



# COUNTY OF HUMBOLDT

## Legislation Details (With Text)

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**On agenda:** 10/27/2020      **Final action:** 10/27/2020  
**Title:** 1:30 p.m. - Appeal of the Planning Commission actions to Approve the Adesa Organic LLC, Conditional Use Permits and to Adopt a Mitigated Negative Declaration for the cultivation of 86,400 square feet of new mixed light cannabis cultivation and associated infrastructure on Assessor Parcel Numbers (APNs): 315-145-002, 315-211-003 and 315-211-004, including improvements to an existing road located on APN 315-222-002

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Staff Report, 2. Attachment 1 - Draft Board Resolution Findings and Conditions of Approval.pdf, 3. Attachment 2 - Appeal filed by Friends of the Mad River 09.17.2020.pdf, 4. Attachment 3 - Additional Materials.pdf, 5. Attachment 4 - PC Resolution 20-60\_Adesa Organic\_11923.pdf, 6. Attachment 5 - PC Staff Report and Supplemental 1 and 2.pdf, 7. Attachment 6 - Adesa ISMND with Attachments.pdf, 8. Attachment 7 - Public Comments.pdf, 9. Public Comment COB.pdf, 10. Public Comment K2.pdf, 11. Resolution 20-105

Date	Ver.	Action By	Action	Result
10/27/2020	1	Board of Supervisors		

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

**From:** Planning and Building Department

**Agenda Section:** Time Certain Matter

**SUBJECT:**

1:30 p.m. - Appeal of the Planning Commission actions to Approve the Adesa Organic LLC, Conditional Use Permits and to Adopt a Mitigated Negative Declaration for the cultivation of 86,400 square feet of new mixed light cannabis cultivation and associated infrastructure on Assessor Parcel Numbers (APNs): 315-145-002, 315-211-003 and 315-211-004, including improvements to an existing road located on APN 315-222-002.

**RECOMMENDATION:**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant, applicant, and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-\_\_). (Attachment 1) which does the following:
  - a. Makes the findings required to deny the appeal and approve the Conditional Use Permits;

- b. Adopts the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2020060675;
  - c. Denies the Appeal;
  - d. Approves the Conditional Use Permits subject to the conditions of approval (Attachment 1A); and
  - e. Adopts the Revised Mitigation, Monitoring, and Reporting Program with substituted Mitigation Measure BIO-2.
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the property owner, and any other interested party; and
5. Direct the Planning and Building Department to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

SOURCE OF FUNDING:

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

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's September 3, 2020, adoption of a Mitigated Negative Declaration and approval of the Adesa Organic, LLC, Conditional Use Permit application to allow 86,400 square feet of new mixed light commercial cannabis cultivation and associated infrastructure and improvements on APNs 315-145-002, 315-211-003 and 315-211-004 and improvements to an existing road on APN 315-222-002. The Planning Commission approved the Adesa Organic, LLC, project and associated Mitigated Negative Declaration by a vote of 4-3.

Friends of the Mad River ("Appellant") has appealed the decision and submitted a letter through their attorney stating why they believe that the Planning Commission's approval is not in accord with the standards and regulations of the California Environmental Quality Act (CEQA) and the Zoning Code and General Plan (see Attachment 2). The primary concerns can be summarized as potentially inadequate environmental review.

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. Staff is recommending that the Board deny the appeal and approve the project with conditions. However, the appeal does raise issues related to the intent of CMMLUO and whether it is appropriate to locate large new cultivation operations in remote rural portions of the county.

Background and Planning Commission Action

On December 15, 2016, Adesa Organic, LLC, applied for two Conditional Use Permits for a total of 86,400 square feet of new mixed-light cannabis cultivation with proposed rainwater catchment ponds and on-site processing on one merged parcel consisting of Assessor's Parcel Numbers (APNs) 315-145-002, 315-211-003, and 315-211-004, which will be approximately 443 acres in size after recording of

a Notice of Merger. An existing road that traverses an adjacent parcel (APN 315-222-002) will be improved to accommodate the increased intensity of development. Two mixed-light greenhouse cultivation areas of 43,200 square feet each are proposed within a single consolidated site. Annual water use is expected to be approximately 1,864,000 gallons for irrigation and approximately 468,000 gallons for restroom facilities, for a total of approximately 2,332,000 gallons. Two rainwater catchment ponds totaling 4,330,000 gallons are proposed to provide the primary sources of irrigation. A maximum of 20 employees are proposed. Power was proposed to be provided by a combination of solar power and diesel generators, although the MND prepared for the project requires 80% of all power to be generated by renewable sources from the beginning of operation. The Planning Commission further required that 100% of all power be generated by renewable sources within 2 years of operation. This project was first heard at the Planning Commission meeting of August 6, 2020, was continued to the August 20, 2020 meeting and continued again to the September 3, 2020 meeting where it was approved by a 4-3 vote (Bongio, O'Neill, Pellegrini opposed). Prior to the 4-3 vote for approval, a motion to deny the project failed by a 3-4 vote (Levy, Newman, Mitchell, McCavour opposed).

The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) provides the opportunity on parcels larger than 320 acres in size to permit new cultivation of up to one acre for each 100 acre increment, provided that the cultivation is located on prime agricultural soils that occupy no more than 20% of the total area of prime agricultural soils on the parcel. During the three Planning Commission meetings there was considerable debate among the commissioners over whether the provisions of the CMMLUO for parcels over 320 acres in size was intended to allow for new cultivation in remote rural portions of the county such as Maple Creek. Specifically, most commissioners agreed that requirement for new cultivation to be located on prime soils was intended to keep new cultivation limited to the more fertile bottomland areas. Commissioners appeared to agree that the identification of prime soils by soils scientists in various rural portions of the county was an unintended byproduct of the CMMLUO as written, however the four commissioners who voted to approve the project noted that the Adesa project should be reviewed under the regulations as written when they applied and that they had met all of the requirements of the CMMLUO.

### Setting and Neighboring Land Uses

The project site is located off Maple Creek Road, approximately 8.0 miles southeast from its intersection with Butler Valley Road. The subject parcel is surrounded by parcels that average over 100 acres in size. Many of the parcels in the surrounding area are under Williamson Act Land Conservation Contracts, including the subject parcel. The parcels in this area are zoned either Timber Production Zone (TPZ) or Agriculture General with a Special Building Site Combining Zone [AG-B-5(160)], or a combination of both. The proposed project site is in the Agriculture General [AG-B-5(160)] zoning district where cannabis cultivation and processing activities are allowable. In this particular portion of the Maple Creek area, which is towards the end of Maple Creek Road and north of the Mad River and within a 1-mile radius of the Adesa site, approximately a dozen commercial cannabis applications were made before the January 1, 2016 deadline under the CMMLUO. Only three of these applications remain in the permit process with all others having either been denied or closed due to inactivity. All three of these applications are for multiple acres of new cultivation under the provisions of Section 314 -55.4.8.2.1.1. Total cannabis cultivation proposed under these three applications within a 1-mile radius

of the Adesa site is approximately 13.5 acres (including the 2 acres proposed by Adesa Organic, LLC). The cultivation area proposed by the Adesa project is the only cultivation proposed north of Maple Creek Road. All other cultivation is proposed south of the road and closer to the Mad River. This is important because the appellant has raised the issue of nesting sites for Golden Eagle and Northern Spotted Owl in the vicinity and that the project's impacts to these species, combined with these other projects may be cumulatively significant. These nesting sites are located primarily south of Maple Creek Road and nearly all of them are located south of the Mad River. This is the first of these cannabis applications that has been brought forward for a consideration of approval because this is the first application that has submitted enough information that demonstrates that potential significant impacts on the environment may be mitigated to a less than significant level.

### Neighborhood Concerns

Concern has been raised by referral agencies and members of the public regarding the potential of new cannabis applications to disrupt the incredibly high habitat values of the area and the overall scenic and rural quality of life. The CMMLUO does not distinguish between any one portion of the county and another, and the subject property's parcel size, zoning, general plan designation and access are all appropriate for cannabis permitting under the CMMLUO. The project has been designed to minimize the impacts of new development on the surrounding area, including the use of a van pool to limit traffic to no more than ten trips per day and the placement of the new greenhouses in a location where they will not be visible from surrounding properties or any public vantage point. Nonetheless, the Planning Commission struggled with the decision of whether this portion of Maple Creek, with its historical very low density and passive agricultural uses, is appropriate for permitting of more intensive agricultural uses such as commercial cannabis.

### Revisions to the project after the Planning Commission approval

In order to accommodate the changes as approved by the Planning Commission and to address some of the concerns raised in the appeal, the applicant has revised the proposed project. Revisions to the proposed project include the following:

- Gutter-connect style greenhouses are no longer proposed, and the applicant will instead utilize only hoop houses for light deprivation techniques. The lighting footprint is reduced to a 'season extension' model rather than a 'light supplementation' model, which is ML-1 rather than ML-2 under state licensing. This will cap out max wattage at 6 watts per square foot of cultivation area. The applicant is proposing to cultivate in-ground in beds rather than rolling benches.
- In order to address both energy demand and habitat fragmentation as a result of human activity in the existing barn area, all processing will occur entirely off-site.
- On site solar would be reduced to 12kw which can be installed on the existing outbuildings thus reducing ground disturbance. A generator for backup power and potential early season use in year one only is proposed as the solar gets installed and also in case there are issues with the solar system during the first year. This reduces the projected diesel use to less than 2,000 gallons for the first two years. Further, this generator will be removed off-site after two years as required by the

Planning Commission.

- The secondary 1.077-million-gallon pond is removed entirely from the project.
- By moving the drying off site there is no need to expand the square footage of the existing barns.
- The applicant is now proposing hard water tank storage on this graded and previously rocked area in order to cultivate at least a part of the square footage before the rainwater catchment pond is constructed and operational.

### Appeal

The basis of the appeal is set forth in the appeal letter submitted by ATA Law Group on behalf of The Friends of the Mad River, received by the Planning and Building Department on September 17, 2020, in Attachment 2. The following discussion addresses the discrete points raised in the appeal.

### **Appeal Issue 1: The Project improperly relies on a mitigated negative declaration where there is a fair argument that the Project will result in significant environmental impacts related to contaminated soils and groundwater.**

- A. The appellant states that a fair argument of significant environmental impacts was presented to the Planning Commission.
- i. The appellant argues that there is a “low threshold” for preparation of an EIR and that an EIR must be prepared where there is a reasonable probability that the project will result in a significant impact. The appellant states that comments from the California Department of Fish and Wildlife demonstrate potential significant impacts.

Staff Response: A fair argument must be based on substantial evidence, such as factual data or expert opinion. As stated in Public Resources Code 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 points to comments from CDFW to assert that there are potentially significant impacts, however, CDFW clearly stated at the September 3, 2020 Planning Commission meeting that they did not believe any of the project impacts for which CDFW is a responsible or trustee agency rose to a level of significance. The appellant has not provided any such 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.

### **B. Impacts to Biological Resources and C. Impacts to Water Resources**

- ii. The appellant states that significant water consumption and hydrologic alterations would

have a reasonable probability of causing significant adverse effects. The appellant believes that taking 6,201,000 gallons out of the local hydrology every year is a potentially significant impact on habitats and biological resources.

Staff Response: The appellant incorrectly refers to 6,201,000 gallons of water that would be taken out of the local hydrology every year, however this amount is the total amount of rainfall that could be collected by the structures and ponds proposed to be developed. The MND is clear that the maximum amount of rainwater diverted to storage for the project would be 4,300,000 gallons of rainwater, which is equivalent to approximately 13 acre-feet per year. According to the Humboldt Bay Municipal Water District Urban Water Management Plan the Mad River watershed annual runoff just over 1,000,000-acre feet per year. 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. For further context, the Wilson Creek Planning Watershed of which the Adesa site is in, is approximately 5820 acres in size. The proposed project is proposing to cover no more than 4.1 acres with impermeable surfaces, so the total diversion of rainwater from the subwatershed if all the water was collected and stored would be 0.07% of the total available to fall in the subwatershed. The appellant has provided no evidence or expert opinion regarding any potential adverse impacts from this small percentage of rainwater collection. Further, in response to the appellant's concerns the applicant has removed the secondary pond completely from the project. The maximum amount of rainwater that will be harvested and collected for irrigation is now 3,221,000 gallons.

- iii. The appellant also states that the MND illegally defers mitigation by referring to an existing shallow well that may be required to apply forbearance.

Staff Response: This well is associated with an existing residence approximately 0.6 miles from the project site and is mentioned only as part of the Draft Lake or Streambed Alteration Agreement that was issued by CDFW. This well is not related in any way to the Adesa project.

- iv. The appellant further argues that the MND fails to consider habitat fragmentation impacts of the project because the California Department of Fish and Wildlife has stated that the scientific literature shows that “wildlife disproportionately use riparian habitat as movement corridors” and that CDFW states that the new road, water, septic, parking, garbage and compost facility, and sustained human presence would likely bifurcate the riparian and stream resources where the Natural Resources Assessment attributes the most wildlife movement.

Staff Response: Most of the area within the riparian corridor that was raised as a concern by CDFW staff is the existing developed area with the two large agricultural outbuildings. While additional human disturbance may contribute to potential habitat fragmentation in the form of noise and other human activity, the primary new disturbance within the riparian corridor is the new access road for the proposed primary rainwater pond which would be approximately 250 feet of linear disturbance through the riparian corridor and the potential

removal of one tree less than 12 inches in diameter. All riparian setbacks will be fenced prior to construction activities to prevent intrusion. It is important to note that CDFW clarified during the September 3, 2020 meeting that they did not believe the impact to habitat fragmentation (nor any other issue related to CDFW concerns) rises to the level of a significant adverse impact (Michael Van Hattem, 2:52:30). However, in response to the appellant's concerns the applicant has removed all processing from the project completely, reducing the amount of human activity and improvements that would occur within the existing developed outbuilding areas. This will reduce the potential habitat fragmentation below that which was analyzed in the ISMND.

- v. The appellant raises the issue of a new mitigation measure announced at the Planning Commission meeting of September 3, 2020 and that because they had not been publicly reviewed, they may have additional adverse impacts.

Staff Response: This is related to the substitution of mitigation measure BIO-2 which was substituted at the request of CDFW staff who state this is a more effective mitigation measure for bullfrog prevention. The substitution of the mitigation measure does not affect the conclusions of the document and does not require recirculation pursuant to Section 15073.5 of the CEQA Guidelines, and the substituted measure will not in itself cause any potentially significant impact on the environment.

- vi. The appellant raises the potential adverse impact of the project, including the potential cumulative impact of this project and others in the vicinity, on Golden Eagles and Northern Spotted Owls.

Staff Response: The appellant inaccurately states that nests for these species have been detected adjacent to the project site and noise and other impacts from the project may negatively impact these nests. Both Golden Eagles and Northern Spotted Owls have nesting sites that have been detected in the vicinity, but not adjacent to the project site. As identified in the ISMND, these nesting sites are located over 1 mile from the project site and technical noise studies prepared for the project have demonstrated that the noise from the project would be far below any thresholds set for adverse impacts to the nesting sites. The Golden Eagle nest site is located approximately 1.6 miles south of the primary project site and 1.2 miles from the closest point of the access road. The Golden Eagle nest is on the other side of Maple Creek Road and the Mad River and approximately 2,000 feet below the elevation of the project site and out of the line of site of the Adesa project. Additionally, technical studies prepared for the project show that there is no high-quality foraging habitat on the Adesa project site. Technical studies prepared by both Golden Eagle and Northern Spotted Owl experts have been prepared over a three-year period which conclude that the project would not have a significant impact on these species.

The county requested an independent peer review of the technical data presented for the Golden Eagle analysis. The peer review was conducted by ICF in a memo dated October 19, 2020 and states: *"The report states that no direct evidence of active nesting was observed, and the nesting status is therefore unknown. The report also states that if the historic site is used*

*for nesting, the distance (1.6 miles) from the project site would eliminate the potential for Golden Eagle impacts to occur. This conclusion is supported by the 2 years (2019 and 2020) of protocol-level surveys which found that the project area was unoccupied by nesting eagles and that suitable foraging habitat will not be significantly impacted for the “Big Bend” territory.”*

- vii. The appellant mentions that Roosevelt Elk have been in the area but have not been identified or analyzed in the ISMND.

Staff Response: Roosevelt Elk is not a special status species and was not identified in a Special Status Species list provided by CDFW and the US Fish and Wildlife Service for the purposes of creating a scoping list for this project.

- viii. The appellant also states that the project would have a potentially significant effect by potentially introducing Sudden Oak Death to the area through vehicular traffic during wet conditions.

Staff Response: It is unclear how the appellant believes this would be transported to the site as a result of the limited local traffic associated with the project. A Reference Manual for Managing Sudden Oak Death in California (USDA December 2013) states that the primary risk may be from the importation of untreated soil or infested plant material. The applicant is proposing to use the existing soil on the site and amend it only with compost and pumice, neither of which should contain pathogens that would spread Sudden Oak Death.

## Appeal Issue 2: Electrical demands

- i. The appellant argues that relying on diesel generators for 20% of the project’s electrical needs for the first two years is a potential significant impact and relies, in part, on the ISMND’s statement that up to 135,000 gallons of diesel fuel per year was proposed and considered potentially significant.

Staff Response: The statement in the ISMND regarding 135,000 gallons of diesel was the projected usage at 100% of power generated from generators. At 20% for the first two years, this would not exceed 27,000 gallons per year for no more than two years. The fuel delivery will be required to comply with all laws regarding secondary containment and spill prevention and the stored fuel will be required to have secondary containment areas to ensure no spills occur. The CEQA threshold of note is whether the project “would result in a potentially significant impact due to wasteful, inefficient or unnecessary consumption of energy resources.” At 20% of total power generation for only two years, this does not appear to rise to a level of significance. Nonetheless, in response to the appellant’s concerns and the changes made to the project by the Planning Commission, the applicant is substantially reducing the amount of power needed for lighting and drying activities. In the first two years of operation, the applicant estimates less than 2,000 gallons of diesel will be needed. After two years of operation all power will be generated entirely from solar arrays.



- ii. The appellant also raises the concern of potential extension of PG&E service to the site and states that this fails to analyze the impacts of such extension.

Staff Response: PG&E service is unlikely to be extended to the site and is included as an option for renewable energy only if such extension did occur. The project does not propose such extension. Further, were such extension to occur, this would not result in a growth inducing impact because the zoning of the Maple Creek area would prohibit further subdivision and commercial development.

- iii. The appellant also states that the development of ground-based solar panels and associated ground disturbance in proximity to wetland and buffer areas would have potential adverse impacts.

Staff Response: The solar arrays as initially proposed would be located well outside of all Streamside Management areas and riparian corridors and within the area studied for botanical and biological resources and will not impact any sensitive or special status species or habitats. The revisions to the project after the Planning Commission approval involve locating the solar panels entirely on the existing outbuildings and so no additional ground disturbance would be required.

### Appeal Issue 3: Fire Safety

- i. The appellant argues that the Kneeland Fire District is the responsible agency for fire protection and that the applicant is required under General Plan standard IS-S5 to obtain a letter acknowledging the fire services can be provided. As a result, the appellant argues that the MND fails to ensure that increased fire risk to adjacent timberland is not adequately evaluated.

Staff Response: This is a misreading of the General Plan Standard, which is listed in its entirety below:

**IS-S5 Other Development Outside of Fire District Boundaries.** *New industrial, commercial, and residential development, excluding subdivisions pursuant to the Subdivision Map Act, outside of fire district boundaries shall be responsible prior to permit approval, to obtain from an appropriate local fire service provider written acknowledgement of the available emergency response and fire suppression services and recommended mitigations.*

*If written acknowledgement indicates that no service is available or no acknowledgement is received, the following shall apply:*

*For building permits, a note shall be placed on the permit indicating that no emergency response and fire suppression services are available.*

*For discretionary permits findings shall be made that no service is available, and the project shall be conditioned to record acknowledgment of no available emergency response and fire suppression services.*

In this instance, the project site is outside any established fire district boundaries for the Kneeland Volunteer Fire Protection District and the Kneeland Fire District has not responded, so the project is conditioned to record an acknowledgment of no available emergency response and fire suppression services. Cal-Fire provides the wildland fire protection services and is the responsible agency for wildland fires. Fire risk to individual structures is not a CEQA issue, nor is it a General Plan conformance issue.

#### **Appeal Issue 4: Air Quality impacts**

The appellant states that the County's Program EIR for the CCLUO (Ordinance 2.0) determined that long-term operational impacts of cannabis operations proposed under the CCLUO would be significant and unavoidable and that therefore the Adesa project requires an EIR. The appellant acknowledges here that the project is being reviewed under the CMMLUO, but states that the impacts of the Adesa project are the same if not worse than those considered by the County EIR and therefore an EIR is required for the Adesa project.

Staff Response: The County's programmatic EIR found that the cumulative impacts on PM10 emissions would contribute to an existing air quality violation and therefore be significant and unavoidable because the entire North Coast Air Quality Basin is currently in non-attainment for PM-10. This was the CEQA threshold standard in effect at the time of the preparation of the County's EIR for the CCLUO. However, this is the incorrect CEQA threshold for review of the subject project. The CEQA threshold in effect during the preparation and circulation of the MND for the Adesa project is whether the project would "result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard." The ISMND for the Adesa project found that there was no "cumulatively considerable net increase" of PM10 as a result of the Adesa project.

#### **Appeal Issue 5: Traffic effects**

The appellant states that the analysis should include traffic from all foreseeable projects including diesel and water deliveries which will increase significantly, along with their unevaluated greenhouse gas emissions. The appellant also states that twelve of the road segments in the road evaluation report are 17-19 feet wide which can make for risky vehicle confrontations and refers to the California Highway Patrol comments of the same.

Staff Response: The ISMND analyzed the trips as identified and estimated in the Road Evaluation Report for the project, which included fuel truck deliveries. These trips are included in the analysis. Regarding the road width, the County Public Works Department has found that Maple Creek Road is suitable for the intended traffic associated with the Adesa project. At an average of ten additional trips per day for the project, the road is of sufficient width and has

sufficient turnouts and site distance to accommodate the small increase in traffic associated with the project.

### **Appeal Issue 6: The MND Fails to Analyze the Whole of the Project**

The appellant argues that the MND fails to analyze the whole of the CEQA “project” because it does not analyze the entirety of the improvements listed in the draft Lake or Streambed Alteration Agreement issued by CDFW. The appellant argues that the LSAA and the Adesa project are “so intertwined as to be part of the whole of the same action”. The appellant further argues that the LSAA stream crossings for the road to the Adesa project are clearly part of the project because they serve the road and should therefore be included in the ISMND.

Staff Response: The ISMND includes all stream crossings and LSAA components that are related to the Adesa project. All of the stream crossings and culvert replacements for the improvement of the access road to the Adesa project site and new access road for the primary rainwater pond are described, analyzed and mitigated for in the ISMND. It is therefore inaccurate for the appellant to argue that the road improvements associated with the Adesa project are not adequately included in the MND.

The draft LSAA issued by CDFW includes components related to culvert replacements and water diversions on the entirety of the 443-acre property that are completely unrelated to the Adesa project. For example, the draft LSAA includes a water diversion improvement for an existing single-family residence that is located over 0.50 of a mile from the Adesa project site. The draft LSAA similarly includes existing cattle stock-ponds which are not part of the Adesa project and will not be utilized or altered in any way as a result of the Adesa project. CDFW clarified that they believe only one of these components that was not analyzed in the ISMND is related to the Adesa project, and that this is the removal of an existing stock pond that is adjacent to the footprint of the proposed cultivation site. CDFW clarified at the September 3, 2020 meeting that removal of this pond is not a significant issue because it would be environmentally beneficial (Michael Van Hattem, 2:43:30). The components of the LSAA that address the existing cattle ranch and single-family residence have no relationship to the Adesa project and have completely independent utility. Further, as CDFW stated in the September 3, 2020 Planning Commission hearing, these components would result in improved environmental conditions on the 443-acre ranch site.

### **Appeal Issue 7: Foreseeable effects from construction of the second pond must be considered.**

The appellant argues that the MND fails to assess future foreseeable effects of permitting more water supply capacity than presently needed because a secondary pond is proposed to be constructed *if necessary*. The appellant argues that this indicates that additional cannabis cultivation is intended to be proposed at the Adesa site.

Staff Response: No additional cannabis may be permitted on this site under the CMMLUO. Any subsequent cannabis applications would be required to be reviewed under the CCLUO, which may or may not be allowable on the site given the constraints of the CCLUO. However, given

that no project has been submitted and the county has received no such indication of future cultivation being proposed on the Adesa site, there are no reasonably foreseeable projects that would occur. Nonetheless, the applicant has removed the secondary pond completely from the project.

**Appeal Issue 8: The project should be consistent with the CCLUO, not the CMMLUO.**

The appellant argues that the applicant submitted a new application on September 23, 2019 for a new stream crossing by the addition of a 24-inch diameter culvert for a proposed new road, and that because this is part of the whole of the Adesa project and the project application, the entire Adesa project should be deemed to have been submitted September 23, 2019.

Staff Response: The project was submitted in December 15, 2016. At that time, the road access to the rainwater catchment pond was proposed as part of the project. The submittal of grading plans and an SMA permit for this work does not amend the project submittal date. Section 314-55.4.3.1 of the CCLUO states that “*Applications for Commercial Cannabis Activity land use permits filed on or before December 31, 2016 shall be governed by the regulations in effect at the time of their submittal, except as follows and is otherwise prescribed herein. Zoning Clearance Certificates filed on or before December 31, 2016 shall be controlled by the provisions of section 55.4.6.7 of this Section.*”

**Appeal Issue 9: The Project May Give Rise to Conflicts of Interest.**

The appellant states that at least one member of the Planning Commission may have financial ties to the cannabis industry that could prejudice the Commissioner’s views of the project and that similar financial interests may exist among the Board of Supervisors. The appellant asks that there be full disclosure and recusal where appropriate in the consideration of this appeal.

Staff Response: This does not appear to be an argument for denial of the Adesa project but rather a request for full disclosure.

**Appeal Issue 10: Inconsistency with federal Law may Impede Environmental Compliance.**

The appellant argues that the federal legal status of cannabis may prevent compliance with federal permitting requirements that would address environmental impacts, such as filling of waters of the US or take of endangered species. More specifically for the project the appellant argues that potential impacts to Northern Spotted Owl could prohibit the North Coast Regional Water Quality Control Board from consulting with the USFWS for consultation before issuance of any Clean Water Act certification.

Staff Response: No filling of waters of the US or take of federal endangered species is proposed as part of this project. The federal status of cannabis has not prevented the NCRWQCB from issuing 401 certifications for cannabis related projects.

## CONCLUSION

The project site is planned and zoned appropriately for the proposed activity. The unique aspect of this application is due to the remote rural location. At the Planning Commission meetings there was significant debate over whether the provision of the CMMLUO for parcels over 320 acres in size was intended to allow for new cultivation in remote rural portions of the county such as Maple Creek. Specifically, whether the requirement for new cultivation to be located on prime soils was intended to keep new cultivation limited to the more fertile bottomland areas.

One of the questions for the Board of Supervisors is whether new cultivation such as this was intended to be permitted in remote rural portions of the county. The CMMLUO included a requirement for new cultivation that it be located on prime soils. This site contains such prime soils and meets all locational requirements of the CMMLUO. This applicant has been among the most responsive applicants in Humboldt County in addressing the issues and concerns raised by pursuing a new development in a remote rural location. Further, the applicant has made significant changes as a result of the appeal in an attempt to address concerns raised by the appellant and members of the public, including reducing the intensity of the development significantly. The list of materials submitted in response to concerns that have been raised reflect this as is the preparation of the Initial Study/Mitigated Negative Declaration, which is the result of over three years of technical environmental studies. Nonetheless, this is a large-scale commercial cannabis project in a very remote and relatively undisturbed portion of the county. Given the unique natural setting of this rural portion of Maple Creek the Board may find that the project would adversely harm the existing physical, aesthetic and environmental character of the community even if it complies with the Commercial Medical Marijuana Land Use Ordinance and would not have an adverse impact pursuant to CEQA.

## 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:

California Department of Fish and Wildlife, Division of Environmental Health; Department of Public Works, Land Use Division.

## ALTERNATIVES TO STAFF RECOMMENDATIONS:

There are a couple of alternatives for the Board of Supervisors to consider:

1. Grant the appeal and deny the project. The Board may decide that the project 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 Adesa project because the findings for approval under Section 312-17.1 of the Humboldt County Code cannot be made.

2. Deny the Appeal and Approved 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 Resolutions and Findings
2. Appeal filed by Friends of the Mad River dated September 17, 2020
3. Additional Materials Submitted by the Applicant
  - a. Written revisions to the project
  - b. Revised site plan
4. Resolution of the Planning Commission, Resolution No. 20-60
5. Planning Commission Staff Report and Supplemental 1 and 2
6. Mitigated Negative Declaration
7. Public Comments

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A