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Humboldt County Board of Supervisors
825 5th Street, Room 111
Eureka, CA 95501

Humboldt County Planning Division
3015 H Street
Eureka, CA 95501

**RE: Appeal of Planning Commission Approval of Adesa Organic, LLC,
Conditional Use Permits, Application Number 11923, APNs 315-145-002,
315-211-003 and 315-211-004**

To the Humboldt County Board of Supervisors:

Friends of the Mad River hereby appeals the September 3, 2020 Planning Commission decision to approve the Adesa Organic, LLC, Conditional Use Permits, Application Number 11923, APNs 315-145-002, 315-211-003 and 315-211-004 (the "Project"), for its failure to comply with the California Environmental Quality Act ("CEQA"), the Humboldt County Municipal Code, and other applicable laws. The Planning Commission adopted a mitigated negative declaration ("MND") for the Project despite substantial evidence in the record providing a fair argument that the Project will have significant environmental impacts. Because there is a fair argument of significant environmental impacts, CEQA mandates preparation of an environmental impact report ("EIR") for the Project to analyze the full scope of impacts prior to project approval. The Project proposes 86,400 square feet of new mixed-light cannabis cultivation, a drying facility, a storage facility, associated cloning/propagation facilities, over 6,000,000 gallons of annual rainwater storage, and significant roadway construction and rehabilitation, with electrical power generated by a combination of on-site solar power and diesel generators.

The Project would be located in the rural Maple Creek area where precious habitat and biodiversity still exists in large part because the area has, *thus far*, been unaffected by the green rush of industrialized cannabis cultivation. Three Planning Commissioners voted against the Project in order to protect this area from the growing and cumulative environmental toll that

cannabis cultivation as taken upon Humboldt County, while the Humboldt Bay Municipal Water District, and the California Department of Fish and Wildlife, also expressed serious concern. Friends of the Mad River opposes approval of this Project. (*See, Las Lomas Land Co., LLC v. City of Los Angeles*, 177 Cal. App. 4th 837, 849 [authority to deny project]; Gov. Code § 65800 [“counties and cities may exercise the maximum degree of control over local zoning matters”].) Here, the Project would require conditional use permits that vest the County with wide discretion to determine whether the proposed project should be permitted. In addition to the deficient CEQA review, below, the Project should be denied due to the significant changes and risk it would create for the largely undeveloped Maple Creek area. There can be no serious debate that increased use intensity, traffic, diesel consumption, and growth in utilities, would increase fire risk to the area. The proliferation of plastic hoop houses in the County can and should be curtailed: even if legally managed and disposed, plastics are a growing plague upon our beleaguered environment. The Project’s water demands and modifications are significant, at a time when increasing drought and climate change require more preservation of our limited water resources than ever. For all of these reasons, we urge the Board to deny this Project.

I. The Project improperly relies on a mitigated negative declaration where there is a fair argument that the Project will result in significant environmental impacts related to contaminated soils and groundwater.

A. A fair argument of significant environmental impacts was presented to the Planning Commission.

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

B. Impacts to biological resources

Significant water consumption and hydrologic alterations by the Project have a reasonable probability of causing significant adverse effects. The MND states that “[t]he total water that will be collected by rainfall catchment is approximately 6,201,000 gallons annually” (MND at 7), but the MND fails to provide any analysis whatsoever of the effects upon the surrounding biological resources that will occur by taking 6,201,000 gallons of water – roughly 18 acre feet – out of the local hydrology every year. The MND considers *ground disturbance* effects to sensitive species such as red-legged frog, effects to wetlands, aquatic habitat, water quality, or riparian vegetation; but nowhere does the MND ever consider what it means for the creeks, wildlife, wetlands, or vegetation to simply *remove* 6,201,000 gallons per year from the immediate ecosystem. (*See,*

EPA v. California ex rel. State Water Resources Control Bd., (1976) 426 U.S. 200, 719, 721 [“water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses.”]) Wildlife and vegetation in the Project area clearly rely on rainwater for survival and wellbeing, most critically during dry or drought periods, but no assessment of removing 6,201,000 gallons of rainwater from the area is provided.

The MND fails to adequately consider the habitat fragmentation impacts of the Project. The MND itself recognizes that wildlife use “nearly all portions of [the] study area as movement corridors. Most of the wildlife movement corridors are expected to be concentrated on nearby perennial drainages.” (MND at 5; MND, Natural Resources Assessment at pp. 4-5.) CDFW confirms that this finding is corroborated by the scientific literature on the topic showing that “wildlife disproportionately use riparian habitat as movement corridors.” CDFW comments further note that Project “proposes a new road with water and septic pipeline, parking, garbage and compost facility, a restroom, and sustained human presence *within the riparian habitat*.” These activities, CDFW concludes, will likely bifurcate the “riparian/stream resources where the NRA most attributes wildlife movement.” The MND, however, ignores the impacts highlighted by CDFW. Specifically, the MND’s finding of less than significant impacts is based on the Projects’ supposed “avoidance of...principal wildlife corridors.” (MND at 34.) This conclusion, however, directly contradicted by its own finding that riparian areas are *the* principal corridor in the study area, and by CDFW’s determination that the activities proposed to take place in the riparian corridors will likely bifurcate that habitat.

Finally, to the extent that the MND considers any impacts to riparian corridors, it only states, in conclusory fashion with no analysis, that “there are no further improvements proposed within riparian buffers aside from water and electrical lines that will be placed within the existing road alignment and crossing.” (MND at 34.) First, the MND does not provide any analysis supporting its ultimate conclusion that the “water and electrical line” additions will not adversely affect riparian corridors. More importantly, its analysis here only touches on a small portion of the total project activities that CDFW has identified that will likely bifurcate the riparian habitat in the study area. The IS/DMND’s own recognition of potential fragmentation impacts, combined with CDFW’s concerns, provides substantial evidence that the Project may have a significant impact and necessitates the preparation of an EIR.

Planning staff announced new mitigation measures at the Planning Commission September 3, 2020 hearing approving the Project, but these mitigation measures have not been publicly reviewed, in writing, leaving their effectiveness, and any additional effects the new mitigation measures themselves may have, unreviewed.

Nesting sites for both Golden Eagle and Northern Spotted Owl have been detected adjacent to the Project, and significant noise, air, odor, and other impacts have a reasonable possibility of disturbing and driving out these protected species. “Golden eagles tend to avoid nesting in areas with a lot of human activity.” (<https://centerofthewest.org/2016/06/20/golden-bald-eagles-different/>). This concern is only heightened in a cumulative context. The cumulative effects of the Project combined with already permitted and active projects, as well as existing impacts from current TPZ and cattle operations, are under-evaluated in the MND. It is clear that Adesa is the

first such cannabis cultivation proposal in this immediate region south of the Mad River, with others to follow, including EcoGreen (12775), and Mad R Estates (12346). Application 11616 was recommended for denial but remains pending. All are generator powered, totaling 900K sq ft of mixed light and outdoor, with 6 acres of outdoor reserved for Remediation, Restoration, and Recovery program activities.

Roosevelt Elk have been migrating into this general area, yet impacts to their survival here have not been evaluated in this MND.

Sudden Oak Death (SOD) is a potentially significant effect caused by vehicular traffic, especially during wet conditions. Adesa and other projects will increase traffic along SOD-infested routes during the winter months when traffic currently is rare with no logging during the wet season. This was not evaluated in the MND.

C. Impacts to water resources

In addition to wildlife and vegetation effects, the MND fails to consider effects to local water supplies resulting from capturing 6,201,000 gallons of rainwater. Both the Humboldt Bay Municipal Water District, and adjacent property owner Ronald Wilson, commented with concern that local water supplies could be adversely affected. The MND fails to analyze such effects. Planning staff offered an explanation that “The capture of 4,300,000 gallons is approximately 13 acre feet per year, which is 0.0013 percent of the total runoff in the Mad River watershed,” (looking only at storage pond capacity, not total rain storage) but this ratio approach to environmental analysis offers no description of the physical effects to the local environment at all, and was rejected by the court in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21.) For the same reasons, the rationale provided by the MND here cannot explain away the potentially significant impacts of the rainwater catchment ponds on water supply, or biological resources described above in Section I.B.

No quantification of groundwater use, nor availability, is provided in the MND, and no consideration of whether groundwater and surface water may be connected is provided, despite CDFW indication of such a connection, describing Well-1 as an “existing, jurisdictional, shallow, hydrologically-connected water well.” The MND contains no factual analysis of this issue raised by CDFW and the Water District, and instead illegally defers investigation and mitigation by stating, “if the wells are found to be hydrologically connected to jurisdictional waters of the State, these sources will be subject to any applicable forbearance requirements.” (MND at 94; *see, Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 [A “requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA.”]; and CEQA Guidelines, § 15070(b)(1) requiring that project plans must be revised to incorporate mitigation measures “before the proposed negative declaration is released for public review....”]) The duty to investigate the proposed project’s effects, based on the expert comments of specific regulatory agencies, falls upon the County as lead agency, but any such investigation and analysis is completely omitted. Moreover, the extremely vague statement that any wells found to be hydrologically connected to

surface waters “will be subject to any applicable forbearance requirements” provides no performance standards or binding commitments to constitute an adequate mitigation measure.

These questions should be submitted to the State Water Board’s division of water rights for review.

D. Electrical demands

The Project will rely on 20% of supply from diesel generators, and 80% from a solar array, for the first two years; with a requirement to rely on 100% renewable energy in year three and beyond. Each and all of these potential energy supplies carries potentially significant effects that are unanalyzed. Further, because 100% renewable is feasible for this project, it should be required on day one, to avoid unnecessary effects of diesel generators.

Truck transport of diesel on dirt roads to rural reaches of the County poses significant and unacceptable risk of hazardous spill, accident, wildfire, and unevaluated GHG emissions. Diesel exhausts and generator noise will be harmful to wildlife. (*See* Section I,B, *supra*.) Due to these types of environmental effects, the Commercial Medical Marijuana Land Use Ordinance (“CMMLUO”) does not permit generators to be used as electrical sources for indoor cultivation. (§ 313-55.4.11, 314-55-4.11.) The MND itself notes that the 135,000 gallons of diesel fuel per year required to run the generators at the outset of the Project “represents a significant unnecessary energy consumption for cannabis cultivation.” (MND at 41.)

The Project approves extension of PG&E service to the area, but fails to analyze at all the potentially significant effects from extending PG&E service to this rural reach, including growth inducing effects, fire hazards, and toxins from treated utility poles, none of which are evaluated in the MND. Similarly, the Mad River Estate (12346) adjacent to Adesa Power “would initially be supplied by generators, with PG&E service being installed in the future.” (MND at 102.) The cumulative effect of this energy grid expansion to the area must be considered. The County’s program EIR for its existing cannabis ordinance determined that provision of utility service would be a significant and unavoidable effect of expanded cannabis cultivation in the County. While that EIR evaluated a different ordinance, the physical demands and effects of this Project are substantially similar to those evaluated under the existing cannabis ordinance, if not worse, since numerous revisions were made to the County’s cannabis ordinance 2.0 to improve environmental protections, which are not being implemented here.

Finally, 12000 sq ft of ground-based solar panels and their associated ground disturbance, and batteries, in proximity to wetland buffer and corridor areas, could have adverse effects to waters, wetlands, and wildlife, including loss of foraging space, chemical leaks, and maintenance demands, but no evaluation is provided in the MND. (See MND at 168.)

E. Fire safety

The MND assigns legal responsibility for fire protection to CalFire instead of the Kneeland Volunteer FD (KVFD) that covers the project site in their “Response Area.” CalFire is not the responsible agency, it is within the “sphere,” but not the District of Kneeland FPD (http://humboldtlafo.org/wp-content/uploads/Kneeland-FPD-and-Sphere_7-17-13.pdf.) A letter from the KVFD is required under the Community Infrastructure and Services Element standard IS-S5, *Other Development Outside of Fire District Boundaries*, “requires new industrial, commercial, and residential development located outside of fire district boundaries to obtain written acknowledgement of available emergency response and fire suppression services from the local fire agency, including any recommended mitigation.”

No such letter exists, but the CalFire letter warns that: “CALFIRE does not support development in areas where there is no local agency fire service for structure fires and emergency medical response. Fire services should be extended into service gap areas as a condition of development.” (SR 89-91). CalFire is fully staffed only 5 months of the year, provides only helicopter and minimal ground suppression, and is often unavailable due to competing fires.

Thus, the MND fails to ensure that the increased fire risk adjacent to timber land caused by use of generators, increased traffic, and more intense land use, would be safely managed by local fire agencies.

F. Air quality impacts

The County’s Program EIR for its existing cannabis use ordinance (2.0) determined that long-term operational emissions of criteria pollutants and precursors, as well as odor emissions, could be directly significant and unavoidable and cumulatively considerable. Here, the Project is proceeding under the CMMLUO, not the updated existing ordinance, but the fundamental project effects are the same if not worse than those considered by the County-wide EIR. CEQA requires review of a project’s effects to the physical environment, and such effects cannot be delimited by artificial policy distinctions. For the reasons provided in the Program EIR, and EIR is required to review the Project’s direct and cumulative air quality effects.

G. Traffic effects

The MND relies on exclusive vanpooling, yet carpooling and individual vehicle use are options (MND at 6). Traffic from all foreseeable projects, including diesel and water deliveries will increase significantly, along with their unevaluated GHG emissions (“...[a]nalysis should include the project’s energy use for all project phases and components, including transportation-related energy.” http://files.resources.ca.gov/ceqa/docs/2018_CEQA_FINAL_TEXT_122818.pdf pg 30).

Traffic along these roads can be treacherous. Twelve of the segments in the project’s road report measured from 17-19 feet, (the standard road is 24 feet), and the one widest measures 23 ft. (64 SR.) Logging trucks and drivers unfamiliar with these winding roads along with diesel and propane trucks make for risky confrontations. (see Highway Patrol at pg. 110 SR)

II. The MND Fails to Analyze the Whole of the Project.

CEQA defines “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (CEQA Guidelines, § 15378, subd. (a).) “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term ‘project’ does not mean each separate governmental approval.” (CEQA Guidelines, § 15378, subd. (c).) The scope of the environmental review conducted for the initial study must include the entire project. Specifically, “[a]ll phases of project planning, implementation, and operation must be considered in the initial study of the project.” (CEQA Guidelines, § 15063, subd. (a)(1).)

CEQA prohibits “piecemeal review of the significant environmental impacts of a project.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 98 [quoting *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358].) The prohibition on piecemeal review “derives, in part, from section 21002.1, subdivision (d), which requires the lead agency--in this case, the Port--to ‘consider[] the effects, both individual and collective, of all activities involved in [the] project.’” (*Berkeley Keep Jets Over the Bay Com.*, *supra*, 91 Cal.App.4th at 1358.) The rule ensures that “that environmental considerations do not become submerged by chopping a large project into many little ones...which cumulatively may have disastrous consequences.” (*Communities for a Better Environment*, *supra*, 184 Cal.App.4th at 98 [quoting *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84.]) “The broad interpretation of ‘project’ . . . is designed to provide the fullest possible protection of the environment within the reasonable scope of CEQA’s statutory language.” (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 73.)

The MND is wrong to exclude impacts related to the draft LSAA. The LSAA and the proposed project are so intertwined as to be part of the whole of the same action. Here, the facts are similar to *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, which considered “whether the proposed home improvement center and the realignment of Old Wards Ferry Road are part of a single ‘project’ for purposes of CEQA.” There, the City and applicant argued that the separate road realignment “was a longstanding, separate City project,” that was “not necessitated by the home improvement center project.” (*Id.* at 1221, 1228.) The court disagreed that the two actions were not part of the same project, considering factors including whether the activities:

are related in (1) time, (2) physical location and (3) the entity undertaking the action. . . . When two acts are closely connected in time and location, the potential for related physical changes to the environment in that location is greater than otherwise. Thus, the need for a single review of the environmental impact of the two acts is greater. Also, when the same entity undertakes both matters, it increases the likelihood that the matters are related—that is, are part of a larger whole.

(*Id.* at 1227.)

The *Tuolumne Citizens* court also held that the question of whether multiple actions constitute a single CEQA project is a question of law reviewed *de novo* by the court, without deference to the local agency. (*Id.* at 1223-24.)

Here, the LSAA, and the project actions considered by the MND, are all occurring at the same time, at the same location, by the same entity, and are clearly the same CEQA project. CDFW itself concurs, stating that “the IS/DMND should be revised to include an analysis of all Project impacts, including Project components included in the LSAA, and proposed mitigation where appropriate.”

The project applicant did not simply reach out to CDFW, in a vacuum, with an altruistic desire to cure its many site deficiencies (having been in violation for an unknown number of years), as the so-called “independent utility” theory would suggest. Obviously, all of the proposed LSAA improvements are being done because the applicant wants to construct the proposed project.

A. LSAA stream crossing improvements are part of the whole of the project.

The draft LSAA itself describes a number of required project components, including a stream crossing “proposed to contain a sewage line that spans the stream channel,” a stream crossing including “[p]ermanent utility lines,” and three water wells (one new) to supply project water. (MND at 174-177.) The MND also describes inextricable overlap: “In one location, a water pipe is proposed to be installed in a roadway that crosses a stream.” (MND at 32.) “Several proposed improvements to the access road between the Adesa Organic, LLC parking lot and the intersection with Maple Creek Road will also require stream crossing improvements.” (MND at 32.) “If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife. (Application on file, permit pending)” (Staff Report at 49.) All of this work, covered by the LSAA, very clearly provides necessary infrastructure to support the proposed project. The Road Report prepared by the project applicant, and required to be implemented as a condition of approval, reveals the same. The Road Report states that it “is intended to provide recommendations necessary to allow all-season industrial use of the road compliant with county and wildlife/water quality agency standards.” (MND at 208.) In turn, the Road Report analyzes and provides recommendations for most of the same water crossings that are addressed by the LSAA. (Compare MND at 174-176 to MND at 211-215.) For a number of crossings, the Road Report and LSAA recommendations are the same. For others, CDFW disagreed with the Road Report, and the CDFW recommendations will instead be adopted. Regardless, because the CDFW LSAA and the project applicant’s own Road Report analyze the exact same roadway features for the same purposes (as the Road Report states, “to allow all-season industrial use of the road compliant with county and wildlife/water quality agency standards”) it is simply arbitrary and incorrect as a matter of law to conclude that the Road Report is part of the whole of the project, but the CDFW LSAA is not. The CEQA review should be revised accordingly.

The applicant's 2019 application, discussed further, below, also confirms that LSAA work is part of the whole of the project being proposed. An attachment to the 2019 application explains that:

My client proposes to proceed with three project that are adjacent to the subject pond, are within 80 feet of each other, and are assumed to have the potential to deleteriously affect Cowan Creek. The intent is to do these projects subsequently to minimize the disturbance to the adjacent habitat . . . Projects include Corssing-1 (WC-1) that involves the replacement of a failing and undersized 48-inch-diameter culvert with a minimum 60-inch-diameter culvert for a proposed new road, and Reservoir-1 (PO-1) that requires the removal of an existing and unpermitted instream reservoir and relocation of the existing channel. These projects require similar erosion and sediment control, temporary water diversions, and potentially an incidental take permit for the foothill yellow-legged frog.

Just as in *Tuolumne Citizens*, the multiple elements of the same project are close in place, time, and being performed by the same applicant for efficiencies and necessity. The 2019 application states that the work is required for the "proposed new road," clearly referencing the road needed for the proposed project. The 2019 application would repair the "failing and undersized" culvert because the new project needs to be built consistent with all basic engineering standards and habitat requirements.

B. LSAA pond and diversion activities are part of the whole of the project.

Water supply impacts are a critical component of the required environmental assessment. As discussed further, below, the project proposal to construct new retention ponds—with resulting adverse effects—while not relying on existing water diversion structures covered by the LSAA simply doubles this property's water supply impacts while creating additional environmental consequences. Instead, the site's existing ponds and diversion structures should be evaluated as alternative water sources in an EIR.

C. Foreseeable effects from construction of the second pond must be considered.

As CDFW notes, "[t]he potential for a second irrigation pond suggests uncertainty about the build-out of this Project or potential future phases." (CDFW Recommendation 5.) The MND fails to assess future foreseeable effects of permitting more water supply capacity than presently needed. An action agency must consider indirect future effects as part of the whole of the project if: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) As it relates to the proposed Project, the County must analyze the effects of expanded cultivation operations resulting from the construction of an additional and unnecessary catchment pond (e.g. Pond B).

The MND proposes to construct two rainwater catchment ponds, Pond A and Pond B. (MND, at p. 3.) Pond A will be located near the proposed processing facility and will have a "a storage

capacity of up to 3,221,000 gallons.” (*Id.*) Pond B is proposed to be located west of the cultivation area and will be smaller with “a storage capacity of up to 1,077,000 gallons.” (*Id.*) The MND clarifies that Pond A will “likely be sufficient to provide for the needs of the project[,]” and that Pond B will be constructed on an “as-needed basis.” (*Id.* at p. 94.) In response to public comments concerning the catchment ponds, the County further clarifies that:

Water use is estimated at 21.5 gallons a square foot which is relatively high for cultivation. At that estimate the *primary pond will have more than enough water to provide for all irrigation needs*, nonetheless the applicant has proposed a second pond in the event that additional water is needed for irrigation or fire-fighting purposes. The secondary pond, *which likely not necessary for project needs*, is still described and analyzed in IS/MND.

(Staff Report at 117 [emphasis added].) Pond B would provide 34% more water storage capacity than the IS/DMND forecasts will be required for Project purposes. The added capacity may even be greater than 34% where the Staff Report admits that the 21.5 gallon per square foot estimate is relatively high, and where additional capacity will likely be drawn from well water. This added, and unnecessary, capacity carries with it the foreseeable effect of future increased cultivation at the Project site. Increased cultivation facilitated by a 34% increase in available water will unquestionably alter the scope of the initial project and exacerbate the Project’s resulting environmental effects. This is not speculative or unlikely, but rather, the only plausible explanation for drastically oversizing the proposed project’s water supply infrastructure. The MND fails to analyze those reasonably foreseeable future impacts as required. (*Laurel Heights, supra*, 47 Cal.3d at 396.)

III. The Project should be Consistent with CCLUO, not the CMMLUO.

On September 23, 2019, the applicant submitted a new application, to include a “new stream crossing by the addition of a 24-inch-diameter culvert for a proposed new road.” The new road is clearly part of the whole of the project, and the project application, therefore, should be deemed to have been submitted September 23, 2019, no longer subject to the CMMLUO.

IV. The Project May Give Rise to Conflicts of Interest.

Testimony provided to the Planning Commission raised concern that at least one Commissioner may have had financial ties to the cannabis industry that could unduly prejudice the Commissioner’s review of the Project. We understand that similar financial interests may exist among the Board of Supervisors, and we respectfully request full disclosure, and where appropriate, recusal, in advance of consideration of this appeal.

V. Inconsistency with Federal Law may Impede Environmental Review and Compliance.

The County’s Program EIR for cannabis cultivation explains that: “Federal agencies are prohibited from issuing permits or approvals for any operation that is in violation of federal law.

Thus, compliance with federal permitting requirements that would usually address environmental impacts (e.g., filling of waters of the U.S. and incidental take authorization under the federal Endangered Species Act) cannot be utilized.” Here, the Project would require, at a minimum, permitting under the federal Clean Water Act section 401 related to road and pond work that fills and impacts watercourses through the Project area. In addition, potential impacts to the Northern Spotted Owl could require the North Coast Regional Water Quality Control Board to consult with the U.S. Fish and Wildlife service before issuing any 401 certification. For these and similar reasons, Friends of the Mad River is concerned that, due to the size and location of this Project, cannabis cultivation’s inconsistency with federal law will impede environmental compliance.

VI. Conclusion

For each of the foregoing reasons, Friends of the Mad River respectfully requests that the Project be denied, or that complete environmental review pursuant to CEQA be performed. Friends of the Mad River respectfully reserves the right to submit further information in support of this appeal.

Thank you for your careful consideration of these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Flanders", is written over the printed name.

Jason Flanders
ATA Law Group
Counsel for Friends of the Mad River