



# COUNTY OF HUMBOLDT

## Legislation Details (With Text)

**File #:** 21-841 **Version:** 1 **Name:**  
**Type:** Appeal **Status:** Passed  
**File created:** 6/11/2021 **In control:** Planning and Building  
**On agenda:** 6/22/2021 **Final action:** 6/22/2021  
**Title:** 10:30 a.m. - Appeal of the Planning Commission actions to Approve the Arcata Land Company, LLC, Conditional Use Permit and to Adopt a Mitigated Negative Declaration to allow for commercial cannabis cultivation. The application is for the operation of a combination of outdoor light-deprivation cultivation (2.3 acres) and mixed-light cultivation (5.7 acres) in new enclosed gutter-connected greenhouses, and 30,000 square feet of existing hoop houses dedicated to ancillary propagation activities on APNs 506-231-021 and 505-151-011 (one separate legal parcel). 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., retention basins).

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Staff Report, 2. Attachment 1 Resolution.pdf, 3. 2 - 17198 Cotton Appeal Letter 05.04.2021.pdf, 4. 2 - 17198 Holder Law Group Appeal Letter 05.04.2021.pdf, 5. 3 - PC Resolution 21-58\_Arcata Land Company\_12255.pdf, 6. 4 - PLN-12255-CUP Staff Report 3.18.2021.pdf, 7. 5 - PLN-12255-CUP Staff Report 4.22.21.pdf, 8. 6 - Attachment 6a - 12255 IS MND Only.pdf, 9. 6 - Attachment 6b - 12255 IS MND Appendices A-J.pdf, 10. 6 - Attachment 6c - 12255 IS MND Appendices K.pdf, 11. 6 - Attachment 6d - 12255 IS MND Appendices L-O.pdf, 12. 6 - Attachment 6e - 12255 IS MND Appendices P part 1.pdf, 13. 6 - Attachment 6f - 12255 IS MND Appendices P part 2.pdf, 14. 6 - Attachment 6g - 12255 IS MND Appendices Q.pdf, 15. 7 - Revised Operations Manual - APP 12255 (Reduced Scale Alternative) (06.04.21).pdf, 16. 8 - 17198 SHN Appeal Response Bio.pdf, 17. 9 - GrowSpan Series 1000 Greenhouse - Example Gutter Connected Greenhouse.pdf, 18. 10 - Agency Comment CEQA Circulation Period.pdf, 19. 10 - Public Comment CEQA Circulation Period.pdf, 20. 10 - Public Comment PC Noticing Period.pdf, 21. 10 - Public Comment for BoS through 6.16.2021.pdf, 22. 10 - Public Comment for BoS through 6.16.2021.pdf, 23. Public Comment COB.pdf, 24. Public Comment.pdf

| Date      | Ver. | Action By            | Action              | Result |
|-----------|------|----------------------|---------------------|--------|
| 6/22/2021 | 1    | Board of Supervisors | approved as amended | Pass   |

**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Time Certain Matter

**SUBJECT:**

10:30 a.m. - Appeal of the Planning Commission actions to Approve the Arcata Land Company, LLC, Conditional Use Permit and to Adopt a Mitigated Negative Declaration to allow for commercial cannabis cultivation. The application is for the operation of a combination of outdoor light-deprivation cultivation (2.3 acres) and mixed-light cultivation (5.7 acres) in new enclosed gutter-connected greenhouses, and 30,000 square feet of existing hoop houses dedicated to ancillary propagation

activities on APNs 506-231-021 and 505-151-011 (one separate legal parcel). 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., retention basins).

RECOMMENDATION:

That the Board of Supervisors adopt the attached resolution to do the following:

1. Adopt Findings relative to CEQA Compliance and findings to support denial of the appeal and approval of the Conditional Use Permit
2. Adopt 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.

SOURCE OF FUNDING:

The Appellant has paid the appeal fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Planning Commission's April 22, 2021, approval of the Arcata Land Company, LLC, Conditional Use Permit application to allow a 8 acres of new cannabis cultivation consisting of 2.3 acres of outdoor light-deprivation cultivation and 5.7 acres of mixed-light cultivation in new enclosed gutter-connected greenhouses. The project was reduced in size from 22.9 acres of cultivation by the applicant between the first and second Planning Commission hearing based upon strong public opposition during the first hearing. The Planning Commission approved the modified project with a vote of 5-2. The appeal was filed by a group of 28 people. The basis of the appeal is that the IS/MND makes false or misleading statements and lacks analyses, concern over the use of well water, an uncertain project description, energy usage, use of Foster Avenue for access and odor impacts. The appellants request that the project be denied or an EIR be required. The issues raised by the appellants have been addressed in the IS/MND or in other information contained in the record. There is not any information which has been raised that points to a procedural failing, or a factual failing in the

processing of this application and as a result staff recommends that the appeal be denied, upholding the Planning Commission decision and the approve the project.

This is a de novo hearing, and the Board of Supervisors is not limited to the evidence in the existing record and may receive new evidence at the appeal hearing.

### Project Description:

Conditional Use Permit application to allow an 8 acres of new cannabis cultivation consisting of 2.3 acres of outdoor light-deprivation cultivation and 5.7 acres of mixed-light cultivation in new enclosed gutter-connected greenhouses. The project also includes 30,000 square feet of ancillary propagation activities, 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). The Applicant will 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. The Planning Commission approved the Arcata Land Company, LLC, Project and associated Mitigated Negative Declaration by a vote of 5-2. The

The project site is located in Humboldt County, in the Arcata area, on the north side of Foster Road, approximately 1,200 feet northeast from the intersection of Dolly Vardon Road and Foster Road, on the property known to be in the southeast quarter of Section 19, Township 06 North, Range 01 East.

### Background and Planning Commission Action

On December 22, 2016, Arcata Land Company, LLC, applied for two Conditional Use Permits for a total operation of 36.87 acres of mixed light cultivation and appurtenant facilities (Application Numbers 12255 and 12262) on two separate legal adjoining parcels (APNs 506-231-011 and 507-181-007). On February 27, 2017, Arcata Land Company, LLC applied for a Lot Line Adjustment (LLA) between four separate legal parcels to result in four separate legal parcels, which was subsequently approved on June 21, 2017. The purpose of the LLA was to reconfigure parcel lines for agricultural purposes. The current 38.3-acre project parcel resulted from the LLA. As a result, Application Number 12262 was withdrawn, and the proposed cultivation area for Application Number 12262 was combined with the proposed cultivation area for Application Number 12255. At that time, it was determined that a reconfiguration of the plan proposal was required to meet property line setbacks. This reconfiguration reduced the cultivation area of the proposed project from 36.87 acres to 22.9 acres.

The proposed 22.9 acres project went before the Planning Commission on March 18<sup>th</sup>, 2021. At the March 18<sup>th</sup>, 2021 meeting the Commission heard a substantial amount of public testimony raising concerns regarding the project. The Planning Commission was not able to complete public input and continued the public hearing to the April 1, 2021 Planning Commission meeting.

Shortly before the April 1, 2021 meeting the Applicant informed the county of their desire to address

public concerns by making substantial reductions to the scale of the Project and requested a continuance to the next meeting. After a brief discussion about upcoming hearings, the Project was continued to a special meeting on April 22, 2021. While this was a continuance to a date certain, given the level of public concern a revised public notice was sent to all property owners within 2,000 feet of the site describing the reduced Project and informing the public of the April 22, 2021 date.

On April 22, 2021, the Planning Commission considered the reduced 8 acre project. This revision also received a significant amount of public opposition. The Planning Commission weighed the public concern about the project including whether an EIR should be required. The Commission felt the reduction to 8 acres is in keeping with the cannabis ordinances and could be supported. The Planning Commission approved the Project and its Mitigated Negative Declaration by a vote of 5-2, with Commissioners Peggy O'Neill and Brian Mitchell the nay votes. One of the dissenting votes was related to concern over lack of pedestrian facilities on Foster Avenue and the other dissenting vote was opposed to the project size.

The approved Project is a reduction from the originally proposed 22.9-acre Project which included 116 employees and 52 acre-feet (17 million gallons) of irrigation water needed. All aspects of the revised Project will be at or below the intensity described and proposed in the staff report submitted to the Planning Commission for the March 18, 2021 hearing and in the Initial Study and Mitigated Negative Declaration that was circulated for public review.

### Appeal

The basis of the appeal is set forth in the appeal letter 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 received by the Planning and Building Department on May 4, 2021 (Attachment 2). The following discussion addresses issues raised by the Appellant in the appeal:

**Appeal Issue 1: The Appellant Asserts the Project Improperly Relies on a Mitigated Negative Declaration Where There is a Fair Argument Based on Substantial Evidence that the Project May Result in Multiple Significant Environmental Impacts and Denial of the Project or an Environmental Impact Report is Warranted.**

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

Staff Response: 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. The appellant has not provided fact-based evidence or expert opinion that the project may result in a significant adverse impact that would rise to the level of a fair argument. Section 15064(f)(5) states: “*Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.*”

As stated in CEQA section 21082.2(b): *The existence of public controversy over the environmental effects of a Project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the Project may have a significant effect on the environment.* Section 15064(f)(5) of the CEQA Guidelines further states that “*Argument, speculation, unsubstantiated opinion or narrative ... shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions based upon facts, and expert opinion supported by facts.*” The Appellant has not provided fact-based evidence or expert opinion supported by facts that the Project may result in a significant adverse impact that would rise to the level of a fair argument. The Appellant relies on comments made by the public, but as stated in the findings and Planning Commission staff reports these comments have all been addressed. There has been no fact-based evidence or expert opinion submitted that would establish a fair argument of a potentially significant adverse impact on the environment.

*B. The Appellant argues that the concerns listed below substantiate a fair argument of significant environmental impacts resulting from the Project.*

*i. The IS/MND is Misleading*

*The Appellant states 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.*

Staff Response: 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 with technical documentation and internally consistent.

*ii. Intensive Reliance on Well Water*

*The Appellant states that the intensive reliance on well water for this Project is a grave concern of experts (not identified by Appellant) 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.*

**Staff Response:** The IS/MND does not rely solely 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. The well itself is located within a specifically defined groundwater basin by the State Water Resources Control Board.

As noted in the IS/MND water for irrigation will be supplied by an existing permitted on-site groundwater well (County Permit Number 18/19-0783). The well is located east of the Project area on an adjoining parcel under common ownership (APN 505-151-012). The well is completed to a depth of approximately 150 feet and has an estimated yield of 400 gallons per minute according to the Well Completion Report. As documented by the well driller (Rich Well Drilling), the well is screened approximately 100' below surface in a state designated groundwater basin (Mad River Valley - Mad River Lowland; 1-008.01). The nearest surface water features to the well are Liscom Slough and McDaniel Slough, located at 1,960 feet and 2,140 feet distance from the well, respectively.

Lastly, 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.

iii. *Investigation of Biological Resources Incomplete and Inadequate*

*The Appellant states that 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.*

**Staff Response:** The appellant does not specify any expert who has reviewed the IS/MND and found it incomplete or inadequate. According to the Biological Resources Assessment performed for the Project, 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 been farmed for crops and flower production and is therefore not native habitat for migratory wildlife. With the reduced footprint Project proposal that was approved on April 22, 2021, 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.

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.

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.

ix. *Energy Cost of the Project*

*The Appellant states 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.*

Staff Response: 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.

x. *Cumulative Impact of Traffic*

*The appellant states that the ISMND does not analyze the cumulative impact of traffic from this project and others on Foster Avenue and that an EIR is required in order to understand these impacts.*

Staff Response: The law relating to traffic analysis under CEQA changed as of July

2020. Section 15064.3 of the CEQA Guidelines states that a project's effect on automobile delay shall not constitute a significant environmental impact (except regarding transportation projects). While delay or LOS analysis is not required for CEQA, the IS/MND included an analysis of both delay and Vehicle Miles Traveled. It was determined that due to location close to population centers the project would have a less than significant effect under the VMT analysis. In the LOS analysis it was determined that in the existing condition the project would not have any significant effects, but under the future condition (cumulative) 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.

*xi. Air Quality, Odor, Noise, and Light Pollution*

- a. The Appellant states 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."*

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

Staff Response: 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. In the event that carbon filtration is inadequate, odor neutralizers such as Ecosorb, a water-based product that contains a proprietary blend of natural plant oils and bio-based surfactants that effectively adsorb to odor molecules, neutralizing their smell, may be utilized.

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.

Lastly, the enclosed greenhouses will include carbon filtration intended to control odor, and which will also ensure that in the event odor neutralizers such as Ecosorb or used, any airborne particulates will be trapped in carbon filters before air is circulated to outside of the greenhouses.

It should be noted that the closest residence to the Project would be at 780 feet. All other residences would be at least 1,250 feet away.

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

Staff Response: The project will be consistent with the Community Noise Equivalent Level (CNEL) standards of the Humboldt County General Plan which will require the project to be demonstrated to not contribute more than 60 decibels as measured at the property lines. This will ensure that noise levels at any sensitive receptor are below the noise threshold established in the General Plan as suitable for sensitive receptors. 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. This is condition of project approval.

In regard to discrepancies between the staff report and the FEIR, this application is being processed under the CMMLUO. The FEIR was completed for the CCLUO. The noise standard in 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*”. The noise standard in the CCLUO (Sec. 314-55.4.12.6) states that “*Noise from cultivation and related activities shall not result in an increase of more than three decibels of continuous noise above existing ambient noise levels at any property line of the site*”. The noise standard from the CCLUO does not apply to this project.

Once again, it should be noted that the closest residence to the Project would be at 780 feet. All other residences would be at least 1,250 feet away.

Regarding light pollution, Sections 314-55.4.11 (v) and (w) of the CMMLUO prohibit and enforce light pollution. See language below.

- v) Those cultivators using artificial lighting for mixed-light cultivation shall shield greenhouses so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise.
- w) The light source should comply with the 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). Should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected as necessary.

**Appeal Issue 2: The Appellant asserts that, “under CEQA, an accurate, finite, stable project description is the cornerstone of an adequate environmental impact review document, including an MND. In fact, courts have held that an MND ‘is inappropriate where the agency has failed either to provide an accurate project description or gather information and undertake an adequate environmental analysis.’”**

*A. Insufficient Project Description*

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

Staff Response: 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. 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. The applicant reduced the size of the project to 8 acres of cultivation in response to the public opposition. All aspects of the revised Project will be at or below the intensity described in the MND project description. The MND adequately identifies the potential impacts associated with the project in its reduced version, it is meaningful for the public and decision makers to understand what impacts may exist and why other potential impacts are not

considered significant. 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. As stated earlier, the approved Project is a reduction from the originally proposed 22.9-acre Project which included 116 employees and 52 acre-feet (17 million gallons) of irrigation water needed. All aspects of the revised Project will be at or below the intensity described and proposed in the staff report and project description submitted to the Planning Commission for the March 18, 2021 hearing.

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.

## CONCLUSION

The Project site is planned and zoned appropriately for the proposed activity. Throughout the cannabis permitting process locating cannabis cultivation on vacant industrial sites has been encouraged. This site falls within that category. Public comment has been made that approving an 8-acre cultivation site is unprecedented. Actually, there is an 8-acre cultivation site approved in Willow Creek. Much of that is in enclosed greenhouses, some is outdoor.

Many members of the public as well as the Appellant have objected to the scale of the proposed project and have expressed the opinion that the proposed Project is too large in this location and could have a detrimental effect on the local community. However, these objections do not consider the fact that the cultivation is being proposed on an approximately 115-acre industrial land holding that has a history of heavy industrial use, and more recently agricultural use. The Site was in agriculture (hay or livestock production) until Simpson Lumber Company constructed an industrial mill site in the late 1940's or early 1950's. The Site has been modified many times with the addition of warehouses and lumber storage racks. Between 1988 and 1993, the storage racks were removed. The fields have since been graded and are currently used for agriculture. The existing hoop houses are used to grow flowers, while the fields have been used for both flowers and mixed row crops.

Comments have been raised regarding the Agricultural land use designation under the Humboldt County General Plan and that the Heavy Industrial zoning is not consistent with this designation and has therefore created a "loophole" through which this site is authorized to do something that would not be allowed if the zoning and land use designation were in alignment. To that end, the amount of cannabis cultivation that could be authorized under the CMMLUO on the two affected Arcata Land Company properties if the zoning was all Agricultural would be 30,000 square feet. Under the CCLUO, a total of 3 Special Permits could be approved for a total of 3.0 acres. Under the current MH zoning there is no cap and the applicant is requesting approval of 348,480 square feet (8 acres).

The Appellant has not provided new information that would cast doubt on the Planning Commission's action to adopt the Mitigated Negative Declaration and approve the Project. The proposed project is consistent with the Humboldt County Zoning Ordinance and General Plan, and the environmental review conducted for the Project has found no significant impacts that cannot be mitigated to a level of

less than significance. The reductions in project size do not affect or alter the analysis and conclusions of the Initial Study and Mitigated Negative Declaration circulated from January 28, 2021 to February 26, 2021 because in all cases the Project impacts are less than described and analyzed in the document.

The subject site is within the Sphere of Influence for the City of Arcata and is something that the Planning Commission took seriously and is an important consideration. It could seem as in other community plan instances that there are neighborhoods pressing right up against the proposed cannabis cultivation site. In this case the setback of the cannabis cultivation from the property line of the Arcata Land Company holding is approximately 1,000 feet, and the nearest house, located on the north side of 27<sup>th</sup> Street is approximately 800 feet away. There are no other homes within 1,000 feet of the proposed cultivation location.

Staff Recommends the Board of Supervisors uphold the Planning Commission decision.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The Appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may consider the following alternatives:

1. Uphold the appeal, overturn the Planning Commission approval, and require preparation of an EIR. The Board may find that it would be desirable to prepare and EIR for the project. The Board should give direction as to why an EIR should be prepared and continue the hearing to a date uncertain to allow an EIR to be prepared.
2. Uphold the appeal, overturn the Planning Commission approval, and deny the project. The Board may decide that the Project in its present form would adversely harm the existing physical, aesthetic and environmental character of the community and would therefore be detrimental to the public welfare. Under this alternative the Board would find the Project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (Projects which are disapproved) and deny the Arcata Land Company, LLC Project because the findings for approval under Section 312-17.1 of the Humboldt County Code cannot be made. In this case staff recommends the Board give direction on the rationale for denial and continue the project to a date certain to allow staff to prepare adequate findings.
3. Deny the Appeal and Approve a Revised Project. The Board could choose to approve a modified project to address concerns and issues raised and could choose to apply additional

conditions of approval to the Project.

**ATTACHMENTS:**

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings
2. Appeal filed by James Cotton et.al., dated May 4, 2021.
3. Resolution of the Planning Commission
4. Planning Commission Staff Report March 18, 2021
5. Planning Commission Staff Report (Reduced Scale Alternative) April 22, 2021
6. Mitigated Negative Declaration
7. Revised Operations Plan
8. SHN Response to Appeal Letter Regarding Bio Assessment
9. GrowSpan Series 1000 Greenhouse Spec Sheet
10. Agency/Public Comment

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: N/A

Meeting of: N/A

File No.: N/A