commercial, business park, or industrial sites, "[I]f a Phase I ESA indicates the presence or likely presence of contamination, the applicant shall prepare a Phase II ESA, and recommendations of the Phase II ESA shall be fully implemented prior to ground disturbance, which will be made a condition of approval for the project." (CCLUO 2018, Mitigation Measure 3.7-2a)

I. Use of Pentachlorophenol on the Subject Site

The subject parcel was used for part of the operations of the former McNamara & Peepe Lumber Mill and Blue Lake Forest Products. Recent groundwater monitoring on nearby parcels has found elevated levels of cadmium, chromium, lead, and pentachlorophenol, a wood preservative used to prevent fungus. This fungicide, known as "penta," was used at the mill until 1984, shortly before it was banned for use on lumber due to its high dioxin content.

In October 1968, a penta spill from the Molalla-Arcata Lumber Mill caused a massive fish kill in the Mad River. State wildlife biologists reported that more than 10,000 steelhead were killed immediately following the spill. In January 1969, the McNamara & Peepe mill spilled the chemical into the Mad River.

According to the Initial Study/Mitigated Negative Declaration,

The project site is located on land that was part of a much larger parcel that has been used for lumber processing by multiple companies for decades. Some of those lumber processing activities included using wood preservatives and anti-staining compounds, specifically pentachlorophenol and tetrachlorophenol, which are hazardous materials according to the California Department of Toxic Substances Control (DTSC). These materials were not used on or in the immediate vicinity of the subject parcel. [p. 38]

We dispute the conclusion that these materials were not used on or in the immediate vicinity of the subject parcel based on our review of the 2003 Report of Findings for Phase II Investigation, Blue Lake Forest Products/Aalfs Property by Winzler & Kelly, which indicates that the project site was used for finished (treated) wood storage and sorter/planer operations (adjacent to the greenchain, where wood preservatives were applied (Winzler & Kelly 2003, Fig. 3: Historical Use Map, p. 17). According to the aerial images included in the report, these activities appear to have taken place from 1966-1988, when pentachlorophenol was used.

II. 1998 Remediation of Adjacent Contaminated Site has been Rescinded

The IS/MND goes on to state that “DTSC oversaw the remediation and monitoring of areas of the larger, former parcel that were found to have hazardous material contamination,” concluding that the site contamination has been remediated [p. 38]. However, DTSC rescinded the 1998 Remedial Action Plan in December 2018, declaring that the concrete cap has failed to contain groundwater contaminated with the highly toxic wood preservative pentachlorophenol. DTSC is developing a new plan to remediate and/or control the contamination. It is unclear at this time to what extent the plume of contaminated groundwater may have migrated beneath the subject parcel.

DTSC says that the failure of the cap is related to much higher groundwater levels, which are now 15 feet higher than in 2002, when Blue Lake Forest Products closed and stopped pumping from an on-site well. Due to the higher groundwater levels, the contaminated soil has been in contact with groundwater for years.

Further sampling must be conducted prior to ground disturbing activities associated with development of the site to ensure that soil and/or groundwater contamination will not be mobilized, potential endangering Hall Creek, the Mad River, and construction workers.

Reliance on limited soil and groundwater sampling conducted in 2003 is inadequate to ensure that human health and the environment will be protected if this project is approved without further sampling.

III. Cadmium Detections in Soil

The IS/MND asserts that “In 2003, Winzler and Kelley, Consulting Engineers, conducted a Phase 2 Investigation of the broader area. Their investigation did not detect hazardous materials on the subject parcel, nor did their investigation find evidence that suggested hazardous materials were ever used on the subject parcel.” [p. 38-39]

During the 2003 site assessment, soil and groundwater samples from the subject parcel were analyzed for contaminants associated with the former lumber mill operations on the site (Fig. 4, Boring Location Map, p. 19).

Cadmium is considered on the Proposition 65 list of toxic compounds; it is listed as known to the State to cause developmental toxicity and male reproductive toxicity. 'Cadmium and cadmium compounds' listed as known to the State to cause cancer.

IV. Absence of Site on State and Federal Lists

The IS/MND asserts that “The subject parcel does not appear on the Cortese List. The site is not shown as containing hazardous materials or being involved in any cleanup or monitoring programs on the U.S. Environmental Protection Agency (EPA)

EnviroMapper¹⁰, The California Department of Toxic Substances Control EnviroStor mapper¹¹, or the State Water Resource Control Board Geotracker¹².” [p. 39]

Absence of a site on any of these lists cannot be used as evidence that a site is free of contamination; these are not “presence/absence” databases. Similarly, lack of comments from the Regional Water Quality Control Board and/or Department of Toxic Substance Control must not be regarded by the County as evidence that there is no contamination present, or that either of the agencies’ concerns have been addressed by the County’s analysis.

V. Inadequate Analysis Results in Erroneous Findings

Based on what we believe to be erroneous information, the IS/MND asserts the following findings:

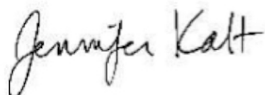
- a) The project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. *Less than significant impact.*

- d) The project would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would not create a significant hazard to the public or the environment. *No impact.*

We dispute these findings based on our review of the 2003 Report of Findings for Phase II Investigation, Blue Lake Forest Products/Aalfs Property by Winzler & Kelly, for the reasons enumerated above.

For these reasons, we strongly urge Humboldt County to prepare an Environmental Impact Report and a thorough Phase II Site Investigation focused on the proposed project site prior to approval of the Conditional Use Permit to further identify the extent and magnitude of contamination in soil and groundwater on the site, which is necessary to incorporate the most effective means of avoiding, minimizing, and mitigating these impacts to human health and the environment.

Sincerely,



Jennifer Kalt, Director
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