

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on \_\_\_\_\_, 2021

Resolution No. 21-\_\_\_ Resolution of the Board of Supervisors of the County of Humboldt ADOPTING FINDINGS OF FACT, DETERMINING THE PROJECT IS SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A MITIGATED NEGATIVE DECLARATION, DENYING THE APPEAL FOR RECORD NO. PLN-17198-2021, APPROVING THE ARCATA LAND COMPANY, LLC, CONDITIONAL USE PERMIT RECORD NO. PLN-12255-CUP, AND ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM.

**WHEREAS**, Humboldt County adopted the Commercial Medical Marijuana Land Use (CMMLUO) Ordinance on September 13, 2016, after adopting a Mitigated Negative Declaration finding that all potential impacts associated with implementation of the ordinance had been reduced to a less than significant level; and

**WHEREAS**, an application for Conditional Use Permit was submitted to the Humboldt County Planning and Building Department to allow 22.9 acres of new cannabis cultivation consisting of 5.7 acres of new mixed light cannabis cultivation, 17.2 acres of new outdoor light-deprivation cannabis cultivation, on APNs 506-231-021 and 505-151-011; and

**WHEREAS**, the Planning and Building Department reviewed the application and evidence supporting the application, referred the application and evidence to appropriate reviewing agencies for site inspections, comments and recommendations and based on this information prepared a written recommendation for the Planning Commission; and

**WHEREAS**, the Planning Commission considered the application at their meeting of March 18, 2021 and received a significant amount of public testimony. The Planning Commission was not able to hear all the testimony and continued the public hearing.

**WHEREAS**, In response to the continuance the applicant modified the application for the Conditional Use Permit to reduce the overall cultivation area to 8 acres consisting of 5.7 acres of new mixed light cannabis cultivation and 2.3 acres of new outdoor light-deprivation cannabis cultivation with 30,000 square feet of appurtenant propagation area: and

**WHEREAS**, on April 22, 2021, the Planning Commission took the following actions:

1. Adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the Arcata Land Company, LLC project; and
2. Found that the proposed project complies with the General Plan and Zoning Ordinance; and
3. Approved the Conditional Use Permit under record No. PLN-12255-CUP as conditioned.

**WHEREAS**, on May 4, 2021, James Cotton, Kim Puckett, Paula Proctor, Michael Proctor, Joan Edwards, Lee Torrence, Rebecca Crow, Carol McFarland, Don Nielsen, Terrence McNally, Kerry McNally, Tamara Spivey, Mona Mazzotti, Abraham Moshekh, Duane E Smith, Pamela J Smith, Victor Howard, Lydia Butyrin, Lisa Pelletier, Kathryn Melia, Julie Hochfeld, Nancy Blinn, Warren Blinn, Peggy Bell-

Hans, Todd Casebolt, Deni Devine, Jose Mendoca and Leonor Mendoca (“Appellant”) filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

**WHEREAS**, the Board of Supervisors held a duly-noticed public hearing, *de-novo*, on June 22, 2021 and reviewed, considered, and discussed the application, mitigated negative declaration, and appeal for the Conditional Use Permit; and reviewed and considered all public testimony and evidence presented at the hearing; and

**WHEREAS**, the Board of Supervisors continued to application, mitigated negative declaration and appeal for the Conditional Use Permit to July 13, 2021 in order for the applicant and staff to explore phasing of the operation and to further research the proposed odor control technology; and

**WHEREAS**, the Board of Supervisors held a public hearing on July 13, 2021 to consider the additional phasing information and additional testimony regarding odor control technology.

Now, **THEREFORE BE IT RESOLVED**, that the Board of Supervisors makes all the following findings:

- 1. FINDING:**                    **Project Description:** A Conditional Use Permit for eight acres of new commercial cannabis cultivation. The Project includes a combination of outdoor light-deprivation cultivation (2.3 acres) and mixed-light cultivation (5.7 acres) in new enclosed gutter-connected greenhouses. In addition, there will be 30,000 square feet of existing hoop houses dedicated to ancillary propagation activities. The Project will also include ancillary support features, such as an administrative building, propagation and office building, utility building, new onsite wastewater treatment system, unpaved parking areas, security fencing, and storm water management features (e.g., detention basins). The Project is anticipated to require up to 80 full-time equivalent employees at full buildout. An existing agricultural well on APN 505-151-012 will provide water for the Project. Yearly water demand for irrigation is estimated at 36 acre-feet (11,736,000 gallons). Project employees will have access to permanent restrooms in the new administration and office building that will be served by a new private onsite wastewater treatment system for sewage disposal, in addition to temporary restrooms for employees during peak harvest periods.

**EVIDENCE:**    a)    Project File: PLN-12255-CUP

- 2. FINDING:**                    **CEQA:** The requirements of CEQA have been satisfied. The project was found subject to CEQA and a Mitigated Negative Declaration was prepared. The MND was made available for public review and the public was able to provide comment. In acting on the document the Planning Commission and Board of Supervisors used their own independent judgement and analysis to determine that the document adequately identifies all potentially significant effects and applies appropriate mitigation measures to reduce potential impacts to a less than significant level. Public comments have been submitting arguing that there are potentially significant adverse impacts however none of these comments have included factual or accurate expert information that rises to the level of substantial evidence under CEQA. While expert opinion and testimony may support a finding of potentially significant impacts under CEQA and two experts

have provided such opinions, in both cases these opinions are unsubstantiated or erroneous. Specifically, Mr. James Cotton has identified himself as a wildlife expert due to his background as a federal wildlife biologist and has testified that there may be potential adverse impacts to wildlife species, however the comments submitted by Mr. Cotton are erroneous and inapplicable to appropriate CEQA analysis (see Section 5.h below). Ms. Rebecca Crow has identified herself as an expert due to her extensive professional background in public water, wastewater and stormwater infrastructure, however her comments regarding potentially significant impacts are related to aesthetics, agricultural resources, air quality, biological resources, noise, and groundwater resources, all issue areas where she has not demonstrated qualifications to be considered an expert and in issue areas where her submitted evidence is erroneous or unsubstantiated (See Section 5 below). Section 15064 of the Guidelines for CEQA state that argument, speculation, unsubstantiated opinion or evidence that is clearly inaccurate or erroneous shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions based on facts, and expert opinion supported by facts [15064(f)(5)]. Based on the whole record before it, including the initial study and comments received, the finds there is not substantial evidence pursuant to section 15064 of the CEQA Guidelines that the project will have a significant effect on the environment, and upon its independent judgment and analysis finds that a Mitigated Negative Declaration is appropriate for the project.

- EVIDENCE:**
- a) The Mitigated Negative Declaration evaluated the originally submitted 22.9 acres cultivation with a combination of mixed-light and outdoor light deprivation cannabis cultivation. The Mitigated Negative Declaration found that all potential impacts were less than significant or could be reduced to a less than significant level. The public review of this document was based on the original project design.
  - b) The Initial Study and Draft Mitigated Negative Declaration (IS/MND) was circulated from January 28, 2021 to February 26, 2021.
  - c) During the Planning Commission consideration of the proposed project, the project was reduced in size from 22.9 acres to 8 acres. In all instances the scale and impact of the project is less than that disclosed and analyzed in the Initial Study. There are no new impacts not previously identified. There is no need for modification of the MND, or for recirculation as a result of the reduction in scale of the project, because the reduction in project scale do not involve new avoidable significant effects.
  - d) The IS/MND included five mitigation measures which have been incorporated into a Mitigation Monitoring and Reporting Plan which is adopted as part of the project.
  - e) The Board of Supervisors was provided a copy of the Mitigated Negative Declaration for their consideration and find that the document, and technical studies supporting the findings adequately identify the potential impacts and provide appropriate mitigation.

### 3. FINDING

**ENVIRONMENTAL IMPACTS FOUND NOT TO BE SIGNIFICANT-NO MITIGATION REQUIRED.** The following impacts have been found to be less than significant and mitigation is not required to reduce project related impacts: Aesthetics, Agriculture and Forestry Resources, Air Quality, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire.

#### EVIDENCE

- a) Relative to aesthetic impacts there are no scenic vistas, or scenic resources which will be adversely affected. The project will not substantially degrade the visual character of the area as the construction of new greenhouses will be in the contexts of the existing Sun Valley greenhouses and the old large Simpson Mill Building which lies to the west of the site. The dark sky regulations contained in the CMMLUO will address any potential impacts to light or glare.
- b) The proposed cannabis cultivation will not have an adverse impact upon farmland or forestland resources. There is no forestland on the subject site. Cannabis is an agricultural product and is consistent with the existing agricultural activities which have been conducted on the site.
- c) An analysis of potential air quality impacts was prepared by a professional air quality consulting firm, finding that the Project's potential emissions during both the construction and operational phases will be well below the NCUAQMD's significance thresholds. There are less than 10 residential units within 1,000 feet of the project site and the project would not expose sensitive receptors to air quality impacts. Odor is a potential nuisance that will be addressed through odor control placed on the greenhouses. Odor will be monitored and if the odor control is not sufficient, adaptive measures will be implemented until the odor is removed.
- d) The project will require use of electric power for the mixed light and security lighting, and gas for boilers. An existing Pacific Gas & Electric service line provides energy sources to the site. The project will not result in significant environmental impacts due to wasteful, inefficient or unnecessary consumption of energy resource or conflict with or obstruct renewable energy or energy efficiency.
- e) A greenhouse gas emissions analysis prepared for the project concludes that the Project would not exceed the relevant significance threshold of 1,100 MT CO<sub>2</sub>e/year and would not conflict or otherwise interfere with the County's General Plan, CMMLUO, or statewide GHG reduction measures. Therefore, a less than significant impact relating to greenhouse gas emissions would occur.
- f) The potential impacts from Hazards and Hazardous Materials is less than significant. No storage of fertilizers, pesticides, or hazardous materials is planned to occur on the Site. All fertilizers and other materials will be stored on the adjacent property in facilities already in use for the existing agricultural operation. There are no schools located within one-quarter mile of the Project Site. The subject site is not identified on the Hazardous Waste and Substances Sites List. The Project is not within two miles of a public airport. The Project Site is located in an area of low Fire Hazard Rating and within the Arcata Fire Protection District.

- g) The impacts to Hydrology and Water Quality were found to be less than significant. A Project-specific wetland delineation conducted by SHN did not identify any wetlands within the Project area. Water will come from an existing well which pulls water from a known ground water basin that is known to have sufficient water. The existing environmental baseline is that the well is being utilized for as much as 71 acre-feet per year for the irrigation of open field agricultural crops in the area proposed for the cannabis cultivation whereas the proposed project would require approximately 36 acre-feet per year, which is below the environmental baseline amount of water utilized. Runoff will be diverted into retention basins so there will not be an increase in runoff from impervious surfaces. There will be no water quality impacts from application of fertilizers being transported in stormwater as all cultivation is within enclosed greenhouses and irrigation is applied at agronomic rates sufficient for cultivation but not resulting in runoff. The Project is not located near a large body of water capable of producing a seiche and is not located in a tsunami inundation area. In addition, according to an October 30, 1997 Letter of Map Amendment from the Federal Emergency Management Agency (“FEMA”), the Site is not located in a Special Flood Hazard Area, that is the area that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.
- h) There is no impact to Land Use and Planning as the project is consistent with the Heavy Industrial Zoning and is consistent with the Agricultural Exclusive Land Use Designation. No changes to the Land Use or Zoning are required. The site is within the City of Arcata’s Greenbelt plan which seek to protect and promote agricultural uses west of the City of Arcata. The existing Sun Valley Flower Farm is identified in the plan as an existing agricultural use. This project will be of the same nature as the existing Sun Valley use.
- i) The Project Site is not classified as a Mineral Resource Zone (e.g., MRZ-2) by the State Geologist, and does not contain any known locally important mineral resources. Implementation of the Project would not result in the loss of availability of a known mineral resource, or loss of availability of a locally important mineral resource recovery site.
- j) Project activities are not expected to generate noise levels that will exceed the Humboldt County General Plan Noise Element standards. Noise producing activities within the administration buildings and hoop structures will be limited to conventional air movement fans and HVAC equipment and will meet applicable County building and zoning code requirements for noise levels. Outdoor noise generating activities will include noise from vehicle use and small agricultural support equipment (e.g., ATVs, tractors, and forklifts). Given that the nearest residence is over 800 feet from the cultivation area, and there is a 1,000-foot setback on the property, noise impacts will be less than significant.
- k) The Project would not result in population growth in the area, does not involve the creation of, or necessity for, new housing, and would not displace existing housing or people, so no impact related to population and housing would occur.
- l) The proposed project will have a less than significant impact on Public Services. The Project Site is located in an area of low Fire Hazard Rating and within the Arcata Fire Protection District. It is not anticipated that the Project will result in a significant increase in the number of calls-for-service related to fire. The proposed security plan will minimize any need for the Sheriff’s office to

respond. The project will not place additional demands on schools, parks or other public facilities.

- m) New recreational facilities are not proposed as part of the Project and the demand for such facilities would not increase with implementation of the Project, as the Project does not involve the creation of new housing and would not result in population growth in the area.
- n) The traffic analysis prepared for the project considered both the old CEQA Level of Service Analysis and the newly implemented Vehicle Miles Traveled. The Traffic Impact Study found that all study intersections are expected to continue operating acceptably at LOS C or better and that the Project would not result in an adverse effect to the surrounding roadway network in all modeled scenarios with the exception of the Future Plus Project Conditions Scenario. In that scenario, study intersections are expected to continue operating acceptably at LOS C or better overall upon the addition of project trips to the anticipated Future volumes, except for Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps both of which would operate at LOS D overall during the p.m. peak hour. With installation of a mini roundabout at Foster Avenue/Alliance Road and a roundabout at Sunset Avenue/US 101 North Ramps, both intersections would operate acceptably with project trips added to Future volumes. The applicant will pay proportional share fees to the City of Arcata to alleviate the project's contribution to the needed improvements at Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps, consisting of \$13,512 and \$8,714, respectively. Given the location in a Traffic Assessment Zone which is characterized by trips at least 15% shorter than other TAZs, the impact to traffic associated with Vehicle Miles Traveled will be less than significant. The traffic analysis did not find that there were any safety issues that needed to be addressed.
- o) The impact to Utilities and Service Systems will be less than significant as no new infrastructure will need to be constructed for water service, sewer service, or power.
- p) The project site is located in an area of low Fire Hazard Rating and within the Arcata Fire Protection District.

#### 4. FINDING

**ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT** – The Initial Study identified potentially significant impacts to Biological Resources, Cultural Resources, Geology and Soils, and Tribal Cultural Resources, which could result from the project as originally submitted. Mitigation Measures have been required to ensure potential impacts are limited to a less than significant level.

- EVIDENCE**
- a) **Biological Resources:** Potentially significant impacts to birds could occur if vegetation is modified during the nesting season (February 28 through September 1). This potential impact will be mitigated to a less than significant level by requiring that vegetation management should occur outside the bird nesting season, or, if project-related brush clearing must occur during the nesting season, a preconstruction nesting-bird survey shall be conducted by a qualified biologist no more than two weeks prior to Project activities. If active nests are found, a no-disturbance buffer zone of a minimum of 250 feet shall be established. Within this buffer zone, no construction shall take place until

September 1 or until the biologist determines that the nest is no longer active. In addition, standard BMPs will be adhered to during ground disturbance activities and construction debris and waste will be removed within 100 feet around drainage ditches.

- b) **Cultural Resources:** Potentially significant impacts could occur if cultural resources, such as lithic materials or ground stone, historic debris, building foundations, or bone are discovered during Project activities. Potential impacts will be mitigated to a less than significant level by stopping work within 100 feet of any discovery. The County, a professional archaeologist, and representatives from the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria, and Wiyot Tribe will immediately be contacted to provide an assessment of the find and determine the significance and recommend next steps. If human remains are included normal protocol from Public Resources Code, Section 7050.5 will be followed.
- c) **Geology and Soils:** Potentially significant impacts to paleontological resources could occur if paleontological resources were unexpectedly discovered. This impact will be mitigated to a less than significant level by stopping work within 100 feet of the discovery and contacting a qualified paleontologist to evaluate the potential resource
- d) **Tribal Cultural Resources:** Potentially significant impacts could occur if cultural resources, such as lithic materials or ground stone, historic debris, building foundations, or bone are discovered during Project activities. Potential impacts will be mitigated to a less than significant level by stopping work within 100 feet of any discovery. The County, a professional archaeologist and representatives from the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria, and Wiyot Tribe will immediately be contacted to provide an assessment of the find and determine the significance and recommend next steps. If human remains are included normal protocol from Public Resources Code, Section 7050.5 will be followed.

## 5. FINDING

**CEQA Public Comments:** The public review of the Mitigated Negative Declaration generated a significant number of comments, including comments from two public agencies (California Department of Food and Agriculture and California Department of Transportation). None of the comments identify potential impacts that have not been addressed or raise a fair argument pursuant to CEQA that the project may have significant effects on the environment. All comments have been considered and none of the comments change the conclusions of the Mitigated Negative Declaration.

### EVIDENCE

- a) **Traffic.** Most of the comments on traffic expressed concern with the number of daily trips being generated to and from the site, and with the cumulative impacts associated with two additional cannabis permits being issued in the area. W-Trans Traffic Engineering Consultants prepared a Traffic Impact Study for the Project, analyzing potential impacts relative to circulation, access for pedestrians, bicyclists, and to transit. Based on the findings of the study, the Project would only have a potential impact on Level of Service at two

intersections in the future condition. As a result, the Traffic Impact Study recommends that the applicant pay proportional share fees to the City of Arcata to alleviate the project's contribution to the needed improvements at Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps, consisting of \$13,512 and \$8,714, respectively. Given the location in a Traffic Assessment Zone which is characterized by trips at least 15% shorter than other TAZs, the impact to traffic associated with Vehicle Miles Traveled will be less than significant. The traffic analysis did not find that there were any safety issues that needed to be addressed. Based upon the mitigation provided by the applicant there can be no argument that traffic contributions are not cumulatively considerable,

- b) **Air Quality (odor).** Comments regarding odor centered around not being able to mitigate cannabis odors, and the IS/MND stating odor impacts are "less than significant" is in direct conflict with the major conclusions of the County's own FEIR prepared for the Commercial Cannabis Land Use Ordinance which states under section 5.1 that the impact on odor would be "cumulatively considerable, significant and unavoidable."

The FEIR acknowledges that unenclosed commercial cannabis cultivation is a source of odors that would likely be detectable by off-site sensitive receptors. At the same time the CCLUO identifies that enclosed cultivation is adequate mitigation to protect sensitive receptors in community plan areas. The project proposes cultivation to take place within enclosed greenhouses with odor control. The significant and unavoidable odor impact identified in the FEIR was specifically regarding unenclosed cultivation and is therefore not applicable to this project.

Odors from the cultivation process will be controlled using fans that direct airflow through the greenhouses to a carbon filtration unit and a vapor-phase odor neutralizing agent. The greenhouse and odor control measures shall be developed by a certified industrial hygienist prior to issuance of building permits. Additionally, the greenhouses shall be designed such that the cultivation areas shall be separately enclosed within the greenhouses so that ingress and egress to the cultivation areas can occur while the greenhouses are still sealed to the outside. These measures will ensure that odor is not discernable off of the subject property.

Distance can also help minimize odor impacts. The reduced footprint project places the closest residence to the project at over 800 feet away and all other residences would be at least 1,250 feet away.

- c) **Agricultural Impacts.** Some commenters are concerned about the potential conversion of prime farmland to a non-agricultural use and have stated that this would occur as a result of the project and is therefore a significant impact under CEQA. The fact is that cannabis cultivation is defined as an agricultural use by both the State of California and the County. Therefore, the prime farmland is not being converted to a non-agricultural use.



- d) **Visual Impacts.** Some commenters are concerned with the visual impact of placing greenhouses at this location. This includes comments from Rebecca Crow stating that there are significant aesthetics impacts because the project conflicts with the City of Arcata Western Greenbelt Plan and would be visible from a city park. The basis for this comment is that the Western Greenbelt Plan advocates for the retention of agricultural uses and open space in the Arcata bottoms area and Ms. Crow alleges that the proposed project is industrial. However, the proposed project is for an agricultural use that is consistent with the existing agricultural uses of the property and area. Ms. Crow also alleges that the county has not consulted with the City of Arcata on this project as is required by the Western Greenbelt Plan. The county has consulted with the City of Arcata both through the project referral process and the CEQA process. Comments were submitted by the City on February 28, 2018 and also on April 22, 2021. A condition of the project is to plant native tree species along the eastern boundaries of parcels 505-151-012 and 506-231-022 to establish a visual buffer between the project site and the neighborhoods to the east. The project site is not located near any designated scenic highway or scenic vista. The Project is proposed on parcels zoned Heavy Industrial. In fact, the site was previously used as a log deck for a lumber mill. The mill buildings still remain to the west and agricultural greenhouses exist to the north. This site is not a designed scenic vista and the addition of agricultural greenhouses to an existing agricultural greenhouse operation would be consistent with the existing scenic character of the area and would not significantly damage scenic resources or degrade the visual character of any public views.
- e) **Visual Impacts - light pollution and glare.** Comments from the public assert that new lighting is a concern, and that lighting from existing operations on the site and neighboring Sun Valley site have been a problem in the past. The CMMLUO requires that mixed light cultivation comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1 and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). The project is required to follow International Dark Sky Association Standards that exceed the requirements of Scenic Resources Standard SR-S4, Light and Glare, that lighting be fully shielded, and designed and installed to minimize off-site lighting and direct light within the property boundaries. Adherence to this standard is a requirement of the CMMLUO and is actively enforced by the County. If the applicant fails to cover illuminated greenhouses this would be a violation of the permit and the ordinance and could subject the permit to revocation. Commenters have stated that the proposed greenhouses would add substantial glare that would impact views from their residences. The greenhouses would be similar in nature to existing greenhouses in the Arcata bottoms area which do not generate significant complaints of glare, and private views are not a CEQA issue.
- f) **Noise Pollution.** Commenters are concerned about noise from the fans used in the operation. Project activities are not expected to generate significant noise levels that will exceed the Humboldt County General Plan Noise Element standards. Project activities within the administration buildings and greenhouses will be limited from a noise-generating perspective (e.g.,

conventional air movement fans, HVAC equipment). Outdoor noise-generating activities will include vehicle use and small agricultural support equipment (e.g., ATVs, tractors, and forklifts). Project noise generating activities will be similar to agricultural and vehicle equipment used at the Site under baseline conditions. The project is conditioned that in the event there are noise complaints an investigation will be conducted to determine if noise from the fans is exceeding the CNEL standard. If the findings of the investigation show that noise levels do not meet the CNEL standard, an appropriate noise study shall be conducted at the applicant/operators' expense. If the findings of the noise study show that noise levels exceed the CNEL standard, the applicant/operator shall develop a plan to bring noise levels into compliance.

With the reduced footprint project proposal, the closest residence to the project would be over 800 feet away. All other residences would be at least 1,250 feet away. With the requirement to not exceed 60 decibels at the property line the noise from the project would be well below the threshold identified in the General Plan as suitable for residential noise exposure.

- g) **Groundwater.** Commenters expressed concerns regarding depletion of the groundwater table and potential salt-water intrusion from over-pumping of the existing groundwater well. The change in use from flower and crop production to cannabis will not result in additional water use, and information available through the California Department of Water Resources indicates that existing groundwater extraction in the Mad River Lowland Subbasin is well below the available groundwater storage of 25,000 acre-feet (California Groundwater Bulletin 118), which recharges every year through rainwater and percolation from the Mad River and tributaries thereto.

The use of 11,736,000 gallons per year for irrigation is well below the historic use (as much as 71 acre-feet, or 23,310,372 gallons per year) for previous agricultural activities. The proposed project will result in a decrease in amount of annual irrigation and would therefore lessen the impact on the groundwater table over the environmental baseline.

- h) **Biology -- Birds.** Commenters expressed concerns regarding impacts on migratory birds, specifically geese. The Project areas do not contain designated critical habitat for any listed species. However, mitigation is in place so that if project-related brush clearing must occur during the breeding season, a preconstruction nesting-bird survey shall be conducted by a qualified biologist no more than two weeks prior to Project activities. If active nests are found, a no-disturbance buffer zone of a minimum of 250 feet shall be established. Within this buffer zone, no construction shall take place until September 1 or until the biologist determines that the nest is no longer active. Comments have been made regarding birds such as geese that have been seen using the site, however geese are not a special status species. Geese are migratory and CEQA requires consideration of whether the project would *substantially* interfere with the movement of any migratory wildlife species. The conversion of open field flower and crop production to greenhouses will not substantially interfere with the movement of migratory species such as geese. The area proposed for

greenhouses has historically been farmed for crops and flower production and is therefore not an established resource for migratory wildlife.

Comments were submitted by Jim Cotton, a retired wildlife biologist, asserting that the biological study for this project and the IS/MND discussion on bird species is inadequate because it did not include all potential bird species that are known to exist in the area. Mr. Cotton states that the report does not include Peregrine Falcon, Marsh Hawk (Northern Harrier), Red-shoulder hawk, white-tailed kite, hummingbird, raven, barn owl, killdeer, western meadow lark, crow, egret and great blue heron. Notably, the biological study and IS/MND do include a discussion and analysis of Peregrine Falcon, Marsh Hawk, White-tailed kite, egret and great blue heron (p. 37 -38 of IS/MND). Red-shouldered hawk, barn owl, crow, raven, killdeer, and hummingbird are not special status bird species that are required to be analyzed under CEQA. Mr. Cotton also points to the two site visits conducted by the project biologist as inadequate sampling. Two to three site visits is consistent with the level of biological analysis needed to determine whether suitable habitat for sensitive species exists or would be impacted. The project biologist visited the site three times in three separate seasons. On December 5, 2018, May 2, 2019 and July 19, 2019. The study found that some foraging habitat for sensitive species may exist in the project area but none of the species that may forage on-site were identified in the area during the three visits. While Mr. Cotton may have the experience to qualify as an expert in biological resources and has presented himself as such, his comments are inaccurate and are not reflective of the requirements for CEQA analysis.

With the reduced footprint project proposal, there will be approximately 100 acres of undeveloped contiguous open space within the land holding, and the vast majority of the Arcata bottoms area is undeveloped and available for migratory species.

It is noteworthy that CDFW has not provided comments about habitat concerns on this project. CDFW consistently comments on projects where there are concerns about habitat and/or sensitive species.

- i) **Pesticide and fertilizer use.** Commenters expressed concerns regarding pesticides and fertilizers leeching into the surface waters and groundwater or being dispersed into the air. Storage and use of fertilizers and pesticides will be conducted in accordance with the Best Practicable Treatment or Control (BPTC) measures of State Water Resources Control Board (SWRCB) Order WQ 2019-0001-DWQ, which include requirements to apply fertilizers and soil amendments at only the proper agronomic rates, and to store materials in a manner that is protected from rainfall and erosion. The cultivation will occur in enclosed greenhouses that will ensure containment of fertilizers and pesticides within the cultivation area only. The enclosed greenhouses will include carbon filtration intended to control odor, which will also ensure that any aerosolized pesticides are trapped in carbon filters before air is circulated to outside of the greenhouses. All pesticide and fertilizer storage will occur on an adjacent parcel under common ownership that is currently setup and permitted to store and

manage fertilizers, pesticides, and hazardous materials used in existing agricultural operations. The materials will be stored in fully enclosed, watertight containers, and in a manner so that they cannot enter or be transported into surface waters or groundwater. These storage facilities are already in place. Some comments have asserted that the site has utilized round-up and other inorganic pesticides that would result in spread of these chemicals to adjacent residences, however the area proposed for cannabis cultivation has historically been cultivated with certified organic quinoa among other crops and flowers. The organic certification requires it be clean of hazardous pesticides and fertilizers, so the site is free of these substances. Legal cannabis is tested and tightly controlled. A cultivator will not jeopardize their crop with use of fertilizers and pesticides that of discovered through mandatory testing would result in the product being destroyed.

- j) **Energy use.** Comments were received expressing concerns regarding excessive energy use. The project will not be drawing more than 1.9 MW at any given time. PG&E has been consulted and has not expressed any further concerns. In addition, the project is conditioned that the applicant shall purchase 100% renewable grid power through Redwood Coast Energy Authority (Re-Power Plus) or a suitable equivalent source, subject to the approval of the Planning and Building Department.
- k) **Hydrology - Stormwater Runoff.** Commentors have expressed concerns regarding stormwater discharge from the site impacting neighboring surface waters. The project is required to remain in compliance with the requirements of the State Water Resources Control Board (SWRCB). SWRCB Order WQ 2019-0001-DWQ prescribes Best Practicable Treatment or Control measures to control runoff and erosion, including monitoring of erosion control measures during and after design storm events, and repair or replacement, as needed, of ineffective erosion control measures immediately. In addition, stormwater basins for retention are proposed as part of the project.
- l) **Potable Water.** There were comments regarding the use of the groundwater well providing drinking water for employees as being unsafe. The well will be required to be permitted through the state as a public water system which will ensure the water is safe for consumption. The well is not currently permitted for use and a source of domestic water and will require permitting by the state to ensure the water is safe for public consumption.
- m) **CDEFA Comment.** The California Department of Food and Agriculture provided comments about state regulations and indicated that consideration should be given to addressing whether the ground water source is sufficient to support the project. This has been addressed above under k).
- n) **Caltrans.** The California Department of Transportation agreed with all, but one conclusion of the traffic study prepared for the MND. Caltrans disagreed that collision rates are higher than statewide average at the intersections of Sunset Ave and US-101. The conclusion of the MND is thus more severe than what

Caltrans understands the situation to be, and per Caltrans, the requirement to post signage is unnecessary.

## FINDINGS FOR CONDITIONAL USE PERMIT

### 6. FINDING

The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

### EVIDENCE

- a) General Agriculture and Intensive Agriculture are allowable uses in the Agricultural Exclusive land use designation. Cannabis is an agricultural product and is consistent with the use of open space land for managed production of resources. The use of an agricultural parcel for commercial agriculture is consistent with the Open Space Plan and Open Space Action Program. Therefore, the project is consistent with and complimentary to the Open Space Plan and its Open Space Action Program.
- b) Cannabis cultivation on agricultural land is an agricultural use and is not a conversion of agricultural land from agriculture to another use.
- c) The General Plan Circulation Element requires, *Decisions to change or expand the land use of a particular area shall include an analysis of the impacts to existing and proposed transportation facilities and services so as to minimize or avoid significant operational, environmental, economic, and health-related consequences.* The project does not change or expand the allowable land uses in this area, as the project site is an existing agricultural operation. Nonetheless, the proposed project has conducted a full transportation analysis which demonstrates that there will be no significant operational, environmental, economic or health-related consequences. The Project site is accessed from Foster Avenue, a paved County-maintained road. W-Trans Traffic Engineering Consultants prepared a Traffic Impact Study for the Project, analyzing potential impacts relative to circulation, access for pedestrians, bicyclists, and to transit. Based on the findings of the study, the Project would only have a potential impact on Level of Service at two intersections. As a result, the Traffic Impact Study recommends that the applicant pay proportional share fees to the City of Arcata to alleviate the project's contribution to the needed improvements at Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps, consisting of \$13,512 and \$8,714, respectively. This is a condition of project approval for the Conditional Use Permit.

Public Works Department recommended approval with the condition that the driveway be paved for a minimum width of 20 feet and a length of 50 feet where it intersects Foster Avenue. Public Works also requested that the intersect of the driveway and Foster Avenue be maintained in accordance with County Code Section 351-1 (Sight Visibility Ordinance). These are included as a conditions of project approval.

- d) The proposed project is consistent with the Conservation and Open Space Element - Biological Resources as evidenced by compliance with the following polices and standards:
  - i. **Streamside Management Areas (BR-P5, P6) and Wetland Identification (BR-P7):** These policies require that SMAs and wetlands be identified and

properly addressed as part of the review process. A Project-specific wetland delineation conducted by SHN did not identify any wetlands within the Project area, but did identify a man-made roadside drainage ditch approximately 5,100 square feet in size containing wetland indicators located along the existing access road at the southwest border of the Project site. The drainage ditch is classified as a Class IV watercourse (all other man-made irrigation canals) under the State Water Resources Control Board (SWRCB) Order WQ 2019-0001-DWQ, with no prescribed setback requirements. The drainage ditch is located outside of the Project boundary and will be conserved and not disrupted by Project activities (with exception of routine maintenance of the ditch, consistent with current practice).

- ii. **Biological Resource Maps (BR-P11):** Biological resource maps shall be consulted during the ministerial and discretionary permit review process in order to identify habitat concerns and to guide mitigation for discretionary projects that will reduce biological resource impacts to below levels of significance. SHN conducted a Biological Resources Assessment to assess the potential presence of any candidate, sensitive, or special status species within the Project area. The site was visited in December 2018 to assess available habitat for special-status species that were reported in the vicinity, and seasonally appropriate surveys occurred on May 2 and July 19, 2019. The Site is heavily disturbed and actively managed for agricultural production. During the field surveys conducted as part of the SHN Biological Resources Assessment, no special status plant or animal species were documented within the Project area. Due to the potential presence of nesting birds at the Site mitigation requiring work outside of the nesting season or preconstruction surveys is required.

SHN found that there are no significant wildlife movement corridors within the Project area, and Project activities will not impact or restrict existing drainage ditches and swales, maintaining general movement corridors in the Project vicinity. As a result, the Project will not interfere substantially with movement of native resident or migratory wildlife species or with established native resident or migratory wild-life corridors. The site proposed for greenhouses has historically been utilized for flower and crop production and was therefore not available as a substantial resource for migratory wildlife species.

The Project does not conflict with local policies or ordinances protecting biological resources. The Project will not impact riparian or wetlands habitats or involve the removal of trees. As a result, the Project will not conflict with any local policies or ordinances protecting biological resources.

- iii. **Agency Review (BR-P12):** Consistent with this policy, the county has consulted with the California Department of Fish and Wildlife. The initial consultation was in October of 2017 and no comments were received. CDFW was consulted in the preparation of the Initial Study/Mitigated Negative Declaration and no comments were received.
- e) **Protection of Cultural Resources and Tribal Consultation (CU-P1 and CU-P2).** These policies require that cultural resources be identified during the review process and that Tribal Consultation be completed as part of the review.

As part of the project review the project was referred to the Northwest Information Center (NWIC), the Bear River Band of Rohnerville Rancheria, the Blue Lake Rancheria, and the Wiyot Tribe. A Cultural Resources Investigation was prepared for the Project by Archaeological Research and Supply Company in May 2018 (updated June 2020). No prehistoric resources were identified within the Project area, but one 1920-50s area historic trash scatter was identified. The cultural resources study concludes that the Project will not impact significant historic or prehistoric archaeological resources so long as earth disturbances do not extend more than 8 feet below the existing ground surface and a heightened inadvertent discovery protocol is implemented. The Project does not propose to excavate greater than 8 feet in depth. To address the unlikely event that buried cultural resource deposits are discovered during Project activities, heightened inadvertent discovery protocol is an ongoing condition of project approval.

f) **Light and Glare.** Policy SR-S4 of the Conservation and Open Space Element requires new outdoor light to be compatible with the existing setting by shielding nighttime lighting. The project involves mixed-light cultivation. The CMMLUO requires that mixed light cultivation comply with International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1 and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG).

g) The project is consistent with the **Water Resources Element** through compliance with the following goals and policies:

- **Sustainable Management (WR-P1). Protection for Surface and Groundwater Uses (WR-P2).**

These policies require land use decisions to conserve, enhance, and manage water resources on a sustainable basis. The project does not utilize diversion from a surface water source, as water will come from a well drawing from a defined groundwater basin. The well is located within the Mad River Lowland Subbasin. The subbasin is not subject to the Sustainable Groundwater Management Act (SGMA) and the basin prioritization is very low (<https://groundwaterexchange.org/basin/mad-river-valley-lowland>). According to California Department of Water Resources California's Groundwater Bulletin 118 (2003), the subbasin has no known groundwater management plans, groundwater ordinances, or basin adjudications. Storage for the subbasin is estimated at 25,000 acre-feet. Estimates of groundwater extraction are based on a survey conducted by the California Department of Water Resources in 1996. The survey included land use and sources of water. Estimates of groundwater extraction for agricultural and municipal/industrial uses are 6,300 and 35 acre-feet respectively. Deep percolation from applied water is estimated to be 1,400 acre-feet. Groundwater recharge occurs from percolation from the Mad River and small tributary creeks in the foothills to the east of Arcata and deep percolation to floodplain deposits from precipitation and applied water. The Hookton Formation is likely recharged by rainfall in the upland recharge areas east of Arcata (DWR 1973). Some water also moves laterally into the alluvium from adjacent formations and some moves upward from leakage

due to differences in pressure between the alluvium and underlying formations. This information demonstrates that this project can be approved with this well without adversely affecting the water resources in this groundwater basin.

- **Project Design (WR-P12.)** Consistent with this policy, the project will not detract from the function of rivers, streams, ponds, wetlands or their setback areas.
  - **Storm Drainage (WR-G10).** A professional engineering firm (Wallace Group) developed a project-specific storm water management design to effectively manage surface runoff. Consistent with this policy this includes the use of retention basins.
- h) **Noise Element.** The goal of the Noise Element is a quiet and healthful environment with limited disagreeable noise, and to arrange land uses to reduce annoyance and complaints and to minimize exposure of community residents to excessive noise. These goals are implemented through a series of policies and standards including the following:
- **Minimize Noise from Stationary and Mobile Sources (N-P1)**
  - **Guide to Land Use Planning. (N-P2)** *Evaluate current noise levels and mitigate projected noise levels when making community planning and zoning decisions to minimize the exposure of community residents to nuisance noise levels.*
  - **Protection from Excessive Noise (N-P4)**
  - **Land Use/Noise Compatibility Matrix (N-S1).** *The Land Use/Noise Compatibility Standards (Table 13-C) shall be used as a guide to ensure compatibility of land uses*

Section 55.4.11(o) of the CMMLUO states: “The combined decibel level for all noise sources, including generators, at the property line shall be no more than 60 decibels.” The Land Use/Noise Compatibility Standards of Table 13-C in the General Plan sets the maximum noise level for compatibility at 60 decibels in residential areas. Thus, the CMMLUO ensures the provisions of the General Plan are complied with. If it is apparent there are noise concerns, the County will investigate to determine if the actual noise exceeds this standard, and if so, take appropriate action to ensure the Project is in compliance. The CMMLUO adequately implements the Noise Element of the General Plan.

- i) The project complies with the **Safety Element** of the General Plan as follows:
- The subject parcels are not within a mapped Fire Hazard Severity Area. According to the Humboldt County Geographic Information System (GIS) the project location is within the 100-year floodplain of the Mad River. However, according to an October 30, 1997 Letter of Map Amendment from the Federal Emergency Management Agency (“FEMA”), the Site is not located in a Special Flood Hazard Area, (the area that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.) According to the California Geologic Survey the project site is outside of the mapped tsunami hazard zone. Thus, placing this project at this location does not raise compatibility issues with the potential for natural disasters.



**7. FINDING** The proposed development is consistent with the purposes of the existing MH zone in which the site is located.

- EVIDENCE**
- a) The Heavy Industrial or MH zone is intended to apply to areas devoted to normal operations of industries subject only to regulations as are needed to control congestion and protect surrounding areas. The existing uses on the site are intensive agricultural production. The MH zone is specifically identified in the Commercial Medical Marijuana Land Use Ordinance as an appropriate district for commercial cannabis cultivation.
  - b) The purpose of the “Q” qualification is to allow for the continued use of the existing Wood Products Processing facilities with vehicular traffic of no greater intensity than an employee average daily trips (ADT) of 765 trips per day and a truck trip ADT of 54 trips per day during the hours of 6:00 A.M. to 4:00 P.M. and during the period of 4:00 P.M. to 12:00 A.M. an employee ADT of 383 "trips per day and a truck trip ADT of 27 trips per day (1,229 total trips), and to prohibit expansion of the existing use or the establishment of new uses without first obtaining a use permit. This application is for a Conditional Use Permit and the daily trips generated by the proposed project will be well below the maximum amount allowed under the Q zone.
  - c) The location and height of all project elements meet the setback and building height requirements for the MH zone.
  - d) The parcels were created in compliance with all applicable state and local subdivision regulations. The parcels known as APN 506-231-021 and 505-151-011 are one separate legal parcel, and 505-151-012 is one separate legal parcel, created by Notice of Lot Line Adjustment and Certificate of Subdivision Compliance (LLA-17-005) recorded April 14, 2020.

**8. FINDING** The proposed development is consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.

- EVIDENCE**
- a) The CMMLUO allows commercial cannabis cultivation to be permitted in areas zoned MH (HCC § 314-55.4.8.2.1.2). There are no limitations on size of cultivation area specified within HCC § 314-55.4.8.2.1.2. This permit would authorize eight acres of cannabis cultivation with 30,000 square feet of ancillary propagation area.
  - b) All the project elements other than the irrigation well are within the MH zoned area. The well is on land zoned Agricultural Exclusive and an agricultural well is allowed on AE land. Conveying water across property lines is allowed.
  - c) The project will obtain water from a permitted well that is within a defined groundwater basin and is not diverting from nearby surface waters.
  - d) The location of the cultivation complies with all setbacks and performance standards of the CMMLUO.
  - e) All the applicable performance standards are included as conditions of project approval. They are required to be met throughout the timeframe of the permit.

- f) According to records maintained by the Department, the applicant holds three other cannabis activity permits, and is entitled to four. This application is for one Conditional Use Permit.

**9. FINDING**

The number of permits allowed, and cultivation acreage allowed under Resolution No. 18-43. Resolution Establishing a Cap on the Number Permits and Acres which May Be Approved for Commercial Cannabis Cultivation has not been exceeded, nor will it be exceeded with approval of this application.

- a) The Project is located within Eureka Plain Planning Watershed. Resolution 18-43 limits a maximum of 89 permits totaling no more than 31 acres to be permitted within the watershed. Currently there are 12 permits totaling 2.6 acres of cannabis cultivation permitted within the watershed and there are 28 permits totaling 18.49 acres of cannabis cultivation pending approval, for a total of 40 permits and 21.09 acres. This Project represents one permit for eight acres of the 18.49 acres of cannabis cultivation pending approval.

**10. FINDING**

The operation of a commercial cannabis cultivation operation and the conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

**EVIDENCE**

- a) The site is located on paved County-maintained road that can safely accommodate the amount of traffic. This is supported by a traffic study that addresses both LOS and VMT. The applicant is contributing towards traffic improvements in Arcata which will improve traffic flow in the future.
- b) There will not be nuisance impacts related to odor from the approved project (See Finding/Evidence 3(c) and 5(b)).
- c) There will not be nuisance impacts related to noise from the approved project (See Finding/Evidence 3(j) and 6(h)).
- d) There will not be nuisance impacts related to light and glare from the approved project (See Finding/Evidence 5(d) and 6(f)).
- e) Commercial cannabis cultivation is an agricultural activity in an area designated and used for agricultural purposes.
- f) The location of the operation is more than 600 feet from any school, school bus stop, or church.
- g) Irrigation water will be sourced from a permitted groundwater well.

**11. FINDING**

The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

**EVIDENCE**

- a) The parcel was not included in the housing inventory of Humboldt County's

2019 Housing Element and is zoned heavy industrial.

**12. FINDING** The Board of Supervisors conducted a legally noticed public hearing on June 22, 2021.

- EVIDENCE**
- a) Section 312-8.3.1 of the Humboldt County Code specifies Notice shall be mailed, posted, published, or otherwise provided at least ten (10) working days prior to the public hearing on the development.
  - b) On June 7, 2021, notice was mailed to property owners and residents within 2,000 feet of the subject site, 11 days prior to the public hearing.
  - c) One June 8, 2021, a notice appeared in the Times Standard advertising the meeting date, 10 days prior to the public hearing

### **FINDINGS FOR APPEAL**

**13. FINDING** The asserted grounds for appeal do not warrant granting the appeal.

- EVIDENCE**
- a) There is no merit in the Appellant's claim that, "*The Planning Commission adopted a Mitigated Negative Declaration ("MND") for the Project despite substantial evidence in the administrative record supporting a fair argument that the Project may have significant environmental impacts mandating an EIR for the Project be prepared to analyze the full scope of impacts prior to approval.*"
    - i) An EIR is required if the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment. (CEQA Guidelines § 15064(f)(1)). 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 if it is presented with other substantial evidence that the project will not have a significant effect. (*Id.*) A fair argument must be based on substantial evidence, such as factual data or expert opinion. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines § 15064(f)(5)). The appellant has not provided substantial evidence that the project may result in a significant adverse impact that would rise to the level of a fair argument.
    - ii) CEQA Guidelines §15064(f)(4) states, "The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment."
  - b) There is no merit in the Appellant's claim that, "The IS/MND makes false or misleading statements, lacks analysis, and has omitted data as is evident by the numerous cogent comments in the administrative record on the following categories: Aesthetics, Agricultural and Forestry Resources, Air Quality,

Biological Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Transportation, and Utilities and Service Systems.”

- i) No specific argument is made in the appeal as to which statements are false, misleading, or lack the data or analysis. The appellant cites their own public comments submitted to the Planning Commission as evidence of this claim, however those comments do not demonstrate such evidence. The IS/MND is well supported and internally consistent.
- c) There is no merit in the Appellant’s assertion that, “The intensive reliance on well water for this Project is a grave concern of experts that reviewed the IS/MND and of the Appellants. Rather than present the qualified substantiation and documentation for the position that the well is not hydrologically connected to surface waters, the IS/MND relies upon conclusory letters from a well drilling company, with no proof of qualifications or the methods employed to make this complex determination, and without consideration of the effects of sea level rise of groundwater resources.”
- i) The appellant refers to themselves as an expert for this assertion. Specifically that Ms. Rebecca Crow is a practicing engineer with over 20 years experience managing public water, waste-water and storm-water projects. However, there is no indication that she has experience to qualify as an expert in groundwater resources.
  - ii) The IS/MND does not rely on a conclusory statement from a well driller. It utilizes the well log and existing topographic and geographic information to determine that there is no substantial connection to surface waters.
  - iii) The well itself is located within a specifically defined groundwater basin by the State Water Resources Control Board. As discussed in Finding/Evidence 6(g) the ground water basin is substantial and provides a sustainable source of groundwater.
  - iv) The use of 11,736,000 gallons per year for irrigation for the Project is well below the historic baseline use (estimated at over 50 acre-feet (16,292,550 gallons)) for previous agricultural activities occurring on the subject parcel
- d) There is no merit in the Appellant’s claim that, “*The Biological Assessment, in the IS/MND, when reviewed by an expert was considered to be incomplete and inadequate which was evident by: the omission of a bat survey, the lack of sampling protocols, and insufficient literature review and numerous oversights.*”
- i) The appellant identifies themselves as an expert for this argument. Specifically that Jim Cotton, a retired wildlife biologist is an expert who has determined that the biological assessment is inadequate and incomplete. Specifically, Mr. Cotton argues that the study does not include Peregrine Falcon, Marsh Hawk (Northern Harrier), Red-shoulder hawk, white-tailed kite, hummingbird, raven, barn owl, killdeer, western meadow lark, crow, egret and great blue heron. Notably, the biological study and IS/MND do include a discussion and analysis of Peregrine Falcon, Marsh Hawk, White-

tailed kite, egret and great blue heron (p. 37 -38 of IS/MND). Red-shouldered hawk, barn owl, crow, raven, killdeer, and hummingbird are not special status bird species that are required to be analyzed under CEQA. Mr. Cotton also points to the two site visits conducted by the project biologist as inadequate sampling. Two to three site visits is consistent with the level of biological analysis needed to determine whether suitable habitat for sensitive species exists or would be impacted. The project biologist visited the site three times in three separate seasons. On December 5, 2018, May 2, 2019 and July 19, 2019. The study found that some foraging habitat for sensitive species may exist in the project area but none of the species that may forage on-site were identified in the area during the three visits. While Mr. Cotton may have the experience to qualify as an expert in biological resources and has presented himself as such, his comments are inaccurate and are not reflective of the requirements for CEQA analysis. Expert opinion that is clearly erroneous is not indicative of a potentially significant impact under CEQA.

- ii) The Project was referred to California Department of Fish and Wildlife (CDFW) on August 31, 2017, and the IS/MND was circulated to CDFW on January 28, 2021. In both instances, the County received no comments from CDFW on the Project. CDFW comments on projects that involve sensitive communities or where inadequate information is being provided.
  - iii) A focused bat roost survey was not conducted due to the lack of available habitat for supporting bat roosts or maternity colonies within the study area (see “Figure 2” from the Biological Resources Assessment), and because the project is not proposing tree removal or modification or removal of buildings.
- e) There is no merit in the Appellant’s claim that that, “The enormous energy cost of this Project is an artifact of its size and location. The Project would be the largest permitted cannabis project in Humboldt County that is in such close proximity to homes and neighborhoods. Due to being sited within 2.5 miles of the ocean and less than two miles from Humboldt Bay in a cool, foggy, and windy environment, the projected mixed-light portion of the energy requirement is calculated at a conservative 6,750 MWh, enough to power at least 614 average homes in the Pacific Northwest.”
- i) The Project will not be drawing more than 1.9 MW at any given time. PG&E has been made aware of this and have not expressed any further concerns. Furthermore, the Project is conditioned that the Applicant shall purchase 100% renewable grid power through Redwood Coast Energy Authority (Re-Power Plus) or a suitable equivalent source, subject to the approval of the Planning and Building Department.
- f) There is no merit in the Appellant’s claim that, “Air Quality, Odor, Noise, and Light Pollution are perhaps the most apparent impacts that neighbors in the Westwood subdivision are concerned about. The IS/MND states these impacts are ‘less than significant’ which is in direct conflict with the major conclusions

of the County's own FEIR which states under 5.1 that the impact on air quality and odor would be 'cumulative considerable, significant and unavoidable.'"

- i) See Finding/Evidence 5(b) for response.
  - ii) The FEIR found that there would be significant and unavoidable impacts on air quality due to the use of dirt and gravel roads for rural cultivation sites. The proposed Project is located on a paved, county-maintained road. The FEIR analysis is applicable county-wide while the MND analyzes the Project specifically. There is no conflict between the two findings.
- g) The Appellants state they, "are very concerned about the noise the Project will create from mechanical systems, including fans, in the greenhouses and the time limit given to the Project to correct a noise violation. Currently, the Project has no maximum time limit to correct a noise violation, and no mitigations to reduce noise impacts. Additionally, there is a discrepancy between the FEIR, and the staff report regarding the allowable noise limits at the property boundary, 3 vs 60 decibels respectively. Again, these types of discrepancies need to be resolved through an EIR."
- i) The appellant is referencing the FEIR that was adopted and certified for implementation of the Commercial Cannabis Land Use Ordinance (CCLUO). Section 55.4.3.1 of the Commercial Cannabis Land Use Ordinance states: "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..."
  - ii) The subject application was filed on December 22, 2016, and the ordinance in effect at that time was the Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The CMMLUO (Sec. 314-55.4.11(o)) states that "The combined decibel level for all noise sources, including generators, at the property line shall be no more than 60 decibels."
  - iii) The closest residence to the Project is over 800 feet away, and all other residences are at least 1,250 feet away. The anticipated noise from mechanical fans and outdoor equipment is projected to fall well under the 60 decibel threshold at the property line.
  - iv) Condition 19 requires the applicant submit information prior to issuance of permits for the greenhouses demonstrating that the sound from the fans will be less than 60 decibels at the property line.
- h) There is no merit in the Appellant's claim that the IS/MND does not account for the cumulative impact of traffic from other projects and uses in the area.
- i) The traffic study completed for the project did more that required under CEQA in analyzing both Level of Service and Vehicle Miles traveled.
  - ii) In conducting the level of service analysis, the study found that there was no impact in the existing plus project condition, but in the future condition the intersections at Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps will decline and the applicant has agreed to pay their fair share to the City of Arcata for the cost of these improvements. This does address the cumulative impact of traffic in the area.

- iii) The LOS analysis was done despite the change to CEQA where in Section 15064.3 of the CEQA Guidelines it states that a project's effect on automobile delay shall not constitute a significant environmental impact (except regarding transportation projects).
  - iv) The MND's Mandatory Findings of Significance listed other projects in within a 1-mile radius of the Project and stated the Project will not have impact that are individually limited but cumulatively considerable. "When there is no substantial evidence of any individual potentially significant effect by a project under review, the lead agency may reasonably conclude the effects of the project will not be cumulatively considerable, and it need not require an EIR on this basis." (*Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 857-858 (citing other cases).
- i) There is no merit in the Appellant's claim that the project description is uncertain.
    - i) The MND evaluated the project as applied for, consisting of 22.9 acres of cultivation and associate ancillary facilities. This was stable through the entire environmental review.
    - ii) The Planning Commission considered the 22.9 acre project at their meeting of March 18, 2021, where a significant amount of public comment was received in opposition to the size of the project.
    - iii) The applicant reduced the size of the project to 8 acres of cultivation in response to the public opposition.
    - iv) All aspects of the revised Project will be at or below the intensity described in the MND project description.
    - v) The MND adequately identifies the potential impacts associated with the project in its reduced version;
    - vi) The applicant revised the project to reduce the size at the Planning Commission meeting. It is clear that the project is 8 acres of cultivation with ancillary facilities. The types of ancillary facilities are the same as previously submitted, although they have been reduced in scale such as the 30,000 sf propagation area.
    - vii) The reduction in the project size represents how the public hearing and environmental review process work to better align project scope and scale with community expectations while protecting the environment.

**NOW, THEREFORE,** be it resolved that the Board of Supervisors hereby:

1. Adopts the Findings set forth in this Resolution;
2. Adopts the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2021010337; and
3. Specifies the custodian of the record of proceedings upon which the decision is based is the Planning Department, located at 3015 H Street, Eureka, California: and
4. Denies the Appeal submitted by James Cotton, Kim Puckett, Paula Proctor, Michael Proctor, Joan Edwards, Lee Torrence, Rebecca Crow, Carol McFarland, Don Nielsen, Terrence McNally, Kerry McNally, Tamara Spivey, Mona Mazzotti, Abraham Moshekh, Duane E Smith, Pamela J Smith, Victor Howard, Lydia Butyrin, Lisa Pelletier, Kathryn Melia, Julie Hochfeld,

Nancy Blinn, Warren Blinn, Peggy Bell-Hans, Todd Casebolt, Deni Devine, Jose Mendoca and Leonor Mendoca; and

5. Approves the Conditional Use Permit for 5.7 acres of new mixed light cannabis cultivation and 2.7 acres of new outdoor light-deprivation cannabis cultivation, with 30,000 square feet of appurtenant propagation area, and associated infrastructure and support facilities, subject to the conditions of approval contained in Attachment 1A of this Resolution; and
6. Adopts the Mitigation, Monitoring, and Reporting Program in Attachment 1B of this Resolution.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on July 13, 2021, by the following vote:

Adopted on motion by Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_  
**and the following vote:**

**AYES: Supervisors:**

NOES: Supervisors:

ABSENT: Supervisors:

\_\_\_\_\_, Chair  
Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California  
By: KATHY HAYES

Date: \_\_\_\_\_, 2021

By \_\_\_\_\_ Deputy



## ATTACHMENT 1A

### RECOMMENDED CONDITIONS OF APPROVAL

Approval of the Conditional Use Permit is conditioned on the following terms and requirements which must be satisfied before site development or initiation of operations.

#### Section 1: Development Restrictions

1. The applicant shall submit a check to the Planning Division payable to the Humboldt County Clerk/Recorder in the amount of \$2,530.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the CDFW fee plus the \$50 document handling fee to the Clerk. This fee is effective through December 31, 2021, at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact CDFW by phone at (916) 651-0603 or through the CDFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife. If CDFW concurs, a form will be provided exempting the project from the \$2,530.25 fee payment requirement. In this instance, only a copy of the CDFW form and the \$50.00 handling fee is required.
2. The project shall be developed and operated in accordance with the approved Operations Plan and the Site and Utility Plan.
3. The project shall meet all applicable fire codes, including fire suppression infrastructure requirements deemed necessary for the project. Sign off on the Occupancy Permit by the Building Division shall satisfy this requirement.
4. The applicant shall verify adequate fire apparatus access per California Code in accordance with the comments from Arcata Fire Protection District.
5. Where feasible, new utilities shall be underground or sited unobtrusively if above ground.
6. The applicant shall obtain from the Building Division any Building or other required permits prior to commencing construction activities or the approved use (i.e. grading building plumbing electrical, mechanical, etc.).
7. Due to staffing demands and projected wastewater flow rates, a cumulative impact study for groundwater mounding and nitrogen loading will be required before the Division of Environmental Health can approve any new septic construction permits.
8. Prior to initiating commercial cannabis cultivation or associated activities the applicant shall obtain a Business License from the Humboldt County Tax Collector.
9. Prior to initiating commercial cannabis cultivation or associated activities the applicant shall execute and file with the Planning Division the statement titled, "Notice and Acknowledgment regarding Agricultural Activities in Humboldt County," ("Right to Farm" ordinance) as required.
10. Prior to issuance of any clearances or building permits the operator shall submit a Neighborhood Odor Complaint Response Plan to the Planning and Building Department for review and approval. The plan

shall designate a staff member to receive, document, and follow-up on odor complaints. Records of complaints shall include a contact name and phone number of the complainant (if available), the source or cause of any odor complaints, and actions taken to mitigate the odors. Complaint records shall be provided to the County Planning and Building Department within 10 days of the complaint or NCUAQMD upon request (ongoing condition of approval).

11. The applicant shall be compliant with the County of Humboldt's Certified Unified Program Agency (CUPA) requirements regarding any hazardous materials. A written verification of compliance shall be required before release of the Building Permit and initiation of operations. Ongoing proof of compliance with this condition shall be required at each annual inspection in order to keep the permit valid.
12. Prior to initiating operation, the applicant shall meet all of the requirements and obtain all necessary permits from the Division of Environmental Health. The applicant shall submit written verification from that agency verifying this requirement has been met.
13. All signage shall comply with Section 314-87.2 of the Humboldt County Code, and shall be subject to review and approval by the Planning Director. Signage shall be compatible with surrounding uses and not distract from visitor serving uses in the area.
14. The existing driveway that connects to Foster Avenue shall be improved to current standards for a commercial driveway. An encroachment permit shall be obtained from the Department of Public Works prior to commencement of any work in the County maintained right of way.
15. The applicant shall pay proportional share fees to the City of Arcata to alleviate the project's contribution to the needed improvements at Foster Avenue/Alliance Road and Sunset Avenue/US 101 North Ramps, consisting of \$13,512 and \$8,714, respectively.
16. There shall be no development within the 20' wide PG&E easement shown on the Site and Utility Plan, Sheet C2.0 (Note 5.1) until it is approved by PG&E, or the easement has been extinguished.
17. If there needs to be any rearrangement of existing PG&E facilities on the property, the owner/applicant will bear the burden of that cost.
18. Prior to the issuance of building permits, the applicant shall submit a revised Operations Manual to the Planning and Building Department describing how odor resulting from the harvesting and transport of cannabis to the processing facility on the adjacent parcel will be mitigated and/or controlled, consistent with Condition 3 of the Ongoing Requirements/Development Restrictions Which Must be Satisfied for the Life of the Project.
19. Prior to the issuance of building permits, the applicant/operator shall submit a noise study based on fan manufacturer specifications for the review of the Planning and Building Department demonstrating that cumulative sound levels from the fans within the greenhouses shall not exceed 60 CNEL (Community Noise Equivalent Level) measured at the property lines.
20. Prior to any development or the issuance of building permits, the applicant/operator shall submit a revised Operations Manual and Site and Utility Plan describing and illustrating the elements of the project in its' modified form for the review and approval of the Planning and Building Department.

21. The applicant shall plant native tree species along the eastern boundaries of parcels 505-151-012 and 506-231-022 in order to establish a visual buffer between the project site and the neighborhoods to the east. The trees must be planted outside of the PG&E gas line easement that runs along said parcel boundaries. Native tree species selection is subject to the review and approval of the Planning and Building Department prior to planting.
- 22) All cannabis cultivation shall be enclosed in greenhouses. Entry into the greenhouse shall be through a vestibule. Odor control measures shall be utilized in both the cannabis cultivation area and the vestibule so that cannabis odor shall be neutralized before air leaves the greenhouse or vestibule. This greenhouse design shall ensure that all ingress and egress to the cultivation space can occur while the exterior entrances are closed and sealed.
- 23) Prior to issuance of the building permits or other clearances for the proposed greenhouses, the applicant shall submit an odor-control plan prepared by a certified industrial hygienist that implements the following odor-control measures:
  - a) The use of appropriately sized activated carbon filters/scrubbers within the greenhouses.
  - b) The use of vapor-phase odor-neutralizing technology with real-time computer-monitoring to provide for appropriate mixing of the odor-neutralizing agent.
- 24) The Applicant shall maintain the odor-control system in good operating order throughout the duration of the cannabis cultivation activities. This shall include frequent inspection and replacement as necessary of carbon filters/scrubbers.
- 25) The operational odor control standard is no odor at the edge of the Arcata Land Company holdings. In the event there is repeated or sustained odor from the cultivation, the Odor Control Plan shall be modified to address the source of the odor. The operator shall have 15 calendar days from notice by County to develop a solution and 30 days from approval to implement the necessary changes. In the event the odor constitutes a significant and persistent nuisance to residents in the area the County shall require cultivation to cease until the source of the odor has been addressed.

#### **A. General Conditions**

1. The applicant is responsible for obtaining all necessary County and State permits and licenses, and for meeting all requirements set forth by other regulatory agencies.
2. The applicant is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. The Planning and Building Department will provide a bill to the applicant after the decision. Any and all outstanding planning fees to cover the processing of the application to decision by the Hearing Officer shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
3. The Applicant is responsible for costs for post-approval review for determining project conformance with conditions. A deposit is collected to cover this staff review. Permit conformance with conditions must be demonstrated prior to release of building permit or initiation of use and at time of annual inspection. A conformance review deposit as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$750) shall be paid within sixty (60) days of the effective date of the permit or upon filing of the Compliance Agreement (where

applicable), whichever occurs first. Payment shall be made to the Humboldt County Planning Division, 3015 "H" Street, Eureka.

4. A Notice of Determination (NOD) will be prepared and filed with the County Clerk for this project in accordance with the State CEQA Guidelines. The Department will file the NOE and will charge this cost to the project.

**Ongoing Requirements/Development Restrictions Which Must be Satisfied for the Life of the Project:**

1. All components of project shall be developed, operated, and maintained in conformance with the Project Description, the approved Site and Utility Plan, the Plan of Operations, and these conditions of approval. Changes shall require modification of this permit except where consistent with Humboldt County Code Section 312-11.1, Minor Deviations to Approved Plot Plan.
2. The well shall be metered to show annual water use. If the water use exceeds the anticipated needs. The County reserves the right to reduce the cultivation area to a size relative to well water availability until additional storage adequate to meet annual irrigation needs are in place.
3. For the life of the project, the project shall not result in a continued discernable odor of cannabis at the property lines of adjoining existing residential uses. Should the Planning and Building Department receive complaints regarding odor, the Planning and Building Department will inspect and evaluate the cause of the perceived odor. If it is determined by staff that the project is causing the odor, staff will work with the applicant/operator to resolve and return the project to compliance in a timely manner. Resolution may entail additional maintenance and/or replacement of the air filtration system. At a minimum, the applicant/operator shall present a plan to the Planning and Building Department within 10 days of initial County contact to address the odor.
4. The applicant shall purchase 100% renewable grid power through Redwood Coast Energy Authority (Re-Power Plus) or a suitable equivalent source, subject to the approval of the Planning and Building Department.
5. The intersection of the access driveway and Foster Avenue shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance).
6. Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws and regulations as set forth in the CMMLUO and MAUCRSA, as applicable to the permit type.
7. Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MAUCRSA, and regulations promulgated thereunder, as soon as such licenses become available.
8. In the event there are complaints regarding noise from the fans within the greenhouses, staff will investigate if there is a likelihood that noise from the fans is exceeding the CNEL standard. If the findings of the investigation show that noise levels do not meet the CNEL standard, an appropriate noise study shall be conducted at the applicant/operators' expense. If the findings of the noise study show that noise levels do not meet the CNEL standard, the applicant/operator shall have a minimum of 10 days to develop a plan to bring noise levels into compliance.

9. Confinement of the area of cannabis cultivation to the locations depicted on the approved site plan. The commercial cannabis activity shall be set back at least 30 feet (or setback for the underlying zone) from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, or Tribal Cultural Resources, except where a reduction to this setback has been approved pursuant to County Code Section 55.4.11(d).
10. Maintain enrollment in Tier 1, 2 or 3, certification with the State Water Board Order WQ 2019-0001-DWQ, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.
11. Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate County officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
12. Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.
13. Pay all applicable application, review for conformance with conditions and annual inspection fees.
14. The use of monofilament netting for all uses, including but not limited for erosion control, shall be prohibited. Geotextiles, fiber rolls, and other erosion control measure materials shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves to minimize the risk of ensnaring and strangling wildlife.
15. Leave wildlife unharmed. If any wildlife is encountered during the Authorized Activity, Permittee shall not disturb the wildlife and shall allow wildlife to leave the work site unharmed.
16. All refuse shall be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
17. The burning of excess plant material associated with the cultivation and processing of commercial cannabis is prohibited.
18. Storage of Fuel - Fuel shall be stored and handled in compliance with applicable state and local laws and regulations, including the County of Humboldt's CUPA program, and in such a way that no spillage occurs.
19. Any outdoor construction activity and use of heavy equipment outdoors shall take place between 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 9:00 a.m. and 6:00 p.m. on Saturday and Sunday.
20. The Master Log-Books maintained by the applicant to track production and sales shall be maintained for inspection by the County.
19. Participate in and bear costs for permittee's participation in the State sanctioned tracking program (METRC).

Performance Standards for Cultivation and Processing Operations

20. Pursuant to Business and Professions Code section 26051.5(a)(8), an applicant seeking a cultivation license shall “provide a statement declaring the applicant is an ‘agricultural employer,’ as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.”
21. Cultivators shall comply with all applicable federal, state, and local laws and regulations governing California Agricultural Employers, which may include: federal and state wage and hour laws, CAL/OSHA, OSHA, California Agricultural Labor Relations Act, and the Humboldt County Code (including the Building Code).
22. Processing shall comply with the following Processing Practices:
  - I. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment.
  - II. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis.
  - III. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function.
  - IV. Employees must wash hands sufficiently when handling cannabis or use gloves.
23. All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:
  - I. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
    - 1) Emergency action response planning as necessary;
    - 2) Employee accident reporting and investigation policies;
    - 3) Fire prevention;
    - 4) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
    - 5) Materials handling policies;
    - 6) Job hazard analyses; and
    - 7) Personal protective equipment policies, including respiratory protection.
  - II. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
    - 8) Operation manager contacts;
    - 9) Emergency responder contacts;
    - 10) Poison control contacts.
  - III. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
24. All cultivators shall comply with the approved Processing Plan as to the following:

- I. Processing Practices.
- II. Location where processing will occur.
- III. Number of employees, if any.
- IV. Employee Safety Practices.
- V. Toilet and handwashing facilities.
- VI. Plumbing and/or septic system and whether or not the system is capable of handling increased usage.
- VII. Drinking water for employees.

25. Term of Commercial Cannabis Activity Permit. Any Commercial Cannabis Permit issued pursuant to the CMMLUO shall expire after one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual compliance inspection has been conducted and the permittees and the permitted site have been found to comply with all conditions of approval.

If the inspector or other County official determines that the permittees or site do not comply with the conditions of approval, the inspector shall serve the permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a reinspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request reinspection or to cure any items of non-compliance shall terminate the Permits, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed pursuant to Section 55.4.12.3 of the CMMLUO.

26. Permit Renewals to comply with Updated Laws and Regulations. Permit renewal per Ongoing Condition of Approval #25, above, is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that new standards are met.

27. Acknowledgements to Remain in Full Force and Effect. Permittee acknowledges that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed in which the cultivation area is located will not support diversions for irrigation.

Permittee further acknowledges and declares that:

- (1) All commercial cannabis activity that I, my agents, or employees conduct pursuant to a permit from the County of Humboldt for commercial cultivation, processing, manufacturing, and distribution of cannabis for adult use or medicinal use within the inland area of the County of Humboldt, shall at all times be conducted consistent with the provisions of the approved County permit; and
- (2) All cannabis or cannabis products under my control, or the control of my agents or employees, and cultivated or manufactured pursuant to local Ordinance and the State of California Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") (SB 94), will be distributed within the State of California; and

- (3) All commercial cannabis activity conducted by me, or my agents or employees pursuant to a permit from the County of Humboldt will be conducted in compliance with the State of California MAUCRSA.
28. Transfers. Transfer of any leases or permits approved by this project is subject to the review and approval of the Planning Director for conformance with CMMLUO eligibility requirements, and agreement to permit terms and acknowledgments. The fee for required permit transfer review shall accompany the request. The request shall include the following information:
- (1) Identifying information for the new Owner(s) and management as required in an initial permit application;
  - (2) A written acknowledgment by the new Owner in accordance as required for the initial Permit application;
  - (3) The specific date on which the transfer is to occur; and
  - (4) Acknowledgement of full responsibility for complying with the existing permit; and
  - (5) Execution of an Affidavit of Non-diversion of Commercial Cannabis.
29. Inspections. The permit holder and subject property owner are to permit the County or representative(s) or designee(s) to make inspections at any reasonable time deemed necessary to assure that the activities being performed under the authority of this permit are in accordance with the terms and conditions prescribed herein.

**Informational Notes:**

1. This permit approval shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see “Effective Date”), except where building permits have been secured and/or the use initiated pursuant to the terms of the agreement, the use is subject to the Permit Duration and Renewal provisions set forth in Humboldt County Code.
2. If cultural resources are encountered during construction activities, the contractor on-site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist and the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and the lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the Native American Heritage Commission will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to Public Resources Code (PRC) Section 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.



## ATTACHMENT 1B

### MITIGATION MONITORING REPORT

**Record Number:** PLN-12255-CUP

**Assessor Parcel Numbers:** 506-231-021 and 505-151-011

Mitigation measures were incorporated into conditions of project approval for the above referenced project. The following is a list of these measures and a verification form that the conditions have been met. For conditions that require ongoing monitoring, attach the Monitoring Form for Continuing Requirements for subsequent verifications.

#### Mitigation Measures:

##### Biological Resources

###### BR-1: Preconstruction Bird Surveys

Project-related vegetation management should occur outside the bird nesting season, (February 28 through September 1). If project-related brush clearing must occur during the breeding season, a preconstruction nesting-bird survey shall be conducted by a qualified biologist no more than two weeks prior to Project activities. If active nests are found, a no-disturbance buffer zone of a minimum of 250 feet shall be established. Within this buffer zone, no construction shall take place until September 1 or until the biologist determines that the nest is no longer active.

| Implementation Time Frame   | Monitoring Frequency | Date Verified | To Be Verified By | Compliance Yes   No | Comments / Action Taken |
|---|----------------------|---------------|-------------------|---------------------|-------------------------|
| If vegetation removal is to occur during the bird nesting season (Feb 28 – Sept 1). | Annually             |               | HCP&BD*           |                     |                         |

###### BR-2: Protection of Drainage Ditches

Use standard BMPs during ground disturbance activities and remove construction debris and waste from and up to 100 feet around drainage ditches.

| Implementation Time Frame                            | Monitoring Frequency | Date Verified | To Be Verified By | Compliance Yes   No | Comments / Action Taken |
|--|----------------------|---------------|-------------------|---------------------|-------------------------|
| During construction activity and project operations. | Continuous           |               | HCP&BD*           |                     |                         |

##### Cultural Resources

###### CR-1: Inadvertent Discovery Protocol

If suspected cultural resources, such as lithic materials or ground stone, historic debris, building foundations, or bone are discovered during Project activities, work shall be stopped within 100 feet of the discovery. Contact will be made to the County, a professional archaeologist and representatives from the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria, and Wiyot Tribe. The professional historic resource consultant, Tribes and County officials will coordinate provide an assessment of the find and determine the significance and recommend next steps.

If human remains are discovered during Project activities, work will stop at the discovery location, within 100 feet, and any nearby area reasonably suspected to overlie adjacent to human remains (Public Resources Code, Section 7050.5). The Humboldt County coroner will be contacted to determine if the cause of death must be investigated. If the coroner determines that the remains are of Native American origin, it is necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the NAHC (Public Resources Code, Section 5097). The coroner will contact the NAHC. The descendants or most likely descendants of the deceased will be contacted, and work will not resume until they have made a recommendation to the landowner or the person responsible for the excavation work for means of treatment and disposition, with appropriate dignity, of the human remains and any associated grave goods, as provided in Public Resources Code, Section 5097.98.

| Implementation Time Frame                            | Monitoring Frequency | Date Verified | To Be Verified By | Compliance Yes   No | Comments / Action Taken |
|--|----------------------|---------------|-------------------|---------------------|-------------------------|
| During construction activity and project operations. | Continuous           |               | HCP&BD*           |                     |                         |

## Geology and Soils

### GEO-1: Inadvertent Discovery Protocol

In the event that paleontological resources are discovered, work shall be stopped within 100 feet of the discovery and a qualified paleontologist shall be notified. The paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in State CEQA Guidelines Section 15064.5. If fossilized materials are discovered during construction, excavations within 100 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist. The paleontologist shall notify the appropriate agency to determine procedures that would be followed before construction is allowed to resume at the location of the find.

| Implementation Time Frame                            | Monitoring Frequency | Date Verified | To Be Verified By | Compliance Yes   No | Comments / Action Taken |
|--|----------------------|---------------|-------------------|---------------------|-------------------------|
| During construction activity and project operations. | Continuous           |               | HCP&BD*           |                     |                         |

## Tribal Cultural Resources

**TCR-1: Inadvertent Discovery Protocol**

If suspected cultural resources, such as lithic materials or ground stone, historic debris, building foundations, or bone are discovered during Project activities, work shall be stopped within 100 feet of the discovery. Contact will be made to the County, a professional archaeologist and representatives from the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria, and Wiyot Tribe. The professional historic resource consultant, Tribes and County officials will coordinate provide an assessment of the find and determine the significance and recommend next steps.

If human remains are discovered during Project activities, work will stop at the discovery location, within 100 feet, and any nearby area reasonably suspected to overlie adjacent to human remains (Public Resources Code, Section 7050.5). The Humboldt County coroner will be contacted to determine if the cause of death must be investigated. If the coroner determines that the remains are of Native American origin, it is necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the NAHC (Public Resources Code, Section 5097). The coroner will contact the NAHC. The descendants or most likely descendants of the deceased will be contacted, and work will not resume until they have made a recommendation to the landowner or the person responsible for the excavation work for means of treatment and disposition, with appropriate dignity, of the human remains and any associated grave goods, as provided in Public Resources Code, Section 5097.98.

| <b>Implementation Time Frame</b>                     | <b>Monitoring Frequency</b> | <b>Date Verified</b> | <b>To Be Verified By</b> | <b>Compliance Yes   No</b> | <b>Comments / Action Taken</b> |
|--|-----------------------------|----------------------|--------------------------|----------------------------|--------------------------------|
| During construction activity and project operations. | Continuous                  |                      | HCP&BD*                  |                            |                                |

\* HCP&BD = Humboldt County Planning and Building Department