

SUPPLEMENTAL INFORMATION #1

For Planning Commission Agenda of: September 5, 2019

- Consent Agenda Item }
- Continued Hearing Item }
- Public Hearing Item } #G2
- Department Report }
- Old Business }

Re: **Brosgart Special Permits**
Application Numbers 13319, 13328, 13339, 13346
Case Numbers SP-16-868, SP-16-870, SP-16-871, SP-16-872
Assessor's Parcel Number (APN) 516-111-064
1695 Glendale Drive

Attached for the Planning Commission's record and review is (are) the following supplementary information item(s):

1. Letter dated August 29, 2019 from Thomas Law Group representing the Humboldt Bay Municipal Water District. This letter objects to the use of a Mitigated Negative Declaration for the project and argues that the Department has not provided adequate notice to HBMWD. This letter raises the same concerns raised in the May 29, 2019 letter from TLG. The May 29, 2019 letter and Planning staff response is included in the staff report.
2. Letter dated August 28, 2019 from Humboldt Baykeeper. This letter objects to the use of a Mitigated Negative Declaration for the project and raises the same concerns in the May 13, 2019 letter from Humboldt Baykeeper. The May 13, 2019 letter and Planning staff response is included in the staff report.
3. Email dated August 9, 2019 from Cliff Johnson, Supervising Planner, to John Friedenbach, General Manager of the Humboldt Bay Municipal Water District (HBMWD) requesting a meeting to discuss the HBMWD's concerns on this project. This email went unanswered.
4. Copy of Planning project referral dated August 21, 2018 sent to Humboldt Bay Municipal Water District requesting that HBMWD review the Brosgart project and provide comments. HBMWD did not respond to this request for comments.
5. Revised Finding of Approval #6 pursuant to the California Environmental Quality Act (CEQA). The revised finding discusses the CEQA comments provided by supplementary items number 1 and 2, and why the comments do not change the conclusion that the project will not have a significant impact on the environment.
6. Claire McAdams comments received September 4, 2019.

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August 29, 2019

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

RE: Application by Michael Brosgart and Arielle Brosgart; APN 516-111-064

Dear Director Ford and Commissioners:

Thomas Law Group submits this letter on behalf of Humboldt Bay Municipal Water District (District) to express concern about the County's intent to approve the proposed Glendale Cannabis project (Project), to be located at APN 516-111-064, on the property known as 1691 Glendale Drive, McKinleyville, CA 95519, based on an environmental analysis contained in a mitigated negative declaration (MND). As discussed in detail below, the County must analyze the proposed Project in an environmental impact report (EIR) to properly understand the scope of impacts before it makes a determination on whether to approve the Project.

The Project proposes volatile and non-volatile extracting manufacturing, processing, and distribution on a 1.77 acre site that lies approximately 550 feet from Hall Creek, which drains into the Mad River, and approximately 2,000 feet from the Mad River itself.

The District is a municipal water district, which supplies high quality water to the greater Humboldt Bay Area, including 88,000 residents of Humboldt County. It operates intake wells in the Mad River, which are located downstream of both the Project site and the point at which Hall Creek flows into the Mad River.

The District is concerned that Project construction and operation will result in contaminated soils and groundwater flowing into Hall Creek to the Mad River and, ultimately, into the District's downstream intake wells. An EIR is required because there is a fair argument that the Project may result in significant environmental impacts related to contaminated soil and groundwater. In addition, the MND fails to analyze the impacts of a "foreseeable" spill or accident involving hydrocarbon based solvents. Further, adoption of the MND is improper because the County failed to provide proper notice to the District, as required by law.

1. The Project Improperly Relies on a Mitigated Negative Declaration Where There is a Fair Argument that the Project Will Result in Significant Environmental Impacts Related to Contaminated Soils and Groundwater.

A lead agency may not rely on an MND for project approval where substantial evidence supports a fair argument that the project may have a significant impact on the environment. (*Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 183-184.) This standard sets a “low threshold” for preparation of an EIR, such that an EIR must be prepared if there is a “reasonable probability” that the project will result in a significant impact. (*Consolidated Irrig. Dist. v City of Selma* (2012) 204 Cal.App.4th 187, 207; *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 309, citing *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 83, fn. 16.) Here, there is a reasonable probability that contaminated soil and groundwater will be disturbed during Project construction, which may result in a significant environmental impact.

Impacts Related to Potential Pentachlorophenol Contamination

The Project site is located on land that was used for timber processing for decades. The timber processing activities included the use of highly toxic pentachlorophenol (PCP) and tetrachlorophenol (TCP) wood preservatives. Use of these chemicals led to significant levels of contamination beneath and near the “green chain,” which was a conveyor system where lumber was moved, sorted, and submersed in solutions containing PCP and TCP. Figure 2 in the Phase II shows that the former “green chain” lies approximately 700 feet to the west of the Project site.

The MND suggests that the contaminated area near the green chain was remediated under DTSC oversight. In doing so, the MND improperly relies upon the 2003 Phase II and fails to address the fact that remedial measures have failed, such that PCP concentrations have skyrocketed above the maximum contaminant level (MCL) of 1 µg/L at numerous monitoring wells surrounding the former green chain. Grab groundwater samples in 2005 contained PCP and TCP concentrations as high as 16,000 µg/L and 1,500 µg/L, respectively. (Exhibit A [DTSC Decertification Letter, Dec. 28, 2018], p. 3.) DTSC explained that groundwater elevations rose approximately 15 feet since 2002 causing groundwater to come into contact with PCP- and TCP-impacted soil, which has resulted in “mobilizing hazardous substances from soil to groundwater.” (*Ibid.*) During the most recent groundwater sampling event of monitoring wells surrounding the former green chain area, PCP levels exceeded the MCL in 4 of 8 wells sampled, reaching as high as 570 µg/L, and the levels of PCP in each of those wells had increased since the prior sampling event in 2016. (Exhibit B [Second Quarter 2017 Groundwater Monitoring Report], p. 4-1, 5-1.) Significantly, PCP levels increased and exceeded the MCL at MW-11—the monitoring well closest to the Project site. (Exhibit B, Figure 3 & Table 2.) **In December 2018, DTSC rescinded the prior Remedial Action Certification finding “soil and groundwater contamination at the Site is not under control and the implemented remedial actions are no longer protective of human health and the environment.”** (Exhibit A, p. 1.)

The depth to groundwater at the Project site may be as little as 7 feet below ground surface. The MND states construction of the sewer line would require excavation to depths of 6-8 feet. Given DTSC’s finding that groundwater contamination is no longer under control and remedial actions are no longer protective of human health and the environment, it is possible that the groundwater under the site is

contaminated with PCP and has contaminated the soil at the Project site as well. Therefore, it is possible that contaminated groundwater and soil will be encountered during excavation. Moreover, installing sewer lines will provide a preferential pathway likely to further exacerbate migration of any contaminants present in the soil or groundwater. Accordingly, further study is necessary to determine: (1) the extent of contamination at the Project site; (2) whether installing a sewer line will exacerbate the plume's migration; and (3) the environmental impact of excavating potentially contaminated soil and groundwater.

As the water provider for 88,000 residents of Humboldt County, the District is concerned that construction activities will result in PCP from contaminated groundwater and soil flowing into Hall Creek to the Mad River and, ultimately, into the District's downstream intake wells. At minimum, the fact that the PCP plume is migrating and may have contaminated the Project site constitutes substantial evidence to support a fair argument that the Project may result in a significant environmental impact.

Impacts Related to Potential Hydrocarbon Contamination

In addition, part of the Project will involve volatile extraction manufacturing, using hydrocarbon based solvents. The MND fails to analyze the potential environmental impacts related to potential hazardous material spills on site arising from the transport, storage, or use of the hydrocarbon solvents on the Project site. While the MND recognizes that a spill or accident involving the solvents is "foreseeable," it simply concludes, without analysis, that such a spill or accident would be unlikely to create a significant hazard to the public or environment. In particular, the MND fails to address the potentially significant impact to the District's water supply if a hazardous material release occurred on the Project site. Given that the MND admits hazardous material "spill or accident conditions" are "foreseeable," an EIR is required to analyze the impacts of such a spill or accident on the environment, particularly on the County's drinking water supply.

2. The County Failed to Comply with CEQA's Notice Requirements.

One of CEQA's primary purposes is to ensure informed decisionmaking and public participation. (*Clews Land & Livestock, LLC, supra*, 19 Cal.App.5th at p. 183.) "[N]oncompliance with the information disclosure provisions of [CEQA] which precludes relevant information from being presented to the public agency . . . may constitute a prejudicial abuse of discretion . . . regardless of whether a different outcome would have resulted if the public agency had complied with [the information disclosure] provisions." (Pub. Resources Code, § 21005(a).)

CEQA requires notice of the intent to adopt a mitigated negative declaration to individuals and organizations that previously submitted written requests for notice. (Pub. Resources Code, §§ 20192(b)(3), 21092.2(a); CEQA Guidelines § 15072(b).) On May 21, 2018, the District submitted a written request for notice of all development projects within the Mad River Watershed proposed under Industrial/Commercial related zoning. Despite its request, the District was not properly notified of the County's intent to adopt the MND. Because the MND was sent to the State Clearinghouse, the statutorily required notice and comment period was to run 30 days. (CEQA Guidelines, § 15073(a).) Accordingly, the public notice and comment period was open from April 4 to May 3, 2019. However,

the District was not provided notice until April 15, 2019, 11 days into the comment period. This constitutes a failure to provide proper notice pursuant to CEQA sections 21092(b)(3) and 21092.2(a) as well as Guidelines section 15072(b).

Additionally, CEQA Guidelines section 15073(c) requires a notice of intent to adopt a proposed MND be sent to every “public agency with jurisdiction by law over resources affected by the project.” Given that the District is legally authorized to supply drinking water to the residents of Humboldt County and that the Project could impact drinking water supplies of over 80,000 customers, the District is unquestionably a public agency with legal jurisdiction over a resource affected by the Project. As discussed above, the County failed to provide timely notice to the District because it did not notify the District of the intent to adopt the MND until 11 days into the notice and comment period. Because the County provided less than 30 days’ time to the District to comment on the Project, the County failed to comply with CEQA Guidelines section 15073. A failure to provide notice to public agencies listed in CEQA Guidelines section 15073 may constitute prejudicial error, warranting the MND to be set aside. (*Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 493 [finding prejudicial abuse of discretion arising from lack of notice to relevant public agency]; see *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1387-1388 [“caution[ing] that the initial study is not necessarily the *only* basis for finding that a proposed negative declaration must be sent to another public agency” with jurisdiction over an affected resource and concluding that failure to notify a public agency as required under CEQA Guidelines section 15073(b) constituted an abuse of discretion] (emphasis original).) Had the required notice been timely provided to the District, the District would have lodged the above arguments in opposition to the MND within the notice and comment period. (See *Fall River Wild Trout Foundation, supra*, 70 Cal.App.4th at p. 493 [discussing prejudice to the public based on unavailability of comments from relevant agency due to lack of notice to the agency].)

In sum, adoption of the MND is improper on procedural and substantive grounds. The County failed to provide notice as required by CEQA, impairing informed decisionmaking and public participation. Furthermore, there is substantial evidence to support a fair argument that the Project may have significant environmental impacts related to contamination of soils and groundwater on the Project site. An EIR is required to adequately analyze these impacts and provide mitigation to prevent any potential contamination of District water.

Respectfully,



Anne Baptiste

cc: Humboldt Bay Municipal Water District
 California Department of Toxic Substances Control
 California Department of Fish and Wildlife
 Humboldt Baykeeper

Exhibit A

Available at

https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/8383564591/Decertification%20%5BDTSC%2012-28-18%5D.pdf



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Barbara A. Lee, Director
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Edmund G. Brown Jr.
Governor

December 28, 2018

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**DECERTIFICATION, MCNAMARA AND PEEPE LUMBER MILL, GENDALE,
HUMBOLDT COUNTY, CALIFORNIA**

Dear Mr. Aalfs, Ms. Finch, and Mr. Schultz:

The Department of Toxic Substances Control (DTSC) issued a Remedial Action Certification on March 9, 1998 for McNamara and Peepe Lumber Mill (Site) upon implementation of the remedial actions pursuant to the December 4, 1994 Remedial Action Plan. However, subsequent soil and groundwater investigations have revealed that soil and groundwater contamination at the Site is not under control and the implemented remedial actions are no longer protective of human health and the environment. Therefore, DTSC rescinds the March 9, 1998 Remedial Action Certification and issues this Decertification based on the following findings:

Site Identification and Landowners: The Site is located in Glendale, an unincorporated community in Humboldt County, approximately 0.9 miles southeast of the City of McKinleyville and approximately 1.2 miles northwest of the City of Blue Lake, Humboldt County, California. The Site occupies approximately 26 acres with nine Assessor's Parcel Numbers (APNs). The current landowners of the Site are (a) Blue Lake Forest Products, Inc. and (b) Jennifer Finch and Robert Schultz.

- Blue Lake Forest Products, Inc. owns seven parcels with APNs 516-091-020, 516-101-040, 516-101-060, 516-111-062, 516-111-063, 516-111-064, and 516-111-066 located on 1619 Glendale Drive.
- Jennifer Finch and Robert Schultz own two parcels with APNs 516-151-003 and 516-151-004 located on 1678 Glendale Drive.

1998 Remedial Action Certification: On December 5, 1994, DTSC approved the Remedial Action Plan with the following remedies for the Site:

- Consolidation of pentachlorophenol (PCP) and tetrachlorophenol (TCP) contaminated soils at the Green Chain area and installation of a new cap over such contaminated soils at areas encompassing APNs 516-101-060 and 516-111-063;
- Surface water and groundwater monitoring; and
- A land use covenant prohibiting any site activities which may compromise the integrity of the cap located at areas within APNs 516-101-060 and 516-111-063 and concrete slab located at an area within APN 516-151-003, as well as prohibiting development of these areas for uses for a residence, long-term care hospital, day-care facility, and school.

On March 9, 1998, DTSC issued the Remedial Action Certification stating that (a) all appropriate remedial actions have been completed, (b) a deed restriction was recorded the County's Recorder Office, and (c) long-term surface water and groundwater monitoring are necessary at the Site.

Subsequent Investigations and Contamination: During groundwater monitoring events conducted from 1997 through 2002, PCP concentrations were predominately below the cleanup goal of 1 µg/L and TCP concentrations were all below the laboratory reporting limit of 1 µg/L. In April 2002, Blue Lake Forest Products, Inc. declared bankruptcy and ceased groundwater pumping from an onsite lumber mill production well PW-1, which caused a rise of the groundwater elevation to approximately 15 feet higher than the previous groundwater elevation measured while the production well was operational. Since April 2002, groundwater has been in contact with the PCP- and TCP-impacted soil beneath the cap, thereby mobilizing hazardous substances from soil to groundwater.

Grab groundwater samples collected in May 2005 at various Site locations contained PCP and TCP concentrations as high as 16,000 µg/L and 1,500 µg/L, respectively. From December 2003 through May 2017, PCP and TCP have been detected in groundwater monitoring wells at concentrations up to 2,200 µg/L and 120 µg/L, respectively.

On April 22, 2008, DTSC issued an Imminent and Substantial Endangerment Determination, Docket No. I&SED 07/08-009 for this Site, because there has been a release or a threatened release of hazardous substances at the Site.

The former saw mill area, located within APNs 516-111-062 and 516-111-063, is partially unpaved and located adjacent to the cap at the Green Chain area encompassing APNs 516-101-060 and 516-111-063. The former saw mill building at the former saw mill area was demolished in 2006. Portions of the building foundation, in poor condition, remain at the former saw mill area. In 2010 and 2011, DTSC conducted investigation at the former saw mill area and found PCP concentrations in soil ranging from 1.8 mg/kg to 40 mg/kg, above the PCP cleanup goal of 1.75 mg/kg established in the 1994 Remedial Action Plan.

Therefore, the remedy selected in the 1994 Remedial Action Plan is no longer protective because (a) rising groundwater level have mobilized PCP/TCP in soil beneath the Green Chain area cap due to cessation of production well pumping in 2002; (b) surface water can percolate through PCP/TCP-impacted soil present below the former saw mill area as this area is partially unpaved and/or covered with a building foundation in poor condition; and (c) PCP/TCP can migrate offsite in groundwater or surface water runoff across the former saw mill area. Since the former saw mill area is partially unpaved and the pavement is in poor condition, people also run the risk of coming into direct contact with the contaminants. Therefore, additional remedial action is necessary to prevent potential exposures and rainwater infiltration at the former saw mill area.

Remedial Action Plan Amendment: To address the contaminated soil and groundwater, DTSC plans to prepare a Remedial Action Plan Amendment and select the appropriate remedy or remedies necessary to mitigate the impact of hazardous substances at the Site. The Remedial Action Plan Amendment will evaluate a range of the alternatives including capping of the former saw mill area, enhanced biodegradation of chemicals in groundwater, long-term groundwater monitoring, and amending the land use covenant.

Mr. Aalfs, Ms. Finch, and Mr. Schultz
December 28, 2018
Page 4

If you have any questions, please contact Henry Wong of my staff at (510) 540-3770 or henry.wong@dtsc.ca.gov.

Sincerely,



Janet Naito
Branch Chief
Site Mitigation and Restoration Program

cc: Stephanie Lai
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Exhibit B

Full Report available at

https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/8077635049/Groundwater%20Monitoring%20Report%2C%20May%202017%20%5BSGI%207-19-17%5D.pdf

**SECOND QUARTER 2017
GROUNDWATER MONITORING REPORT**

**McNamara and Peepe Lumber Mill
1619 and 1678 Glendale Drive
Arcata, California**

01-DTSC-006

Prepared For:

California Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Contract No. 14-T3913

Prepared By:



The Source Group, Inc., A division of Apex Companies, LLC.
3478 Buskirk Avenue, Suite 100
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July 19, 2017

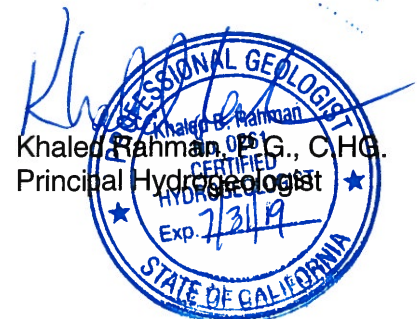


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1.0 INTRODUCTION

The Source Group, Inc., a division of Apex Companies, LLC. (SGI-Apex), has prepared this *Second Quarter 2017 Groundwater Monitoring Report* (Report) for the McNamara and Peepe Lumber Mill located at 1619 and 1678 Glendale Drive in Arcata, California (hereinafter the Site, Figure 1). This Report and the scope of work presented herein were conducted for the California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC) under Contract No. 14-T3913.

This Report presents the results of the groundwater monitoring and sampling event conducted at the Site on May 8, 2017. The field activities were conducted in general accordance with the *Soil and Groundwater Investigation Work Plan* (Work Plan; URS Corporation [URS], 2011). This Report summarizes the monitoring and sampling field activities, laboratory analytical results for pentachlorophenol (PCP) and 2,3,4,6-tetrachlorophenol (TCP), water quality parameters, and quality assurance protocols. In response to a DTSC request, the concrete slab at the “new” dip tank building (Dip Tank Building), which is located at 1678 Glendale Drive, was also inspected during the May 2017 event.

2.0 SITE BACKGROUND

The Site is a former lumber mill located in an unincorporated area of Humboldt County, approximately one mile southeast of McKinleyville, California and five miles northeast of Arcata, California. The Site operated as a lumber mill under multiple owners from the 1940s until 2002 (URS Corporation [URS], 2011). A detailed summary of background information for the Site is presented in a *Five-Year Comprehensive Review* prepared by the DTSC (DTSC, 2014). The following section provides a brief overview of the Site.

2.1 Site and Vicinity Description

As shown on Figure 2, the Site totals approximately 21 acres located north and south of Glendale Drive (DTSC, 2014). The northern portion of the Site is located at 1619 Glendale Drive (Assessor Parcel Numbers [APNs]: 516-111-062 and 516-111-063) and consisted of the former Green Chain area, Saw Mill, Planer Chain, and a groundwater production well (URS, 2011). The 1619 Glendale Drive portion of the Site is currently leased to Royal Gold for storage and distribution of potting soil and compost. The southern portion of the Site is located at 1678 Glendale Drive (APNs: 516-151-003 and 516-151-004) and is the location of the Dip Tank Building. Based on the findings of our Site walk (see below), the 1678 Glendale Drive portion of the Site is currently owned by Gary Johnson and is used for equipment and vehicle maintenance storage.

The Site is surrounded by residential and commercial/light industrial properties to the west, north, east and south. The Mad River is located approximately 0.25 miles south of the Site.

2.2 Geological and Hydrogeological Setting

The Site is located in the Dows Prairie Subbasin, which is the northern portion of the Mad River Groundwater Basin (California Department of Water Resources [DWR], 2004). The Hookton Unit is the primary water-bearing unit in the Dows Prairie Subbasin and underlain by the Franciscan Formation (DWR, 2004). The Hookton Unit consists of fine-grained (clay) and coarse-grained (sand and gravel) intervals that are approximately 150-200 feet in depth (DWR, 2004).

Previous investigations conducted at the Site indicate that the shallow subsurface consists of alluvial and terrace deposits composed of fine-grained silts and clays, and coarse-grained sands and gravels. Based on previous investigations, groundwater was measured at depths of approximately 8.0 feet below ground surface (bgs) to 30 feet bgs and generally flows to the south-southwest toward the Mad River (URS, 2011).

2.3 Historic Land Use

McNamara and Peepe operated the lumber mill from 1969 until they filed for bankruptcy in 1985 (DTSC, 2014). Chemical fungicides containing PCP and TCP were applied to processed lumber at the Site in dip tanks or with spray applications from 1967 to 1984 (URS, 2011). Dip tanks were present near the Green Chain area on the 1619 Glendale Drive portion of the Site (Figure 3), and in

the Dip Tank Building on the 1678 Glendale Drive portion of the Site (Figure 2). Spray applications were conducted at the Planer Chain building (Figure 2). During this period, several incidents of improper storage, spills, and leaks are documented (DTSC, 2014). Blue Lake Forest Products leased and operated the mill without the use of PCP and TCP from 1986 until lumber mill operations ceased at the Site in 2002 (DTSC, 2014).

2.4 Regulatory Oversight

Regulatory oversight of the Site was conducted by the North Coast Regional Water Quality Control Board (NCRWQCB) from 1968 to 1984 and included establishment of waste discharge requirements (WDRs) for the Site (URS, 2011). In 1982, NCRWQCB adopted WDRs, issued a Cease-and Desist Order (Order No. 82-3; the Order), required the lumber mill operator to cease discharge of fungicide wastes, determine the source of the discharge, prepare a plan for eliminating discharges, and implement the plan according to the schedule outlined in the Order (URS, 2011). DTSC became the lead oversight agency for the Site in 1984 and issued a Remedial Action Order (RAO; No. 88/89-023), which was amended in 1996 (No. 95/96-072). In 2008, DTSC issued an Imminent and Substantial Endangerment Determination (ISED No. 07/08-009; DTSC, 2008).

2.5 Remedial Activities

DTSC approved a *Remedial Action Plan* (RAP) for the Site in 1994 (DTSC, 2014). The former Green Chain area and former Saw Mill building were identified as the source area for PCP and TCP in soil and groundwater (Figure 3). A concrete cap over the Green Chain area was selected as a remedy for the Site and was constructed in 1998 (DTSC, 2014). A land use covenant (LUC) was issued in 1998 to restrict use in two areas of the Site: the “Cap Restricted Area” on the former lumber mill property located at 1619 Glendale Drive and the “Concrete Slab Restricted Area” located in the Dip Tank Building located at 1678 Glendale Drive. Routine assessments of the concrete cap indicate the condition of the cap was excellent. Since construction of the concrete cap, the former Saw Mill building has been demolished.

Elevated PCP concentrations (>1,100 micrograms per liter [$\mu\text{g/L}$]) in groundwater were detected in Site monitoring wells during the 2003 annual monitoring event. A remedial investigation (RI) was conducted in 2005 to evaluate the source of the elevated PCP concentrations in groundwater (DTSC, 2014). The RI concluded that dissolution of PCP and TCP from soil into groundwater was due to a rise in groundwater elevations of up to 15 feet across the Site since 2001. The rise in groundwater elevations was attributed to cessation of groundwater extraction from production well PW-1 in the northern portion of the Site in 2002 (DTSC, 2014).

2.6 Groundwater Monitoring Well Network

The groundwater monitoring well network consists of wells MW-1, MW-5, MW-7, MW-8, MW-9, MW-11, and MW-12, which are located at 1619 Glendale Avenue, and well MW-10 offsite on Glendale Avenue (Figure 3). As summarized on the table below, well construction details indicate that the monitoring wells are screened to maximum depths of 25 feet bgs, except for well MW-7,

which is screened from 22 feet bgs to 37 feet bgs. Readily available groundwater monitoring well logs are included in Appendix A.

Well Name	TOC (feet amsl)	Screened Interval (feet btoc)
MW-1	90.92	19-23
MW-5	93.25	18-23
MW-7	98.90	22-37
MW-8	96.04	8.5-24
MW-9	99.65	21-25
MW-10	95.65	9-24
MW-11	91.70	9.5-24.5
MW-12	91.73	10-20

Notes:

TOC = top of casing
 amsl = above mean seal level
 btoc = below top of casing

2.7 Recent and Planned Activities

Groundwater monitoring events conducted in December 2016 were documented in the *Fourth Quarter 2016 Groundwater Monitoring Report*, which included supplemental analytical results collected to support an evaluation of remedial alternatives (SGI-Apex, 2017). A remedial alternative evaluation for PCP and TCP in groundwater is in preparation.

3.0 GROUNDWATER MONITORING ACTIVITIES

3.1 Groundwater Monitoring Wells

On May 8, 2017, eight (8) groundwater monitoring wells (MW-1, MW-5, MW-7, MW-8, MW-9, MW-10, MW-11, and MW-12) were gauged and sampled. Field data forms are included in Appendix B.

3.2 Groundwater Sampling Activities

Groundwater sampling activities were completed in accordance with the Groundwater Monitoring Well Low Flow Sampling Standard Operating Procedure (SOP-005) included in Appendix D of the Work Plan (URS, 2011). No deviations from the SOP were noted. Sampling activities consisted of the following:

- Depth to groundwater and total depth were gauged in each monitoring well to the nearest 0.01 foot using an electronic water level indicator;
- Low-flow sampling methods were used to collect samples from groundwater monitoring wells. Well purging and water quality parameters (pH, temperature, specific conductance, dissolved oxygen [DO], and oxidation-reduction potential [ORP], turbidity, and total dissolved solids [TDS]) using a water quality meter were recorded on groundwater sampling forms (Appendix B);
- One duplicate sample was collected from well MW-1 for quality assurance/quality control (QA/QC) purposes;
- Sample containers provided by the analytical laboratory were labeled with a unique sample identification number consistent with previous sampling events (e.g., MW-1), date and time of sample collection, sampler, preservation, and analytical method; and
- Samples were submitted to North Coast Laboratories of Arcata, California, a California State Environmental Laboratory Accreditation Branch (CA ELAP)-certified laboratory under standard chain-of-custody protocols.

3.3 Laboratory Analysis

Groundwater samples were analyzed for:

- PCP and TCP by Canadian Pulp Method (Chlorinated Phenols) National Council for Air and Stream Improvement (NCASI) 86.07.

Laboratory analytical reports are presented in Appendix C.

3.4 Investigation-Derived Waste Disposal

Purgewater and decontamination water produced during sampling activities were stored onsite in a Department of Transportation (DOT)-approved 55-gallon drum. The drum was transported to the

Woodward Drilling Company, Inc. wastewater treatment facility, in Rio Vista, California on May 9, 2017 (Appendix D).

3.5 Site Walk of 1678 Glendale Drive Dip Tank Building

A reconnaissance of the concrete slab floor of the Dip Tank Building located at 1678 Glendale Drive was completed in response to an April 21, 2017 DTSC email request. Prior to the monitoring event, contact information for the owner of this property was not readily available. During the monitoring event, an onsite facility representative indicated that Gary Johnson was the property owner. During a subsequent discussion, Mr. Johnson verbally approved access to the property for inspection.

The condition of the concrete slab floor of the Dip Tank Building appeared similar to DTSC's 2007 observations documented in the Annual Inspection Report (DTSC, 2007). The building is largely used to store vehicles and maintenance equipment. Localized oil staining and surface deterioration (e.g., chatter marks) were observed. No signs of cracking or settling were observed in the readily accessible areas. Photographs of the concrete slab floor of the Dip Tank Building are provided in Appendix E.

4.0 GROUNDWATER MONITORING RESULTS

4.1 Groundwater Elevations

During the May 2017 gauging event, depth to groundwater measurements ranged from 5.00 feet below top of casing (btoc) in well MW-1 to 11.38 feet btoc in well MW-7. The water levels are approximately 0.9 feet to 2.0 feet deeper than observed during the December 2016 monitoring event. Note that the depth to water in well MW-10, which was considered anomalous in December 2016, was more consistent with historic levels in May 2017.

Groundwater elevations ranged from 84.71 feet above mean sea level (msl) in well MW-10 to 90.66 feet above msl in well MW-9. Based on the groundwater elevation data collected during the May 2017 gauging event, horizontal hydraulic gradients are generally to the south-southwest. The May 2017 groundwater elevation data and contours are presented on Figure 4. Groundwater level measurements and elevation calculations are presented in Table 1.

4.2 Water Quality Parameter Data Summary

The water quality parameters measured in the field during the May 2017 monitoring event is summarized on Table 1. General findings for May 2017 water quality parameters are described below.

- DO concentrations ranged from 0.17 milligrams per liter (mg/L) to 1.47 mg/L. DO concentrations below 1 mg/L were measured in wells MW-1, MW-5, MW-8, MW-10, and MW-11;
- ORP levels ranged from 14.4 millivolts (mV) to 465.7 mV;
- pH ranged from 5.08 to 6.00. The prevalence of pH values below 7.0 indicates slightly acidic groundwater conditions beneath the Site;
- Conductivity measurements ranged from 0.094 millisiemens per centimeter (mS/cm) to 0.546 mS/cm; and
- TDS levels ranged from 62 mg/L to 355 mg/L.

4.3 PCP and TCP Groundwater Analytical Results

The PCP and TCP analytical results for groundwater samples collected during the May 2017 monitoring event are summarized on Table 2. Laboratory analytical reports are presented in Appendix C. General findings for PCP and TCP in groundwater are described below.

- PCP was detected above laboratory reporting limits in four of the eight monitoring wells sampled. Detected concentrations were reported at up to 570 µg/L in well MW-1, 81 µg/L in well MW-12, 46 µg/L in well MW-5, and 1.9 µg/L in well MW-11.
- TCP was detected above laboratory reporting limits in two of the eight monitoring wells sampled at a concentration of up to 8.4 µg/L in well MW-1 and 2.3 µg/L in well MW-5.

The May 2017 distribution of PCP and TCP in shallow water-bearing zone are depicted on Figure 4.

4.4 Groundwater Monitoring Quality Assurance/Quality Control

The groundwater analytical data collected during the May 2017 monitoring event were evaluated to ensure that the data quality objectives identified in the *Quality Assurance Project Plan* were met (URS, 2011). The results were reviewed for precision, accuracy, representativeness, completeness, comparability, and method detection limits. The laboratory reports were reviewed for data completeness, chain-of-custody, holding times, blanks, surrogates, and laboratory control samples and duplicates. In addition, QA/QC samples (field duplicate samples) were collected during the 2017 monitoring event. QA/QC analyses included the following:

- Method blank;
- Laboratory control spike (LCS)/laboratory control spike duplicate (LCSD);
- Surrogate recoveries; and
- Field duplicate samples for similarity.

The QA/QC findings indicate the following:

- No detections in the method blanks were noted;
- LCS/LCSD and surrogate recoveries were within control limits; and
- Field duplicates results were sufficiently similar ($RPD < 30\%$) in PCP and TCP concentrations (Table 3).

Based on these findings, the overall data quality is considered acceptable.

5.0 FINDINGS

5.1 Water Levels

Findings of the water level data for May 2017 indicate:

- Groundwater elevations were approximately 1.0 to 2.0 feet lower than during the December 2016 monitoring event; and
- Horizontal hydraulic gradients to the south, in general, were consistent with historic observations.

5.2 PCP and TCP Distribution

PCP and TCP concentrations were detected in monitoring wells in the central area of the Site near the former Green Chain area and former Saw Mill building (Figure 4). For screening level purposes, the California maximum contaminant level (CA MCL) for PCP of 1 µg/L was used. There is no CA MCL for TCP. A summary of the May 2017 findings indicates:

- PCP concentrations exceed the CA MCL of 1 µg/L in wells MW-1, MW-5, MW-11, and MW-12, which are located hydraulically downgradient and south of the former Green Chain area and former Saw Mill building. The December 2016 and May 2017 data indicate PCP concentrations increased in each of these four wells. The PCP concentration in well MW-1 increased from up to 1.2 µg/L in December 2016 to 570 µg/L in May 2017. Concentration increases may be attributed to a dissolution of mass associated with observed higher groundwater elevations in the fourth quarter of 2016 across the Site;
- TCP was detected above laboratory reporting limits in wells MW-1 and MW-5. The December 2016 and May 2017 data indicate that the TCP concentration in well MW-1 increased but was similar to May 2016 concentration. TCP concentrations in well MW-5 were similar to previous results since 2002; and
- The May 2017 PCP and TCP distributions are similar and consistent with the historical distribution. As depicted on Figure 4, the absence of TCP in well MW-12, suggests PCP has a slightly larger distribution than TCP. The presence of a low concentration of PCP in well MW-11 was similar to intermittent low detections since 2010.

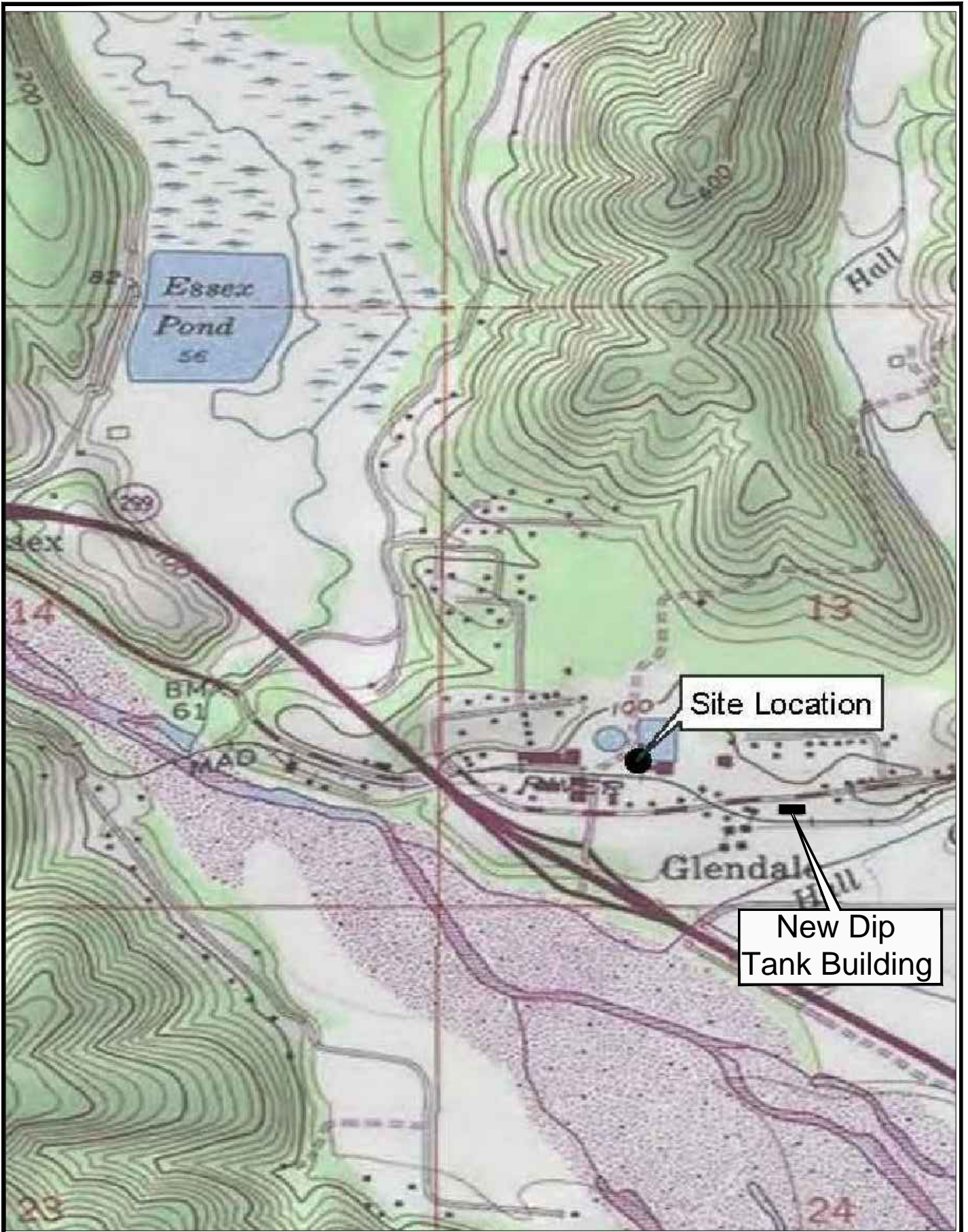
6.0 LIMITATIONS

This document was prepared for the exclusive use of the DTSC for the express purpose of complying with a client- or regulatory directive for environmental investigation or restoration. SGI-Apex and DTSC must approve any re-use of this work product in whole or in part for a different purpose or by others in writing. If any such unauthorized use occurs, it shall be at the user's sole risk without liability to SGI-Apex or DTSC. To the extent that this document is based on information provided to SGI-Apex by third parties, including DTSC, their direct contractors, previous workers, and other stakeholders, SGI-Apex cannot guarantee the completeness or accuracy of this information, even where efforts were made to verify third-party information. SGI-Apex has exercised professional judgment to collect and present findings and opinions of a scientific and technical nature. The opinions expressed are based on the conditions of the Site existing at the time of the field investigation, current regulatory requirements, and any specified assumptions. The presented findings and recommendations in this document are intended to be taken in their entirety to assist DTSC in applying their own professional judgment in making decisions related to the property. SGI-Apex cannot provide conclusions on environmental conditions outside the completed scope of work. SGI-Apex cannot guarantee that future conditions will not change and affect the validity of the presented conclusions and recommended work. No warranty or guarantee, whether expressed or implied, is made with respect to the data or the reported findings, observations, conclusions, and recommendations.

7.0 REFERENCES

- California Department of Toxics Substances Control (DTSC). 2007. Annual Inspection Report, Former McNamara and Peepe Lumber Mill. July 11.
- DTSC. 2008. McNamara and Peepe Lumber Mill, Docket Number I&/SE 07/08-009, Imminent and Substantial Endangerment Determination. April 22.
- DTSC. 2014. Five-Year Comprehensive Review, McNamara and Peepe Lumber Mill, 1619 Glendale Drive, McKinleyville, California. November.
- California Department of Water Resources (DWR). 2004. California's Groundwater Bulletin 118. Updated February 27.
- The Source Group, Inc., a division of Apex Companies, LLC., (SGI-Apex). 2017. Fourth Quarter 2016 Groundwater Monitoring Report, McNamara and Peepe Lumber Mill, 1589 Glendale Drive, Arcata, California. January 27.
- URS Corporation (URS). 2011. Soil and Groundwater Investigation Work Plan, McNamara & Peepe Lumber Mill, 1589 Glendale Drive, Arcata, California. October 24.

FIGURES



McNAMARA AND PEEPE
LUMBER MILL
ARCATA, CALIFORNIA

SITE LOCATION MAP





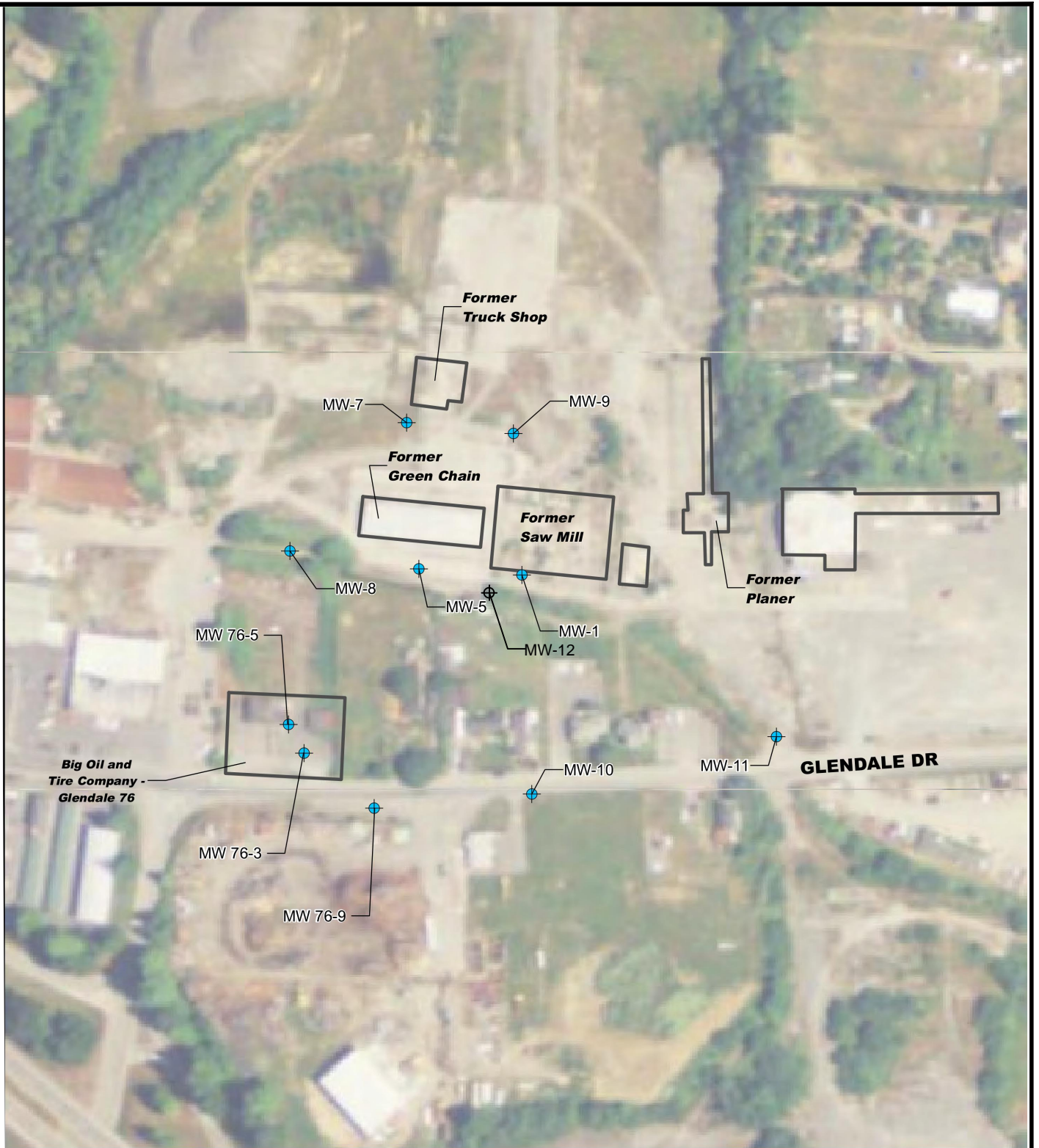
Source: Humbolt County Planning and Building Department, 7/13/17





McNAMARA AND PEEPE
LUMBER MILL
ARCATA, CALIFORNIA

SITE LAYOUT





LEGEND

-  Monitoring well location
-  Building/former building

Source: URS, 2011 Soil and Groundwater Investigation Work Plan, October.



McNAMARA AND PEEPE
LUMBER MILL
ARCATA, CALIFORNIA

SITE FEATURES



3478 BUSHY AVENUE, SUITE 300, PLEASANT HILL, CA 94523

PROJECT NO. 01-DTSC-006	DATE 07/19/17	DR. BY: ZA	APP. BY: KR
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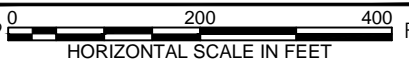




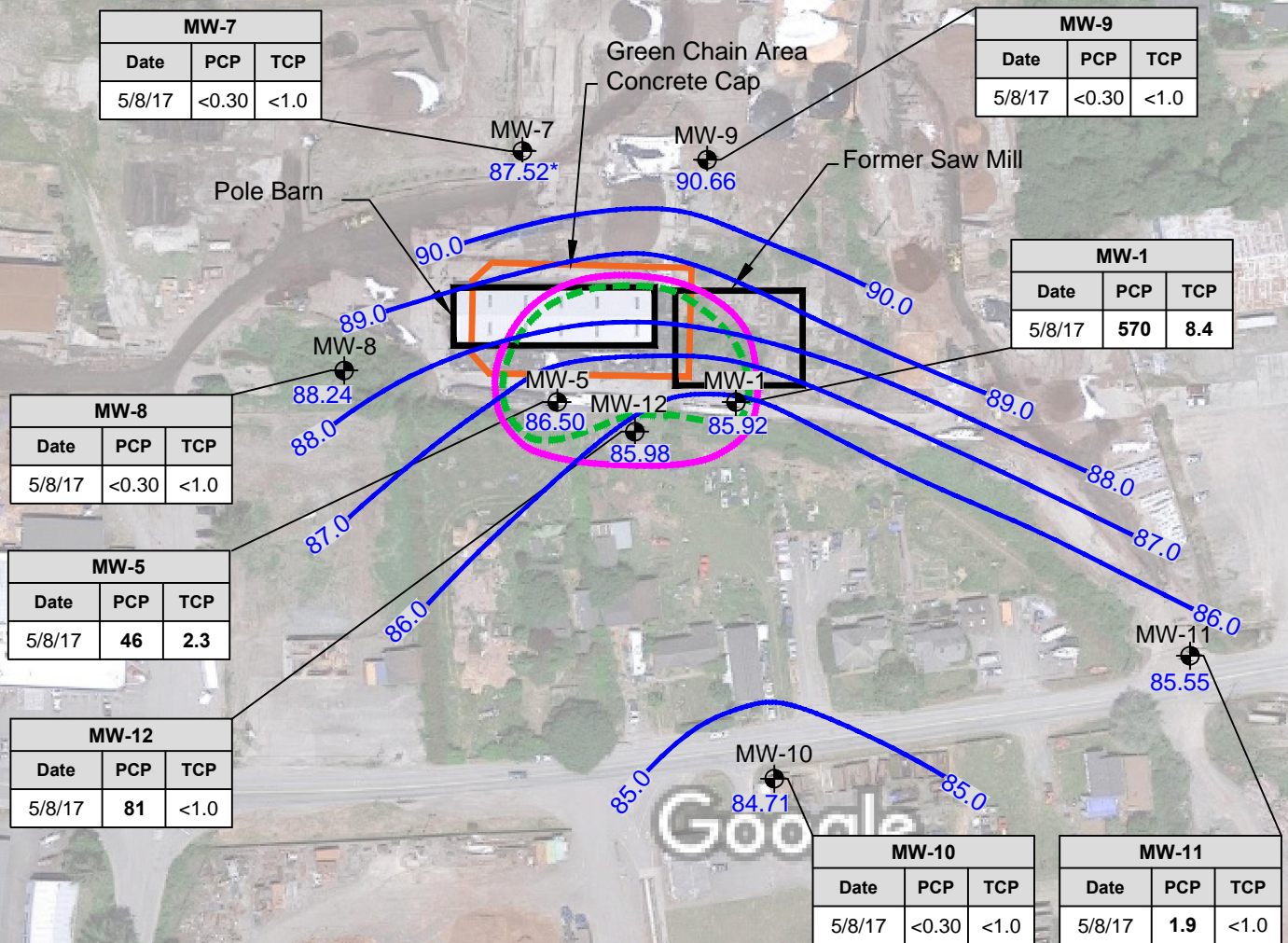


FIGURE 3
Page 27

LEGEND

- MW-7 Monitoring Well Designation
 -  Monitoring Well Location
 - 87.52 Groundwater Elevation
 - PCP Pentachlorophenol
 - TCP 2,3,4,6-Tetrachlorophenol
 - * Data Not Used in Contouring
 -  Groundwater Elevation Contour
 -  PCP Concentration Contour >1.0 µg/L
 -  TCP Concentration Contour >1.0 µg/L
- All results in micrograms/liter (µg/L)
 Bolded results: Analyte concentration exceeds laboratory reporting limit

Basemap Source: Google, 2015
 URS, 2011



S:\Clients A - F\DTSC_McNamara_Peepe Corp - DTSC-006\Report - May 2017\Fig.4-GW Elevation Contours, PCP & TCP Concentration in GW (from Server5).dwg, 7/19/2017 12:49:59 PM



McNAMARA AND PEEPE
 LUMBER MILL
 ARCATA, CALIFORNIA

**GROUNDWATER ELEVATION CONTOURS,
 PCP AND TCP CONCENTRATIONS IN
 GROUNDWATER
 MAY 2017**



3478 BUSKIRK AVENUE, SUITE 100
 PLEASANT HILL, CA 94523

PROJECT NO. 01-DTSC-006
 DATE 07/19/17
 DR. BY: ZA
 APP. BY: KR

PC Supplemental #19.5.19
 0 100 200
 HORIZONTAL SCALE IN FEET

Page 4
FIGURE 4

TABLES

Table 1
Groundwater Elevation and Field Parameters
 McNamara and Peepe Lumber Mill
 Arcata, California

Well	Screened Interval	Date	Depth to Water	TOC Elevation	Groundwater Elevation	Temperature	pH	DO	ORP	Conductivity	Turbidity	TDS
	(feet btoc)		(feet btoc)	(feet msl)	(feet msl)	(degrees C)	--	(mg/L)	(mV)	(mS/cm)	(NTU)	(mg/L)
MW-1	19-23	11/2011	3.19	90.92	87.73	14.39	5.80	0.95	134	NR ⁽¹⁾	57.6	NR
		5/13/2015	7.32		83.60	15.51	5.42	0.75	70.7	0.279	3.9	NR
		11/10/2015	11.15		79.77	18.39	5.61	1.27	121.3	0.281	-3.8 ⁽²⁾	NR
		5/23/2016	6.87		84.05	16.37	6.25	0.80	-15.1	0.479	3.1	372
		12/14/2016	3.00		87.92	13.20	6.69	2.89	150.1	0.491	3.6	319
		5/8/2017	5.00		85.92	15.50	6.00	0.21	102.7	0.546	46.8	355
MW-5	18-23	11/2011	5.21	93.25	88.04	14.37	5.88	0.99	-22	NR ⁽¹⁾	121	NR
		5/13/2015	9.40		83.85	14.65	5.15	0.87	183.7	0.243	1.1	NR
		11/10/2015	12.15		81.10	16.62	5.13	1.32	170.1	0.205	1.1 ⁽²⁾	NR
		5/23/2016	8.90		84.35	15.68	5.44	0.54	22.7	0.250	48.5	200
		12/14/2016	5.20		88.05	16.20	5.28	0.05	176.9	0.275	3.3	178
		5/8/2017	6.75		86.50	15.30	5.17	0.17	155.8	0.302	68.3	197
MW-7	22-37	11/2011	9.67	98.90	89.23	15.17	5.55	1.67	119	0.062	104	NR
		5/13/2015	13.63		85.27	16.86	5.28	1.55	151.3	0.095	1.4	NR
		11/10/2015	17.90		81.00	15.33	5.50	1.43	223.7	0.089	-2.8 ⁽²⁾	NR
		5/23/2016	13.33		85.57	18.15	5.70	2.01	17.3	0.130	5.9	96
		12/14/2016	9.82		89.08	16.80	5.60	2.34	237.2	0.108	15.1	NR
		5/8/2017	11.38		87.52	14.80	5.31	1.32	264.8	0.111	50.3	72
MW-8	8.5-24	5/13/2015	8.48	96.04	87.56	15.55	5.96	0.70	26.6	0.476	2.0	NR
		11/10/2015	11.40		84.64	18.03	5.40	1.80	190.5	0.712	3.5 ⁽²⁾	NR
		5/23/2016	8.72		87.32	16.12	6.22	0.82	-137.4	0.392	6.7	302
		12/14/2016	5.90		90.14	14.10	6.16	0.71	103.1	0.321	7.1	NR
		5/8/2017	7.80		88.24	13.60	5.96	0.68	14.4	0.495	48.3	321

Table 1
Groundwater Elevation and Field Parameters
 McNamara and Peepe Lumber Mill
 Arcata, California

Well	Screened Interval	Date	Depth to Water	TOC Elevation	Groundwater Elevation	Temperature	pH	DO	ORP	Conductivity	Turbidity	TDS
	(feet btoc)		(feet btoc)	(feet msl)	(feet msl)	(degrees C)	--	(mg/L)	(mV)	(mS/cm)	(NTU)	(mg/L)
MW-9	21-25	11/2011	6.27	99.65	93.38	14.26	5.64	1.18	408	NR ⁽¹⁾	33.6	NR
		5/13/2015	11.17		88.48	17.08	5.83	1.65	164.7	0.251	1.5	NR
		11/10/2015	14.29		85.36	17.30	5.70	1.79	465.7	0.178	-4.2 ⁽²⁾	NR
		5/23/2016	10.97		88.68	16.72	6.01	1.09	18.5	0.290	49.1	224
		12/14/2016	8.09		91.56	16.60	6.00	4.82	241.2	0.207	3.4	NR
		5/8/2017	8.99		90.66	14.40	5.69	1.47	465.7	0.301	70.3	196
MW-10	9-24	11/2011	9.74	95.65	85.91	12.12	5.22	7.14	207	0.013	68.1	NR
		5/13/2015	13.44		82.21	15.85	5.03	1.29	179.7	0.118	48.2	NR
		11/10/2015	16.15		79.50	16.93	5.32	1.79	180.5	0.039	36.4 ⁽²⁾	NR
		5/23/2016	13.36		82.29	15.28	5.37	2.91	57.1	0.094	48.3	74
		12/14/2016	5.70		89.95	11.70	5.80	9.28	217.0	0.020	24.1	NR
		5/8/2017	10.94		84.71	13.60	5.93	0.69	117.1	0.094	50.3	62
MW-11	9.5-24.5	11/2011	5.20	91.70	86.50	14.00	5.12	1.37	155	0.048	29.8	NR
		5/13/2015	7.80		83.90	16.88	5.04	0.78	202.8	0.086	1.5	NR
		11/10/2015	9.97		81.73	17.28	5.07	1.40	252.7	0.079	-4.4 ⁽²⁾	NR
		5/23/2016	7.25		84.45	16.42	5.16	1.74	64.8	0.145	0.3	111
		12/14/2016	4.24		87.46	16.90	5.01	0.57	214.9	0.260	4.2	NR
		5/8/2017	6.15		85.55	14.70	5.08	0.47	194.1	0.281	65.7	183

Table 1
Groundwater Elevation and Field Parameters
 McNamara and Peepe Lumber Mill
 Arcata, California

Well	Screened Interval	Date	Depth to Water	TOC Elevation	Groundwater Elevation	Temperature	pH	DO	ORP	Conductivity	Turbidity	TDS
	(feet btoc)		(feet btoc)	(feet msl)	(feet msl)	(degrees C)	--	(mg/L)	(mV)	(mS/cm)	(NTU)	(mg/L)
MW-12	10-20	11/2011	3.92	91.73	87.81	14.14	5.67	0.91	11	NR ⁽¹⁾	41.6	NR
		5/13/2015	8.20		83.53	14.69	5.28	0.81	167.3	0.189	31.7	NR
		11/10/2015	12.05		79.68	16.09	5.38	1.24	77.9	0.196	-1.1 ⁽²⁾	NR
		5/23/2016	7.75		83.98	15.19	5.55	1.01	10.1	0.230	4.1	184
		12/14/2016	3.80		87.93	14.40	5.42	0.52	240.2	0.228	4.3	NR
		5/8/2017	5.75		85.98	15.70	5.32	1.07	180.4	0.221	43.7	139

Notes:

Data prior to 2015 from URS (2011).

TOC = Top of casing

bgs = Below ground surface

btoc = Below top of casing

C = Celsius

DO = Dissolved oxygen

TDS - total dissolved solids

msl = mean sea level

mS/cm = Millisiemens per centimeter

mg/L = Milligrams per liter

mV = Millivolts

NTU = Nephelometric Turbidity Units

ORP = Oxidation Reduction Potential

NR = Not Recorded

⁽¹⁾ Conductivity not recorded due to equipment errors.

⁽²⁾ Negative turbidity readings during November 2015 considered suspect due to equipment errors.

Table 2
Groundwater Analytical Results - PCP and TCP
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
	<i>CA MCL</i>	<i>1.0</i>	<i>NV</i>
	<i>Analytical Method</i>	<i>Canadian Pulp Method</i>	
MW-1	7/31/1997	<0.30	<1.0
	1/12/1998	<0.30	<1.0
	4/8/1998	<0.30	<1.0
	7/8/1998	<0.30	<1.0
	10/10/1998	--	--
	1/26/1999	<0.30	<1.0
	7/14/1999	<0.30	<1.0
	4/13/2000	<0.30	<1.0
	10/19/2000	<0.30	<1.0
	6/7/2001	0.49	<1.0
	12/26/2002	<0.30	<1.0
	12/12/2003	1,100	19
	12/24/2003	720	11
	3/15/2004	1,100	15
	6/10/2004	900	19.8
	6/28/2005	890	11
	8/4/2005	890	14
	06/2010	0.34	<1.0
	10/2010	2,200	36
	11/2011	1,300	25
	4/2012	1,300	24
	5/13/2015	690	14
	5/13/2015 (FD)	560	12
	11/11/2015	610	120
	11/11/2015 (FD)	670	120
	5/23/2016	830	7.1
5/23/2016 (FD)	1,100	8.0	
12/14/2016	1.2	<1.0	
12/14/2016 (FD)	1.2	<1.0	
5/8/2017	570	8.4	
5/8/2017 (FD)	530	7.9	
MW-5	7/31/1997	<0.30	<1.0
	1/12/1998	<0.30	<1.0
	4/8/1998	<0.30	<1.0
	7/8/1998	<0.30	<1.0
	7/8/1998 (FD)	<0.30	<1.0
	10/10/1998	--	--
	1/26/1999	<0.30	<1.0
	7/14/1999	<0.30	<1.0

Table 2
Groundwater Analytical Results - PCP and TCP
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
	CA MCL	1.0	NV
MW-5 (Cont.)	4/13/2000	<0.30	<1.0
	10/19/2000	<0.30	<1.0
	10/19/2000 (FD)	<0.30	<1.0
	6/7/2001	<0.30	<1.0
	6/7/2001 (FD)	0.68	<1.0
	12/26/2002	<0.30	<1.0
	12/26/2002 (FD)	<0.30	<1.0
	12/12/2003	<0.30	<1.0
	12/12/2003 (FD)	<0.30	<1.0
	1/28/2005	<0.30	<1.0
	1/28/2005 (FD)	<0.30	<1.0
	8/4/2005	<0.30	<1.0
	06/2010	1.7	<1.0
	10/2010	1.6	<1.0
	11/2011	5.1	<1.0
	4/2012	54	2.2
	5/13/2015	35	4.3
	11/11/2015	65	3.3
5/23/2016	56	1.6	
12/14/2016	39	2.3	
5/8/2017	46	2.3	
MW-6	7/31/1997	<0.30	<1.0
MW-7	1/12/1998	<0.30	<1.0
	4/8/1998	<0.30	<1.0
	4/8/1998	<0.30	<1.0
	7/8/1998	<0.30	<1.0
	10/10/1998	<0.30	<1.0
	1/26/1999	<0.30	<1.0
	1/26/1999	<0.30	<1.0
	7/14/1999	<0.30	<1.0
	4/13/2000	<0.30	<1.0
	4/13/2000	<0.30	<1.0
	10/19/2000	<0.30	<1.0
	6/7/2001	0.36	<1.0
	12/26/2002	<0.30	<1.0
	12/12/2003	<0.30	<1.0
	1/28/2005	<0.30	<1.0
	8/4/2005	<0.30	<1.0
8/4/2005 (FD)	<0.30	<1.0	

Table 2
Groundwater Analytical Results - PCP and TCP
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
CA MCL		1.0	NV
MW-7 (Cont.)	06/2010	<0.30	<1.0
	10/2010	<0.30	<1.0
	11/2011	<0.30	<1.0
	4/2012	<0.30	<1.0
	5/13/2015	0.39	<1.0
	11/11/2015	<0.30	<1.0
	5/23/2016	<0.30	<1.0
	12/14/2016	<0.30	<1.0
	5/8/2017	<0.30	<1.0
MW-8	1/12/1998	<0.30	<1.0
	4/8/1998	1.3	<1.0
	4/27/1998	<0.30	<1.0
	7/8/1998	<0.30	<1.0
	10/10/1998	--	--
	1/26/1999	<0.30	<1.0
	7/14/1999	<0.30	<1.0
	4/13/2000	<0.30	<1.0
	10/19/2000	<0.30	<1.0
	6/7/2001	<0.30	<1.0
	12/26/2002	<0.30	<1.0
	8/4/2005	<0.30	<1.0
	5/13/2015	<0.30	<1.0
	11/11/2015	<0.30	<1.0
	5/23/2016	<0.30	<1.0
12/14/2016	<0.30	<1.0	
5/8/2017	<0.30	<1.0	
MW-9	1/12/1998	<0.30	<1.0
	4/8/1998	<0.30	<1.0
	7/8/1998	<0.30	<1.0
	10/10/1998	<0.30	<1.0
	10/10/1998	<0.30	<1.0
	1/26/1999	<0.30	<1.0
	7/14/1999	<0.30	<1.0
	7/14/1999 (FD)	<0.30	<1.0
	4/13/2000	<0.30	<1.0
	10/19/2000	<0.30	<1.0
	6/7/2001	<0.30	<1.0
	12/26/2002	<0.30	<1.0
	8/3/2005	<0.30	<1.0

Table 2
Groundwater Analytical Results - PCP and TCP
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
CA MCL		1.0	NV
MW-9 (Cont.)	06/2010	<0.30	<1.0
	10/2010	<0.30	<1.0
	11/2011	<0.30	<1.0
	4/2012	<0.30	<1.0
	5/13/2015	<0.30	<1.0
	11/11/2015	<0.30	<1.0
	5/23/2016	<0.30	<1.0
	12/14/2016	<0.30	<1.0
5/8/2017	<0.30	<1.0	
MW-10	06/2010	<0.30	<1.0
	10/2010	<0.30	<1.0
	11/2011	<0.30	<1.0
	4/2012	<0.30	<1.0
	5/13/2015	<0.30	<1.0
	11/11/2015	<0.60	<2.0
	5/23/2016	<0.30	<1.0
	12/14/2016	<0.30	<1.0
5/8/2017	<0.30	<1.0	
MW-11	10/2010	0.84	<1.0
	11/2011	<0.30	<1.0
	4/2012	1.6	<1.0
	5/13/2015	<0.30	<1.0
	11/11/2015	0.67	<1.0
	5/23/2016	<0.30	<1.0
	12/14/2016	<0.30	<1.0
5/8/2017	1.9	<1.0	
MW-12	11/2011	24	<1.0
	04/2012	53	<1.0
	5/13/2015	52	<1.0
	11/11/2015	51	<1.0
	5/23/2016	120	<1.0
	12/14/2016	46	<1.0
	5/8/2017	81	<1.0

Notes:

Data prior to 2015 from URS (2011).
 All results in micrograms per liter
 CA MCL = California Maximum Contaminant Levels
 PCP = Pentachlorophenol
 TCP = 2,3,4,6-Tetrachlorophenol

Table 2
Groundwater Analytical Results - PCP and TCP
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
<i>CA MCL</i>		<i>1.0</i>	<i>NV</i>

Embolden values: Analyte concentration exceeds laboratory reporting limit

Shaded values: Analyte concentration exceeds MCL

< = indicates value is below the noted laboratory reporting limit

NV = No established value

FD = Field duplicate

Table 3
Comparison of Primary and Duplicate Sample Analytical Results
 McNamara and Peepe Lumber Mill
 Arcata, California

Well Name	Date	PCP	TCP
MW-1	5/8/2017	570	8.4
	5/8/2017 (FD)	530	7.9
	RPD	7%	6%

Notes:

Analytical results in micrograms per liter

PCP = Pentachlorophenol

TCP = 2,3,4,6-Tetrachlorophenol

RPD = relative percent difference

FD = Field duplicate

NA = Not applicable



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.

Mailing Address: 600 F Street, Suite 3 #810
Office: 415 I Street, Arcata, CA 95521
(707) 499-3678

www.humboldtbykeeper.org



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:

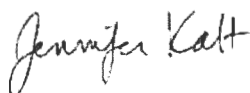
- a) The project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. *Less than significant impact.*

- 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
jkalt@humboldtcounty.org

Johnson, Cliff

From: Johnson, Cliff
Sent: Friday, August 9, 2019 5:59 PM
To: friedenbach@hbmwd.com
Cc: Castellano, Caitlin
Subject: Glendale (Brosgart) Cannabis Manufacturing facility

Hi John, You might be aware that we took very seriously the concerns raised in the HBMWD's comment letter on this project and on the CEQA document, and continued the hearing from its originally scheduled date. We have been working with the applicant to address the primary concerns that you raised , specifically regarding the DTSC decertification of the remedial action of the adjacent property. Based on the information we have gathered, we are likely going to be moving this project forward to a hearing quite soon and I wanted to see if you would like to meet to discuss the project. John Ford is going to be out next week, but I'd like to set up a meeting for the following week if you are available. If you have some time that Wednesday morning (21st) or that Friday (the 23rd), I'm sure we could have a productive meeting. I could try to squeeze in some time on some of the other days as well if those days do not work well for you. Please let me know. Thanks,

Cliff Johnson, Supervising Planner
County of Humboldt Planning and Building Department
3015 H Street
Eureka, CA 95501
(707) 268-3721



HUMBOLDT COUNTY
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION
3015 H STREET, EUREKA, CA 95501 ~ PHONE (707) 445-7541

8/21/2018

PROJECT REFERRAL TO: Humboldt Bay Municipal Water District

Project Referred To The Following Agencies:

Building Inspection Division, Public Works Land Use Division, Health and Human Services Environmental Health Division, County Counsel, CalFire, California Department of Fish And Wildlife, Northwest Information Center, Bear River Band Rohnerville Rancheria, Blue Lake Rancheria, Wiyot Tribe, Regional Water Quality Control Board, North Coast Unified Air Quality Management District, Humboldt County District Attorney, Humboldt County Agriculture Commissioner, SWRCB - Division of Water Rights, Sheriff, Fieldbrook CSD Community Services District, Blue Lake FPD Fire Protection District, Northern Humboldt HSD School District, Humboldt Bay Municipal Water District, Blue Lake Union School District

Applicant Name Micheal Brosgart **Key Parcel Number** 516-111-064-000

Application (APPS#) 13312 **Assigned Planner** Elizabeth Schatz (707) 268-3759 **Case Number(s)** CUP16-1096

Please review the above project and provide comments with any recommended conditions of approval. To help us log your response accurately, please include a copy of this form with your correspondence.

Questions concerning this project may be directed to the assigned planner for this project between 8:30am and 5:30pm Monday through Friday.

County Zoning Ordinance allows up to 15 calendar days for a response. If no response or extension request is received by the response date, processing will proceed as proposed.

If this box is checked, please return large format maps with your response.

Return Response No Later Than 9/5/2018 Planning Commission Clerk
County of Humboldt Planning and Building Department
3015 H Street
Eureka, CA 95501
E-mail: PlanningClerk@co.humboldt.ca.us **Fax:** (707) 268-3792

We have reviewed the above application and recommend the following (please check one):

- Recommend Approval. The Department has no comment at this time.
 - Recommend Conditional Approval. Suggested Conditions Attached.
 - Applicant needs to submit additional information. List of items attached.
 - Recommend Denial. Attach reasons for recommended denial.
 - Other Comments: _____
-

DATE: _____ PRINT NAME: _____

6. Environmental Impact: The following table identifies the evidence supports the finding that the proposed development will not adversely impact the environment.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
§15063 and 15070 of CEQA guidelines	Initial Study and Mitigated Negative Declaration (MND).	<p>As lead agency, the Department prepared a Mitigated Negative Declaration (MND) for the proposed Glendale Cannabis Facility and Special Permits. The MND evaluated the project for potential impacts on aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology/water quality, land use/planning, noise, population/housing, public services, recreation, transportation/traffic, tribal cultural resources, and utilities/service systems, wildfire, and mandatory findings of significance. The Draft Initial Study MND is included as Attachment 2 and includes a detailed discussion of all of the relevant environmental issues required under CEQA.</p> <p>The Planning department received multiple comments on the draft Initial Study and Mitigated Negative Declaration and have addressed those comments in the executive summary to this staff report. Specifically, the comments from the Humboldt Bay Municipal Water District regarding the use of hydrocarbon solvents on the site are adequately addressed by the projects design to follow all haz-mat requirements, store hazardous materials with secondary containment, and to receive hydrocarbon solvents at specified loading docks with spill containment kits. The projects design and conditions will ensure that any unforeseen spills will be contained on-site and not have the potential to migrate to surface water that could contaminate the drinking water supply. The conclusion of the MND that there is no impact remains appropriate.</p> <p>The Humboldt Bay Municipal Water District and Humboldt Baykeeper also commented that an MND is inappropriate because of the likelihood of soil and groundwater contamination on the site that could be disturbed by construction of the project. As discussed elsewhere in this report, the site has had a Phase II Site Assessment prepared which demonstrates that the site is not contaminated, and the California Department of Toxic Substances Control has reviewed the concerns raised by Humboldt Bay Municipal Water District and Humboldt Baykeeper and stated that the project site is not impacted by contaminated soil or groundwater. Further still, a groundwater study of the project site shows that development of the site will occur without disturbing groundwater on the site. Such that even if the groundwater on the site was contaminated, it would not be disturbed during construction activities. The evidence therefore shows that the site is not contaminated and that groundwater will not be disturbed by the project, and accordingly the project will not have a significant impact on hazards or hazardous materials.</p> <p>Based on the information in the application and a review of relevant references in the Department, staff has determined that there is no evidence before the Department that the project will have a potential adverse effect either individually or cumulatively on the resources</p>

		described above.
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Claire McAdams, Ph.D.
295 Glendale Drive, McKinleyville, CA 95519
Claire.mcadams@sbcglobal.net

September 3, 2019

Humboldt County Planning Commission
825 Fifth Street
Eureka, CA 95519

Dear Planning Commissioners Brian Mitchell, Noah Levy, Peggy O'Neill, Melanie McCavour, Mike Newman, Alan Bongio, and Robert E. Morris:

RE: Glendale's Proposed Cannabis Conditional Use Permit, including the Brosgart Glendale Cannabis Facility

Governmental planning scholars and the courts have much to say that is relevant to the Brosgart Cannabis Facility Special Permit applications.

For cases seeking Special Permits, such as this one, the hearing body's decision must be based on Findings. Findings must involve, among other criteria, "that the proposed use and improvements may be operated or maintained in such a manner as to not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity" (Humboldt County website, 2019). Conditional Use Permits are a type of Special Permit.

According to "The Planner's Training Series: The Conditional Use Permit" (CA Governor's Office of Planning and Research, July 1997), a "traditional purpose of the conditional use permit ["CUP"] is to enable a municipality to control certain uses which could have detrimental effects on the community" (*Neighborhood Action Group v. County of Calaveras (1984) 156 Cal. App.3d 1176*). "Local governments have the [constitutional] authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power (CA Constitution, Article XI, Section 7) (GOPR, 1997: 1). "California code reiterates the Constitutional policy powers of cities and counties, but has little to say about CUPs in particular" (GOPR, 1997: 1).

Case law has established certain CUP principles: "a city or county zoning ordinance can provide...specified uses which may be permitted after consideration and resolution by an administrative agency that the proposed use is in the best interest of public convenience and necessity and **will not be contrary to the public health, morals, or welfare** (*Upton v. Gray (1969) 269 Cal.App.2d 352*). (GOPR, 1997:2).

Local governments **must have a complete and valid general plan** before they can issue conditional use permits (*Resource Defense Fund v. County of Santa Cruz (1982) 133 Cal. App.3d 800* and *Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176*).(GOPR, 1997: 2)

The authority to issue CUPs, "delegated to planning commissions or other administrative bodies by elected officials, must include **standards of guidance**. These standards of guidance are provided to insure that the delegation of discretion to an administrative agency is not unbridled, and thus, not invalid" (*Stoddard v. Edleman (1970) 4 Cal.App.3d 544*) (GOPR, 1997: 2).

“As a quasi-judicial act, the approval of a conditional use permit requires the board or administrator to **adopt written findings** to support their action. Whether the proposal has been approved or denied, the decision can be appealed to a higher body....in accordance with the city or county zoning ordinance” (GOPR, 1997:3).

“Written ‘**findings of fact**’ are required in order to support the decision of the hearing body to approve or deny a conditional use permit (*Topanga Association for a Scenic Community v. Count of Los Angeles (1974) 11C.3d.506*). Findings are the legal footprints left by local decision-makers to show how the decision-making process progressed from the initial facts to the decision. Findings are important. They ‘bridge the analytical gap between the raw evidence and ultimate decision’ (*Topanga, supra*). If the decision is challenged, a court will examine the evidence supporting the findings to determine whether the hearing body abused its discretion when acting on a conditional use permit. Such **an abuse of discretion is found when: (1) the agency did not proceed in a manner prescribed by law; (2) the agency’s decision is not supported by findings; and (3) the agency’s findings are not supported by evidence in the administrative record** (GOPR, 1997: 3).”

“**The hearing body may apply conditions of approval**, but there are limitations in establishing conditions of approval: “(1) the jurisdiction must be acting within its police powers; (2) the condition must substantially further a legitimate public purpose; (3) the condition must further the same public interest for which it was imposed; and (4) the property owners may not be required to carry a disproportionate load in furthering the public purpose (*California Land-Use and Planning Law, 9th edition*).”

“Section 65909 provides that dedications of land, as conditions of approval, must be “reasonably related” to the use of the property for which the conditional use is requested. There must also be a “rough proportionality” between the extent of the condition and the particular demand or impact of the project (*Dolan v. City of Tigard (1994) 129 L.Ed2nd 304*). In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use” (GOPR, 1997: 5). “If a condition applied to a conditional use permit is not **linked to some legitimate public need or burden the project creates**, the condition imposed could be deemed a taking of property in violation of the U.S. Constitution’s Fifth and Fourteenth Amendments (*Nollan v. California Coastal Commission (1987) 97 L. Ed2nd 677*).”

Requests for all Glendale Applications in process as of August 2019, including the 4 Brosgart Special Permit applications:

-What is the basis for granting the CUPs? **Have Findings been adopted to support the agency’s decision, based upon substantial evidence in the record**, for each of the applicants’ properties? Please share the Findings with the public and the Planning Commission prior to its vote.

-Regarding CEQA Compliance: What is the cumulative impact of all the properties’ cannabis projects? How is it possible to consider cumulative impact of Brosgart facilities without considering the other known applicants’ facilities’ impacts?

-What is the cumulative Traffic Impact?

As a Glendale neighbor, and recognizing that any future legal challenges can consider items mentioned in writing or hearings for the special permits, I request the following:

-Impose a moratorium on all cannabis-related CUPs until there is a "Specific Plan" adopted for the Glendale/Blue Lake area (i.e. the Glendale/Blue Lake Community Plan process has occurred and been completed and approved by hearing bodies (Planning Commission, Board of Supervisors);

-Add a Condition that there be No Retail Sales allowed;

-Add a Condition for Visual barring of applicants' industrial/commercial services from Glendale Drive;

- Add a Condition that Applicants shall provide generous security measures to protect their products/cash/equipment from theft, and protect the neighbors from higher neighborhood crime associated with the non-banking nature of Applicants' cannabis businesses. Such security measures must be rigorous, but not include forbidding/concertina-wire topped walls (i.e. boundaries that look like prisons);

-Add a Condition to Disallow Noise before 8:00am and after 6:00pm Monday-Saturday, and all hours Sunday;

-Add a Condition that smell from cannabis grows/processing/manufacturing/distribution be prohibited outside boundaries of the properties;

-Add a Condition to protect existing Dark Night Sky enjoyed by properties adjacent and near the Applicants' properties, even if doing so exceeds current County standards for direct outdoor lighting at industrial/commercial facilities.

-Add Condition that Fieldbrook Glendale CSD certify that there is current capacity in the existing FGCSO water system to serve the cumulative capacity of this group of Glendale applications (including all indoor grows), without detriment to the quality and quantity and cost of service to existing Glendale residential and commercial FGCSO customers;

-Add a Condition that Fieldbrook Glendale CSD certify that there is current capacity in the existing FGCSO wastewater system to treat the cumulative wastewater load of this group of Glendale applications, without detriment to the quality and quantity and cost of service to existing Glendale residential and commercial FGCSO customers. Require FGCSO to calculate the above, using the same formula for wastewater use by which FGCSO calculates residential wastewater use;

-Add a Condition that Applicant contribute to cost of planning and implementing a non-motorized transportation path along Glendale Drive, and agree to provide an easement for such a path if its path crosses Applicant's property, at no cost to the public;

-Add a Condition that Applicant must certify that explosions within the SP-16-868 volatile manufacturing facility will not pollute groundwater or subflooring of the explosion-proof walled structure, or surrounding atmosphere;

-Add a Condition that Applicant shall control noxious weeds on site, and greenspaces be mowed/maintained regularly;

-Add a Condition that Applicant certify that they will bear the cost of pollution abatement environmental cleanup for any underground and surface pollution on their site, as required by any governmental authorities at present and in future;

- Add a Condition that Applicant will contribute toward the cost of planning and implementing any proposed regional wastewater collection and treatment system, in the same proportion which their facilities' wastewater volume, is, of the total existing wastewater system capacity.

-Add a Condition that the Applicant shall not block existing wildlife paths/corridors with their facilities.

Thank you for your careful consideration of all these requests, which, if approved, would help protect the public health, morals, and welfare.

Respectfully,

Claire McAdams

-

