



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



INSTRUCTIONS:

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

SECTION I

APPLICANT (Project will be processed under Business name, if applicable.)	AGENT (Communications from Department will be directed to agent)
Business Name: <u>Redwood Properties</u>	Business Name: <u>Harland Law Firm LLP</u>
Contact Person: <u>Craig Lehman</u>	Contact Person: <u>Allison G. Jackson</u>
Mailing Address: <u>831 Redwood Drive</u>	Mailing Address: <u>212 G Street, Suite 201</u>
City, St, Zip: <u>Garberville, CA 95542</u>	City, St, Zip: <u>Eureka, CA 95501-0420</u>
Telephone: <u>(707) 923-3210</u> Alt. Tel: _____	Telephone: <u>(707) 444-9281</u> Alt. Tel: _____
Email: _____	Email: <u>ajackson@harlandlaw.com</u>
OWNER(S) OF RECORD (If different from applicant)	
Owner's Name: <u>Emerald Triangle Group LLC</u>	Owner's Name: <u>n/a</u>
Mailing Address: <u>P.O. Box 262</u>	Mailing Address: _____
City, St, Zip: <u>Alderpoint, CA 95511</u>	City, St, Zip: _____
Telephone: _____ Alt. Tel: _____	Telephone: _____ Alt. Tel: _____
LOCATION OF PROJECT	
Site Address: <u>829 Redwood Drive, Garberville</u>	Assessor's Parcel No(s): <u>032-051-032</u>
Community Area: _____	Parcel Size (acres or sq. ft.): _____
Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons? <input type="checkbox"/> YES <input type="checkbox"/> NO	

SECTION II


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

Appeal of the Planning Commission's December 5th approval of Emerald Triangle Group LLC's Special Permit Application Numbers PLN-12733-SP and PLN-12747-SP to the Board of Supervisors. See attached letter from Harland Law Firm LLP.

SECTION III

OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT

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

 _____ Applicant Signature	December 18, 2019 _____ Date
_____ Owner of Record Signature	_____ Date
_____ Owner of Record Signature	_____ Date

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

Harland Law Firm LLP

FORTUNA

RICHARD A. SMITH
ALLISON G. JACKSON
JOHN S. LOPEZ
AMY MENDOZA-STOVER
TAMARA C. FALOR
JUSTIN T. BULLER

ATTORNEYS AT LAW

212 G STREET, SUITE 201
EUREKA, CALIFORNIA 95501
(707) 444-9281
FACSIMILE: (707) 445-2961

954 MAIN STREET
FORTUNA, CA 95540
(707) 725-4426
FACSIMILE: (707) 725-5738

Gerald R. Harland
(Partner 1952 - 2012)

Allison G. Jackson
ajackson@harlandlaw.com

December 18, 2019



John Ford, Director
Humboldt County Planning and Building Department
3015 H Street
Eureka, California 95501-4484

Re: Appeal from December 5, 2019, Planning Commission Approval of Emerald Triangle Group LLC's Special Permit Application Numbers PLN-12733-SP and PLN-12747-SP; Assessor's Parcel Number: 032-051-032; 829 Redwood Drive, Garberville Area

Dear John:

Please accept this appeal of the Planning Commission's December 5th approval of Emerald Triangle Group LLC's Special Permit Application Numbers PLN-12733-SP and PLN-12747-SP. This letter accompanies the appeal application in order to comply with Humboldt County Code section 312-13.2's requirement that "the appellant shall state specifically why the decision of the Hearing Officer is not in accord with the standards and regulations of the zoning ordinances, or why it is believed that there was an error or an abuse of discretion by the Hearing Officer." H.C.C. § 312-13.2.

I represent Mr. Craig Lehman who operates a business adjacent to this site. This is a formal objection to the approval of both permits by your department and the Planning Commission. We have the greatest respect for the Planning Commissioners, and for you as the Director and your entire department. We believe that the CEQA exemptions cited by your department are inapplicable to the Project, since the Project is not for new construction or minor changes to the building, but instead is for "*expansion of the existing use of the property.*" The Project is for a special permit to install a manufacturing and mass distribution (industrial) facility which operates 24/7 into a light retail area deemed CG, wherein industrial is neither a principally permitted use nor an existing use. The building at Redwood Drive, Garberville has been light retail for decades. The last occupants were "Miranda's Rescue Thrift Store." Approval of industrial manufacturing and distribution is an expansion of the existing use for the site. Before Miranda's Rescue (the last occupant of the first floor) was another light retail clothing store on the first floor. All of the

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surrounding businesses are small, commercial light retail businesses. The block upon which these small retail business are located has no setbacks between buildings. The building and surrounding buildings are all old wood frame construction and were built in the early-to-mid 1900s. Residences/homes are in back of the Project site on the other side of a very narrow alley. The narrow alley is where the existing businesses park to keep the few parking spaces (13) open in front for customers. There are three churches and a preschool all within 400 feet of the site; one church and preschool is only about 150 feet away from the purposed wholesale distribution and manufacturing facility. While the neighboring businesses and residents think the project itself is good for Southern Humboldt, they are adamant that the site is not appropriate due to the limitations of the light retail area, the location of the preschool and churches, and the location of homes. This project is for two special permits in a CG zone; this is not a C3 zone where this project would be consistent with an existing use exception. While it is in a C2 zone, there are no existing industrial uses in sight. To be frank, even with your department's conditions of approval (discussed further below), which your department inserted into the finding of the exemption in order to mitigate some of the impacts from this project, the categorical exemption your department has claimed is, at best, tenuous because the public has provided facts which support a fair argument that there are impacts to the environment which are unique from this industrial/distribution facility and which are very different from anything presented by the operation of the light retail establishments that currently exist in the area.

During the Planning Commission hearing, numerous members of the public spoke and presented the Commission with facts that a fair argument exists that the Project may have direct impacts to the environment because of the expansion from the currently permitted use which is light retail to industrial/distribution and manufacturing. The fire department, neighboring businesses, and even a pastor submitted written comments regarding the potential direct impacts from the expansion of use from light retail to a 24/7 industrial/distribution/manufacturing enterprise. The impacts they discussed are quite different than any impacts from the existing light retail businesses, including but not limited to: noise, odor, and lighting from a 24/7 operation; fire protection from the operation of the hash manufacturing and storage of ethanol on site; lack of parking for an expanded 24/7 industrial/distribution facility with three different shifts of employees; marginal access in the alleyway for delivery trucks when the alleyway is used by other business owners for parking. The impacts also include the existence of at least three Sensitive Receptors very close to the project site as defined pursuant to HCC ordinance 314.55.4.6.4.4.1.3, seemingly making any grant of a special permit impossible.

The most troubling aspect for the community members is how this project is proceeding under a categorical exemption thereby avoiding CEQA EIR/Negative Declaration process where the discussion of appropriate mitigation measures lawfully belong. Also, troubling is the dismissal of facts that establish that a fair argument exists

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that the project may have environmental impacts” that are not present from the operation of the existing small retail establishments. Those facts which have been submitted to your department and to the Planning Commission seem to belie your department’s recommendation that the project is exempt from CEQA since a fair argument based upon those facts has been expressed by neighbors that the project may have direct environmental impacts. While the law shows great deference to your decision that an exemption may apply, the same cannot be said for disregarding the facts establishing the existence of a “fair argument” of potential impacts. We believe that once the concerns of direct impacts became part of the official record, the County is duty bound to conduct either an EIR or Negative Declaration. In fact, we believe that the project cannot proceed due to some of the conditions of approval inserted into the project in order to qualify for the categorical exemption; actually because of your departments imposition of certain conditions of approval this matter *must proceed with formal environmental review* (EIR/Negative Declaration). All mitigation measures must be imposed through the CEQA process and not by “conditions of approval” from your department.

1. **Project site:**
 - a. The location is a C2 light commercial zone in downtown Garberville. It was formerly “Miranda’s Rescue Thrift Shop” and was a small clothing store before that.
 - b. The building and the surrounding buildings are very old wood frame construction.
 - c. The project site has zero setbacks to other businesses.
 - d. There is a Residential zone behind the project site with homes all within three hundred (300) feet of the project site and would be thereby affected by noise from a 24/7 operation, odor, parking, lighting, etc.
 - e. There are three churches and preschool all within 600 feet. One church and preschool is about one hundred fifty feet from the site, and the other two churches about four hundred feet of the site. While one church (along with its preschool) was damaged by fire, it is in the process of being rebuilt.
 - f. There is limited parking in the alleyway behind the site which is used by all of the other business owners making it likely difficult or impossible to maneuver fire trucks during the day when businesses use the alley way. There is likely no other parking other than for two cars off the alleyway.
 - g. The alleyway’s ingress and egress is limited. There is an easement for the project applicant to use the alley in one direction only up to the project site but not past that site as there is a locked gate. As such, delivery trucks have little-to-no turn around ability during the day, and the delivery trucks would have to block the alleyway stopping ingress and egress of the property owners who occupy businesses past the project site. Also, it is likely delivery trucks will not only block the alley from ingress and egress for users located

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past this project site, but the delivery trucks may have to back in reverse down the driveway after delivery.

- h. There is little to no ability to maneuver a fire truck in the alley with cars parked in that alleyway.
- i. A business is operated on the second floor of the project area.
- j. A residential unit(s) occupies the third floor of the project area.

2. Project:

- a. This Project is described as a Manufacturing Site for “kief, hash, rosin, steam distilled terpenes and pre-rolls.”
- b. The manufacturing process uses ethanol described as a non-volatile process, but ethanol itself is volatile.
- c. The Project is also for a mass distribution center wherein product will be packaged on site at this off site processing facility and sent out. Cannabis will be delivered from all over the area and then packaging on site and distributed or manufactured into hash, packaged and then distributed.
- d. The project description is that it will take/buy cannabis, package it and also manufacture it on site, then distribute raw and packaged cannabis goods.
- e. Hours of activity are up to twenty-four hours a day and seven days a week.

3. CEQA:

- a. Generally.

This Project is for two Special Permits to operate a cannabis manufacturing and distribution business; the Project is not for building permits for existing structures of the same size or for new construction. The Special Permits are required in order to allow an industrial use in a light retail area.

- b. The Ceqa Exemptions Listed in by the Project Applicant and Planning Department Are Inapplicable to the Project since this Project Expands the Existing Use from Light Retail to Industrial.

Your department has claimed that there is a categorical exemption for this project exempting it from CEQA environmental analysis. With all due respect to your department, the exemption you claimed is not applicable because it expands the use from light retail to industrial. Only in the event that the use is not expanded or changed may this exemption be claimed. Since the use is expanded, the exemption cannot be lawfully used.

- c. Assuming, *Arguendo*, That the County Could Use the Categorical Exemption, Because There Are Facts Presenting a Fair Argument of Impacts to the

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Environment, Ceqa Analysis Is *Mandated as a Matter of Law*, and the Exemption Cannot Be Claimed to excuse formal environmental review.

As you are fully aware, “Only those projects having no significant effect on the environment are categorically exempt from CEQA review. [Citations.] **If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. [Citation.] Mitigation measures may support a negative declaration [or a mitigated negative declaration] but not a categorical exemption.**” *San Francisco Beautiful v. City and County of San Francisco*, 226 Cal. App. 4th 1012, 1032 (2014).

CEQA Guidelines section 15064, subdivision (f)(1), “If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward*, 106 Cal. App. 3d 988 (1980). **Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect** (*No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68 (1974).” If, however, an agency’s “initial study” for a nonexempt project “shows that there is no substantial evidence that the project may have a significant effect” on the environment, the agency “prepares a negative declaration” (Guidelines, § 15002, subd. (k)(2)) describing “the reasons” why no EIR is required (§ 21064). (*Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1111-1112 (2015).)

- d. The Record Is Replete with Facts Presenting a Fair Argument That There Are Environmental Impacts from this Project, Therefore There must Be Formal Environmental Review; Conditions of Approval Will Not Legally Suffice.

I ask that the written record before the Planning Commission, which is the staff report and letters submitted, become part of the record on appeal including, but not limited to:

- i. Page 102 - recommendation to deny special permit by the chief of the Garberville Fire Protection District due to fire concerns;
- ii. Page 105-110 - my letter to the Commission;
- iii. Page 111 fax cover sheet from Pastor Craig Parkenson to Supervisor Fennel;
- iv. Page 112-113 - letter from Paster Parkenson discussing the existence of the church and school, the age of the building, the fact that the

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- alleyway can't handle the traffic for a manufacturing and distribution center, the restrictive parking for the existing retail businesses being unable to handle the 24/7 manufacturing operation; fire concerns for a 100 year old building;
- v. Page 114-115 - Brian Winterberg (property owner, three addresses neighboring the project site) regarding the risk of fire from ethanol storage anywhere on site as it presents a severe threat to the other retail businesses on the whole block (especially due to the age of the buildings on the block and lack of setbacks;
 - vi. Pages 118-119, Karen Miclette - regarding the fact that Main St., Garberville is not an industrial park and that she objects to the odors and traffic associated with a mass distribution and manufacturing facility for herself, her staff and her clients. She expressed her concerns of the very limited space in the alley which is already full and that the area is so narrow that the Recology trash truck must come at 7 am before working people get to the existing businesses because there is no room to pull in afterwards. She stated there was an inability to store a delivery truck in the alley and there was no ability to have a loading area in the alley due to the fact that there is only one way in and out (since the alley is fenced off directly adjacent to the project site. She stated that the parking restrictions cannot support a 24/7 industrial manufacturing and distribution center either in the alley or in the 13 spaces in front that provide the only parking for customers for the existing 6 retail businesses. Her concerns regarding the fact that there is little wastewater capacity on site for the manufacturing process and that while the ethanol extraction process may be a non-volatile process, that ethanol is volatile and has no place in a small retail district composed of 100 year old wooden structures.

I also ask that the DVD of the planning commission proceedings are incorporated into the record to be before the Board including but not limited to the oral testimony presented by:

- vii. Brooke Epperly – Opposed to the use of ethanol in an area not zoned for it; shared alley is inadequate for the proposed use;
- viii. Kent Sawatzky – Location chosen for project is not consistent with its current zoning; project has potential for unsightliness (“boarded-up appearance”); concerned with staff’s assertion that ethanol process is not a potential problem;

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- ix. Mr. Studebaker – Concerned about odor; says the location is one of the worst possible choices for the project, with the possible exception of locating the project in the high school gym; the concrete building is 100 years old, the 180 sq. ft. building in back was not a septic tank but was an old ice house; he expressed concerns that ethanol extraction will not be properly performed or could be switched to a more volatile medium after approval;
- x. Female Owner of house nearby – opposed to locating the project in downtown Garberville; joined comments of Mr. Studebaker.

As discussed above, even if your department maintains its position that there is no expansion of use from the issuance of the two Special Permits allowing an industrial/manufacturing/distribution center in a small mom-and-pop light retail area, the record sets forth facts which present a fair argument that there will be direct physical impacts to the environment from the expansion of use from light retail to industrial/distribution/manufacturing and from traditional day operation to a three shift 24/7 operation. Because a fair argument based on facts is in the record, as a matter of law, the comments establish that there are “unusual circumstances” not associated with the existing uses but with the expansion of the existing uses requested by the 2 special permit applications. Therefore, the claimed categorical exemption cannot be used to avoid environmental review; either an EIR or Negative Declaration must be conducted. This is not my view, it is the view of the California Supreme Court and the First District Court of Appeal discussed above in the *Berkeley Hillside* and the *San Francisco Beautiful* matters.

Pursuant to section 15064(f)(1) provides: A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic. It includes such things as odor, fire risks, parking, and lighting.

The Project proposes a 24/7 operation. Given the proximity to the business (above on the second floor, the residence on the third floor, the zero setbacks to the adjacent businesses) together with the lack of a being able to use the alleyway past the project site for ingress and egress, the proximity to three churches and a preschool, as well as the location of residences clearly within three hundred (300) feet of the proposed manufacturing and distribution center, there is a fair argument that there may be direct and indirect physical impacts to the environment. For instance, in the oral and written comments before the Planning Commission, neighboring businesses and homeowners are concerned about: lighting and noise from a 24/7 enterprise, and parking restrictions both in the front of the building (only 13 spaces for all businesses for which this one would take at least 5) and restricted parking in the alley in back from the use of other property owners. Other direct physical impacts are the odors from this major cannabis distribution

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center and manufacturing facility. There are fire and security concerns; the fire department has urged denial due to dangers regarding the use and storage of ethanol. There is no plan for how a fire truck could maneuver in the alley with parked cars from other businesses especially *during the day when vehicles are parked in the alley.*

- e. Staff's Conditions of Approval Establish Prima Facie Evidence That There Are Facts That Show a Fair Argument Exists That the Project May Have a Direct/Indirect Physical Impact; the Conditions of Approval Themselves Establish This.

I have found in working with clients and trying to guide them through the CEQA process as applicants that it is often difficult to navigate CEQA based upon a simple lay reading of words of the statutes and/or guidelines. That is why it is important to go beyond the words and see how the courts have interpreted them. When Conditions of Approval are imposed to mitigate environmental concerns of a project, those Conditions of Approval, alone, negate the exemption. I am not talking about general conditions (*e.g.*, follow all codes) or of conditions made after the exemption hearing to lessen the impact of construction. If there are mitigation measures imposed as "conditions of approval" in connection with the exemption process, then, as a matter of law, those mitigation measures *must proceed within the environmental review process of and EIR or Negative Declaration.*

"Mitigation" includes the following:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

(Cal. Code Regs., tit. 14, § 15370 (Lexis Advance through Register 2019, No. 48, November 29, 2019).)

Reliance upon mitigation measures (whether included in the application or later adopted during the permitting process) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts. That process must be conducted under established California Environmental Quality Act

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(CEQA), Pub. Resources Code, § 21000, *et seq.*, standards and procedures for EIRs (environmental impact reports) or negative declarations. There are sound reasons for precluding reliance upon mitigation measures at the preliminary stage of determining eligibility for a categorical exemption. Regulatory guidelines dealing with the environmental review process under CEQA contain elaborate standards—as well as significant procedural requirements—for determining whether proposed mitigation will adequately protect the environment and hence make an EIR unnecessary; in sharp contrast, the guidelines governing preliminary review do not contain any requirements that expressly deal with the evaluation of mitigation measures. An agency is not permitted to evade standards governing the preparation of a mitigated negative declaration by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption. (*Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.*, 242 Cal.App.4th 555, 557, (2015).)

The Planning Department has imposed conditions of approval on this project. Some are general and not connected to the exemption process, but some are absolutely site-specific to offset concerns about the inappropriateness of the project site (*e.g.*, such as installing odor control mechanisms, moving the ethanol processing to an shed in the back of the building and approval of deliveries only during “normal business hours” (even without a definition of what “normal business hours” are. The Staff Report alluded to an informal agreement by the applicant (which is totally non enforceable) that the applicant could possibly use smaller delivery trucks due to the size limitations of the alley and lack of turn around ability and loading.

Without a doubt, the concerns raised by neighboring businesses and homeowners present facts that there is a fair argument that there may be direct impacts from the project. Those assertion of facts by the neighboring businesses, home owners, the pastor and the fire department voicing specific environmental concerns of expanding the existing light retail use to industrial/distribution/manufacturing, especially when coupled with the Planning Departments Conditions of Approval imposed in connection with finding the “exemption” mandates that this process stop now and that the Negative Declaration process by used. Ignoring the facts presented by oral and written comments, coupled with the conditions of approval planning staff has set in connection with finding an “exemption,” and issuing the 2 special permits expanding the use on site will only delay the inevitable. To be clear, environmental review must occur. Either the Board can reverse the Planning Commission’s approval and send this matter back for the required environmental review to occur, or the Superior Court can. Either way, the proper environmental review must be done with this project likely proceeding with a mitigated negative declaration. But disregarding the “fair argument” at this junction means that the project will be stopped for a significant period of time and makes no sense with this record.

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As a practitioner I do more CEQA practice guiding applicants through the CEQA process, and as a rule, I tell all of my clients that they cannot shirk CEQA because it will cost them dearly financially and will stall their project for sometimes years. First, there is the indemnification required by the county from the applicant. These costs escalate when an applicant has tenuously maneuvered around the EIR/Negative Declaration process and has to defend such folly in court, paying both their own and the opposing party's legal fees. Second, it will also set the project back years sometimes, especially after the matter winds its way through the courts and must start again using the appropriate environmental review process.

4. Problems with the Humboldt County Codes and this Project Going Forward Even after CEQA Review:

It has been repeatedly expressed to me by your staff (and even a member of the commission) that because the project applicant submitted applications for the two special permits on December 28, 2016 (or prior to December 31, 2016) that none of the current cannabis ordinance requirements apply. Your department has stated that none of the requirements from what is referred to as 2.0 applies and that only what is in the now defunct 1.0 applies. A simple reading of the express wording of the ordinance contradicts this assertion.

Under 314-55.4.3.1:

“All facilities and activities involved in the commercial cultivation, processing, manufacturing, and distribution, testing, and sale of cannabis within the jurisdiction of the County of Humboldt outside of the coastal zone shall be controlled by the provisions of this section, regardless of whether those activities existed or occurred prior to the adoption of this section. *Applications for commercial cannabis activity land use permits filed on or before December 31, 2016, shall be governed by the regulations in effect at the time of their submittal, except as follows and is otherwise prescribed herein.* Zoning clearance certificate applications for open air cultivation filed on or before December 31, 2016 shall be controlled by the provisions of Section 314-55.4.6.7.”

What follows and is prescribed herein is that:

- a. Under 314.55.4.4 “Commercial cannabis activity” means any activity involving the cultivation, processing, distribution, manufacturing, testing, sale, or related activities, of cannabis for commercial purposes.

- b. Under 314.55.4.4, “Manufacturing” means a process whereby the raw agricultural product is transformed into a concentrate, an edible product, or a topical product, and the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- c. “Commercial cannabis cultivation” means *any* activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana or cannabis, including nurseries, that is intended to be processed, manufactured, distributed, dispensed, delivered, and sold.
- d. “Off-site processing facility” means the location or facility where cannabis is dried, cured, graded, trimmed, and/or packaged when conducted at premises separate from the cultivation site where the processed cannabis is grown and harvested.

In addition and more importantly:

- e. Under 55.4.5.1.1. No commercial cannabis activity shall be permitted within six hundred (600) feet of a school. This includes preschools. A preschool is about 150 feet away.
- f. Under 55.4.6.2.1. Zoning for commercial cannabis manufacturing and cultivation (as defined above) shall only be in zones designated as C-3, ML, MH, and U when accompanied by a commercial or industrial general plan land use designation, or where previously developed for a lawful industrial or commercial use. This is a C-2 zone.
- g. Under 55.4.6.4.4 Setbacks: Standard Setbacks Cultivation Site(s) must observe all of the following setbacks: a) Property Lines - Thirty (30’) feet from any property line; b) Residences and undeveloped parcels - Three hundred feet (300’) from any residence on an adjacent separately owned parcel, and two hundred seventy feet (270’) from any adjacent undeveloped separately owned parcel. c) Sensitive Receptors - Six hundred feet (600’) from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or

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wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership

- h. Under 55.4.7 **Cannabis Support Facilities**. Cannabis Support Facilities include facilities for Distribution, Off-Site Processing, Enclosed Nurseries, Community Propagation Centers and Cannabis Testing and Research Laboratories. All Cannabis Support Facilities must meet or exceed the setbacks from Sensitive Receptors and Tribal Ceremonial Sites specified under 55.4.6.4.4(c) and (d), unless waived or reduced pursuant to 55.4.6.4.4(f). Where conducted within an Enclosed setting, Cannabis Support Facilities shall not be subject to the setbacks from School Bus Stops prescribed within 55.4.6.4.4(c). There are three churches within the sensitive receptor setback requirements.
- i. 55.4.8.2 **Manufacturing**. Manufacturing Sites must comply with all applicable performance standards, as well as meet the Eligibility Criteria specified in Section 55.4.6.3.1 and 55.4.6.3.2 as well as comply with the Siting Criteria specified in Sections 55.4.6.4.1, 55.4.6.4.2, 55.4.6.4.3, and 55.4.6.4.4 (c), (d) and (g). Manufacturing may not occur within the sensitive receptor setbacks; there are three churches within the set back area of the proposed manufacturing/distribution center.

I am well aware that the Planning Department is of the opinion that nothing in Cannabis Ordinance 2.0 applies to these two permits. However, the very language of the ordinance "except as otherwise prescribed herein" dispels that proposition. The express language used in your Ordinance, which was approved by the Board in a 5-0 vote, says it applies. Reading the express words of 314-55.4.3.1, what is prescribed in 2.0 also applies to this project, and all the setbacks discussed above apply. I cannot comprehend an argument that the ordinance does not say what it says.

5. Conclusion

The record, both by the speakers at the Planning Commission hearing and by those who submitted written comments, establishes that there are facts in this record that present a fair argument that there may be direct impacts to the environment from the project. Because of this record, the county is required to conduct the formal EIR/Negative Declaration process and not impose mitigation measures as conditions of approval. The staff report and its use of conditions of approval to mitigate some of the direct impacts from the project establish facts that a fair argument exists that there may be direct impacts from the expansion of the existing use from light retail to

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industrial/distribution/manufacturing. The record from the community establishes the same thing. This matter may not proceed outside the EIR/Negative Declaration process; it requires formal environmental review via an EIR or Negative Declaration since the lead agency cannot impose mitigation measures in connection with the "exemption" and outside of the CEQA environmental review process. Stopping the proceeding now and requiring the Negative Declaration process will allow the applicant to proceed, will mitigate the impacts from the proposed project, and will be a more efficient use of resources since ignoring the facts which present a fair argument of impacts will result in a lengthy delay of the project application as it winds its way through the court system.

Please forward this appeal to the Humboldt County Board of Supervisors as soon as possible for their consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allison G. Jackson", with a long horizontal flourish extending to the right.

Allison G. Jackson

cc: Client