

May 4, 2021

From:

James M. Cotton, et al.

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VIA EMAIL AND HAND DELIVERY

John Ford, Director

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Humboldt County Board of Supervisors

Attn: Clerk of the Board

825 5<sup>th</sup> Street, room 111

Eureka, C 95501

Email: [cob@co.humboldt.ca.us](mailto:cob@co.humboldt.ca.us)

Re: **Notice of Appeal of Planning Commission Approval of Arcata Land Company, LLC Conditional Use Permit (PLN-12255-CUP)**

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

James Cotton, Kim Puckett, Paula Proctor, Michael Proctor, Joan Edwards, Lee Torrence, Rebecca Crow, Carol McFarland, Don Nielsen, Terrence McNally, Kerry McNally, Tamara Spivey, Mona Mazzotti, Abraham Moshekh, Duane E Smith, Pamela J Smith, Victor Howard, Lydia Butyrin, Lisa Pelletier, Kathryn Melia, Julie Hochfeld, Nancy Blinn, Warren Blinn, Peggy Bell-Hans, Todd Casebolt, Deni Devine, Jose Mendoca, Leonor Mendoca (collectively, Appellants), appeal the April 22, 2021 Planning Commission decision to approve the Arcata Land Company, LLC Conditional Use Permit (the "Project")<sup>1</sup> for the failure to comply with the California Environmental Quality Act (CEQA)<sup>2</sup>. Appellants filed this Appeal within the statutory time period and have paid

the appeal fee and, therefore, request a hearing before the Board of Supervisors (“Board”) on the issues presented and, after such hearing, ask for an order reversing the decision of the Planning Commission and either denying the application or finding that an Environmental Impact Report (“EIR”) is required for the Project.<sup>3</sup>

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

Under CEQA, an accurate, finite, stable project description is the cornerstone of an adequate environmental impact review document, including an MND. In fact, courts have held that an MND “is inappropriate where the agency has failed either to provide an accurate project description or gather information and undertake an adequate environmental analysis.”<sup>4</sup>

For all these reasons, and as explained below and in prior comments on the IS/MND submitted to the Humboldt County Planning Department,<sup>5</sup> Appellants urge the Board to reverse the Planning Commission’s decision to approve the Project and either deny the application or order the preparation of an EIR.

1. The IS/MND makes false or misleading statements, lacks analysis, and has omitted data as is evident by the numerous cogent comments in the administrative record on the following categories: Aesthetics, Agricultural and Forestry Resources, Air Quality, Biological Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Transportation, and Utilities and Service Systems<sup>15, 8, 11</sup>

2. The intensive reliance on well water for this Project is a grave concern of experts that reviewed the IS/MND and of the Appellants. Rather than present the qualified substantiation and documentation for the position that the well is not hydrologically connected to surface waters, the IS/MND relies upon conclusory letters from a well drilling company, with no proof of qualifications or the methods employed to make this complex determination, and without consideration of the effects of sea level rise of groundwater resources.

3. The Biological Assessment, in the IS/MND, when reviewed by an expert was considered to be incomplete and inadequate which was evident by: the omission of a bat survey, the lack of sampling protocols, and insufficient literature review and numerous oversights.<sup>8</sup>

4. The project description is uncertain. The staff report, April 22, 2021, failed to include an Operations Plan because the applicant had not submitted an updated version.<sup>6</sup> Without an updated Operations Plan, the length of the cultivation period along with the number of growing cycles and number of plants is unknown, and thus water usage, energy usage, staffing, and other impacts cannot be calculated accurately. The Planning Commissioners voted to approve this Project without knowing the details of the Operation.

5. Decision makers should seek counsel from an attorney and not Director Ford regarding the differences between MNDs and EIRs. During the Planning Commission meeting, 4/22/21, Director Ford said an "EIR does the same analysis that a Mitigated Negative Declaration just undertook."<sup>9</sup> This statement is inaccurate<sup>11</sup> and may have biased the Commissioners decision.

6. The enormous energy cost of this Project is an artifact of its size and location. The Project would be the largest permitted cannabis project in Humboldt County<sup>7</sup> that is in such close proximity to homes and neighborhoods. Due to being sited within 2.5 miles of the ocean and less than two miles from Humboldt Bay in a cool, foggy, and windy environment, the projected mixed-light portion of the energy requirement is calculated at a conservative 6,750 MWh,<sup>12</sup> enough to power at least 614 average homes in the Pacific Northwest.<sup>10</sup>

7. The proposed access for the Project will be Foster Avenue. The IS/MND does not account for the cumulative impact of traffic from the cannabis manufacturing, processing and distribution site that is adjoining this Project nor does it include an analysis of the additional traffic from another adjacent parcel, WE Produce cannabis application, or the proposed Creekside Annexation for senior housing and care facility on Foster Ave. In order to understand these impacts, an EIR needs to be completed.

8. Air Quality, Odor, Noise, and Light Pollution are perhaps the most apparent impacts that neighbors in the Westwood subdivision are concerned about.<sup>5,14</sup> The IS/MND states these impacts are "less than significant" which is in direct conflict with the major conclusions of the County's own FEIR which states under 5.1 that the impact on air quality and odor would be "cumulative considerable, significant and unavoidable."<sup>13</sup>

With regard to odor, the IS/MND states that if carbon filtration is inadequate in neutralizing odors, products such as Ecosorb may be utilized. Appellants are highly concerned about the proposed use of Ecosorb, or similar products, with no information on ingredients, application protocols, or performance standards provided, and with no monitoring.<sup>14</sup> Odor can be transient in nature, depending on changes in wind direction. Given the proximity of homes and neighborhoods that are downwind of this Project, and the conflicting impacts

of odor between the IS/MND and the FEIR,<sup>13</sup> an EIR should be required for this Project.<sup>11</sup>

With regard to noise, the Appellants are very concerned about the noise the project will create from mechanical systems, including fans, in the greenhouses and the time limit given to the Project to correct a noise violation. Currently, the Project has **no maximum** time limit to correct a noise violation, and no mitigations to reduce noise impacts.<sup>14</sup>

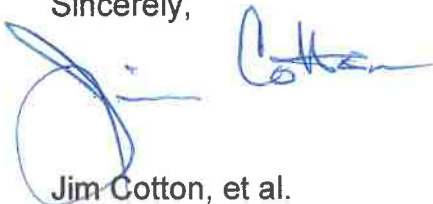
Additionally, there is a discrepancy between the FEIR<sup>13</sup> and the staff report regarding the allowable noise limits at the property boundary, 3 vs 60 decibels respectively. Again, these types of discrepancies need to be resolved through an EIR.

Appellants have demonstrated that the Project will have detrimental effects on the health, safety, and well-being of the residents of the area with regard to odors, noise pollution, light pollution and other significant environmental impacts as discussed.

To better understand the consequences, to inform decision makers of these impacts, and develop appropriate mitigations an EIR needs to be prepared. In addition to this, an EIR allows for exploration of alternatives, something an IS/MND does not.

**Conclusion: The Board should not approve the Project with this IS/MND and should either deny the Project or require an EIR.**

Sincerely,



Jim Cotton, et al.

If you have any question regarding this appeal, please contact me via email: [jimcotton47@gmail.com](mailto:jimcotton47@gmail.com) or phone: 707.498.2514

**Endnotes:**

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<sup>1</sup> Application Number 12255, Assessor's Parcel Numbers (APN): 506-231-021 and 505-151-011 (one separate legal parcel), and 505-151-012

<sup>2</sup> Public Resources Code ("PRC") §§ 2100, et seq.; *see also* CEQA Guidelines, 14 CC §§15000, et seq.

<sup>3</sup> See Humboldt County Code ("HCC") § 312-13.1, 13.2. Please let this letter serve as the requisite notice of appeal of the above referenced decision pursuant to HCC, § 312-13.1. Enclosed herewith is a check in the amount of \$1,636 representing the balance of the applicable appeal fees in this matter (see Exhibit A completed Fees and Charges Worksheet and Exhibit B completed Planning Application Form). Accordingly, Appellants respectfully request that an appeal hearing be granted in accordance with the appeal procedures outlined in HCC, § 312-13 and that the Planning Department begin processing this appeal pursuant to HCC, § 312-13.4. Likewise, Appellants request a copy of the transcript of the hearing for review in preparation for the appeal.

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

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

<sup>5</sup> Please note: Petitioners' and other public comments on the January 2020 IS/MND as well as their comments on supplemental information provided in staff reports to the Planning Commission for hearings on March 18, April 1, and April 22, 2021, respectively, are hereby incorporated by reference. Rather than attach duplicate copies of these materials. CEQA requires, and the Appellants request, that the entire Administrative Record (formally called Record of Proceedings) concerning this Project be furnished to the decision makers, the Humboldt County Board of Supervisors, before the requested hearing.

<sup>6</sup> email from Rodney Yandell to Jim Cotton, April 23,2021, 10:50 AM

<sup>7</sup> email from John Ford to Jim Cotton, April 12, 2021 4:06 PM

<sup>8</sup> Planning Commission meeting 3/18/21, **agenda**, PLN-12255-CUP, [Attachment 5a](#), pages 127-132 & pages 103-128.

Attachment 5b Public comments: page 97, Jim Cotton comments, March 10, 2021; Rebecca Crow comments March 10, 2021 pages 103-128 and others.

<https://humboldt.legistar.com/DepartmentDetail.aspx?ID=25787&GUID=C79B4BC4-E3F3-4AE2-BA90-5618ED18BCB5>

<sup>9</sup> Video of Planning Commissioners meeting, April 22, 2021, time marker 2:08:38 – 2:10

[http://humboldt.granicus.com/MediaPlayer.php?view\\_id=5&clip\\_id=1489](http://humboldt.granicus.com/MediaPlayer.php?view_id=5&clip_id=1489)

<sup>10</sup> [https://www.nwcouncil.org/sites/default/files/final\\_comparisonofresidentialuse\\_rates\\_bills\\_2016-12\\_1.pdf](https://www.nwcouncil.org/sites/default/files/final_comparisonofresidentialuse_rates_bills_2016-12_1.pdf)

<sup>11</sup> See Exhibit C, this document.

<sup>12</sup> Planning Commission meeting ,4/22/21, **agenda**, G, Arcata Land Company, Attachments, PLN-12255-CUP Staff Report, page 69, Operations Manual addendum.

<https://humboldt.legistar.com/DepartmentDetail.aspx?ID=25787&GUID=C79B4BC4-E3F3-4AE2-BA90-5618ED18BCB5>

<sup>13</sup> <https://humboldt.gov.org/DocumentCenter/View/62689/Humboldt-County-Cannabis-Program-Final-EIR-60mb-PDF>

<sup>14</sup> Planning Commission meeting ,4/22/21, **agenda**, G, Arcata Land Company, Attachments, PLN-12255-CUP Staff Report, page 14-15.

<https://humboldt.legistar.com/DepartmentDetail.aspx?ID=25787&GUID=C79B4BC4-E3F3-4AE2-BA90-5618ED18BCB5>

<sup>15</sup> Planning Commission meeting ,3/18/21, **agenda**, PLN-12255-CUP, attachment 5a, Public comments, page 116: comments by Californians for Alternatives Toxics, February 26, 2021.

<https://humboldt.legistar.com/DepartmentDetail.aspx?ID=25787&GUID=C79B4BC4-E3F3-4AE2-BA90-5618ED18BCB5>