

**OFFICIAL RESPONSE TO SIGNIFICANT ENVIRONMENTAL POINTS RAISED  
DURING THE TIMBER HARVESTING PLAN EVALUATION PROCESS**

**FROM THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FORESTRY  
AND FIRE PROTECTION (CAL FIRE)**

TIMBER HARVESTING PLAN (THP) No:	1-21-00012-HUM
SUBMITTER:	Rolling Meadow Ranch INC
COUNTY:	Humboldt
END OF PUBLIC COMMENT PERIOD:	April 12, 2021
DATE OF RESPONSE AND APPROVAL:	June 10, 2021

The California Department of Forestry and Fire Protection (CAL FIRE) serves as the lead agency in the review of Timber Harvesting Plans. These plans are submitted to CAL FIRE, which directs a multidisciplinary review team of specialists from other governmental agencies to ensure compliance with environmental laws and regulations. As a part of this review process, CAL FIRE accepted and responded to comments, which addressed significant environmental points raised during the evaluation of the plan referenced above. This document is the Director's official response to those significant environmental points, which specifically address this Timber Harvesting Plan. Comments, which were made on like topics, have been grouped together and addressed in a single response. Remarks concerning the validity of the review process for timber operations, questions of law, or topics and concerns so remote or speculative that they could not be reasonably assessed or related to the outcome of a timber harvesting operation, have not been addressed.

Sincerely,



**Shawn Headley**  
Forester II, Forest Practice  
RPF #2970

cc: RPF, Unit, File; Timber Owner, Timberland Owner and/or Submitter  
CP, CDFW, DPR, & RWB

<https://caltreesplans.resources.ca.gov/caltrees/caltrees.aspx>

## **PUBLIC NOTIFICATION**

To inform the public of this proposed Timber Harvesting Plan (THP) and determine if there were any concerns with the plan the following actions were taken:

- Notice of the receipt of the plan was submitted to the county clerk for posting with other environmental notices.
- Notice of the plan was posted at the Department's local office and also at the regional office in Santa Rosa.
- Notice of the receipt of the THP was sent to those organizations and individuals on the Department's list for notification of plans in the county.

## **THP REVIEW PROCESS**

The laws and regulations that govern the Timber Harvesting Plan review process are found in Statute law in the form of the Forest Practice Act which is contained in the Public Resources Code (PRC) and Administrative law in the rules of the Board of Forestry and Fire Protection (the Forest Practice Rules) which are contained in the California Code of Regulations (CCR).

The Forest Practice Rules are lengthy in scope and detail and provide explicit instructions for permissible and prohibited actions that govern the conduct of timber operations in the field. The major categories covered by the rules include:

- Timber Harvesting Plan contents and the Timber Harvesting Plan review process
- Silvicultural methods
- Harvesting practices and erosion control
- Site preparation
- Watercourse and lake protection
- Hazard reduction
- Fire protection
- Forest insect and disease protection practices
- Coastal Commission Special Treatment Areas
- Use, construction and maintenance of logging roads and landings
- County-specific rules

When a THP is submitted to the Department, it undergoes a multidisciplinary review consisting of several steps. In addition to CAL FIRE, the Review Team members include representatives of the California Department of Fish and Wildlife (CDFW); the appropriate Regional Water Quality Control Board (RWQCB or RWB); California Geological Survey (CGS); the Department of Parks and Recreation (DPR); the appropriate County Planning office; and if within their jurisdiction, the Coastal Commission (CC) (14 CCR §1037.5(a)). Once submitted the Director determines if the plan is accurate, complete, and in proper order, and if so, files the plan (14CCR §1037). In addition, the Review Team determines whether a Pre Harvest Inspection (PHI) is necessary, and what areas of concern are to be examined during the inspection (14 CCR §1037.5(g)(1)).

If the Plan is accepted for filing, and a PHI is determined to be needed, a field review is conducted to evaluate the adequacy of the THP. All agency personnel who comprise the multidisciplinary

Review Team are invited to attend the PHI as well as other experts and agency personnel whom the Department may request. During this field review, additional mitigation and/or recommendations may be formulated to provide greater environmental protection. These recommendations are forwarded to the RPF along with the Review Team member's PHI Report. The RPF will respond to the recommendations made and forward these to the Region office and Second Review Team Chair.

A Second Review Team meeting is held where members of the multidisciplinary Review Team meet to review all the information in the plan, and develop a recommendation for the Director (14 CCR §1037.5(g)(2)). Prior to and/or during this meeting they examine all field inspection reports, consider comments raised by the public, and discuss any additional recommendations or changes needed relative to the proposed THP. These recommendations are forwarded to the RPF. If there are additional recommendations, the RPF will respond to each recommendation, and forward the responses to the regional office in Santa Rosa.

The representative of the Director of the Department reviews all documents associated with the proposed THP, including all mitigation measures and plan provisions, written correspondence from the public and other reviewing agencies, recommendations of the multidisciplinary Review Team, and the RPF's responses to questions and recommendations made during the review period. Following consideration of this material, a decision is made to approve or deny a THP.

If a THP is approved, logging may commence. The THP is valid for up to five years, and may be extended under special circumstances for a maximum of two more years, for a total of seven years.

Prior to commencing logging operations, the Registered Professional Forester must meet with the licensed timber operator (LTO) to discuss the THP (CCR §1035.2); a CAL FIRE representative may attend this meeting. The Department makes periodic field inspections to check for THP and rule compliance. The number of inspections depends upon the plan size, duration, complexity, and the potential for adverse impacts. Inspections include but are not limited to inspections during operations pursuant to Public Resources Code (PRC) section 4604, inspections of completed work pursuant to PRC section 4586, erosion control monitoring as per PRC section 4585(a), and stocking inspection as per PRC section 4588.

The contents of the THP, the Forest Practice Act, and Rules, provide the criteria which CAL FIRE inspectors use to determine compliance. While the Department cannot guarantee that there will be no violations, it is the Department's policy to vigorously pursue the prompt and positive enforcement of the Forest Practice Act, the Forest Practice Rules, related laws and regulations, and environmental protection measures that apply to timber operations on non-federal land in California. This enforcement is directed primarily at preventing forest practice violations, and secondarily at prompt and adequate correction of violations when they occur.

The general means of enforcement of the Forest Practice Act, the Rules, and other related regulations range from the use of violation notices, which require corrective action, to criminal proceedings through the court system. Timber operator and Registered Professional Forester licensing action may also be pursued. Most forest practice violations are correctable and the Department's enforcement program assures correction. Where non-correctable violations occur, criminal action is usually taken. Depending on the outcome of the case and the court in which the

case is heard, some sort of environmental corrective work is usually done. This is intended to offset non-correctable adverse impacts.

Once harvesting operations are finished, a completion report must be submitted certifying that the area meets the requirements of the rules. CAL FIRE inspects the area to verify that all aspects of the applicable rules and regulations have been followed, including erosion control work. Depending on the silvicultural system used, the stocking standards of the rules must be met immediately or in certain cases within five years. A stocking report must be filed to certify that the requirements have been met.

### FOREST PRACTICE TERMS

ASP	Anadromous Salmonid Protection	IS / MND	Initial Study / Mitigated Negative Declaration
BMP	Best Management Practice	LSAA	Lake and Streambed Alteration Agreement
BOF	California Board of Forestry and Fire Protection	LTO	Licensed Timber Operator
CAL FIRE	Calif. Dept. of Forestry & Fire Protection	NCRWQCB	North Coast Water Quality Control Board
CalTREES	California Timber Regulation Environmental Evaluation System	NSO	Northern Spotted Owl
CCR	California Code of Regulations	OR	Official Response
CDFW	California Department of Fish and Wildlife	PC	Public Comment
CEQA	California Environmental Quality Act	PHI	Pre-Harvest Inspection
CESA	California Endangered Species Act	PRC	Public Resources Code
CIA	Cumulative Impacts Assessment	RMR	Rolling Meadow Ranch
CGS	California Geological Survey	RWB	Regional Water Quality Control Board
DPR	Department of Parks and Recreation	RPF	Registered Professional Forester
ECP	Erosion Control Plan	SRA	State Responsibility Area
EIR	Environmental Impact Report	THP	Timber Harvesting Plan
EPA	Environmental Protection Agency	TMDL	Total Maximum Daily Load
FPR's	California Forest Practice Rules	TPZ	Timber Production Zone
GOEA	Golden Eagle	USFWS	U.S. Fish and Wildlife Service
GHG	Greenhouse Gases	USGS	United States Geological Survey
HUM	Humboldt	WAA	Watershed Assessment Area
GOES	Golden Eagle Surveys	WLPZ	Watercourse & Lake Protection Zone

[sic] Word used verbatim as originally printed in another document. May indicate a misspelling or incorrect word usage



## BACKGROUND

Timber Harvesting Plan (THP) # 1-21-000012-HUM “Tickle THP” proposes to harvest timber on 290 acres of Rolling Meadow Ranch INC timberland using the group selection silvicultural method. The THP was received by CAL FIRE on February 4, 2021, accepted for filing on February 11, 2021, and a Preharvest Inspection (PHI) was conducted on March 4, 2021. Attendees on the PHI included Cameron Holmgren the RPF, Joelle Geppert from NCRWQCB, and Tim Meyers the CAL FIRE Inspector. The Final Interagency Review (aka Second Review) occurred on April 1, 2021 and the Second Review Chair recommended the Plan for approval. The public comment period then ended on April 12, 2021. The initial deadline for the Director’s Determination Deadline (DDD) was set for May 3, 2021 per 14 CCR § 1037.4. Three extensions were provided for the DDD, in order to review final clarifications and address public comments and generate the Official Response (OR) to concerns brought up by the public.

## PUBLIC COMMENT SUMMARY

During the public comment period for this THP as described above, there was one public comment letter received at the CAL FIRE Region Headquarters in Santa Rosa. This public comment letter brought up concerns that are addressed in this Official Response (OR). The 17 page letter was submitted by The Holder Law Group and given a public comment number of 21PC-000000323. The primary concerns were about cumulative impacts, specifically as they pertain to an approved Commercial Cannabis Project on the Rolling Meadow INC property. This OR will respond to concerns associated with the proposed THP. The letter is well organized with many documented points in the form of footnotes. To preserve the order of the letter’s format, OR responses will come directly after major identified headings of the letter shown in **bold font and (CONCERN#)** with the corresponding **(Response)**. Original text taken directly from the public comments are presented as *italicized text*. All footnotes are summarized in order at the end of the concerns in smaller font as in the original letter. Additionally, there are 106 pages of 10 exhibits containing figures and supplemental reports and information referenced in the footnotes. These exhibits are included at the end of this OR for reference and completeness. A copy of the original letter sent to the Department is viewable through the Department’s online Forest Practice Database CalTREES.

(note: there was one public comment letter received after the close of public comment by The Holder Law Group. It was reviewed but was determined to not contain any new significant information, and therefore not specifically addressed in this OR.)

**CalTREES instructions:** navigate to <https://caltreesplans.resources.ca.gov/caltrees/caltrees.aspx> Click the search icon at the top of the page, then type the Plan # in the Record Number box (county identifier not needed). Under the Document Number column, select the Plan Number for the “Timber Harvest Plan” Type. Below the “Record Details” should be a list of attachments for the Plan. (Note: if there are a substantial number attachments, or attachments with large file sizes, it may take some time to load) The Public Comments are labeled under “Record Type” and are in pdf format, usually with a “PC” label.

## **SIGNIFICANT ENVIRONMENTAL CONCERNS WITH RESPONSES**

*Dear Mr. Babcock, Mr. Bey, CalFire Forest Practice Program Manager and THP Review Team, and CDFA Cannabis Licensing Officials:*

*On behalf of Northcoast Environmental Center, Citizens for a Sustainable Humboldt, and Mary Gaterud (collectively, “Petitioners”), we submit these comments and objections concerning (1) Responsible and Trustee Agency reliance on the Initial Study / Mitigated Negative Declaration (“IS/MND”) recently adopted by the County of Humboldt (“County”) in connection with its approval of the Rolling Meadow Ranch, LLC Commercial Cannabis Project (the “Commercial Cannabis Project”) and (2) the pending Tickle Timber Harvesting Plan (“Tickle THP” or the “Timber Harvesting Project”), also proposed for the Rolling Meadow Ranch property on the same ranch access road.<sup>1</sup>*

*By submitting comments and objections concerning the Timber Harvesting Project and for the Commercial Cannabis Project, Petitioners intend to protect the quality of the environment in the County of Humboldt (“County”) and in the vicinity of this remote and undeveloped area (adjacent to and upslope from the middle main Eel River) for all residents, businesses, and visitors in the area, both now and for future generations. The IS/MND failed to describe the “whole of the project”, establish an accurate environmental baseline, squarely address the potentially significant environmental impacts of the Commercial Cannabis Project with proper analysis, and propose adequate mitigation, in violation of CEQA’s purposes.<sup>2</sup> The proposed THP is incomplete – among other major deficiencies, the THP does not adequately analyze the cumulative impacts of two pending projects proposed by the same applicant on the same property and in close proximity. By participating in the environmental review process for both simultaneously proposed and pending projects, Petitioners seek to enforce important rights affecting a broad public interest.*

*With this background, Petitioners respectfully submit the following comments (1) objecting to Responsible Agency and Trustee Agency reliance on the IS/MND and (2) identifying areas in the proposed THP requiring further impact analysis and mitigation, as required under the Z’berg-Nejedly Forest Practice Act of 1973 (“Forest Practice Act”).<sup>3</sup> We request that the agency officials carefully consider these and prior comments submitted on the IS/MND before deciding whether to rely on the IS/MND and THP when granting the necessary project approvals.*

### **(CONCERN #1) I. Introduction: the Environmental Review Documents for the Pending Projects Fail to Adequately Consider Their Combined Impacts.**

*A. The Two Pending Projects on Rolling Meadow Ranch The Commercial Cannabis Project involves large-scale cultivation and processing of cannabis on an isolated “greenfield” property located adjacent to the Eel River in rural Humboldt County. The Project site is previously undeveloped and has limited road access. According to County staff reports for the Project, cultivation will take place on approximately 5.73 acres of prime agricultural soil areas, and approximately 8.50 acres will be disturbed. Cultivation would occur in 16 greenhouses distributed in four clusters across miles of single-lane, steep, unpaved access roads. Operations would occur year-round, with a maximum of four cultivation cycles annually.*

*According to the Notice of Intent to Harvest filed on Feb. 4, 2021, the Timber Harvesting Project involves the harvesting of approximately 290 acres. The THP does not provide a detailed Project*

*description that summarizes project activities and the project schedule.<sup>4</sup> The THP also does not describe, as part of a synthesized and clearly understandable project description, all improvements to the internal ranch roads that will be necessary to implement the Timber Harvesting Project. For example, the THP does not describe, as part of the “whole of the project” the planned replacement of the bridge over Larabee Creek that was the subject of a Lake and Streambed Alteration Agreement (“LSAA”) with CDFW, issued to the Project applicant in October 2020.<sup>5</sup> Like the IS/MND, the THP treats the integral bridge replacement project as somehow independent, when in fact bridge replacement is integral to both of these major projects.*

*Neither the IS/MND nor the THP provide a map that depicts the two Projects, their proximity to each other, and the internal ranch roads that both Projects will rely upon. By comparing the maps provided in the IS/MND and THP, it is possible to identify the approximate location of the Tickle THP area in proximity to the “Winter Access Road” that will be utilized by the Commercial Cannabis Project.<sup>6</sup> Close examination reveals that the THP area lies along the same road that the Commercial Cannabis Project will rely upon for access during the winter and spring months while the McCann Bridge is submerged by the Eel River.<sup>7</sup>*

**RESPONSE:** Section IV of the THP was revised to include a more detailed discussion of the approved Commercial Cannabis project on the Rolling Meadow LLC ownership. Page 71 of the THP revised 3/27/2021 states the following:

Cannabis cultivation is not planned for any portion of the THP. However, portions of the ownership are proposed for Commercial Cannabis. There is potential for traffic concerns if the haul rout[e] becomes the only entry point for vehicles to the commercial grow site. The possibility of winter period access on the seasonal haul road could impact existing surface.

Page 72 was revised on 5/31/2021 and now lists the commercial cannabis project in the list of approved projects in the WAA. Page 72.1 was also revised on 5/31/2021 and adds to the discussion of future projects on the ownership in the WAA, including more details on the commercial cannabis project:

Other projects that are known within the ownership and assessment area, is an approved Commercial Cannabis on a total of 4.9 acres of mixed light cultivation and processing facilities located in four distinct cultivation areas. Cultivation would occur in as many as 13 greenhouses. Operations would occur year-round and there will be a maximum of four cultivation cycles annually. Processing, including drying, curing and trimming, will take place on site within 5 proposed processing structures totaling 33,750 square feet. There will be a maximum of 30 employees during peak operations. The project includes development of power from P.G & E. The overall development will total 6.4 acres, including on-site propagation facilities.

An analysis of the project acres compared to the WAA shows a very small portion of the overall assessment area for both projects on the ownership. The commercial cannabis project is listed at 6.4 acres or 0.02% of the WAA and the proposed Tickle THP listed at 290 acres is approximately 1% of the WAA. Note that the group selection silviculture method will have a maximum of only 20% of the proposed THP under group opening areas, or 58 acres which

calculates to be approximately 0.2% of the watershed. All of these figures are very small totals and are seen as less than significant by the Department with regards to cumulative impacts in the WAA.

Page 82 was revised on 5/31/2021 and discusses the cumulative impacts of traffic in the WAA, specifically with more detail in association with commercial cannabis project:

The potential interactions of the Tickle THP with cannabis traffic is touched on - p.11 of the MND. The primary ingress and egress for the Cannabis project vehicles will be the McCann bridge and will not impact logging traffic. "Due to the winter use of the Alderpoint Road access for cannabis operations, the project does not anticipate a conflict with timber harvest traffic as timber harvesting is not a rainy season process."

To add to this: the low water McCann bridge is inaccessible when the river rises. This rise in water level is due to sig/severe rain events or series of events. Timber operations will be running (per the THP's Winter Period Operation Plan. The plan described falling and ground based yarding as occurring when the soils are not "saturated." The rise of the river and the saturation of soils are directly connected - the bridge will be inaccessible and Alderpoint access will be used when the soil is too saturated to continue THP activity.

The traffic assessment area for the THP includes appurtenant roads located within the ownership, Alderpoint Road, Hwy 36 and Hwy 101. All of the public roads have been used historically and frequently for the transportation of wood products with no known past or existing traffic, safety, or maintenance problems. The proposed permanent bridge provides access along Larabee creek to ensure the feasibility of the THP. There will be no significant effects on vehicular traffic as a result of this THP. The proposed project should not create any significant cumulative impacts to vehicular traffic within the assessment area.

The commercial cannabis project was added to the WAA map on 5/31/2021 in revised page 90 and added page 90.1. Based on these maps the commercial cannabis project is approximately 2 miles from the proposed THP, a distance that would suggest very little operational overlap if any.

The description of the proposed THP is summarized in Section III on page 54. This is a concise summary statement to encompass the detailed operations proposed throughout the THP.

The Tickle THP is located 3.2 air-miles northeast of Whitlow, California in portions of Sections 19, 20, 29, 30 & 32, Township 1 South, Range 3 East; Humboldt Base and Meridian in Humboldt County. The THP encompasses approximately 290 acres of Group Selection. The THP area contains unnamed tributaries that drain to Cameron Creek, Beaty Creek and Larabee Creek which are all tributaries to the Eel River. The THP is located on the Blacksburg and Myers Flat 7.5' USGS Quadrangles.

The THP continues the project description on page 54 with discussions detailing the watershed conditions, vegetation / stand conditions, soils and geology.

Additionally, the timing of the THP is established on page 4, under Item 9(d) where it is anticipated that timber operations will be completed with 5 years from the date of the THP conformance.

The CDFW streambed alteration agreement (Notification No 1600-2020-0285) is now included in Section V on added pages 183.1-183.10 received on 3/27/2021. This agreement outlines the seasonal bridge replacement with a permanent bridge over Larabee Creek relieving the access concern due to past seasonal closures. This approved agreement covers the timing of bridge work, vegetation management, limitations of bridge repair work, erosion / pollution control, and reporting measures. This road point is identified as map point E2 in the table on page 47 and located on the appurtenant roads map on page 51.

With the addition of these revisions to the THP the Department has reviewed and agrees that the information provided is consistent with the requirements in the Forest Practice Act. The Review Team has determined and agrees that the THP is in compliance with the cumulative impacts assessment requirements.

**(CONCERN #2) B. CEQA Lawsuit Challenging Commercial Cannabis Project**

*On April 8, 2021, Petitioners filed a lawsuit challenging the County's approvals concerning the Commercial Cannabis Project, including the adopted IS/MND. In that lawsuit, Petitioners allege, inter alia, that the IS/MND does not satisfy the requirements of California Environmental Quality Act ("CEQA"). More specifically, the Petition for Writ of Mandate filed by Petitioners, includes the claim that the IS/MND does not analyze the impacts from the "whole of the project" as required and attempts to "sweep under the rug" difficult issues concerning site access, increased wildfire risks, traffic safety impacts, impacts to biological resources, land use impacts, cumulative impacts, and growth inducing impacts. Accordingly, Petitioners will seek a court order requiring preparation of an environmental impact report ("EIR") for the Project that fully analyzes, discloses, mitigates and/or avoids the potentially significant impacts.<sup>8</sup>*

**RESPONSE:** This concern is specific to the IS/MND Commercial Cannabis project, and not the proposed Tickle THP.

**(CONCERN #3) C. Significant New Information Triggers the Requirement for Supplemental Environmental Review.**

*Because the IS/MND did not consider the cumulative impacts of the Commercial Cannabis Projects together with the impacts of the pending Timber Harvesting Project, the analysis was incomplete. The proposal for a THP, which was submitted just two weeks after the Planning Commission approved the Commercial Cannabis Project and while the appeal of this decision to the Board of Supervisors was pending, constitutes significant new information triggering the need for subsequent or supplemental environmental review.<sup>9</sup>*

**RESPONSE:** The THP was revised prior to approval, as is common with THPs during the Forest Practice review process. The discussion for the approved commercial cannabis project was updated in the cumulative impacts assessment over the course of the review. The Department determined that no new significant information was included in the revised / added information to

the Plan, per the definitions under 14 CCR 895.1. Clarification points and communication discrepancies were addressed in revisions to the THP, but not seen as significant changes to the Plan, and therefore a recirculation was not warranted.

**(CONCERN #4) II. The Two Projects Located on the Same Ranch Property Are Likely to Cause Cumulative Impacts That Must Be Carefully Analyzed and Mitigated.**

**A. The IS/MND Failed to Consider Cumulative Impacts of Two Simultaneously Proposed and Pending Projects on the Same Property.**

*The IS/MND approved by the County described prior THPs approved for the Rolling Meadow Ranch property, but it did not reveal that a THP was currently being proposed for the property.<sup>10</sup> If it had, Petitioners and other commenters would have commented that the IS/MND should have considered the cumulative impacts of the Commercial Cannabis Project in combination with the impacts caused by a potentially simultaneously implemented Timber Harvesting Project on a nearby area of the ranch property. Instead, the IS/MND makes the following vague assertion concerning the possibility of a future THP: “Any new proposals for THPs on the ranch property will undergo a thorough analysis per the protocols of the Forest Practices Rules; new THP on the property are not expected to have a significant cumulative effect on forest resources....”<sup>11</sup>*

*This conclusory and dismissive statement, which omits any reference to a currently pending THP proposal by the same project applicant (Rolling Meadow Ranch, Inc.<sup>12</sup>), does not satisfy CEQA’s informational and analytical requirements.*

**RESPONSE:** Not identifying the future THP for the approved IS/MND Commercial Cannabis project is a limitation or lack of information on that project. The current THP has been revised and adequately discusses the approved future commercial cannabis project proposed under the Rolling Meadow Ranch LLC ownership.

**(CONCERN #5) B. The THP Must Analyze Both Projects’ Cumulative Impacts.**

*Like the IS/MND, the original THP submitted by the applicant similarly ignored the pending Commercial Cannabis Project. The cumulative impact analysis submitted in February 2021 with the original THP stated that there were no known future projects to consider within the Watershed Assessment Area (“WAA”).<sup>13</sup> Obviously, this statement is inaccurate and must be corrected. It is not reasonable to omit from the cumulative impacts analysis any discussion of a currently pending development project on the same parcel, also within the Cameron Creek WAA, proposed by the same applicant. Indeed, CalFire officials appear to agree – the Preharvest Inspection Report for the Tickle THP, dated March 12, 2021, states:*

*During the PHI the use of the ownership for marijuana cultivation was discussed and it will need to be added to the cumulative effects discussion. CALFIRE Recommendation #8: The RPF shall revise the THP to include in the cumulative effects discussion the converted areas for marijuana cultivation on the Rolling Meadows Ranch Cannabis project including but not limited to the possibility of future development of more growing space, traffic concerns if the haul route becomes the only entry point for vehicles to the*

*Rolling Meadows Ranch grow site. And the possibility of winter period access on the seasonal road and the impact that could have on the seasonal road.<sup>14</sup>*

*This recommendation provides a good starting point for the cumulative impacts analysis. Unfortunately, it comes too late to influence the County's defective environmental impact review for the Commercial Cannabis Project.*

*The Forest Practice Rules state in part: "Cumulative impacts shall be assessed based upon the methodology described in Board Technical Rule Addendum Number 2, Forest Practice Cumulative Impacts Assessment Process and shall be guided by standards of practicality and reasonableness."<sup>15</sup> The Forest Practice Rules contain a cumulative impacts assessment checklist as well as Technical Rule Addendum No. 2.<sup>16</sup>*

*The THP applicant submitted a revised discussion of the THP's contribution to cumulative impacts.<sup>17</sup> This revised discussion is deficient because it does not disclose or analyze the potential cumulative impacts that may be caused by two large projects, potentially being carried out simultaneously in close proximity in a largely undeveloped area. The THP must be revised to consider, in detail sufficient to inform the public and decision-makers, the cumulative traffic, air quality, water quality, biological resource, and other impacts that may be caused by these two projects – on the same property – together with all other past, present, and reasonably probable future projects.*

*On April 1, 2021, the review team issued its recommendation to the director. This single-page document summarily concludes: No significant unmitigated cumulative impacts were identified. This conclusion is not based on the required level of impact analysis.<sup>18</sup>*

*Petitioners urge all Responsible Agencies to require an adequate analysis of the potentially cumulatively considerable impacts of the Timber Harvest Project and the Commercial Cannabis Project (and any other past, present, and reasonably probable future projects). At the very least, these Projects should consider the concurrent impacts on traffic, traffic safety, air quality, biological resources, water resources and water quality, and fire safety and risks.*

**RESPONSE:** Please see response to Concern #1 above addressing the majority of the comment in regards to project analysis with the current THP and the commercial cannabis project. The responses to the cumulative impacts recommendations from the PHI were submitted by the RPF and accepted by the Department. The cumulative impacts assessment has been determined to include adequate and reasonable assessments of the listed subjects of concern.

The Department, as lead agency, shall make the final determination regarding assessment sufficiency and the presence or absence of significant adverse Cumulative Impacts. This determination shall be based on a review of all sources of information provided and developed during review of the Plan.

Section IV of the THP starting on page 72 discusses and documents the Past, Present, and Future projects in the WAA along with discussions for the remaining resource subjects listed under Technical Rule Addendum No 2. These include evaluating the Watershed, Soil Productivity,

Biological (flora and fauna species), Recreation, Visual, Traffic, Greenhouse Gases, and Wildfire Risk Hazard.

The review of the significance of cumulative impacts is further described under CEQA section 21082.2:

- (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.
- (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.
- (c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

For traffic and traffic safety impact concerns please see response to Concern#1 above.

Air quality is assessed starting on page 82 under the greenhouse gasses discussion:

Carbon dioxide (CO<sub>2</sub>) is considered the greenhouse gas (GHG) that has the greatest effect on the dynamic of global warming due to the fact that it composes the vast majority of the releases by human activities. There are two basic ways carbon emissions are reduced. First is efficiency, where technology or conservation reduces carbon emissions through the use of less energy (electricity, fuel, heat, etc.) to accomplish an activity. Second is storage, which can be accomplished through geologic or terrestrial sequestration.

Forest activities can result in emissions through harvesting, wildfire, pest mortality and other natural and anthropogenic events. However, forestry is a net sink for carbon, the primary greenhouse gas. Plants absorb CO<sub>2</sub> from the air, and use the carbon as a building block of plant tissue through the process of photosynthesis. Worldwide forests store approximately 2,000 billion tons (Gt) +/- 500 of CO<sub>2</sub> (National Energy Technology Laboratory, 2000). An acre of mature redwood can store between 600-700 ton/ac of CO<sub>2</sub>, which is the highest of any forest type on Earth. Though redwood forests can store the largest amounts of GHGs per acre of any forest type, the expanse of this forest type is not significant on a global level. The most recent draft Greenhouse Gas Inventory shows the forestry sector to be a net sink with emissions of 6.1 MMT CO<sub>2</sub> EQ. and emissions reductions of 21 MMT CO<sub>2</sub> EQ (Bemis, 2006).

The forest sector offers the ability to reduce emissions through a suite of possible activities: 1) substitute wood products for more energy-intensive products, 2) reduce demand for energy in growing timber, harvesting, and wood processing, 3) reduce biomass burning (wildfires), 4) afforest marginal croplands, 5) reduce conversion of forestland to nonforest use, 6) improve forest management, 7) reduce harvest, 8)



increase agro-forestry, 8) plant trees in urban areas, 9) other combinations (Joyce and Nungesser, 2000). This proposed THP uses several of the activities which are considered to have the effect of reducing the overall forest emissions and improving the storage of GHGs. The harvest will add to the carbon stored in wood products, while at the same time increase the rate of carbon storage by maintaining a healthy, fast-growing forest. The Timberland Owners' forest management may result in a reduced risk for wildfire, and will maintain maximum sustained productivity of quality forest products. By maintaining timber management there is a reduced risk of deforestation through conversion of the land to non-forest uses.

GHG associated with this project are insignificant relative to global CO<sub>2</sub> emissions that are thought to affect climate. There is virtually no opportunity to reduce these emissions in a manner that would meaningfully emissions benefit the climate because they are already miniscule. (U.S.E.P.A. 2005). An acre of managed forest is entered with equipment once every 15-20 years with emissions measured in hours of equipment operation over that time period. Few if any other land uses can match the low intensity of CO<sub>2</sub> emissions over space and time that are associated with commercial forestry. In urban areas of California, a typical California household will operate one or more vehicles every day and the demands of that household will induce a variety of additional CO<sub>2</sub> emissions for other forms of commerce, power production, and consumption. In rural areas, even a typical farm acre in California will be subject to equipment operation for several hours or days every year over 20 years - not once every 20 years.

The insignificant GHG effects of the proposed project are further diminished by the mitigating effects of carbon sequestered in wood products produced from harvest and by the forest management of this non- industrial landowner, which will increase forest stocking over time.

At the project scale, the beneficial impacts on carbon sequestration and the project-related CO<sub>2</sub> emissions related to global warming are negligible and undetectable at the global scale. The CO<sub>2</sub> emissions from vehicles used to implement the project over several weeks or months are dwarfed by the CO<sub>2</sub> emissions from other routine daily activities engaged in by all Californians such as a single morning commute for even one city . Also, impacts from transportation will be further mitigated by the implementation of new standards for diesel engines recently adopted by the CARB (CARB 2008). When considering the impacts of this project on climate it is doubtful that a measurable change could be detected, even at the micro climate level.

For watercourse and water quality impacts see response to Concern #8 below.

For fire safety and fire risks impacts see response to Concern #7 below.

The Department agrees with the summaries presented in Section IV of the THP that proposed timber operations will not cause or add to significant adverse Cumulative Impacts. These impacts by themselves or in combination with other Projects and listed resource subjects have been reduced

to insignificance or avoided by mitigation measures or alternatives proposed in the Plan and application of the Rules.

**(CONCERN #6) 1. Cumulative Impacts to Special Status Species.**

*With respect to the proposed THP, CDFW commented: "THP 1-21-00012 HUM is located in a landscape with multiple Golden Eagle breeding territories (see Figure 1 in attached CDFW First Review document). The three nearest mapped breeding territories are located approximately 2.2, 4.5, and 7.1 miles from the THP. Furthermore, the THP is located in a landscape with substantial amounts of potentially suitable nesting habitat (e.g., prairies, recent clear-cuts)."*<sup>19</sup> *According to the THP, surveys for Golden Eagles will be "conducted by personnel knowledgeable in Golden Eagle biology and survey techniques." There is no indication that a qualified biologist, trained in protocol-level survey techniques will conduct the surveys. This should be clarified. With respect to the approved IS/MND, CDFW provided highly probative insight and a depth of knowledge concerning the Commercial Cannabis Project's potential to significantly impact the Golden Eagle, a species that has been seen flying over the Commercial Cannabis Project sight during surveys.*<sup>20</sup> *CDFW's comments concerning the presence of the Golden Eagle and its use of the site for foraging serves as substantial evidence that the Projects may result in both individual and cumulatively significant impacts on this fully protected species.*

*Additionally, surveys conducted in 2018 for the Commercial Cannabis Project revealed the presence of the California Foothill Yellow-Legged Frog, a species of special concern.*<sup>21</sup> *Despite the observance of several individual frogs during surveys, the IS/MND falsely reported "This species was not observed during surveys of the project areas."*<sup>22</sup> *The THP similarly falsely reports that there are no non-listed species that could be impacted by the Timber Harvesting Project.*<sup>23</sup> *Because both Projects have the potential to significantly impact special status species, including the Foothill Yellow-Legged Frog, the cumulative impacts analysis must be revised to consider their combined impact.*

*The THP also does not acknowledge that the Timber Harvesting Project has the potential to impact rare plant species and special status species that depend upon grasslands for foraging habitat, including the Golden Eagle. Comments on the IS/MND, including those submitted by CDFW, reveal the presence of rare plant species and Sensitive Natural Communities and urge analysis of cumulative impacts to these biological resources.*<sup>24</sup> *The single measure proposed to mitigate potentially significant impacts to rare plants calls for reporting the results of surveys "no less than 10 working days prior to operations to allow review of the survey results and proposed mitigations (if applicable). The botanical survey report and any additional mitigation measures developed in consultation with CDFW shall be amended to the plan prior to start of operations."*<sup>25</sup> *This approach to impact analysis and mitigation constitutes improper deferral of analysis under CEQA. The Timber Harvesting Project's potential to directly, indirectly, and cumulatively impact biological resources must be investigated prior to approval of the THP, not after the fact.*

**RESPONSE:** The THP has considerable protection measures for the Golden Eagle. Revised on 2/17/2021, under Section II, Item 32, page 34 includes the following:

### Golden Eagle

1. Surveys shall be completed for Golden Eagles (GOEA) prior to the first and second year of operations as follows:

a. Surveys shall be conducted by personnel knowledgeable in Golden Eagle biology and survey techniques.

b. The survey area shall be defined as the area of timber operations and the area within 0.5 mile of associated ground-based timber operations.

c. Survey stations shall be established at one or more major vantage points to provide complete visual coverage of the survey area. See the Golden Eagle Survey Map at the end of Section II for the survey area and survey station location.

d. Two visits shall be conducted at each station and each visit shall last at least three consecutive hours. Surveys shall not begin prior to 10:00 A.M. Visits shall be conducted when weather and daylight conditions allow full visibility of the survey area.

e. One survey for GOEA shall be completed between January 15 and February 15. A second survey for GOES shall be completed on or after March 1, a minimum of 30 days after the first survey.

f. Surveyors shall watch for and record the detection of Golden Eagles flying below 600 feet above ground-level within 1.0 mile of the THP, perching within 1.0 mile of the THP, exhibiting breeding behaviors (courtship, intra-specific and inter-specific territorial defense, nest building, prey delivery, etc.) at any distance from the plan area, and the presence of nest structures. All such occurrences shall be described in detail including date, time, locations of observers and subjects, number, age, and gender of eagles, and all aspects of behavior and activity observed such as flight direction and altitude, type of vocalizations, displays, etc.

g. If any of the behaviors in Item 2.e are observed, the RPF will reconsult with CDFW within 5 working days to determine if additional survey effort is needed. Following the completion of surveys, results shall be submitted to CDFW. The location and behavior observed during incidental Golden Eagle observations within 4 miles of the plan area shall be reported to CDFW as well. Submitted information shall include a map identifying the survey area and specific survey sites and routes, the details pertaining to the survey effort that verify conformance with required survey protocol, and all detail from field notes. Additional observations of avifauna made during the survey should be included to help verify the competence of the surveyor(s). Survey results shall be emailed to [CTP@wildlife.ca.gov](mailto:CTP@wildlife.ca.gov).

The Golden Eagle Survey Station Map is on page 52 of the THP, locating the two stations for the survey and the 0.5 mile buffer around the harvest area.

The THP has added pages 161.1 – 161.5, which discuss the Golden Eagle surveys compliance review:

The 2021 Golden Eagle Survey Season has begun for the Tickle THP. On 2/9/21 Visit 1 was completed from stations 1& 2. Additional Golden Eagle Surveys from 6 separate stations have been completed for other portions of the ranch. There have been no known Golden Eagle observations from any of the stations on the ranch or within 4 miles so far in 2021.

The purpose of this report is to provide results for Golden Eagle (*Aquila chrysaetos*) occupancy surveys conducted in January and February, 2021. The Golden Eagle (GOEA) is a Fully Protected species on the Watch List for the California Department of Fish and Wildlife (CDFW), and a Bird of Conservation Concern for the US Fish and Wildlife Service (USFWS). Surveys were conducted due to the presence of GOEA foraging and nesting habitat in the general area, including on Rolling Meadow Ranch (RMR), as well as an historic record in the CDFW, California Natural Diversity Database (CNDDDB), south of the Eel River and within one mile of proposed projects (Figure 1).

**Golden Eagle Survey Stations 2021**

**Project Facilities**

**CNDDB Historic Golden Eagle Occurrence**

**On Ranch 1 Mile Buffer Around Project Facilities**

**Base Maps**

**USGS Topographic Maps (Caltopo)**

Station #6

Station #4

Station #2

Station #1

Station #3

Station #5

Bel River

Northwestern Willow

0 0.25 0.5 mi

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The Foothill Yellow-Legged Frog sensitive species listing was revised and removed from the listing in December 2019 by the California Fish and Game Commission:

The Commission made a listing decision under the California Endangered Species Act (CESA) regarding the foothill yellow-legged frog. Due to the level of genetic divergence, geographic isolation, and differing levels of imperilment between populations and threats within these populations, the California Department of Fish and Wildlife (CDFW) recommended separating the listing into different clades for the foothill yellow-legged frog. The Commission's decision was consistent with that recommendation. The Commission listed the Southern Sierra, Central Coast and South Coast clades as endangered under CESA, and the Feather River and Northern Sierra clades as threatened under CESA. The Commission also decided that listing the North Coast clade is not warranted at this time.

This THP falls within the North Coast clade for the Foothill Yellow-Legged Frog, an area where this species is no longer listed with CDFW. See revised page 60 which removes this species from the discussion.

Botanical protection measures are described in Item 32 on page 34, revised 2/17/2021:

Plants:

Once completed, the results of the botanical floristic surveys pursuant to revision *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (California Department of Fish & Game, March 20, 2018), will be submitted to the California Department of Fish and Wildlife (CDFW) no less than 10 working days prior to operations to allow review of the survey results and proposed mitigations (if applicable). The botanical survey report and any additional mitigation measures developed in consultation with CDFW shall be amended to the plan prior to start of operations. If during timber operations any rare or endangered plant including plants occurring on California Rare Plant Rank B & Z, is found an interim 50-foot-wide no operations buffer will be put in place until consultation with CDFW. The results of the consultation will be amended into Section II of the THP.

As the concern states, "surveys will be submitted to the Department and CDFW as an amendment prior to operations". This amendment will be reviewed by resource professionals and determined to be adequate or returned for clarification if proper survey protocols or protections measures were not followed. It is important to conduct these surveys during the appropriate seasonal period to be able to identify plants at critical stages of their life cycle, but also recognize that this timing may be different from the submittal of the THP, hence the submittal of an amendment for rare plant surveys. The THP includes a discussion that details the scoping steps taken in the Plan for rare plants and animals and states on page 57 that; "A scoping list for special status plant species including a 9-quad search is located at the end of section II." This list is on pages 37-40 under Item 32 of the THP. Additionally, this list is supported with a more detailed analysis of the species and potential habitat with protection measures in the Plan area on pages 58 – 66 in Section III of the THP.

On page 7 of the PHI report the CAL FIRE inspector concluded that all state or federal listed species present in the Plan area have been accurately disclosed and mitigated.

The Department and the Interagency Review Team agrees that the THP proposes adequate mitigation and protection measures for listed flora and fauna species, and is in compliance with CEQA, CESA, and FPA. All proposed surveys and qualifications for those have been addressed and there are no concerns identified by CAL FIRE or CDFW.

**(CONCERN #7) 2. Cumulative Wildfire Risk Impacts.**

*The THP describes a number of improvements to the roads accessing the proposed THP area. Unfortunately, the THP does not provide a detailed map depicting the locations and designs of proposed roadway and culvert improvements.*

*The document does not describe the access road standard used to evaluate the sufficiency of these roads. Under the County's SRA Fire Safe Regulations, a Category 4 or equivalent road is required for new development projects, including the Commercial Cannabis Project located in proximity to the THP site. As commenters explained in connection with the Commercial Cannabis Project's IS/MND, the roads accessing the Rolling Meadow Ranch site do not conform to minimum requirements of the County's Fire Safe Regulations. Because the private ranch roads to Alderpoint Road will be used as a secondary "winter access route" for the Commercial Cannabis Project, those roads must be brought up to the minimum access road standards specified in the SRA Fire Safe Regulations.*

*A consultant retained by the applicant for the Commercial Cannabis Project prepared a comprehensive report identifying necessary improvements to the internal ranch roads.<sup>26</sup> Specifically, the consultant (1) concluded that the access roads serving the Commercial Cannabis Projects do not satisfy the County's SRA Fire Safe Regulations and (2) recommended improvements to bring the main access road through the ranch property up to the County's Category 4 or equivalent standards and other improvements to bring spur roads to facilities to Category 2 standards. Unfortunately, the consultant did not submit this report to the County until after Project approval.<sup>27</sup>*

*This report provides CalFire and the responsible agencies with detailed substantiated information concerning the deficient access roads – information these agencies must carefully consider when determining whether the access roads will satisfy the County's Fire Safe Regulations and in turn whether the Projects, both independently and in combination, pose significant enhance risk to fire emergency response and evacuation, and whether such impacts require mitigation. Please note that the Commercial Cannabis Project, as revised following comments, appears to concentrate all four clusters of cultivation and processing facilities along the same main access road. However, instead of designing the road to meet the County's Category 4 road or equivalent, the County permitted a project that relies on roads that can barely be categorized as Category 2 roads.*

*The THP is silent on the issue of the adequacy of the main access road through Rolling Meadow Ranch to serve as simultaneous ingress and egress routes for both Projects' personnel in the event of a wildfire emergency. The THP must be revised to analyze the cumulative impact to*

wildfire risk that will result from two simultaneous projects operating in an area with deficient access roads. This analysis is especially important where, as is the case here, the area has no local agency fire service. As CalFire itself commented with respect to the Commercial Cannabis Project:

*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. New development can adversely impact existing fire services. Careful consideration must be given where development may overload the local fire service's ability to respond.*<sup>28</sup>

*The THP should be revised to consider the cumulative impacts to wildfire risk, emergency response, and civilian evacuation taking into consideration the deficient access roads described in the access road evaluation (Exhibit 6).*

**RESPONSE:** Section IV addresses the fire safety and risks in the THP on page 89:

The Tickle THP is located in a high fire risk area. The LTO shall have all the proper fire prevention tools and equipment. The use of group selection logging will significantly reduce the amount of surface and ladder fuels. In many cases overly dense, poor health and poor form trees are harvested to release the dominant and codominant conifers and promote conifer regeneration in the understory. Additionally, the practice of logging creates and maintains fuel breaks in the form of skid trails and truck roads which contributes to a reduction of vertical continuity. This THP will modify fire behavior to reduce environmental damage and aid in suppressing wildfires. Within the assessment area there are no known existing public or private fuel breaks.

During timber harvest operations, equipment and personnel are required by regulation to be available to fight a fire if one should start in the immediate vicinity when harvesting is occurring. Code section PRC 4428 requires that each logging crew have a fire cache and PRC 4431 requires that each chainsaw operator have at least one serviceable round point shovel or one serviceable fire extinguisher within 25 feet. These firefighting tools, and equipment such as tractors/skidlers allow operators to immediately respond should a fire start as the result of natural causes (i.e., lightning), harvest operations, or other causes in the vicinity of active harvest operations. The Forest Practice Rules require that access for fire equipment be kept in passable condition during timber operations when those operations occur during fire season (code section 14 CCR § 923.6). Periodic inspections by CAL FIRE include the verification of the required firefighting requirements are in place or a violation may be issued.

Additional mitigation measures are also in place for the commercial cannabis project to help in the event of wildfire:

The approved Commercial Cannabis project will have some wildfire protection measures as well. Rainwater collection systems shall be installed at each greenhouse to capture and store rainwater. A minimum of 50% of the stored water shall be reserved for fire suppression purposes. Additionally, the project proposes one generator and water pump at every processing building for fire suppression - of which there are 5. Rainwater



catchment is described as 350,000 total on greenhouses. Prior to operation of the site, the project will purchase a Tanker Truck to have on hand in case of fire.

A revised road access discussion was received on 5/31/2021, found under Item 38 and addressed the road use right of way issue:

5. The Tickle THP is feasible logged by using existing non-appurtenant seasonal haul roads. There is a road use agreement between the THP Timber Owner and non-appurtenant road owners; Sierra Pacific Land & Timber Company, Perry Ranch LLC and Adrian Kavanaugh & Sarah Carey. These agreements are for use of the existing non-appurtenant roads. The THP Timber Owner will be responsible for the maintenance and condition of the road to ensure feasibility of the THP and the protection of the environment.

The CAL FIRE Inspector nor any other Review Team members had any concerns with wildfire risk, or road access issues during or reported from the PHI for the proposed timber operations.

Recommendations for timberland owners to comply with county road categories from a separate road evaluation for a different project are not required by the Forest Practice Rules. The CAL FIRE Inspector provided PHI recommendations for road issues. These recommendations were addressed and incorporated into the THP.

Please also see response to Concern#1 and Concern #5 above.

### **(CONCERN #8) 3.Cumulative Water Quality Impacts**

*Both the Commercial Cannabis Project and the Timber Harvesting Project will cause impacts to water quality through the construction of road and drainage improvements, as well as through other construction and soil disturbing activities.*

*The THP acknowledges that “[t]he THP area contains unnamed tributaries that drain to Cameron Creek, Beaty Creek and Larabee Creek which are all tributaries to the Eel River.”<sup>29</sup> It also notes that “The Environmental Protection Agency (EPA) has listed the Eel River, as [an] impaired watershed under Section 303 (d) of the Clean Water Act for sedimentation/siltation and temperature.”<sup>30</sup> However, the THP does not describe the erosion control and other measures that will be employed to ensure that the timber harvesting operations and road improvement work will not adversely impact water quality. The THP also does not analyze the potentially significant cumulative impacts to water quality that may result from the two Projects as well as all other past, present, and reasonably probable future projects.*

**RESPONSE:** The THP thoroughly documents and discusses the protection of watershed resources. Starting on page 73 the water quality and water resources assessment discusses in detail, the history, impacts, and mitigations of watercourses in the WAA. Additionally, Item 26, starting on page 24 outlines many operational mitigations and protection measures for watercourses for the THP. On pages 41- 45 the notification for the streambed alteration agreement to CDFW is included containing several proposals for erosion control and road work to improve soil



stabilization and minimize erosion. This is followed up with the road work order in pages 46-48 listing all the map point proposed operations to maintain and repair proper crossings and drainage structures. Furthermore, Item 18 starting on page 12, outlines several mitigations and protection measures for soil stabilization and erosion control for the proposed timber operations.

The Erosion Control Plan for the THP is located in Section V starting on page 176:

Erosion Control Plan - As required by the Order, an Erosion Control Plan (ECP) has been prepared for the entire logging area of the THP. The logging area includes the area to be harvested, the roads used to access the harvest area (appurtenant roads), and the area within 100 feet of these appurtenant access roads (when these areas are owned by the landowner). The ECP is designed to prevent and minimize the discharge or threatened discharge of sediment from existing Controllable Sediment Discharge Sources and develop a time schedule for implementation of prevention and minimization of management measures. Additionally, the ECP contains an Inspection Plan with reporting requirements.

The RWQCB's Guidance Document for Order No. RI-2004-0030 states that an Erosion Control Plan (ECP) shall contain the following:

1. An inventory of all controllable sediment discharge sources within the Project area, and,
2. A time schedule for implementation of prevention and minimization management measures from all controllable sediment discharge sources within the Project area. The implementation of prevention and minimization management measures must be completed during the period of coverage under General WDRs.

Controllable sediment discharge sources means sites or locations, both existing and those created by proposed timber harvest activities, within the Project area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of applicable water quality requirements or other provisions of these General WDRs,
2. was caused or affected by human activity, and
3. may feasibly and reasonably respond to prevention and minimization management measures.

The Department agrees with the conclusions in the THP found on page 78 for watershed protection:

It is the RPF's opinion that this THP, when combined with past, current and future harvesting, projects, is not expected to cause or contribute to significant adverse cumulative effects in this WAA relating to watercourse conditions, due to the mitigations proposed in this plan and expected management practices of future plans.

Please also see responses to Concern #1 and Concern #5 above.

**(CONCERN #9) III. Inter-agency Consultation and Coordination is Required.**

**A. Responsible and Trustee Agencies Have Independent Duties to Ensure the Adequacy of the Environmental Review Document Prepared by the Lead Agency.**

*CEQA requires lead agencies and responsible agencies to integrate the EIR process with other permitting processes.<sup>31</sup>*

*[CEQA] sets out a fundamental policy requiring local agencies to integrate the requirements of this division with planning and environmental review procedures otherwise required by law ... so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively. [Citation.] The [CEQA Guidelines] similarly specify that to the extent possible, the environmental impact report process should be combined with the existing planning, review, and project approval process used by each public agency. [Citation.]<sup>32</sup>*

*A responsible agency has an independent duty to review the EIR or IS/MND prepared by the lead agency and “issue its own findings regarding the feasibility of relevant mitigation measures or project alternatives that can substantially lessen or avoid significant environmental effects.”<sup>33</sup>*

*CDFW is a Responsible Agency and a Trustee Agency under CEQA for projects that require an incidental take permit under the California Endangered Species Act (“CESA”) or a Lake and Streambed Alteration Agreement (“LSAA”) under Fish & Game Code, § 1602.<sup>34</sup> Responsible agencies are responsible for ensuring the MND prepared for an approved project adequately analyzes project impacts within the responsible agency’s jurisdiction and expertise.<sup>35</sup>*

*CEQA also disallows approval of a project that fails to comply with other laws, including CESA. A lead agency may not approve a project with significant unavoidable impacts unless it is “otherwise permissible under applicable laws and regulations.”<sup>36</sup>*

**RESPONSE:** The approved CDFW LSAA was revised 3/27/2021 and located in Section II starting on page 41. The THP does not propose any “incidental take” of any listed species as outlined in operational restrictions under Item 32 starting on page 32 of the THP. The proposed Plan describes several mitigation and protection measures for listed species under the California Endangered Species Act. Section III of the THP from page 57 - 66 contain a comprehensive list of potential species impacted by the THP, their habitats and protection measures.

Please also see responses to Concern #1, Concern #5, Concern #6 and Concern #8 above.

**(CONCERN #10) B. The IS/MND Is Inadequate as a CEQA Document and Cannot Be Relied Upon for Permitting Purposes.**

*As commenters consistently stated to the County of Humboldt (“County”) when it considered the IS/MND for approval, the analysis is deficient in the following respects:*

- Piecemealed environmental review: The IS/MND fails to analyze the whole of the project by failing to consider necessary improvements for (1) all Project access roads so that they comply with applicable “Category 4” or equivalent access road requirements and (2) all*

*internal ranch roads and stream crossings (including the bridge over Larabee Creek) necessary to satisfy regulatory requirements.*

- *Inadequate Project Description: The IS/MND's description of the Project fails to identify important details concerning Project roadway, bridge, and parking lot design and necessary improvements, Project construction, and details concerning Project operation.*
- *Potentially significant unmitigated impacts to water supplies, water quality, and aquatic resources: The Project's three wells were installed in 2019 while the Project's permit application was pending at the County. Despite the County's own peer review consultant recommending that a qualified expert evaluate whether the Project's wells are hydrologically connected to surface waters, this never occurred. CDFW and others have repeatedly stated that this investigation must be conducted by a qualified expert who must then demonstrate the lack of hydrologic connectivity. Wells that are hydrologically connected to surface waters have the potential to impact surface water features.*
- *Potentially significant unmitigated traffic safety impacts: The IS/MND glosses over potentially significant direct, indirect, and cumulative traffic and traffic safety impacts that may be caused by the impermissibly narrow access roads.*
- *Potentially significant unmitigated public services impacts: The Project's impermissibly narrow access roads also may cause potentially significant impacts to public services, including fire and police protection, and other emergency responses. The IS/MND disregards these potentially significant impacts.*
- *Potentially significant unmitigated biological resources impacts: Because protocol wildlife and wetland surveys were not conducted prior to the release of the IS/MND, as required, the analysis fails to establish an accurate baseline by which to measure Project impacts. The IS/MND disregards the Project's potential to significantly impact threatened and endangered species, rare plant communities, and wetlands, on a direct and cumulative level. Comments from the CDFW suggest that the preparers did not consult with that agency concerning the scope of environmental review in general and these potentially significant impacts in particular, as required.*
- *Potentially significant unmitigated construction-period air quality impacts: The IS/MND fails to quantify the emissions that will result from the Commercial Cannabis Project construction. Construction activities may expose offsite receptors to diesel exhaust and fugitive dust. The IS/MND relies on unspecified conditions that may be included in a permit from the air district to conclude that air quality impacts would be reduced to less-than-significant. There is no substantial evidence to support this finding.*
- *Potentially significant unmitigated land use impacts: The IS/MND disregards, without careful factually supported analysis, the Project's substantial inconsistencies with Humboldt County Code ("HCC") requirements applicable to commercial cannabis operations.*
- *Potentially significant unmitigated cumulative impacts: The cumulative impact analysis is perfunctory and fails to satisfy the requirements of CEQA. The analysis must be revised to consider all relevant past, present, and reasonably foreseeable probable future projects that will cause impacts that can combine with the impacts of this Project. The conclusory analysis, fails to identify, much less consider, the cumulative impacts caused by numerous past, present, and reasonably probable future projects in the nearby vicinity and the region. The IS/MND must also analyze whether the Project's incremental contributions to cumulative impacts, even if not directly or indirectly significant, are cumulatively considerable.*

- *Potentially significant growth inducing impacts: The analysis of growth inducing impacts does not take account of (1) the extension of electricity infrastructure and the necessary expansion of access roads and (2) the cumulative pressures for development.*

*The experience and expertise of government officials, such as CDFW's Curt Babcock and Greg O'Connell, qualifies agency comments on the IS/MND to serve as substantial evidence of the numerous ways in which the IS/MND does not comply with the procedural and substantive requirements of CEQA.<sup>37</sup> Petitioners' comments, CDFW's comments, and the evidence cited in these comments demonstrate that Responsible and Trustee Agencies may not rely upon the fundamentally flawed IS/MND for their respective permitting decisions.<sup>38</sup>*

*CDFW and other Responsible Agencies should not grant permits under their respective jurisdictions for the Commercial Cannabis Project based on this inadequate IS/MND. Instead, because there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment, an EIR is required.<sup>39</sup>*

*Additionally, because the IS/MND did not adequately analyze a number of the Commercial Cannabis Project's potentially significant impacts, it is even more imperative that the THP analyze the Timber Harvest Project's impacts, especially those that, when combined with the unmitigated significant impacts of the Commercial Cannabis Project, can become cumulatively considerable.*

**RESPONSE:** This concern is specific to the IS/MND Commercial Cannabis project, and not the proposed Tickle THP.

#### **(CONCERN #11) IV. Comments on the Proposed THP**

##### **A. The THP is Incomplete.**

*The THP is subject to both CEQA and the Forest Practice Act. The THP is an informational document designed to serve as an 'abbreviated' environmental impact report, setting forth proposed measures to mitigate the logging operation's potential adverse impact on the environment. CDF and public review of the THP prior to approval is intended to ensure that the adverse environmental effects are substantially lessened, particularly by the exploration of feasible less damaging alternatives to the proposed harvesting project.*

*As an 'abbreviated' EIR, the THP must contain sufficient information regarding the environmental effect of the logging project to enable the evaluation of the effect of the project on the environment, the feasibility of alternatives to the project, and the measures to minimize any significant adverse impact.*

*Section 21080.5 does not grant the timber harvesting industry a blanket exemption to CEQA's provisions; it grants only a limited exemption to the applicability from CEQA by allowing a timber harvester to prepare a THP in lieu of a complete environmental impact report.<sup>40</sup>*

*The Notice of Intent states that the earliest the THP could have been adopted was on February 19, 2021. The applicant's most recent substantial revisions to the THP are dated March 28, 2021.*

*The Review Team Recommendations to the Director issued on April 1, 2021 states that the close of public comments on the THP is April 12, 2021.*

*Unfortunately, the THP does not provide a detailed description of the proposed project, a thorough analysis of the project's direct, indirect, and cumulative impacts, or a description of all feasible mitigation measures and alternatives that can reduce or avoid the potentially significant impacts. The revised THP must provide a project description that enables the public to understand all aspects of the project, from the road improvements required, to the equipment involved, to the implementation schedule.*

*The public comment period on the THP should not begin until the THP is complete. Under Public Resources Code, section 21080.5, which authorizes CalFire's THP process as a certified regulatory program, every THP prepared under this program "must include a description of the proposed activity, its alternatives, and mitigation measures to minimize any identified significant adverse environmental impacts. The plan must also be available for a reasonable time for review and comment by other concerned agencies and by the general public." <sup>41</sup>*

*Because the applicant's recent responses to CalFire's feedback substantially altered the analysis in the THP, and because the THP remains incomplete, recirculation of a complete, updated THP is required. One appellate court described the problem that would result when recirculation is not required when a THP is not recirculated when revised:*

*If an interested party reviews and/or obtains a copy of the THP before CDF substantively alters it, and that party is thereafter not notified of the change, then he or she has been denied a meaningful opportunity to review and comment on the THP. Absent notice that CDF has made a substantive change or even that it has the right to make such a change, we question why a member of the public should be expected to anticipate such a change. Further, if the THP is routinely significantly altered by CDF during the review period, then the THP that CDF ultimately approves is essentially a different plan than that which the property owner submitted.<sup>42</sup>*

*Here the original six sections of the THP are available at the CalTREES website, as are the Preharvest Inspection Report, notice documents, and the applicant's consultant's responses to agency feedback. The CalTREES website does not include a revised copy of the THP that includes all of the most recent revisions to the analysis made by the applicant in response to agency feedback (described in the letters from the RPF dated February 24, 2021 and March 28, 2021). This is improper under CEQA.<sup>43</sup>*

*Petitioners conservatively submit these preliminary comments now to ensure the issues raised herein are timely considered and the THP is revised accordingly. Unless the THP is substantially revised, CalFire's Director may not approve the THP.<sup>44</sup>*

**RESPONSE:** A Timber Harvest Plan is considered functionally equivalent to an Environmental Impact Report and is therefore compliant with CEQA. Per 14 CCR, 896:

General (a) The purpose of the Forest Practice Rules is to implement the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 in a manner consistent with other laws,

including but not limited to, the Timberland Productivity Act of 1982, the California Environmental Quality Act (CEQA) of 1970, the Porter Cologne Water Quality Act, and the California Endangered Species Act. The provisions of these Rules shall be followed by Registered Professional Foresters (RPFs) in preparing Timber Harvesting Plans, and by the Director in reviewing such plans to achieve the policies described in Sections 4512, 4513, of the Act, 21000, 21001, and 21002 of the Public Resources Code (PRC), and Sections 51101, 51102 and 51115.1 of the Government Code. It is the Board's intent that no THP shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in these Rules which would substantially lessen or avoid significant adverse Impacts which the activity may have on the environment. The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC Section 21080.5. In recognition of that certification and PRC Section 4582.75, these Rules are intended to provide the exclusive criteria for reviewing THPs. If the Director believes that there are significant adverse environmental Impacts not covered in existing Rules, matters should be referred to the Board as otherwise specified in these Rules.

PRC Section 21080.5 does not include language that a project be mandated to contain the final completed version of a project to start the open public comment period. As the comment states the project needs to be "available for a reasonable time for review and comment by other public agencies and the general public". On the contrary it would seem to go against the intent of the process to not allow comments that may have valid concerns during the review process which could be reviewed, vetted, and potentially incorporated as revisions to the project. This THP was filed by the Department on 2/11/2021, with the close of public comment taking place on 4/12/2021. This open period provided over two months where the public could review and comment on the THP. Because of the evolving nature of a THP, the majority of the Plan was submitted at filing with minor subsequent revisions being uploaded to CalTREES consisting of updated pages after Review Team recommendations.

Throughout the course of the review of this THP, revisions were accepted by the Department as standard practice for the THP review process. These revisions have been clearly labeled with page numbers and revisions dates and uploaded to CalTREES for access by the public. The files in the database are labeled as to which revisions are contained in the pdf and the date of the revisions. These revisions are generally available online to the public in 1 to 5 business days of submission to the Review Team. It is noted that the Plan is not continually updated as a completed document as revisions come in since that effort is simply not feasible for CAL FIRE Forest Practice to constantly provide an updated complete version of the Plan. The information is readily available online and organized and labeled in a reasonable method. Additionally, CAL FIRE Forest Practice Region offices, continually take phone calls to help the public understand available information in CalTREES for THPs, and answering questions about the THP review process. A final version of the sections of the Plan with the incorporated revisions will be compiled by the Department and posted on CalTREES by section number, if the Plan is found to be in compliance with the FPRs.

As required by CEQA the range of feasible alternatives is included in Section III of the THP starting on page 55:

## Range of Feasible Alternatives

As provided in the California Environmental Quality Act (CEQA), Title 14, CCR Sec 15126(d), the Alternatives Analysis must "describe a range of reasonable alternatives to the project, or to the location of the project which would feasibly attain most or the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives "This discussion of alternatives requires a definition of the basic objectives of the project. Discussion is limited to feasible alternatives that would avoid or substantially lessen any of the significant effects. The range of these alternatives is limited by the rule of reason in 14. CCR 15126(d)(5)(c) "whose implementation is remote and speculative" need not be given extensive consideration.

Project description, purpose and need - The project is the Timber Harvesting Plan (THP) as proposed. The basic objectives of the project are to access, harvest, and re-establish hardwood dominated stands delineated in the THP . This project is needed to contribute to the ongoing business operations of the timberland owner. The project is to be carried out in accordance with the California Forest Practices Act and other applicable rules and regulations. Potential impacts are mitigated to insignificance by methods prescribed in the rules, by site-specific measures incorporated into the THP, and by the recommendations of the multi-agency, Inter-disciplinary, review team process.

No project alternative - A "no project" alternative would avoid the potential for environmental impacts associated with the project. However, elimination of the project would meet none of the basic objectives of the project, and, since the THP process mitigates environmental effects to a level of insignificance, a "no project" alternative would not necessarily result in significantly superior environmental results. The "no project" alternative will not decrease the need for forest products, but could impact the supply. This could potentially be offset by shifting lumber harvest to areas outside of the jurisdiction of the THP process where significant effects are not required to be mitigated. The elimination of the project is not a reasonable alternative to the project as proposed.

Alternative land uses - This project, as proposed, is consistent with the management of the timber stands within the project area which establishes the presumption that timber harvesting is expected to, and will, occur on such lands. The THP submitter does not know of any other feasible land use that would further reduce potential impacts while meeting the basic project objectives. This project will protect and enhance the public resources of the state through the application of the Forest Practices Act, other applicable rules and regulations and through the THP process. An alternate land use is inconsistent with the zoning of the project area and falls to meet the basic objectives of the project.

Timing of the project - The timing of the project is prescribed, to a certain degree, by the Forest Practices Act and other rules and regulations. These rules prescribe minimum stand ages for harvest, and, under certain conditions, prescribe harvesting adjacent to previously harvested areas for specified lengths of time. Changing the timing of the project would not avoid or substantially lessen any potentially significant effects of the

project, only defer those effects to another time. Therefore, changing the timing of the project is not a reasonable or necessary alternative.

Alternative site – Similar to the timing alternative, the key question in the analysis of alternative sites is whether any of the potential impacts of the project would be avoided or lessened by putting the project in another location. Since this project involves harvesting UMBER and leaving the area in a forested condition, consistent with current zoning, it is substantially different from other types of projects that involve a permanent conversion to another land use. This project, as proposed, is site specific and is designed to address the specific conditions at a particular site, and to mitigate or eliminate potential Impacts at that site. This project as proposed and mitigated will not have any significant effects on the environment. Additionally, since the project is located on a single ownership there is no alternative site.

Public Acquisition or Conservation Easement - This alternative would involve limitations on management activities through public purchase of the subject property or donation or sale of conservation easements. If the property were covered by a conservation easement such that no timber harvesting could be implemented, then any unidentified effects associated with this THP would be avoided through this alternative.

A restrictive conservation easement and/or public purchase could also mitigate or avoid potentially significant adverse impacts of timber harvesting and, upon payment of fair market value, would allow the landowner to realize its investment objectives.

Comparison of Project and Protect Alternatives - The project as represented by the THP is preferred over the project alternatives for the following reasons:

1. A "no project alternative" eliminates the potential for impacts associated with timber harvesting but achieves none of the basic objectives of the project.
2. An alternative land use, which would include a permanent conversion away from timber harvest, would be inconsistent with the TPZ zoning of the project area and could potentially lead to significant adverse environmental impacts from further landscape fragmentation and unregulated uses.
3. Relocating the project, or delaying the project to a later date, only shifts potential Impacts to another time and place without further reducing the potential for impacts.
4. Conservation easements and public purchase of the project area may eliminate potential impacts associated with timber harvesting, but, as an alternative to the project as proposed, is both remote and speculative.

Please also see responses to Concern #1, and Concern #5 above.

**(CONCERN #12) B. The THP Does Not Adequately Address Access Road Needs for Simultaneous Use by Both the Timber Harvesting Project and the Commercial Cannabis Project.**



*The THP does not limit ingress and egress to the THP area to the access road to Alderpoint Road depicted in the Tickle THP Appurtenant Roads Map. According to CalFire's Preharvest Inspection Report:*

*During the PHI all of the road points in the THP were evaluated. Recommendations will be made by WQ and CALFIRE relating to the proposed road work. CALFIRE Recommendation #7: The RPF shall revise the THP Maps to show the non-appurtenant seasonal road that connects the THP to the lower haul route for disclosure purposes. Additionally, in Section V of the THP the RPF shall attach the 1600 agreement for the bridge crossing of Larabee Creek that was issued to Rolling Meadows Ranch on October 8, 2020.<sup>45</sup>*

*This discussion does not disclose what recommendations the inspectors will make for road improvements. The discussion also does not disclose whether potential traffic conflicts between the operators and construction workers of the Timber Harvesting Project and the Commercial Cannabis Project. To avoid potential traffic conflicts between the Projects and other potentially significant cumulative impacts, the THP should be revised to specify that only the depicted appurtenant road will be used to access the THP area.*

*The THP states that no roads will be reconstructed.<sup>46</sup> This statement is inconsistent with other information in the THP stating that a number of substantial improvements to the roads and culverts will be made as part of this project. This inconsistency and all other conflicting statements should be corrected, and the necessary analysis of impacts associated with road construction should be performed. In addition to addressing the impacts of identified road improvements (and any additional improvements that may be required), the revised analysis must consider the impacts of replacing the bridge over Larabee Creek as part of the Timber Harvesting Project as a whole.<sup>47</sup>*

**RESPONSE:** Road work recommendations were provided after a field review with the interagency review team. The PHI report includes these recommendations on page 6 under Item 29, and listed in the PHI recommendations table on page 10 as stated in the concern. The RPF responded to these with revisions on 3/29/2021, which are available through CalTREES. These page revisions will be incorporated into the THP and reposted in its entirety when the Plan is approved.

The THP was revised on 3/27/21 to indicate that 800 ft of seasonal road will be "reconstructed" in Item 24. This road segment was also depicted in the THP map on page 50 which was also revised on 3/27/2021.

Please also see response to Concern #1, Concern #5, and Concern #11 above.

**(CONCERN #13) C. The Revised THP Should Analyze the THP's Potential to Induce Growth and the Potential Conversion of Timberland.**

*Because the THP is being proposed on the same property where highly lucrative industrial-scale commercial cannabis cultivation and processing has been approved, the analysis must be revised to consider whether the proposed THP activities have the potential to induce growth within and adjacent to the THP area. The Tickle THP is being proposed in an area directly accessible via the Winter Access Road that will be used for the Commercial Cannabis Project. The relatively flat and*

*sparsely forested ridge area where timber harvesting will occur could be suitable for additional cannabis greenhouses and processing facilities. CalFire and Responsible Agencies should consider whether the Tickle THP is a precursor to timberland conversion and should investigate whether the THP applicant intends to expand the commercial cannabis operations (or propose other development) within the THP area.*

**RESPONSE:** The timberland owner is responsible and liable for any illegally expanded or converted land from timber production without a valid permit. Violations, permit suspensions, fines and, in rare cases, jail time are possible if an investigation finds that the timberland owner illegally expanded the commercial cannabis project, or converted timberland outside the scope of approved operations.

**(CONCERN #14) *D. The Revised THP Should Consider Alternatives and Mitigation Measures.***

*The revised THP should consider a range of feasible alternatives to the proposed Timber Harvesting project. Petitioners recommend that among the alternatives considered is a project design that requires exclusive access from Alderpoint Road and along the designated appurtenant access route. The THP should also include traffic management measures to ensure timber harvesting operations do not coincide with construction of the commercial cannabis facilities. These alternative designs and mitigation measures may reduce the potential for significant impacts to public services, traffic and traffic safety, and wildfire response.*

**RESPONSE:** Please see responses to Concern #1, Concern #5, and Concern #11

**(CONCERN #15) *Conclusion: Responsible and Trustee Agencies Cannot Rely Upon the Defective IS/MND for Their Respective Permitting Decisions; the Tickle THP Must be Revised.***

*For the foregoing reasons, Petitioners urge Responsible and Trustee Agencies to conduct supplemental or subsequent environmental review before issuing permits and licenses for the Commercial Cannabis Project. Petitioners also recommend substantial revisions to the proposed THP before it is again released for public review and comment. Pursuant to Public Resources Code, § 4582.4, please provide the undersigned with notice concerning the Director's consideration of the THP, either as submitted or as revised.*

**RESPONSE:** The THP has been revised throughout the course of the Plan review. It has been determined to be adequate, complete and in proper order. The multi-agency review has submitted revisions for the RPF and the Department has received revisions to the Plan addressing any errors, deficiencies, or clarifications. All revisions and corrections are available online through CalTREES. All public comment submitters will be responded with a copy of this OR.

Please also see response to Concern #12 above.

## FOOTNOTES FROM PUBLIC COMMENT LETTER

- <sup>1</sup> The Commercial Cannabis Project and the Timber Harvesting Project are sometimes collectively referred to herein as the “Projects.”
- <sup>2</sup> See Humboldt County’s legistar website for access to the IS/MND, public comments on the IS/MND, staff reports to the County Board of Supervisors, and correspondence concerning the appeal from the Planning Commission decision to approve the Commercial Cannabis Project, available at: <https://humboldt.legistar.com/LegislationDetail.aspx?ID=4817922&GUID=67CA3FEC-A1AA-4951-B821-76752DDA7B58&Options=&Search=>, accessed 4/2/21.
- <sup>3</sup> See Cal. Pub. Res. Code § 4511 et seq., and Cal. Code Regs. tit. 14, § 895 et seq.
- <sup>4</sup> Information concerning the timber harvesting schedule, including the dates of commencement and completion, is required pursuant to Public Resources Code, § 4582(g).
- <sup>5</sup> CDFW may have issued the LSAA for this bridge replacement project prematurely, since environmental review for the two Projects was not complete.
- <sup>6</sup> See Exh. 1 – Commercial Cannabis Project IS-MND Main & Winter Access Roads w THP Area Superimposed.
- <sup>7</sup> Compare Exh. 2 – Tickle THP Appurtenant Roads Map with Exh. 3 - Commercial Cannabis Project IS-MND Winter Access Road Exhibit. Of course, the public and reviewing agencies should not have to compare these two documents to understand how the two projects may relate to each other, this is information that both the IS/MND and the THP should have disclosed from the outset.
- <sup>8</sup> The Petition also raises claims under the State Planning and Zoning Law for inconsistencies with mandatory policies of the County General Plan and applicable land use regulations. Upon request, we will send a conformed copy of the filed Petition.
- <sup>9</sup> Of course, it is safe to assume that the process for developing the application for the Tickle THP began months and possibly even years before the Commercial Cannabis Project was approved, during the period when the IS/MND was being prepared. Information provided in Section 5 of the THP confirms the THP application process began before the Commercial Cannabis Project had been approved. (See, e.g., letter from Holmgren Forestry (the Registered Professional Forester (“RPF”) to Rolling Meadow Ranch, Inc., dated Jan. 3, 2021.)
- <sup>10</sup> See IS/MND, pp. 45-51.
- <sup>11</sup> Revised IS/MND, p. 51. The IS/MND appendices includes a memorandum from the Commercial Cannabis Project applicant that states “No logging traffic can be expected for 20 to 30 years.” (See Memo from Manhard Consulting to County Planning Dept., dated Jan. 10, 2018.)
- <sup>12</sup> In the IS/MND and County approval documents, the Project applicant is sometimes also referred to as “Rolling Meadow Ranch, LLC.”
- <sup>13</sup> See THP, Section IV, p. 72 [stating “The Plan Submitter will most likely not be conducting timber operations within this ownership and assessment area within the next 5 years. No other projects are known within the balance of the assessment area.”]
- <sup>14</sup> Preharvest Inspection Rpt., p. 9, emphasis added.
- <sup>15</sup> 14 C.C.R., § 898.
- <sup>16</sup> 14 C.C.R., § 952.9
- <sup>17</sup> See letter from applicant’s representative Holmgren Forestry to CalFire dated March 28, 2021, p. 17.
- <sup>18</sup> See Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection (2006) 142 Cal.App.4th 656, 676 [“[t]he cumulative impact analysis must be substantively meaningful. “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.]’ [Citation.] [¶] While technical perfection in a cumulative impact analysis is not required, courts have looked for ‘adequacy, completeness, and a good faith effort at full disclosure.’ [Citation.]”, citing Mountain Lion Coalition v. Fish & Game Com. (1989) 214 Cal. App. 3d 1043, 1051–1052.
- <sup>19</sup> See RPF Response to First Review Team Questions, letter dated Feb. 24, 2021, p. 2.

<sup>20</sup> See Exh. 4 – CDFW comments on revised IS/MND, dated Dec. 30, 2020.

<sup>21</sup> See Exh. 5 – Photo of FYLF taken at main internal access road culvert during on-sight Commercial Cannabis Project survey.

<sup>22</sup> See IS/MND, p.137.

<sup>23</sup> See THP, Section II, p. 34.

<sup>24</sup> See, e.g., Exh. 4 – CDFW comments on revised IS/MND, pp. 7-8.

<sup>25</sup> See THP, Section II, p. 34.

<sup>26</sup> See Exh. 6 – Road Evaluation Report concerning Unnamed Main Rd (Abandoned McCann Rd), prepared by DTN Engineering & Consulting, dated Dec. 17, 2018, without Exhibits B and C. Exhibits B and C to this Road Evaluation Report consist of hundreds of photographs of the Commercial Cannabis Project access roads and maps depicting that project's facilities. These exhibits have been omitted to limit file size and are available upon request.

<sup>27</sup> See Exh. 7 – Email exchange between David Nicoletti and County Senior Planner Cliff Johnson, dated March 24, 2021. Mr. Nicoletti provided the undersigned with a copy of his report on the access roads and explained that the report was not submitted to the County in connection with the IS/MND due to a disagreement with the applicant concerning the conclusions in the report.

<sup>28</sup> See Exh. 8 – CalFire comments on Commercial Cannabis Project proposal, dated July 6, 2017.

<sup>29</sup> See THP, Section III, p. 54.

<sup>30</sup> See *ibid*.

<sup>31</sup> See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936.

<sup>32</sup> *Id.* at p. 936, citing PRC § 21003 and CEQA Guidelines § 15080.

<sup>33</sup> *Riverwatch v. Olivenhain Mun. Dist.* (2009) 170 Cal.App.4th 1186, 1207; see also CEQA Guidelines, §§ 15096(g)(1)-(2).

<sup>34</sup> See PRC § 21069; see also CEQA Guidelines, §§ 783.3(a), 15050(b), 15251(o).

<sup>35</sup> See CEQA Guidelines, § 15096(e)-(g).

<sup>36</sup> See PRC, §21002.1(c)

<sup>37</sup> See *Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370, 382 [comments by qualified experts constitute substantial evidence that EIR is inadequate]; see also *City of Arcadia v. SWRCB* (2006) 135 Cal.App.4th 1392, 1425 [comments of government officials on anticipated environmental impacts constitutes substantial evidence that EIR is inadequate]; see also *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1387 [comments of agency staff constitute substantial evidence].)

<sup>38</sup> See Exh. 4 – comments from CDFW re IS/MND, dated 12/30/20; see also Exh. 9 – comments from RRAS re IS/MND, dated 12/30/20; see also Exh 10 – comments from appellants to Commercial Cannabis Project approvals re IS/MND, dated 12/30/20, without exhibits. The exhibits referenced in the letter attached as Exhibit 10 are available upon request.

<sup>39</sup> Pub. Res. Code §§ 21082.2, 21151; CEQA Guidelines §§ 15064(f), (h), § 15063(a)(3); *Laurel Heights II*, supra, 6 Cal. 4th at p. 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; see also *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151, *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602, *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320, citing *No Oil*, supra, 13 Cal.3d at p. 75, and *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505; and *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>40</sup> *Environmental Information Protection Center v. Johnson* (1985) 170 Cal. App. 3d 604, 609-610, 616 (EPIC).

<sup>41</sup> PRC, § 21090.5(d)(3).

<sup>42</sup> See *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal. App. 4th 656, 671.

<sup>43</sup> See *Vineyard Area Citizens for Local Control v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 [“The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.” Information scattered here and there “is not a substitute for a good faith reasoned analysis”], citations omitted.

<sup>44</sup> See 14 CCR § 898.2

<sup>45</sup> PHI, p. 4.

<sup>46</sup> See *Tickle THP*, Section II, pp. 21-22.

<sup>47</sup> This impact analysis is especially important here, because the IS/MND disregarded the impacts of the bridge replacement on the grounds that it was being carried out for independent ranch operations. (See revised IS/MND, p. 12 [“A separate permit for the bridge over Larabee Creek (Alderpoint Access) has already been issued by CDFW (LSA no. 1600-2020-0285-R1; Appendix K) as the bridge improvement is a part of ranch operations that will progress independently of this cannabis project.”].)

## REFERENCES

2021 California Environmental Quality Act Statute & Guidelines. Available on 05/04/2021 at [https://www.califaep.org/statute\\_and\\_guidelines.php](https://www.califaep.org/statute_and_guidelines.php)

2021 California Forest Practice Rules and Forest Practice Act. Available on 03/23/2021 at [https://bof.fire.ca.gov/media/3gebuoma/2021-forest-practice-rules-and-act\\_final.pdf](https://bof.fire.ca.gov/media/3gebuoma/2021-forest-practice-rules-and-act_final.pdf)

2019 CDFW Foothill Yellow-Legged Frog report summary. Available on 05/05/2021 at <https://cdfgnews.wordpress.com/tag/foothill-yellow-legged-frog/>

## SUMMARY

The preharvest inspection held on March 4, 2021, concluded that the Plan was found to be in conformance after the successful completion of the agreed upon recommendations, which were incorporated into the Plan prior to approval.

The Second Review meeting held on April 1, 2021, concluded that the THP was found to be in conformance with the Act and the Rules of the Board of Forestry and Fire Protection. It was recommended for approval on April 1, 2021.

The Department has reviewed the concerns brought up through the public comment process and has replied to them by this Official Response. This process has not demonstrated any new significant points that would warrant a recirculation of the Plan pursuant to 14 CCR § 1037.3(e), or a recommendation of nonconformance pursuant to 14 CCR § 1054. The THP states in Section I, under Item 13(b) “After considering the rules of the Board of Forestry and Fire Protection and the mitigation measures incorporated in this THP, I (the RPF) have determined that the timber operation will not have a significant adverse impact on the environment”. The Department finds that the RPF

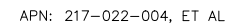
has sufficiently documented that there shall be no unmitigated significant impacts to the identified resources under this THP.

It is the Department's determination that this THP, as proposed, is in compliance with the FPRs and has been through a detailed multi-agency review system. The discussion points and mitigation measures included in the THP have been found to be appropriate to address the concerns brought up by the public comment process. The conclusions reached by the Department and the other state resource agencies are based on decades of professional experience associated with the review of similar harvest plans.

### **EXHIBITS FROM PUBLIC COMMENT LETTER**

- Exh. 1. Commercial Cannabis Project IS-MND Main & Winter Access Roads w THP Area Superimposed;
- Exh. 2. Tickle THP Appurtenant Roads Map;
- Exh. 3. Commercial Cannabis Project IS-MND Winter Access Road Exhibit;
- Exh. 4. CDFW Comments on revised IS/MND, dated Dec. 30, 2020;
- Exh. 5. Photo of FYLF taken at main internal access road culvert during on-sight Commercial Cannabis Project survey;
- Exh. 6. Road Evaluation Report concerning Unnamed Main Rd (Abandoned McCann Rd), prepared by DTN Engineering & Consulting, dated Dec. 17, 2018;
- Exh. 7. Email exchange between David Nicoletti and County Senior Planner Cliff Johnson, dated March 24, 2021;
- Exh. 8. CalFire comments on Commercial Cannabis Project proposal, dated July 6, 2017;
- Exh. 9. Comments from RRAS re IS/MND, dated 12/30/20; and
- Exh. 10. Comments from appellants to Commercial Cannabis Project approvals re IS/MND, dated 12/30/20, without exhibits.

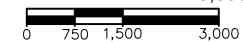
## **Exhibit 1**



1. DRAWING SCALE AS NOTED. WRITTEN DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS.
2. THIS IS NOT A BOUNDARY SURVEY. BOUNDARY INFORMATION DEPICTED HAS BEEN OBTAINED FROM HUMBOLDT COUNTY 2015 GIS DATA. NORTHPOINT CONSULTING GROUP, INC. HAS NOT VERIFIED THIS PROPERTY BOUNDARY.
3. ROAD NAMES AND STATE ROAD NUMBERS OBTAINED FROM HUMBOLDT COUNTY GIS DATA.
4. WATERCOURSES OBTAINED FROM HUMBOLDT COUNTY GIS DATA

 = MAIN ACCESS ROAD (CATEGORY 2 EQUIVALENT WITH RECOMMENDED IMPROVEMENTS)  
 = WINTER ACCESS ROAD (CATEGORY 2 EQUIVALENT WITH RECOMMENDED IMPROVEMENTS)

22x34 SHEET: 1"=1,500'  
11x17 SHEET: 1"=3,000'

[illegible]

**NORTHPOINT**  
**CONSULTING GROUP, INC.**  
1117 Samoa Blvd., Arcata, CA 95521

**ROLLING MEADOWS RANCH, INC**

**McCANN, CA**

**ACCESS ASSESSMENT**

PROJ. MGR.: POW  
DRAWN BY: DDR  
DATE: 10/06/2020  
SCALE: AS SHOWN

**SHEET**  
**A0**

20-063



**Tickle THP Appurtenant  
Roads Map**



Sec. 19, 20, 29, 30 & 32, T1S, R4E  
HB&M, Humboldt County  
USGS Quad: Blocksburg & Myers Flat  
Contour Interval: 40'  
Scale 1" = 2,000'

**Legend**

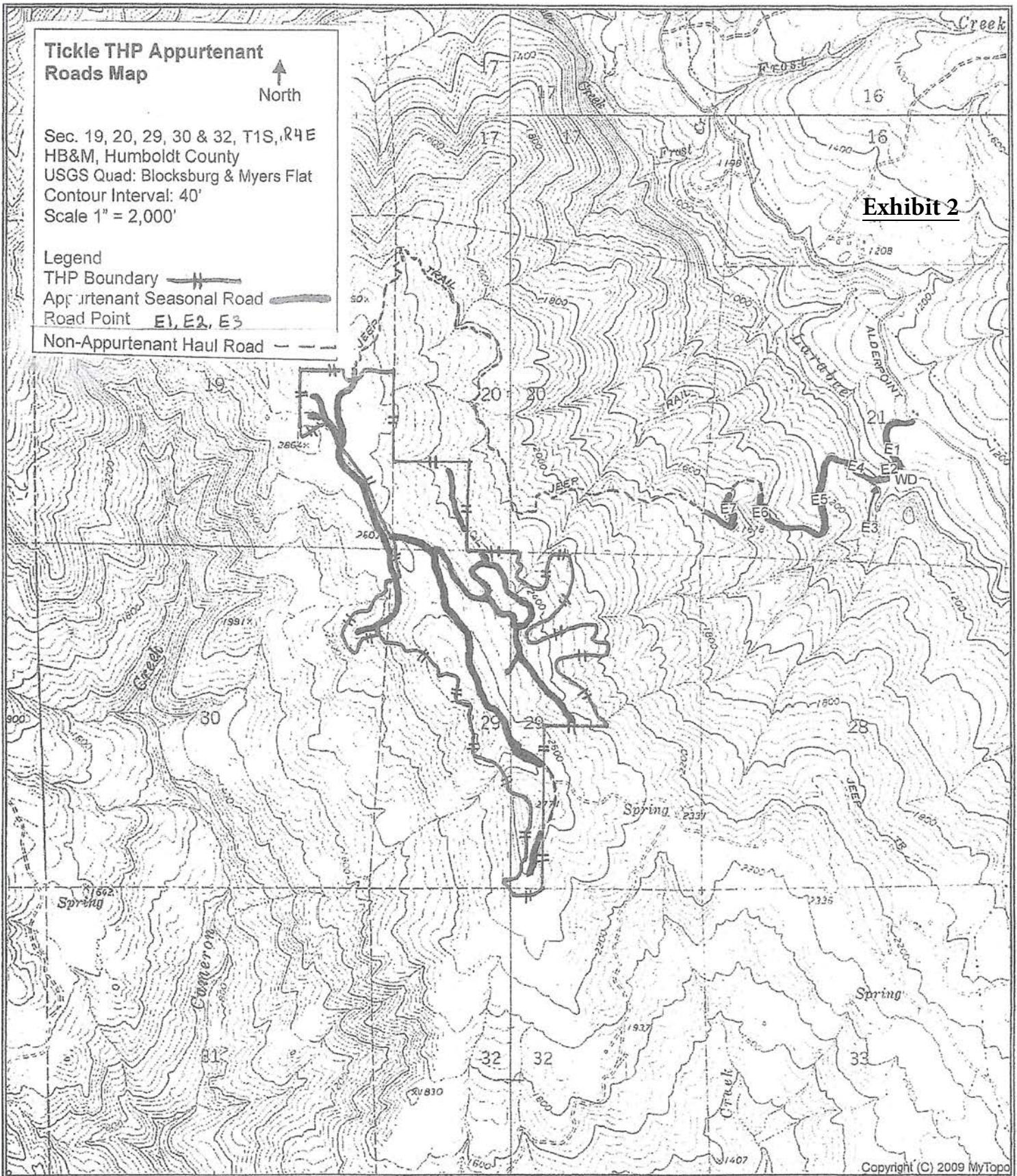
THP Boundary

Appurtenant Seasonal Road

Road Point E1, E2, E3

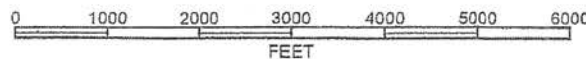
Non-Appurtenant Haul Road

**Exhibit 2**



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SCALE 1:24000



**RECEIVED**

**MAR 29 2021**







**COAST AREA OFFICE  
RESOURCE MANAGEMENT**

183 Revised 3/27/21




### **Exhibit 3**

**LEGEND:**

-  = MAIN ACCESS ROAD (CATEGORY 2 EQUIVALENT WITH RECOMMENDED IMPROVEMENTS)  
 = WINTER ACCESS ROAD (CATEGORY 2 EQUIVALENT WITH RECOMMENDED IMPROVEMENTS)  
 = ROAD POINTS ASSOCIATED WITH INTERSECTIONS AND TYPICAL ROAD SECTIONS  
 = ROAD POINTS ASSOCIATED WITH PINCH POINTS OR VISIBILITY RESTRICTIONS THAT HAVE ACCOMPANYING TURNOUT(S)  
 = ROAD POINTS ASSOCIATED WITH PINCH POINTS OR VISIBILITY RESTRICTIONS THAT DO NOT HAVE ACCOMPANYING TURNOUT(S)  
 = ROAD POINTS ASSOCIATED WITH SRA TURNAROUNDS AND TURNOUTS

22x34 SHEET: 1"=1,000'  
11x17 SHEET: 1"=2,000'



A horizontal graphic scale bar with a black and white alternating pattern. It is marked with the numbers 0, 500, 1,000, and 2,000, representing feet.



**NORTHPOINT**  
CONSULTING GROUP, INC.  
1117 Samoa Blvd., Arcata, CA 95521

**ROLLING MEADOWS RANCH, INC**  
**McCANN, CA**  
**ACCESS ASSESSMENT**

PROJ. MGR.:	POW
DRAWN BY:	DDR
DATE:	10/06/2020
SCALE:	AS SHOWN

**SHEET**  
**A3**  
20-063



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Northern Region  
 601 Locust Street  
 Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 30, 2020

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Governor's Office of Planning & Research

**Dec 31 2020**

**STATE CLEARINGHOUSE**

**Subject: Rolling Meadows ([SCH# 2020070339](#)) Conditional Use Permits Initial Study and Draft Mitigated Negative Declaration**

Dear Meghan Ryan:

The California Department of Fish and Wildlife (CDFW) received from the County of Humboldt (Lead Agency) a recirculated Initial Study and Draft Mitigated Negative Declaration (IS/MND), dated November 25, 2020, for the Rolling Meadows (Project), in McCann, Humboldt County, California. CDFW understands the Lead Agency will accept comments on the Project through December 30, 2020.

Previously, on July 16, 2020, the Lead Agency circulated an IS/MND. On Thursday, August 13, 2020, CDFW staff conducted a site visit of Facilities #1-16 of the Project area. On August 17, 2020, CDFW submitted written comments on the IS/MND. On October 8, 2020, CDFW issued a final Lake or Streambed Alteration (LSA) Agreement to rebuild an existing bridge on Larabee Creek that will serve as an alternate access to the Project from Alderpoint Road. Work at several additional stream crossing locations disclosed in the IS/MND are subject to LSA Notification and have not yet been evaluated or authorized by CDFW.

The Project is located on Humboldt County Assessor's Parcel Numbers (APNs) 217-181-028, 217-201-001, 217-022-004, 217-201-001, 211-281-006, and 217-181-017. The project proposes 306,648 square feet (7 acres) of new cannabis facility space, including 249,739 square feet (5.73 acres) of new mixed-light cannabis cultivation. The Project also proposes use of three wells for irrigation in addition to 320,000 gallons of proposed greenhouse roof rainwater catchment that will be stored in tanks. The mixed-light cultivation is proposed to be powered by Pacific Gas and Electric, however new connection lines and associated infrastructure will be needed.

As the Trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary to sustain their populations. As a Responsible Agency, CDFW administers the California Endangered Species Act and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. CDFW offers the following comments and recommendations in our role as Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code §21000 *et seq.*). CDFW participates in the regulatory process in its roles as Trustee and Responsible Agency to minimize project impacts and

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Humboldt County Planning and Building Department  
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avoid potential significant environmental impacts by recommending avoidance and minimization measures. These comments are intended to reduce the Projects impacts on public trust resources.

### **Clarification of CEQA Document Type**

The CEQA document currently in circulation is called an "Initial Study and Environmental Checklist", however the November 30, 2020 Notice of Intent calls the document an IS/MND. For this comment letter, CDFW assumes the document currently in circulation is an IS/MND. However, the Environmental Checklist on page 33 of the November 25, 2020 IS/MND was not completed or signed.

Please provide clarification if the document is 1) IS/MND or 2) an Initial Study and Environmental Checklist that will be used to determine the appropriate CEQA Environmental Document (i.e., Mitigated Negative Declaration or an Environmental Impact Report) (**Recommendation 1**).

### **Golden Eagle**

The IS/MND discloses a previously documented golden eagle (*Aquila chrysaetos*) nest site within line-of-site from the Project (California Natural Diversity Database occurrence #80, Nelson 2000), however complete protocol level golden eagle surveys for the Project have not yet occurred. The IS/MND acknowledges golden eagles are designated as Fully Protected pursuant to FGC section 3511, and that take of Fully Protected Species is prohibited. Additionally, the low and declining population numbers of golden eagles within northwestern California (Harris 2005, Hunter et al. 2005) and the broader Bird Conservation Region (BCR) where the Project occurs (Millsap et al. 2016, USFWS 2016) suggest impacts to golden eagle may be potentially significant (CEQA Guidelines section 15125 (c)). However, the IS/MND does not contain complete or adequate survey results for this species (Pagel et al. 2010). Without sufficient and complete surveys for golden eagle, CDFW cannot adequately comment on the potential for take or significant impacts to this species nor the effectiveness and feasibility of mitigations.

No Sustainable Take Rates. The importance of conserving golden eagle populations and their habitats is highlighted by their low and declining population numbers within BCR, where the Project occurs. BCR 5 spans from Alaska to Sonoma County, California and is estimated to contain only 189 golden eagle breeding pairs with no sustainable take rates (Millsap et al. 2016, USFWS 2016). While avoiding disturbance to nest locations is important during courtship, breeding, and rearing of young, it is also important to ensure that adequate grassland foraging habitat remains within a golden eagle territory. Prior studies in the western US suggest a radius of two miles encompasses 50 to 80 percent of golden eagle use and represents densely used core area (Watson et al. 2014, Hansen et al. 2017).

Project Juxtaposition to Golden Eagle Breeding Habitat. Grasslands within one mile of nest sites may be particularly vulnerable to disturbance effects on golden eagle while

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they are feeding nestlings (USFWS 2020). From the location of the documented 2003 nest site, the Project's two eastern most clusters of greenhouse facilities lie within one-mile and are within in line-of-site of the nest location (Figure 1- 2). The juxtaposition of the Project area to the 2003 nest site would maximize visual and other disturbances perceived at the nest site and potentially eliminate the majority of the foraging habitat within the core area (Figure 1 – 2).

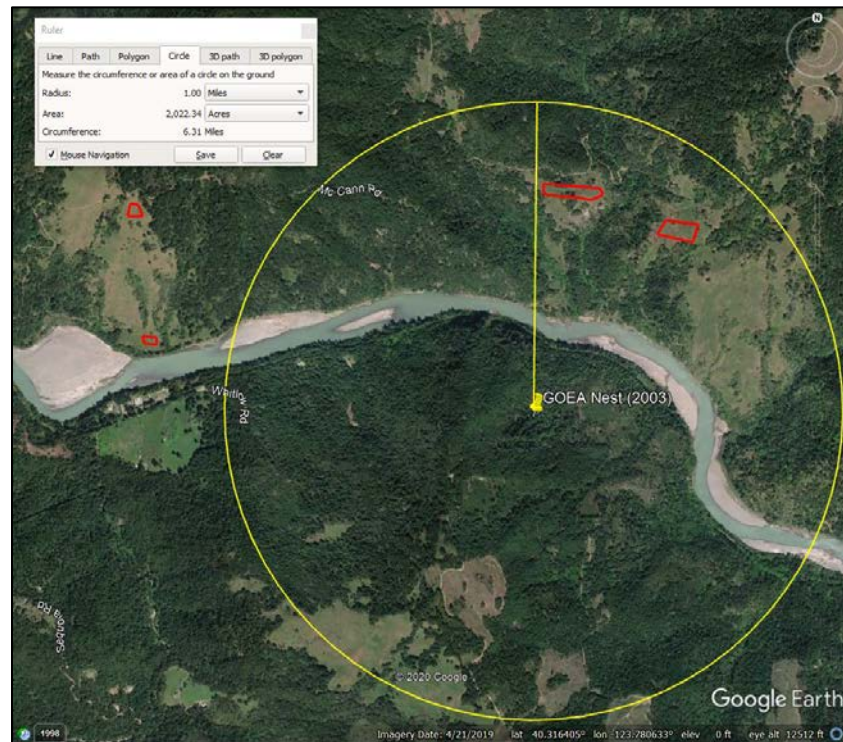


Figure 1. A one-mile radius around the 2003 nest site. Project areas are shown in red and two locations are within the one-mile no disturbance buffer. Note: alternative nest sites may be closer to the Project.



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Figure 2. A documented golden eagle nest site (yellow pin) is within line-of-site of Project cultivation areas (shown in red). Note: alternative nest sites may be closer to the Project.

**Golden Eagle Sensitivity to Disturbance.** Although not well described in the Environmental Setting section of the IS/MND, the pre-Project baseline level of anthropogenic disturbance (e.g., visual, noise, and light) is very low or non-existent within the Project area. Any golden eagles in this vicinity are likely to be especially sensitive to human disturbance. Based on the range of disturbance distance thresholds for golden eagles (Hansen et al. 2017), they may flush from their nests or reduce feeding young with even low to moderate disturbance (including pedestrian activity) occurs within 1,000 meters (3,281 feet or 0.62 miles). Furthermore, nest-site protection is only beneficial if there is adequate access to prey. While male golden eagle's presence at nests is generally limited to prey delivery or brief assistance with young, they frequently rest on perches in view of nests (Watson et al. 2014). In southwestern Idaho, golden eagles perched away from nests were 12 times more likely to flush in response to recreationists than eagles at nests (Hansen et al. 2017). This suggests frequent human activity away from nests could result in chronic disturbance of foraging golden eagles and reduced provisioning rates at the nest. For example, if the 1,000-meter disturbance metric is applied to Project cultivation areas that may affect grassland foraging areas within a one-mile no disturbance buffer of the 2003 nest site, approximately 125 acres of 219 acres (57 percent) of foraging area may be avoided by foraging golden eagles attempting to feed their young (Figure 3).

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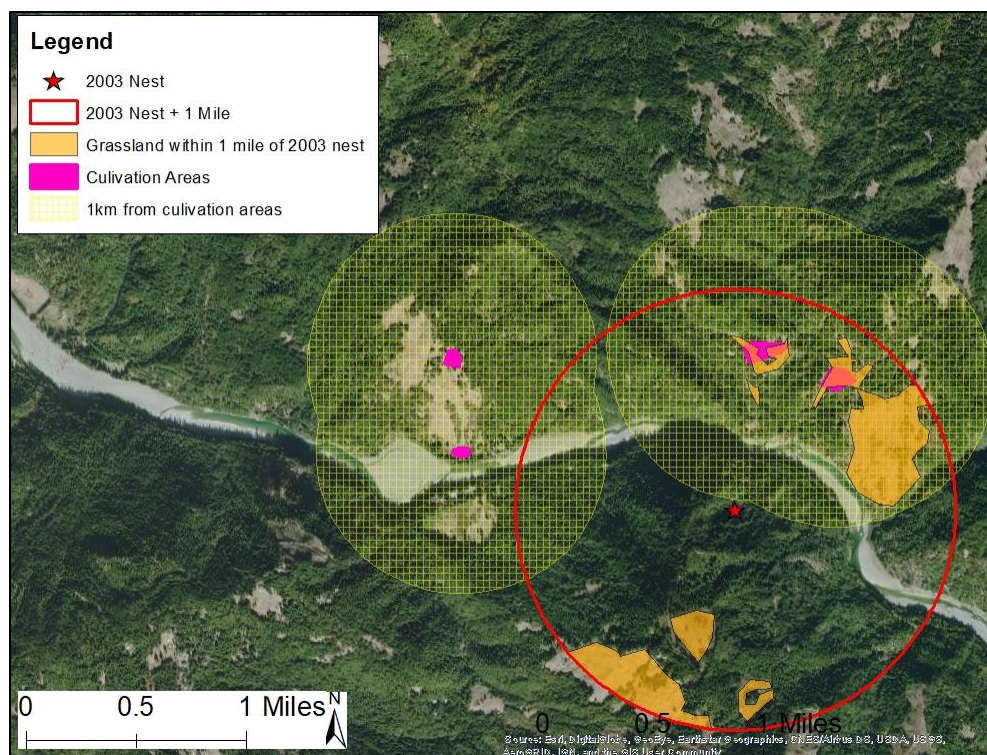


Figure 3. Assuming no golden eagles forage within 1,000 meters of cultivation sites, the Project would result in a 57 percent reduction of foraging habitat within a one-mile no disturbance buffer.

Unlike short term disturbance impacts (e.g., timber harvest), ongoing chronic disturbance may warrant buffers in excess of 1,000 meters, further supporting the USFWS' one-mile no disturbance buffer for golden eagle nest sites. Importantly, the IS/MND Mitigation Measure Bio-16 calling for a 660-foot buffer from nest sites was intended by the USFWS for bald eagles (*Haliaeetus leucocephalus*) (USFWS 2017), who are much less sensitive to disturbance than golden eagles (USFWS 2016).

Golden Eagle Surveys. Deficiencies in Project golden eagle surveys include: 1) none of the golden eagle surveys conducted for the Project occurred during the courtship season when golden eagles are most likely to be detected. Once golden eagles have paired and laid eggs after courtship, they become secretive and difficult to detect. The protocol specifically states the first inventory and monitoring surveys should be conducted during courtship when adults are mobile and conspicuous. Other deficiencies of the Project's golden eagle surveys include: 2) survey duration less than four hours (as recommended in the protocol), 3) surveyor location movement during surveys (survey should occur in blinds or other cryptic locations because golden eagles will avoid human presence and activities, potentially resulting in false negative survey results), 4) insufficient Project area coverage from survey locations (cultivation locations are nearly two miles apart and likely require multiple four-hour protocol observation points), 5) anecdotal conclusions based on out-of-season observations that the documented 2003 nest site is unoccupied, and 6) no evaluation of potential alternative nest sites within the Project vicinity (golden eagles often rotate annual occupancy of several alternative nest sites within a core area (Watson et al., 2014)).

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Regarding anecdotal conclusions based on out-of-season observations, the IS/MND provides insufficient evidence to support current unoccupancy at the 2003 golden eagle nest that occurs about 1,000 meters south of the Project. The nest was last reported occupied in 2003 (Nelson 2020), but there are no records of attempts to verify continued nesting until one month ago, outside the breeding season. Project biologists visited the 2003 nest vicinity in November 2020 and concluded the nest is no longer present due to a lack of visible white-wash (fecal matter) or prey remains on the ground. If that nest location was occupied in 2020, young may have fledged from the nest several months prior and evidence of white-wash and prey remains may no longer have been present in November. The lack of a physical nest observation in 2020 does not support the conclusion a nesting site is no longer there because, 1) nests can occur in any portion of trees that could support a large stick platform and can be obscured from ground view when located at the top of a tree or in complex side-branch structures, 2) nest structures can be 10-feet in diameter and retain white-wash and discarded prey remnants where they cannot be observed from the ground, and 3) nests platforms occasionally fall out of trees and are rebuilt by golden eagles when they choose to nest in that tree again as part of their semi-annual rotation of alternative nest sites within a territory, of which they exhibit nest site fidelity over years and decades (Hansen et al., 2017).

Regarding no evaluation of potential alternative nest sites within the Project vicinity, the IS/MND states that no golden eagle nesting habitat exists in the immediate vicinity of the Project based on the assumption that potential nesting habitat is synonymous with northern spotted owl (NSO) high quality nesting/roosting habitat, but this statement is not supported. While NSO may be more likely to utilize forested areas with many larger trees, golden eagles can nest in locations with just one tree large enough to support a nest platform anywhere within the tree (Menkens et al. 1987, Baglien 1975). Given that many large diameter trees (e.g., Douglas fir [*Pseudotsuga menziesii*] crown diameter 40+ft visible on Google Earth) occur within one mile of Project locations, suitable nesting trees with complex branch structures may occur closer to the Project than the 2003 nest location.

Given the high-quality nesting and foraging habitat in the Project vicinity (large trees and grasslands), the previously documented nest site, 2018 golden eagle flyover observation during Project surveys, multiple other recent reports of juvenile golden eagles in the vicinity (Gaffin 2014 and 2015), and fidelity to nesting sites over years or decades (Hansen et al. 2017), the potential for an active breeding territory within the Project vicinity is high. Without adequate surveys for this species and, if present, a detailed effects analysis of potential Project impacts, CDFW is concerned that the Project could interfere with breeding, nesting success, feeding, sheltering behavior, and result in a loss of productivity, nest failure (e.g., disturbance-induced reduced provisioning of young), or complete abandonment of a golden eagle breeding territory (due to long term chronic disturbance).

Based on the golden eagle information discussed above, CDFW recommends the Project complete protocol golden eagles surveys and consult with CDFW prior to completion of CEQA (**Recommendation 2**). There is a reasonable likelihood an active

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golden eagle breeding territory occurs within the Project vicinity and that several alternative nest sites may exist within relatively close proximity to the Project. Without sufficient protocol surveys for this species, we cannot adequately comment on the potential for significant impacts nor the effectiveness and feasibility of take avoidance or mitigations. Additionally, as proposed in the IS/MND, mitigation measure Bio-16's 660-foot nest buffer may be inadequate for this species and could potentially result in take of a Fully Protected species.

### **Cumulative Impacts to Grassland Prairies**

The Lead Agency's Commercial Medical Marijuana Land Use Ordinance states no more than 20 percent of the area of prime agricultural soils on a parcel may be permitted for commercial cannabis cultivation. It is unclear if the ordinance and its supporting CEQA analysis intended new cultivation sites to be located within remote (i.e., exurban), hillside grassland prairies (where sensitive species may occur) as opposed to traditional agricultural lands already associated with crop production. An unintended consequence of requiring new cultivation on prime agricultural soils (and allowing new areas to be classified as such with no minimum size) is the targeting of small, isolated, flat grasslands within larger prairie complexes on steeper slopes. These habitats are vital elements of biodiversity and provide important habitat for wildlife (Stromberg et al. 2007, CNPS 2011, CDFW 2014a). For example, grasslands in less developed portions of the County correspond with golden eagle foraging habitat and may be occupied by sensitive breeding territories, as described previously in this letter.

The Humboldt County Planning and Building Department has received at least 45 commercial cannabis applications occurring within 1 mile (recommended no disturbance buffer) of documented golden eagle nest sites (Table 1, Battistone, 2020). Furthermore, over 150 commercial cannabis cultivation applications occur within two miles of documented golden eagle nest sites. Given the number of proposed projects within one mile of documented nest sites and that 50 to 80 percent of eagle habitat use is reported to occur within 2 miles of nest sites, CDFW is concerned cumulative project impacts could eliminate golden eagle territories within Humboldt County.

Additional cumulative impacts could occur to other grassland-dependent special status species such as northern red-legged frog (*Rana aurora*), grasshopper sparrow (*Ammodramus savannarum*), mountain plover (*Charadrius montanus*), northern harrier (*Circus hudsonius*), white-tailed kite (*Elanus leucurus*), Pacific gilia (*Gilia capitata* ssp. *pacifica*), short-leaved evax (*Hesperis matronalis* var. *brevifolia*), Baker's navarretia (*Navarretia leucocephala* ssp. *bakeri*), Kneeland prairie pennycress (*Noccaea fendleri* ssp. *californica*), maple-leaved checkerbloom (*Sidalcea malachroides*), Siskiyou checkerbloom (*Sidalcea malviflora* ssp. *patula*), beaked tracyina (*Tracyina rostrata*), leafy reed grass (*Calamagrostis foliosa*), Hitchcock's blue-eyed grass (*Sisyrinchium hitchcockii*), and other special status species (CDFW 2020a).



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Table 1. Humboldt County commercial cannabis applications within two miles of documented golden eagle nest sites.

Key Parcel Distance to Mapped Golden Eagle Nest (Miles)	Number of County Cannabis Cultivation Applications
0 - 0.25	9
0.26 - 0.5	9
0.51 - 1	27
1.1 - 2	112
Total	157

Cumulative impacts could also occur to rare vegetation types known as Sensitive Natural Communities. Using the best available data on the abundance, distribution, and threat, CDFW assigns natural communities rarity ranks and/or a designation as “Sensitive” (\*). Rarity ranks range from 1 (very rare and threatened) to 5 (demonstrably secure). Sensitive Natural Communities (S1 – S3 or otherwise designated as sensitive) should be addressed in the environmental review processes of CEQA and its equivalents (CDFW 2020b). Cumulative impacts could occur to grassland-associated Sensitive Natural Communities in Humboldt County including California brome – blue wildrye prairie (*Bromus carinatus* – *Elymus glaucus*; S3), Oatgrass - Tufted Hairgrass - Camas wet meadow (*Danthonia californica* – *Deschampsia cespitosa* – *Camassia quamash*; S4\*), Idaho fescue - California oatgrass grassland (*Festuca idahoensis* – *Danthonia californica*; S3), California goldfields – dwarf plantain – small fescue flower fields (*Lasthenia californica* – *Plantago erecta* – *Vulpia microstachys*; S4\*), and other sensitive natural communities.

The IS/MND should evaluate cumulative impacts to grassland prairies, particularly special status species and sensitive natural communities (**Recommendation 3**).

### Use of Water Wells

The IS/MND relies on written statements from David Fisch of Fisch Drilling to assess well use impacts to groundwater. Although Mr. Fisch is a Licensed Water Well Contractor, it is not apparent that he is licensed to provide geologic interpretations and/or related evaluations of groundwater/surface water connectivity. The scientific and engineering community universally accepts the connectivity of surface water and groundwater systems and that groundwater discharge to streams constitutes a sizeable and important fraction of streamflow (Fetter 1988, Winter et al. 1998, Department of Water Resources 2003, Barlow and Leake 2012, Province of British Columbia 2016).

In light of the Project’s geologic setting, mapped springs, wetlands, and other surface water features (IS/MND Figure 61 on page 197), and based on the potential total volume of groundwater extraction from the three new wells, CDFW recommends the applicant retain a qualified professional (e.g. geologist or engineer with hydrogeology background) licensed to practice in California to conduct a preliminary evaluation of the Project’s potential impacts to local surface water flows, and to provide

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recommendations that ensure Project activities will not substantially affect aquatic resources (**Recommendation 4**).

### **Post-project Reclamation and Restoration**

As described in the IS/MND, the Project will occur in a remote area of the County that supports numerous special status species and habitats. The Project's seven acres of new cannabis facility development and infrastructure will have lasting effects on the landscape if the Project permanently ceases operations at some point in the future. Similar to other industries with this spatial magnitude of ground disturbance (e.g., mining) it is appropriate to decommission facilities and restore the area at the end of a project's life.

CDFW recommends a mitigation measure or condition of approval to require a Post-project Reclamation and Restoration Plan. That plan should be implemented if project activities cease for five years (**Recommendation 5**).

***The following resource topics were brought up in our August 17, 2020 letter for this Project, and are reiterated with additional information here as the revised IS/MND did not appear to fully address these:***

### **Botanical Surveys and Impact Analysis**

The IS/MND states botanical surveys for rare plants did not encompass the entire Project area, specifically Facilities #6 through #9. The entire Project area should include the "whole of the action" (CEQA Guidelines section 15003 (h)), including all proposed buildings, new powerlines, borrow pits, access roads, and other areas of new ground disturbance. The IS/MND proposes completing botanical surveys as a mitigation measure. Based on the IS/MND, it appears floristic botanical surveys have not yet covered the entire Project area, including proposed work on the access road to Alderpoint, which contains suitable habitat for a Humboldt County milk-vetch (*Astragalus agnicidus*), a State Endangered Species.

To avoid deferred analysis, and potential deferred mitigation, the IS/MND should include the results of floristically appropriate botanical surveys for the entire Project area. Surveys and reporting should be in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* and propose avoidance/mitigation where appropriate (**Recommendation 6**).

### **Wetland Fill and Development Setbacks**

The IS/MND indicates development of Facility #9 will require wetland fill and encroachments on wetland setbacks at Facilities #1 and #2. Approximately 90 percent of California's historical wetlands have been filled or converted to other uses, with a consequent reduction in the functions and values wetlands provide (CDFW 2014b). Additionally, there may not be a viable path for wetland fill to create cultivation sites

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pursuant to the SWRCB's Cannabis Cultivation General Order (SWRCB 2019a).

CDFW recommends the Project adhere to Humboldt County General Plan wetland setbacks through Project layout changes to avoid wetland fill and associated development setbacks (**Recommendation 7**). CDFW also recommends the Project consult with the North Coast Regional Water Quality Control Board regarding the State Water Resources Control Board's (SWRCB) Cannabis Cultivation Policy and its mandate to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation (SWRCB 2019b).

### **Development within the 100-year Flood Zone**

The Project proposes locating two greenhouses (Facilities #1 and #2) within the 100-year flood zone of the Eel River (IS/MND Figure 63 on page 200). Floodplains, by their nature, are likely to be inundated by high flow events. They also connect streams and rivers to upland habitat and provide an important ecological transition zone (CDFW 2014b). Grading within the floodplain and placement of complex, automated mixed-light greenhouses, and ancillary facilities, would likely result in pollution and debris during a 100-year flood event.

CDFW recommends Project layout changes to avoid non-essential development in Eel River 100-year floodplain. (**Recommendation 8**).

### **Electric Infrastructure Expansion**

The IS/MND indicates approximately four miles of new electrical lines will be installed to connect existing powerlines to proposed cannabis cultivation sites. Based on the IS/MND, it appears the new electrical lines will be installed, primarily buried within the road prism.

Although CDFW appreciates the Project using existing disturbed areas for the utility alignment, the IS/MND should include further analysis on potential additional development or growth inducing impacts within the local region that may be facilitated by the creation of four miles of new electrical utilities (**Recommendation 9**). If the Project will not be growth inducing, as stated in the IS/MND, it may be appropriate to include development limitations on these parcels in the form of a Development Plan recorded with the County.

### **Mixed-light Cultivation**

Light pollution effects on wildlife include disruption of circadian rhythms and suppressed immune response, changes in foraging behavior, altered navigation and migration patterns, altered predator-prey relationships, impacts on reproduction, and phototaxis (CDFW 2018, CDFW 2020c). CDFW and others have observed light pollution originating from greenhouses throughout the County. This is inconstant with the County General Plan and International Dark Sky Standards. The IS/MND suggests International Dark Sky Standards will be upheld by the Project.

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Based on experience with other similar cultivation projects, it is difficult to monitor and regulate potential light pollution impacts from non-compliance with permit conditions. The County should ensure the measures to comply with International Dark Sky Standards are implementable and easy to confirm or monitor (**Recommendation 10**).

### **Invasive Species**

The IS/MND does not address potential significant effects from introduction or spread of invasive plant and animal species. Invasive species are known to result in habitat loss and other impacts to native species and may result in an overall loss of biodiversity, particularly special status species (Duenas et al. 2018). Invasive plant species may enter or spread through the Project area from imported soil, attachment to vehicles, and other means of accidental introduction.

CDFW recommends a mitigation measure or condition of approval to require an invasive species management plan that would manage any existing invasive species and prohibit planting, seeding or otherwise introducing terrestrial or aquatic invasive species on Project parcels, including all access roads (**Recommendation 11**).


### **Rodenticides and Similar Harmful Substances**

This Project has potential high use areas for birds of prey including, white-tailed kite (*Elanus leucurus*), red-tailed hawk (*Buteo jamaicensis*), ferruginous hawk (*Buteo regalis*), golden eagle, and other species. New agricultural development has the potential to increase rodent populations, which are sometimes treated with rodenticides. Rodents killed by rodenticide have the potential to be consumed by raptors, other birds of prey, and wildlife species, resulting in harm or mortality (CDFW 2018, CDFW 2020c).

CDFW recommends a condition of approval that will prohibit the use of rodenticides and similar harmful substances on Project parcels (**Recommendation 12**).

We appreciate the opportunity to comment on this IS/MND. If you have any questions please contact Environmental Scientist Greg O'Connell by email at [Gregory.OConnell@Wildlife.ca.gov](mailto:Gregory.OConnell@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
974D273FEE784E2...

**Curt Babcock**  
Northern Region Habitat Conservation Program Manager  
California Department of Fish and Wildlife

Meghan Ryan, Senior Planner  
Humboldt County Planning and Building Department  
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ec:

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Humboldt County Planning and Building Department  
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**V. Appendix A. Pictures (February 6, 2018)**



**Picture 1.** Track 2/3 culvert with temporary pool and foothill yellow-legged frog



**Picture 2.** Foothill yellow-legged frog in pool below culvert

**HUMBOLDT COUNTY DEPARTMENT OF PUBLIC WORKS  
ROAD EVALUATION REPORT****PART A:** *Part A may be completed by the applicant*Applicant Name: Rolling Meadows Ranch APN: Multiple See Exhibit APlanning & Building Department Case/File No.: 12837Road Name: Unnamed Main Rd (Abandoned McCann Rd) *(complete a separate form for each road)*From Road (Cross street): Mccan RdTo Road (Cross street): Sites 2A/2B (Exhibit A)Length of road segment: 4.25 miles Date Inspected: 11/20/2018Road is maintained by: ☐ County ☒ Other Owner  
(State, Forest Service, National Park, State Park, BLM, Private, Tribal, etc)

Check one of the following:

**Box 1** ☐ The entire road segment is developed to Category 4 road standards (20 feet wide) or better. If checked, then the road is adequate for the proposed use without further review by the applicant.**Box 2** ☐ The entire road segment is developed to the equivalent of a road category 4 standard. If checked, then the road is adequate for the proposed use without further review by the applicant.

*An equivalent road category 4 standard is defined as a roadway that is generally 20 feet in width, but has pinch points which narrow the road. Pinch points include, but are not limited to, one-lane bridges, trees, large rock outcroppings, culverts, etc. Pinch points must provide visibility where a driver can see oncoming vehicles through the pinch point which allows the oncoming vehicle to stop and wait in a 20 foot wide section of the road for the other vehicle to pass.*

**Box 3** ☒ The entire road segment is not developed to the equivalent of road category 4 or better. The road may or may not be able to accommodate the proposed use and further evaluation is necessary. Part B is to be completed by a Civil Engineer licensed by the State of California.

The statements in PART A are true and correct and have been made by me after personally inspecting and measuring the road.

David Nicoletti

Signature

12/17/2018

Date

David Nicoletti PE #76814

Name Printed

**Important: Read the instructions before using this form. If you have questions, please call the Dept. of Public Works Land Use Division at 707.445.7205.**

**PART B: Only complete Part B if Box 3 is checked in Part A. Part B is to be completed by a Civil Engineer licensed by the State of California. Complete a separate form for each road.**

**Unnamed Main Rd (Abandoned)**

Road Name: McCann Rd Date Inspected: 11/20/2017 APN: See Exhibit A  
From Road: McCann Rd (Post Mile         ) Planning & Building  
To Road: Sites 2A/2B (Post Mile 4.75) Department Case/File No.:  
12837

1. What is the Average Daily Traffic (ADT) of the road (including other known cannabis projects)?

Number of other known cannabis projects included in ADT calculations:  
(Contact the Planning & Building Department for information on other nearby projects.)         

ADT: <400 Date(s) measured: 11/20/2018

Method used to measure ADT: ☒ Counters ☐ Estimated using ITE *Trip Generation Book*

Is the ADT of the road less than 400? ☒ Yes ☐ No

If **YES**, then the road is considered very low volume and shall comply with the design standards outlined in the American Association of State Highway and Transportation Officials (AASHTO) *Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT ≤ 400)*. Complete sections 2 and 3 below.

If **NO**, then the road shall be reviewed per the applicable policies for the design of local roads and streets presented in AASHTO *A Policy on Geometric Design of Highways and Streets*, commonly known as the "Green Book". Complete section 3 below.

2. Identify site specific safety problems with the road that include, but are not limited to: (Refer to Chapter 3 in AASHTO *Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT ≤ 400)* for guidance.)

A. Pattern of curve related crashes.

Check one: ☒ No. ☐ Yes, see attached sheet for Post Mile (PM) locations.

B. Physical evidence of curve problems such as skid marks, scarred trees, or scarred utility poles

Check one: ☒ No. ☐ Yes, see attached sheet for PM locations.

C. Substantial edge rutting or encroachment.

Check one: ☐ No. ☒ Yes, see attached sheet for PM locations.

D. History of complaints from residents or law enforcement.

Check one: ☒ No. ☐ Yes (☐ check if written documentation is attached)

E. Measured or known speed substantially higher than the design speed of the road (20+ MPH higher)

Check one: ☒ No. ☐ Yes.

F. Need for turn-outs.

Check one: ☐ No. ☒ Yes, see attached sheet for PM locations.

3. Conclusions/Recommendations per AASHTO. Check one:

☐ The roadway can accommodate the cumulative increased traffic from this project and all known cannabis projects identified above.

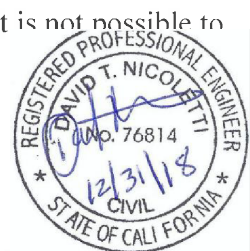
☒ The roadway can accommodate the cumulative increased traffic from this project and all known cannabis projects identified above, if the recommendations on the attached report are done. (☐ check if a *Neighborhood Traffic Management Plan* is also required and is attached.)

☐ The roadway cannot accommodate increased traffic from the proposed use. It is not possible to address increased traffic.

A map showing the location and limits of the road being evaluated in PART B is attached. The statements in PART B are true and correct and have been made by me after personally evaluating the road.

David Nicoletti  
Signature of Civil Engineer

12/17/2018  
Date



**Important: Read the instructions before using this form. If you have questions, please call the Dept. of Public Works Land Use Division at 707.445.7205.**

From: David Nicoletti PE QSD\QSP  
DTN Engineering & Consulting  
2731 K Street Unit A  
Eureka, CA 95501  
Email: dnicoletti@dtngineering.com

**Subject: Roadway Evaluation for Rolling Meadows Ranch, APPS 12837**

**Introduction**

On November 20<sup>th</sup>, 2018, DTN Engineering & Consulting (Engineer) performed a roadway evaluation for Rolling Meadows Ranch, upon request from Humboldt County Public Works. Humboldt County Public Works has provided direction for the roads to be evaluated by the Engineer. For project location, proposed roadway alignments, and photo locations see Exhibit A.

The access roads are being evaluated as part of the Applicant's Cannabis permit referral process. The roadways were evaluated for Category 4 and Category 2 compliance as described in Title III – Land Use and Development, Division II, Fire Safe Regulations (Ordinance) (Exhibit D). This analysis performed was in accordance with the Roadway Evaluation Report Instructions provided by Humboldt County Public Works Department.

**Site Conditions**

The existing site conditions for the evaluated roadways in this Technical Memorandum crosses two Streamside Management Areas (SMA) (Exhibit C) that are tributary to the Eel River, high seismic instability with many historic slides (Exhibit C), and gradual to steep grades. The Applicant proposes a central parking facility at the gate shown in Photo 472 (Exhibit A) where employees will park, and a bus will transport employees throughout the property.

**Proposed Criteria:**

The roadways in this evaluation are being prosed to be brought up to a Category 4 and Category 2 standard in accordance with the Ordinance (Exhibit E). The following criteria are the main components of a Category 4 roadway as specified in the Ordinance.

**Category 4**

- Two 12 foot travel lanes.
- Roadway grades shall be under 16% or the roadway shall have surfacing applied.
- All curves shall have no radius less than 50 feet.
- Vertical curves shall not be less than 100 feet in length.

- Turnarounds shall be placed every 1320 foot intervals.
- Pullouts will be placed in accordance with the Humboldt County Roadway Design Manual.
- The roadway and bridges shall be constructed to carry a vehicular load of 75,000 lbs.
- Gates opening shall not be less than 14 feet.

### Category 2

- One 12 foot travel lanes.
- Roadway grades shall be under 16% or the roadway shall have surfacing applied.
- All curves shall have no radius less than 50 feet.
- Vertical curves shall not be less than 100 feet in length.
- Turnarounds shall be placed every 1320 foot intervals.
- Pullouts will be placed in accordance with the Humboldt County Roadway Design Manual.
- The roadway and bridges shall be constructed to carry a vehicular load of 75,000 lbs.
- Gates opening shall not be less than 14 feet.

Additional criteria the Engineer will apply in the evaluation and recommendations will be from the *American Association of State Highway and Transportation Officials (AASHTO) standards*.

The Engineer recommends that a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

### **Evaluation**

Private Access Rd from Site #6 to Unnamed Main Road (Abandoned McCann Rd) Photos 1-80 (Exhibit B)

The evaluation begins at Site #6 as shown in Exhibit A and proceeds down to the Unnamed Main Access Rd. The criteria for evaluating the Private Access Rd is as a Category 2 road in accordance with Humboldt County Title III - Land Use

and Development Division 11 Fire Safe Regulations.

The existing conditions on this Private Access Rd are those of a quad trail. The road has significant vegetative overgrowth and the roadway width is generally 8 -11 feet wide. There are some existing pullouts on this Private Access Rd, but there is so much overgrowth, they are obscured along with any shoulders. The existing grade for this Private Access Rd is moderately hilly with some grades above 16% and there is one partially buried culvert identified in this stretch of Private Access Rd (Photos 45/46), the size of the culvert was not able to be determined because it was buried. There is also one large rolling dip (Photo 14) that is very difficult to traverse.

The following are photo locations that are not in accordance with Humboldt County SRA Ordinance, AASHTO Guidelines for Geometric Design of Low Volume Roads, or industry standard practices for gravel roadway maintenance, and drainage.

**Curve Locations without Turnouts:** Photo #20/21, 28, & 49,

**Slope Over 16%:** Photos 7, 22, 32, 53, & 61.

**Width Under 12 Feet:** All locations.

**Slide Locations:** None.

**Clogged / Partially Culverts:** Photos 45/46

**Erosion / Drainage Issues:** Photos 14, 31, & 69.

***This roadway does not meet a Category 2 Roadway. The Engineer recommends the following improvements for safe travel on the Private Access Rd for the amount of Average Daily Traffic (ADT) calculated.***

**Recommendations:**

The Engineer recommends that roadway be constructed that meets a Category 2 roadway. Prior to the design a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

## **Evaluation**

### Unnamed Main Rd (Abandoned McCann Rd) Photos from Sites 2A/2B to the Private Access Rd in Photo 80. Photos 81-388 (Exhibit B)

The evaluation begins at Site #2A\2B as shown in Exhibit A and proceeds to the Private Access Rd evaluated above ending at Photo 80. The criteria for evaluating the Private Access Rd is as a Category 4 road in accordance with Humboldt County Title III - Land Use and Development Division 11 Fire Safe Regulations.

The existing conditions on this Unnamed Main Rd are a roadway width that is generally 9 -11 feet wide with 1 - 3 foot shoulders and there are pullouts at all curves. The existing grade for this Unnamed Main Rd is moderately hilly with some grades above 16% there is 13 culverts in this section of roadway and they are generally 18" or above and are all mostly fully or partially clogged.

The existing geologic conditions identified on this stretch of Unnamed Main Rd consists of multiple hillside slips, a major hillside slide that was filled in (Photos 333 - 350), which looks as if there are springs in this section of roadway. The Engineer recommends that this slide area as well as the others identified down below, be assessed for slope stabilization recommendations to be included with the roadway design.

The following are photo locations that are not in accordance with Humboldt County SRA Ordinance, AASHTO Guidelines for Geometric Design of Low Volume Roads, or industry standard practices for gravel roadway maintenance, and drainage.

**Curve Locations without Turnouts:** None.

**Slope Over 16%:** Photos 100, 116, 127, 136, 208, 216, 230, 235, 240, 285, 305, 331, 348, 362, 368, 381, & 384.

**Width Under 12 Feet:** All locations.

**Slide Locations:** Photos 124, 141, 151, 174, 186, 190, 287/291, 330 – 350.

**Clogged / Partially Culverts:** Photos 103/104, 114/115, 171/172, 194/195, 203/204, 212/213, 227/228, 253/254, 294/295, 307/308, 344/345.

**Erosion / Drainage Issues:** Photos 207 & 385.

**Bridge:** Photo 122

***This roadway does not meet a Category 4 or Equivalent Category 4 Roadway. The Engineer recommends the following improvements for safe travel on Unnamed Main Rd (Abandoned McCann Rd) for the amount of***



***Average Daily Traffic (ADT) calculated.***

**Recommendations:**

The Engineer recommends that roadway be constructed that meets a Category 4 roadway. Prior to the design a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design

The Engineer recommends that a focus on slope stability in this segment of roadway be considered during design engineering, because of the historic slides within this roadway alignment. The slide location between Photos 330 -350 be given an especially engineered focus.

The Engineer recommends that the one lane bridge (Photo 122) be evaluated for weight rating. If the rating of the bridge doesn't meet Ordinance requirements, then the Engineer recommends it to be replaced.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

**Private Access Rd Photos from Unnamed Main Access Rd (Abandoned McCann Rd) to Site 20 419-429 (Exhibit B)**

The evaluation begins at the intersection of the Unnamed Main Rd & Private Access Rd (Photos 77/78) to Site #20 as shown in Exhibit A. The criteria for evaluating the Private Access Rd is as a Category 2 road in accordance with Humboldt County Title III - Land Use and Development Division 11 Fire Safe Regulations.

The existing conditions on this Private Access Rd are those of a quad trail. The road has significant vegetative overgrowth and the roadway width is generally 8 -11 feet wide. There are some existing pullouts on this Private Access Rd, but there is so much overgrowth, they are obscured along with any shoulders. The existing grade for this Private Access Rd is moderately hilly with some grades above 16% and there is one culvert identified in this stretch of Private Access Rd (Photos 425/426). There is also one large rolling dip (Photo 423) that is very difficult to traverse over.

The following are photo locations that are not in accordance with Humboldt



County SRA Ordinance, AASHTO Guidelines for Geometric Design of Low Volume Roads, or industry standard practices for gravel roadway maintenance, and drainage.

**Curve Locations Requiring Turnouts:** None

**Slope Over 16%:** Photos 428

**Width Under 12 Feet:** All Locations

**Slide Locations:** None

**Clogged / Partially Culverts:** None.

**Erosion / Drainage Issues:** None

***This roadway does not meet a Category 2 Roadway. The Engineer recommends the following improvements for safe travel on the Private Access Rd for the amount of Average Daily Traffic (ADT) calculated.***

**Recommendations:**

The Engineer recommends that roadway be constructed that meets a Category 2 roadway. Prior to the design a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

Private Access Rd Photos from Sites 4B to Gate in Photo 472. Photos 433-474 (Exhibit B)

The evaluation begins at Site #4B as shown in Exhibit A and proceeds to the Private Access Rd in Photos 484/485. The criteria for evaluating the Private Access Rd is as a Category 2 road in accordance with Humboldt County Title III - Land Use and Development Division 11 Fire Safe Regulations.

The existing conditions on this Private Access Rd are those of a quad trail. The road has significant vegetative overgrowth and the roadway width is generally 8 -11 feet wide. There are some existing pullouts on this Private Access Rd, but there is so much overgrowth, they are obscured along with any shoulders. The existing grade for this Private Access Rd is slightly hilly with some grades above 16% and there is two culverts identified in this stretch of Unnamed Main Rd (Photos 443/444), the size of the culvert was not able to be determined because

it was buried.

The following are photo locations that are not in accordance with Humboldt County SRA Ordinance, AASHTO Guidelines for Geometric Design of Low Volume Roads, or industry standard practices for gravel roadway maintenance, and drainage.

**Curve Locations without Turnouts:** None.

**Slope Over 16%:** None.

**Width Under 12 Feet:** All locations.

**Slide Locations:** None.

**Clogged / Partially Culverts:** Photos 443.

**Erosion / Drainage Issues:** Photos 465.

***This roadway does not meet a Category 2 Roadway. The Engineer recommends the following improvements for safe travel on the Private Access Rd for the amount of Average Daily Traffic (ADT) calculated.***

**Recommendations:**

The Engineer recommends that roadway be constructed that meets a Category 2 roadway. Prior to the design a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

Unnamed Main Rd (Abandoned McCann Rd) Photos from Unnamed Main Rd (Photo 388) to Unnamed Main Rd (Abandoned McCann Rd) (Photos 485/486) Photos 389-418 & 472-486 (Exhibit B)

The evaluation begins at the Intersection Unnamed Main Rd (Photo 388) and proceeds to McCann Rd (Photos 485/486) as shown in Exhibit A. The criteria for evaluating the Unnamed Main Rd is as a Category 4 road in accordance with Humboldt County Title III - Land Use and Development Division 11 Fire Safe Regulations.

The existing conditions on this Unnamed Main Rd are a roadway width that is generally 9 -11 feet wide with 1 - 3 foot shoulders and there are pullouts at all

curves. The existing grade for this Unnamed Main Rd is moderately hilly with some grades above 16% there is 3 culverts in this section of roadway and they are generally 18" or above and are all mostly fully or partially clogged.

The following are photo locations that are not in accordance with Humboldt County SRA Ordinance, AASHTO Guidelines for Geometric Design of Low Volume Roads, or industry standard practices for gravel roadway maintenance, and drainage.

**Curve Locations without Turnouts:** None.

**Slope Over 16%:** Photos 405 & 477.

**Width Under 12 Feet:** All locations.

**Slide Locations:** None.

**Clogged / Partially Culverts:** Photos 400/401, 411/412 & 470/471.

**Erosion / Drainage Issues:** None.

***This roadway does not meet a Category 4 or Equivalent Category 4 Roadway. The Engineer recommends the following improvements for safe travel on Unnamed Main Rd (Abandoned McCann Rd) for the amount of Average Daily Traffic (ADT) calculated.***

**Recommendations:**

The Engineer recommends that roadway be constructed that meets a Category 4 roadway. Prior to the design a geotechnical evaluation, hydraulic / hydrology evaluation, and environmental assessment of the construction foot print for the length of the proposed roadway improvements are completed prior to any roadway design.

The existing site conditions do not lend itself to any hard roadway surfacing because of the site's rural nature and the environmental impacts due to runoff with impermeable surfaces. The Engineer recommends that the design include gravel surfacing.

Report Completed By:



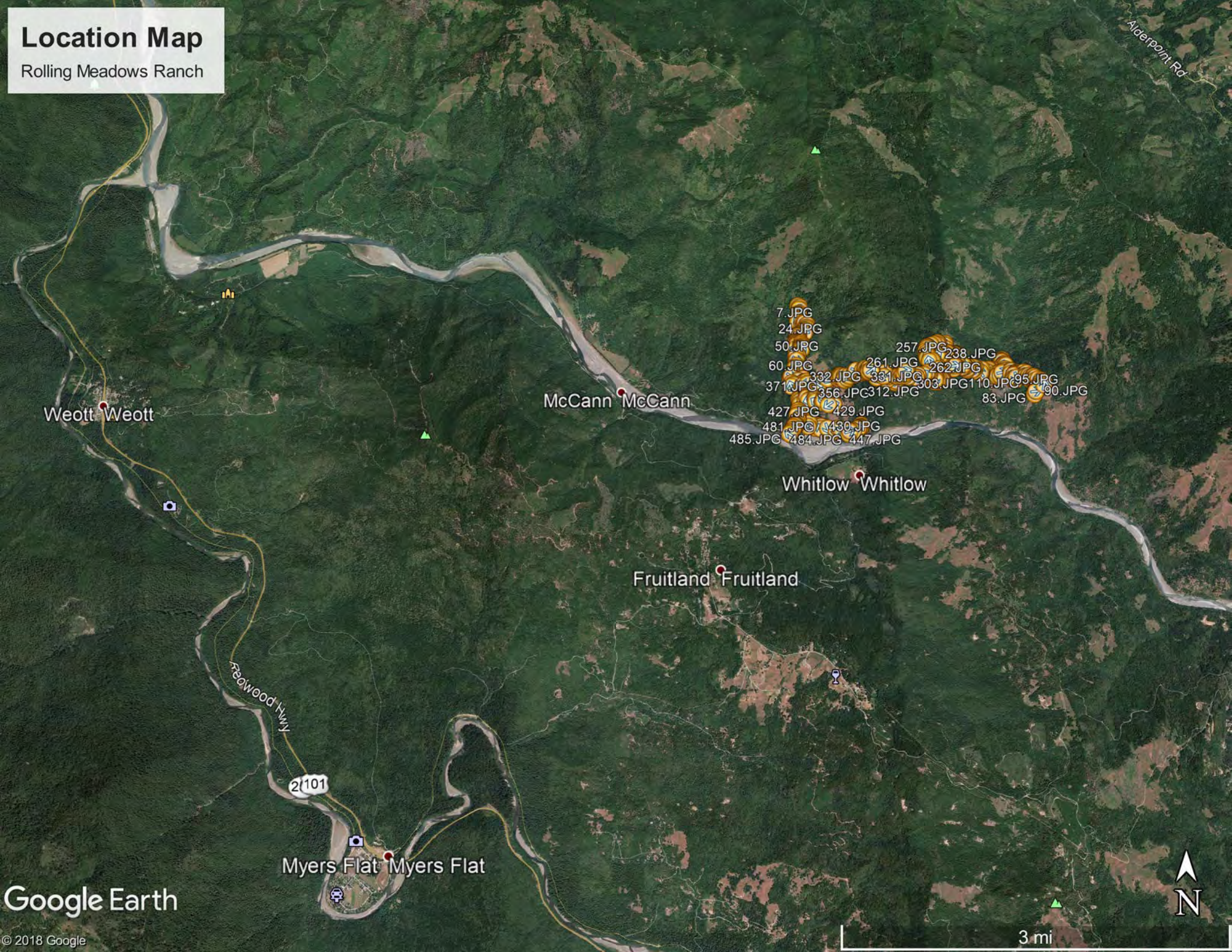
David Nicoletti PE

# Exhibit A



# Location Map

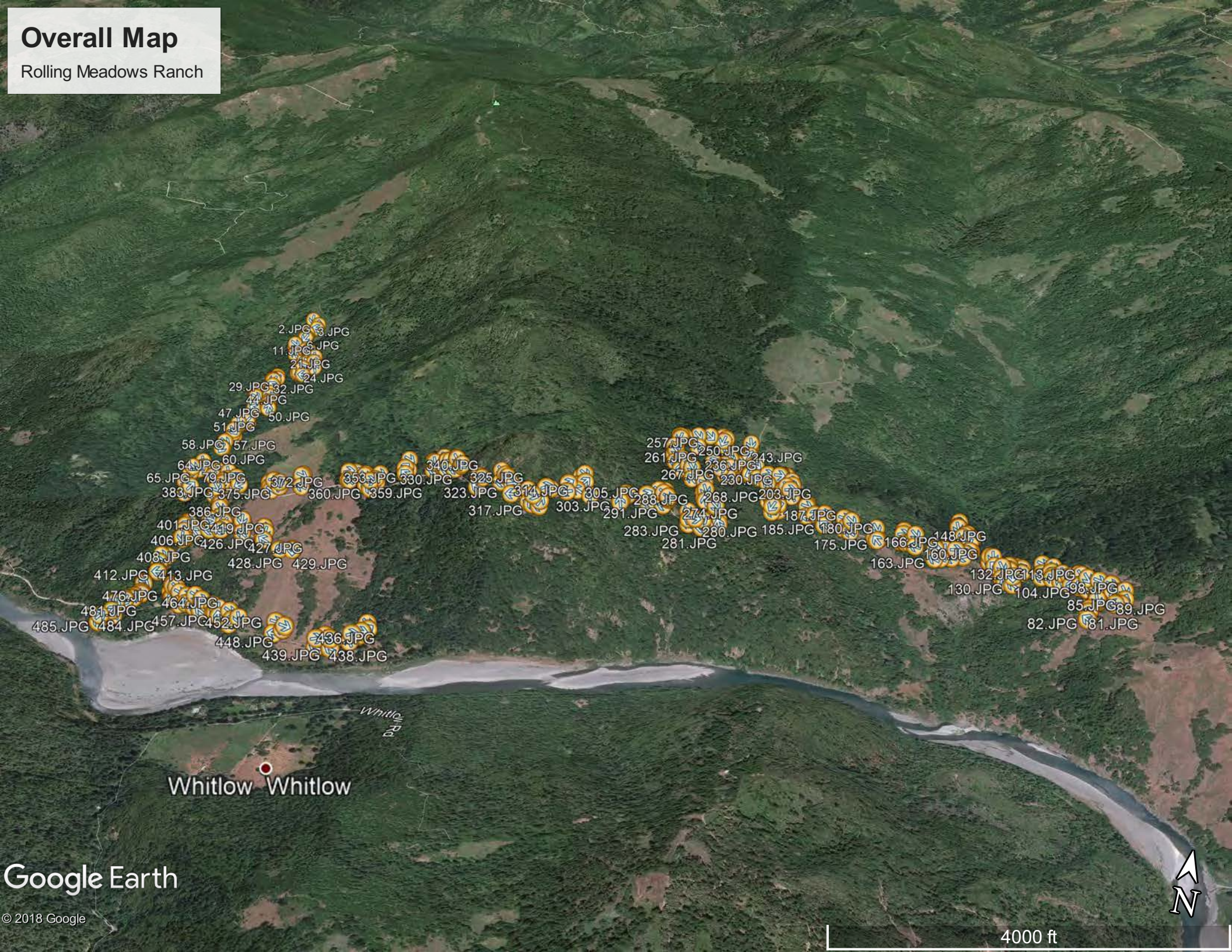
Rolling Meadows Ranch





# Overall Map

Rolling Meadows Ranch





# Private Access Rd

Photos 1 (Site 6) -27





# Private Access Rd

Photos 28 - 55

29.JPG  
30.JPG  
32.JPG  
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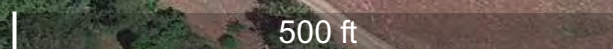
# Private Access Rd

Photos 56-80



Google Earth

© 2018 Google





# Unnamed Main Rd

Photos 81 - 97





# Unnamed Main Rd

Photos 98 - 118





# Unnamed Main Rd

Photos 119 - 137





# Unnamed Main Rd

Photos 138 - 156



144.JPG 145.JPG

146.JPG

147.JPG

148.JPG

140.JPG

150.JPG

139.JPG 141.JPG

149.JPG

153.JPG

151.JPG 152.JPG

138.JPG

154.JPG

155.JPG

156.JPG



# Unnamed Main Rd

Photos 157 - 166





# Unnamed Main Rd

Photos 167 - 178





# Unnamed Main Rd

Photos 179 - 186





# Unnamed Main Rd

Photos 187 - 202





# Unnamed Main Rd

Photos 203 - 218





# Unnamed Main Rd

Photos 219 - 240





# Unnamed Main Rd

Photos 241 - 257



Mc Cann Rd

Google Earth

© 2018 Google

300 ft



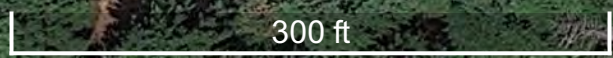


# Unnamed Main Rd

Photos 258 - 299



Mc Cann Rd





# Unnamed Main Rd

Photos 300 - 320



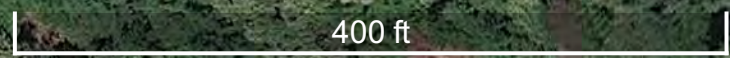
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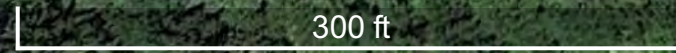
# Unnamed Main Rd

Photos 321 - 350



Google Earth

© 2018 Google





# Unnamed Main Rd

Photos 351 - 379





# Unnamed Main Rd

Photos 380 - 401



100 ft



# Unnamed Main Rd

Photos 402 - 418

Google Earth

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395.JPG 394.JPG 392.JPG 400.JPG 399.JPG 401.JPG 402.JPG 398.JPG

404.JPG 403.JPG 407.JPG 405.JPG 406.JPG

408.JPG

409.JPG

412.JPG 410.JPG 413.JPG

414.JPG 415.JPG 416.JPG 418.JPG 417.JPG

473.JPG 472.JPG 471.JPG 300 ft





# Private Access Rd

Photos 420 - 429 (Site 20)



400 ft



# Private Access Rd

Photos 433 (Site 4B) - 451





# Private Access Rd

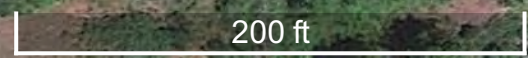
Photos 452 - 474





# Unnamed Main Rd

Photos 476 - 485







Jason Holder &lt;jason@holderecolaw.com&gt;

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**FW: Rolling Meadows**

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**David Nicoletti** <dnicoletti@dtngineering.com>  
To: "jason@holderecolaw.com" <jason@holderecolaw.com>

Wed, Mar 24, 2021 at 2:28 PM

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**From:** Johnson, Cliff <CJohnson@co.humboldt.ca.us>  
**Sent:** Wednesday, March 24, 2021 1:52 PM  
**To:** David Nicoletti <dnicoletti@dtngineering.com>  
**Subject:** RE: Rolling Meadows

Hi David,

I can't find any evidence that this was ever submitted for the project. As you know, we asked for a road evaluation prepared by a licensed engineer. The road evaluations he turned in are by licensed engineers who state the road is adequate and meets fire safe standards. As we are not engineers we do not typically question the analysis and recommendations of engineers who put their license on the line. The staff report was based on the assessment by a licensed engineer.

Cliff

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**From:** David Nicoletti <dnicoletti@dtngineering.com>  
**Sent:** Wednesday, March 24, 2021 9:40 AM  
**To:** Johnson, Cliff <CJohnson@co.humboldt.ca.us>  
**Subject:** Rolling Meadows

Hey Cliff! I was curious about this project because the Client tried to get me to modify my road evaluation and I wouldn't. So I read the staff report to see what it said about the roads and I almost fell over. That road network out there needs lots of work, there isn't a road out there that is 12 feet in width, lots of turnouts required, a number of slides along the roads, steep grades, and most culverts are undersized and clogged. I was surprised to see that the Staff Report basically said the road is good, I guess Andy got someone to write the re[port the way he wanted it. I am attaching the road evaluation for your reference.

Thanks

David Nicoletti PE QSD\QSP  
DTN Engineering & Consulting  
2731 K Street Unit A

4/10/2021

Holder Law Group Mail - FW: Rolling Meadows

Eureka, CA 95501

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**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

Humboldt – Del Norte Unit

118 Fortuna Blvd.  
Fortuna, CA 95540  
Website: [www.fire.ca.gov](http://www.fire.ca.gov)  
(707) 726-1272



Ref: 7100 Planning  
Date: July 6, 2017



John Ford, Director  
Humboldt County Planning Department  
3015 H Street  
Eureka, CA 95501

**Attention:** Michelle Nielsen**Applicant:** Rolling Meadow Ranch, Inc. (Tract 4)**APN:** 217-201-001-000**Area:** Blocksburg**Case Numbers:** CUP16-734, CUP16-735  
CUP16-736, CUP16-737**Humboldt County Application #:** 12542**Type of Application:** Conditional Use Permit**Date Received:** 6/29/2017**Due Date:** 7/5/2017

**Project Description:** Four (4) Conditional Use Permits for commercial medical cannabis cultivation on the subject parcel of land that is approximately 420 acres in size, and is referred to as Tract 4 of Rolling Meadow Ranch. On Tract 4, the applicant proposes mix-light commercial medical cannabis cultivation totaling 88,000 square feet (SF) in size, on one (1) location, to occur in four (4) new greenhouses that are each 22,000 SF in size. The application seeks CUPs for both new and existing cannabis cultivation. One area of existing cannabis cultivation within the boundaries of Tract 4 will be repositioned to the area of mix-light cultivation as described above. Additionally, the applicant proposes the development of a 2,000 SF appurtenant processing facility, to be served by a sewage disposal system, and parking areas. These ancillary improvements will be adjacent to the cultivation areas. The applicant estimates that each 22,000 SF greenhouse will have a total water demand of approximately 820 gallons per day: 780 gallons (gal.) for cultivation; 30 gal. for general and personal use, and 10 gal. for additional when processing. Irrigation water for cultivation is proposed to be sourced from an on-site well for which the applicant has applied for a well permit from the County of Humboldt. Irrigation water will be applied using drip irrigation. If required, the applicant will capture rainwater from the roofs of the greenhouses, and store the water in containment ponds or tanks, and it will be used for landscaping and fire suppression. All power is proposed to be from the electrical grid. A propane standby generator will only be used in the event of a power failure. The applicant estimates there will be seventeen (17) employees at peak operations. In order to comply with Humboldt County Code Section 314-55.4.8.10, the applicant will transfer all approved permits above the specified limit of four (4) permits to eligible independent third parties prior to initiating cultivation activities.

Mr. Ford,

The California Department of Forestry and Fire Protection (CALFIRE) provides these standard project review comments on the above noted project for the following subject matter:

- Fire Safe
- Resource Management
- Cannabis

The following pages address these concerns directly.

If CALFIRE staff develops additional comment on this project, it will be forwarded in an additional response letter.

By: Planning Battalion  
CALFIRE Humboldt – Del Norte Unit

For **Hugh Scanlon**, Unit Chief



## **FIRE SAFE**

### **General:**

CALFIRE has responsibility for enforcement of Fire Safe Standards as required by Public Resources Code (PRC) 4290 and 4291. However CALFIRE is not the lead agency in planning development and project permitting. CALFIRE provides input as a contributing agency, generally limited to plan review, and is not the approving agency for these projects.

### **Local Responsibility Areas:**

Should this project include Local Responsibility Area (LRA) lands, CALFIRE has no direct fire safe input on those parcels. However, in those areas with LRA parcels adjacent to State Responsibility Area (SRA) land, CALFIRE recommends that local standards be applied that are consistent with those CALFIRE makes for SRA lands.

### **State Responsibility Areas:**

Should this project include State Responsibility Area (SRA) lands, the following are CALFIRE's Fire Safe minimum input and recommendation for any and all development.

1. In Humboldt County, developments must meet minimum fire safe standards by constructing the project in conformance with County Fire Safe Ordinance 1952, which the California Board of Forestry and Fire Protection has accepted as functionally equivalent to PRC 4290. The County Fire Safe Ordinance provides specific standards for roads providing ingress and egress, signing of streets and buildings, minimum water supply requirements, and setback distances for maintaining defensible space.
2. New buildings located in any Fire Hazard Severity Zone within State Responsibility Areas shall comply with the 2007 California Building Code (CBC) Section 701A.3.2. This requires roofing assemblies, attic and eave ventilation, exterior siding, decking and deck enclosure, windows and exterior doors, and exposed under floor areas that are approved "ignition resistive" in design.
3. All development, especially commercial or industrial development, should be designed to comply with the most current versions of the following standards:
  - a) California Fire Code (CFC) — for overall design standards
  - b) Public Utilities Commission (PUC) General Order 103 — for design of water systems
  - c) National Fire Protection Association Standards (NFPA) for fire flow minimums and other design questions not specifically covered by CFC and PUC
  - d) Housing and Community Development Codes and Standards —for mobile home parks and recreational camps
4. For Department of Real Estate reporting purposes, fire protection coverage in SRA is generally described as follows:

During the declared fire season (usually June through October) CALFIRE responds to all types of fires and emergencies in SRA.

During the remainder of the year (winter period), CALFIRE responds to emergency requests with the closest available fire engine, if a response can reasonably be expected to arrive in time to be effective. A fire engine is usually available somewhere in the Unit, but may have an extended response time.

There are many hazards confronting fire protection agencies in most subdivisions on SRA lands. Steep terrain and heavy wildland fuels contribute to fire intensity and spread. The distances from fire stations and road grades encountered usually create an excessive response time for effective structure fire suppression purposes.

Subdivisions increase fire risks from additional people and increase probable dollar losses in the event of fire due to added structures and improvements.
5. If the project expects to produce densities consistent with a major subdivision, the impacts on all infrastructures should be mitigated. Local government more appropriately provides the responsibility for

high-density area protection and services. Annexation or inclusion into Local Responsibility Area should be studied as well.

6. 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. New development can adversely impact existing fire services. Careful consideration must be given where development may overload the local fire service's ability to respond.

## RESOURCE MANAGEMENT

CALFIRE has enforcement responsibility for requirements of the Z'berg—Nejedly Forest Practice Act of 1973. CALFIRE is also the lead agency for those parts of projects involving the scope of the Forest Practice Act. The following basic input will cover the majority of projects. Each project will be reviewed with additional input sent at a later date, if needed.

The following comments reflect the basic Resource Management policies of the Board of Forestry and Fire Protection and CALFIRE on CEQA review requests. These policies apply to both Local and State Responsibility Areas.

1. If this project reduces the amount of timberland, by policy, the Board of Forestry and CALFIRE cannot support any project that will reduce the timberland base of California. "Timberland" means land which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees regardless of current zoning (PRC 4526). However, if the zoning and intended use are consistent with the county's general plan; and if no land other than timberland can be identified to site the project; then CALFIRE may choose not to oppose the project.
2. If **any** commercial timber operations are involved with a project, the timber operations cannot be conducted without a CAL FIRE permit. Commercial timber operations include the cutting or removal of trees offered for sale, barter, exchange, or trade or the conversion of timberlands to land uses other than the growing of timber (PRC 4527). Contact your nearest CAL FIRE Resource Management office for guidance on obtaining the necessary permits.
3. If **any** timberlands are being converted to a non-timber growing use by this project, the conversion operations cannot be conducted without a CAL FIRE permit (PRC 4621). Conversion of timberland takes place when trees are removed and the land use changes, even without the sale, barter, exchange, or trade of the trees. Contact your nearest CAL FIRE Resource Management office for guidance on obtaining the necessary permits.
4. If timberland is in the viewshed of a project, the current and future owners should be overtly notified that changes will occur to their views due to timber management activities. Further, no project should be allowed to negatively affect access to timberland for timber management purposes; neither on the project parcel(s) nor any other timberland parcels.
5. If timber harvesting has occurred and post-harvest restocking and prescribed erosion control maintenance obligations have not been met on a parcel, future owners should be overtly notified (14 CCR 1042). The current owner of a parcel is responsible for restocking requirements and maintenance of roads whether or not they were involved in the actual harvest plan.
6. If the project involves the development of parcels zoned as Timber Production Zone (TPZ), CALFIRE cannot support the project. Dividing TPZ land into parcels of less than 160 acres requires a Joint Timber Management plan prepared by a Registered Professional Forester (RPF), recorded as a deed restriction for a minimum of 10-years on all affected parcels, and approved by a four – fifths vote of the full board (Govt. Code 51119.5). TPZ may be rezoned using a "Ten Year Phase Out," which precludes the need for a Timberland Conversion Permit. CALFIRE opposes immediate rezoning of TPZ land.

## **Cannabis**

### **General:**

CALFIRE has responsibility for enforcement of Fire Safe Standards as required by Public Resources Code (PRC) 4290 and 4291. CALFIRE is not the lead agency in planning development and project permitting. However, CALFIRE provides comment as an emergency response expert agency, generally limited to plan review, and is not the approving agency for these projects.

### **Local Responsibility Areas:**

Should this project include Local Responsibility Area (LRA) lands, CALFIRE has no direct fire safe input on those parcels. However, in those areas with LRA parcels adjacent to State Responsibility Area (SRA) land, CALFIRE recommends that local standards be applied that are consistent with those CALFIRE makes for SRA lands. Also CAL FIRE is the primary command and control dispatch, for most local agency fire districts and departments.

### **State Responsibility Areas:**

Should this project include State Responsibility Area (SRA) lands, the following are CALFIRE's minimum input.

1. Agricultural cannabis growing operations medicinal or commercial shall have an easily accessible material safety data sheet (MSDS) or safety data sheet (SDS) for all chemicals and hazardous materials on site. Posted (NFPA 704) Placard clearly visible to emergency responders
2. California code of regulations Health and Safety (CCR 11362.769.) Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.
3. International Fire Code (N101.1 Scope) Marijuana growing and extraction shall be in accordance with this chapter, of the International Building Code, and the International Mechanical Code. Cryogenic fluids shall comply with Chapter 55. Compressed gases shall comply with Chapter 53. Flammable and combustible liquids shall comply with Chapter 57. Hazardous materials shall comply with Chapter 50. LP-gas shall comply with Chapter 61 and the International Fuel Gas Code. All applicable California State Fire Marshal standards and regulations for the designated occupancy must be met.
4. Growing marijuana and the extracting of oils  
Extraction of marijuana oils; All materials hazardous and non-hazardous associated with the extraction process shall be utilized in conformance of the law and fire safe codes.



# **REDWOOD REGION AUDUBON SOCIETY**

P.O. BOX 1054, EUREKA, CALIFORNIA 95502

[RRAS.ORG](http://RRAS.ORG)



December 30, 2020

Planning Commission  
Humboldt County Courthouse  
825 5th Street  
Eureka CA, 95501

Subject: Concerns Regarding Continuances of the Planning Commission's Consideration of Six Conditional Use Permits for the Rolling Meadow Ranch, LLC Commercial Cannabis Project (PLN-12529-CUP; SCH# 2020070339)

Dear Chairman Bongio, Honorable Members of the Humboldt County Planning Commission.

Redwood Region Audubon Society is a California non-profit public benefit corporation whose mission is to conserve and protect the earth's natural systems, with an emphasis on birds.

We have reviewed the materials relating to the proposed continuance of consideration for six conditional use permits for the Rolling Meadows Ranch, LLC commercial cannabis project (PLN-12529-CUP; SCH# 2020070339) (Project). We agree with the California Department of Fish and Wildlife comments in their letter of August 17, 2020 on the overall Project and have additional specific concerns regarding the Project's potential negative impacts on birds.

The initial study and draft mitigated negative declaration by Natural Resource Management Inc. (NRM) relies on conclusions based on unsubstantiated assumptions to arrive at a statement of no significant impact with regard to birds, as follows:

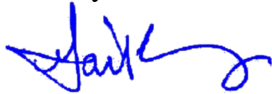
1. Golden Eagle (GOEA), a federally fully protected species.
  - 1.1. NRM states that established practice indicates that the best time to establish GOEA presence is in January and February when courtship behavior is obvious but states the opinion that fledging season is also a good time because of location calls. NRM does not support this assumption with evidence or previous studies. We therefore assert that the absence of attempted field observation in January and February invalidates NRS conclusion relating to GOEA in the project area.
  - 1.2. No Mention is made of a known active GOEA nest site located on the south side of the Eel River approximately one kilometer (.62 miles) from a proposed cannabis growing structure and activity site in the project area. The observation on July 17 "GOEA flew from the NE ridgeline to the SW across the Eel River" strongly infers GOEA foraging on Rolling Meadows Ranch and adjacent prairies. The observed GOEA flight also suggests that this bird was going to the nest on the south side of the Eel River.
  - 1.3. The effect of human activity and disturbance adjacent to GOEA foraging areas is not discussed. Therefore, no determination of the effect on GOEA foraging success in this situation has been made. The effect of human activity and disturbance adjacent to GOEA foraging areas is not discussed. Therefore, no determination of the effect on GOEA foraging success in this situation has been made.

- 1.4. In the oak savanna and open prairie habitat of the Coast Range are the primary foraging areas for GOEA prey consisting of Black-tailed jackrabbit and Beechey ground squirrel. Structures and human activity adjacent to and in these areas are likely to inhibit or prevent GOEA foraging activity. This would not only result in less efficient foraging but less control of jack rabbits and ground squirrels and potential degradation of prairie biodiversity.
  - 1.5. “For Golden Eagles, this area should extend **at least 2 miles** from the Project boundary (Watson *et al.* 2014, Crandall *et al.*, *in prep.*). A 2-mile radius will typically incorporate 80% of home range use (Crandall *et al.*, *in prep.*). For the purposes of this report, I will refer to this 2-mile radius area as the GOEA Analysis Area.” (Woodbridge, 2020)
  - 1.6. Mitigation Measure (MM) Bio-7 lumps GOEA into raptors which vary widely in tolerance for disturbance near active nest sites. GOEA is one of the least tolerant. The proposed MM-Bio-7 provides no justification specific to GOEA. MM-Bio-7 also fails to address loss of GOEA foraging habitat.
2. Grasshopper sparrow and Bryant’s savannah sparrow (GRSP, SAVS), California Species of Special Concern.
    - 2.1. The NRM report stated that no indirect effect on GRSP and SAVS would result if construction were avoided during nesting season. This statement is incorrect as nesting habitat would be permanently eliminated by construction, thereby reducing reproduction of these species due to reduction of nesting and foraging habitat.
    - 2.2. Mitigation Measure (MM) Bio-8 fails to address loss of nesting and foraging habitat for GRSP and SAVS.

For mitigation measures to be effective, all potential impacts on the species of concern need to be determined, based on the best available knowledge.

We find, as explained above, that errors and omissions in the biological report do not support the proposed mitigation measures for potential negative impacts to Golden eagle, Grasshopper sparrow or Savannah sparrow. We therefor request the six conditional use permits for the Rolling Meadow Ranch, LLC Commercial Cannabis Project be denied.

Sincerely,



Gail Kenny, President  
Redwood Region Audubon Society





**Holder Law Group**

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Oakland, CA 94607-3810

holderecolaw.com

(510) 338-3759  
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December 30, 2020

VIA EMAIL AND HAND DELIVERY

Humboldt County Planning Department  
Attn: Meghan Ryan, Senior Planner  
3015 H St.  
Eureka, CA 95501  
Email: [mryan2@co.humboldt.ca.us](mailto:mryan2@co.humboldt.ca.us)

**Re: Comments Concerning the revised version of the Initial Study / Mitigated Negative Declaration for the Rolling Meadow Ranch, LLC, dated Nov. 25, 2020; Six Conditional Use Permits for Commercial Cannabis Facilities (PLN-12529-CUP; SCH# 2020070339)**

Dear Ms. Ryan:

On behalf of Fran Greenleaf, John Richards, and Patty Richards (collectively “Petitioners”), we submit these comments, which supplement those expressed in Petitioners’ previous comment letters concerning deficient environmental review for the proposed Rolling Meadow Ranch, LLC Commercial Cannabis Project (“Project”).<sup>1</sup> These supplemental comments address revisions to the environmental impact analysis presented in the “revised” Initial Study, dated November 25, 2020, and the presumably proposed Mitigated Negative Declaration (“Revised IS/MND”) and the persistent omissions, errors, and misrepresentations in that analysis.<sup>2</sup> Through their diligent participation in the administrative process for this Project, Petitioners advance the public purpose of environmental protection by fostering revisions and additions to the environmental impact analysis that should be required for this large Project before it can be considered for approval – revisions that will help make the analysis accurate, complete, informative, and protective, as required under CEQA.

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<sup>1</sup> Because the revised version of the IS/MND has not addressed many of the deficiencies identified in Petitioners’ prior comments, submitted on August 17, 2020 and September 10, 2020, respectively, those comments are incorporated herein by reference and should also be addressed in any revised impact analysis that the County may conduct for the Project pursuant to CEQA.

<sup>2</sup> The title page for the latest revised version of the IS/MND does not disclose that the analysis has been revised and the document has been recirculated for public review. The uncompleted Initial Study checklist on pages 33 and 34 of the document also does not disclose that a Mitigated Negative Declaration is proposed for the Project. The County recently issued a Notice of Public Hearing that indicates the intent to adopt an MND for this Project. Thus, for convenience we refer to the document as the “Revised IS/MND.”

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**I. Introduction: The Proposed Large Commercial Cannabis Project is the Wrong Project at the Wrong Location with the Wrong Level of Environmental Review.**

**A. The Project is Unsuitable for the Site.**

The Project site, Rolling Meadow Ranch, was described in a 2014 real estate listing as a “Conservationists Dream.”<sup>3</sup> In fact, according to press reports, in 2016 the Wildlands Conservancy – an organization that specializes in purchasing properties with “significant environmental value” and turning them into nature preserves – almost purchased the 6,500-acre ranch property for \$15,000,000 before the organization was outbid at the last minute in a well-publicized land deal that fell through.<sup>4</sup> While the property has tremendous potential for conservation, as with many other large ranch properties in the County of Humboldt (“County”), the tremendous allure of commercial cannabis appears to have prevailed.<sup>5</sup>

The Project is one of the largest completely new commercial cannabis projects ever to be proposed within the County.<sup>6</sup> It is not, like many projects recently processed under the Commercial Medical Marijuana Land Use Ordinance (“CMMLUO”), an existing grow operation by a long-time county resident that is being proposed.<sup>7</sup> Rather, it is a new industrial-scale operation (including 16 greenhouses, ranging size from just over 17,000- to just under 20,000 - sq. ft. and accompanying processing facilities) by an out-of-state non-resident project applicant.<sup>8</sup> The applicant does not propose to grow cannabis organically, despite the fact that all 16 greenhouses will be located near sensitive wetlands, Class I and II streams, and the Eel River itself. Rather than propose a seasonal full sun grow operation that would use substantially less electricity and would have less reliance on generators in the event of a power outage, the applicant proposes an energy-intensive year-round mixed-light grow system. The greenhouses and processing facilities will be arranged in several clusters spread over miles of narrow winding unpaved roads. Simply put, the proposed Project is an intensive industrial-

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<sup>3</sup> See Exh. A – 2014 Real Estate Listing for Rolling Meadow Ranch.

<sup>4</sup> See The Humboldt Independent, \$20 Million Myers Flat Land Deal Falls Through, dated June 7, 2016, available at: <http://www.humboldtindie.com/local-news/2016/6/6/20-million-myers-flat-land-deal-falls-through>, accessed 12/22/20.

<sup>5</sup> See SF Chronical, Allure of legal weed is fueling land rush in Emerald Triangle, dated May 27, 2016, available at: <https://www.sfchronicle.com/science/article/Allure-of-legal-weed-is-fueling-land-rush-in-7948587.php>, accessed 12/22/20.

<sup>6</sup> See Revised IS/MND, p. 10 [The total proposed square footage for all cannabis facility space (Facilities #1-#16 combined) is 304,560 square feet (7.04 acres). The total area dedicated to cannabis cultivation will be approximately 249,739 sq. ft. (5.73 acres)]. Compare this Project’s size to the many smaller commercial cannabis projects described in recent County Planning Commission agendas.

<sup>7</sup> See, e.g., agenda for Planning Commission meeting on Dec. 4, 2020 [8 existing commercial cannabis projects considered for approval].

<sup>8</sup> Revised IS/MND, pp. 9-10 [describing greenhouse sizes for facilities #1 through #16].

scale cannabis cultivation and processing operation located in a remote area with vulnerable natural resources and significant access issues.

**B. Petitioners are Neighbors Concerned About the Project's Impacts.**

Petitioners are neighboring property owners and residents of McCann, an unincorporated area located approximately 5 miles east of Highway 101 and adjacent to the main stem of the Eel River. The Project, as proposed, will substantially intensify the use of Dyerville Loop Road, McCann Road, and the seasonally-open one-lane McCann Bridge – all rural roads that are windy, narrow, and unpaved in many areas. Consequently, if the Project is approved, Petitioners will be adversely affected by increased Project-related traffic, construction and road noise, increased emissions and fugitive dust, increased wildfire risk, and a degraded natural environment, among other impacts. Even worse, the Project could lead to still more development within the expansive ranch area and accompanying environmental impacts. Petitioners seek to preserve the quality of the environment in this remote, undeveloped, and biologically important area adjacent to the Eel River for all to enjoy, both now and for future generations.

**C. Substantial Evidence Supports a Fair Argument that the Project Will Cause Significant Environmental Impacts, Necessitating an Environmental Impact Report.**

Petitioners maintain that the IS/MND, even as revised and supplemented, does not satisfy CEQA's requirements and cannot serve as the environmental clearance document for this large-scale and difficult-to-access Project. As explained further below, because there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment, the County is required to prepare an EIR before it can consider this Project for approval.<sup>9</sup> Alternatively, the Planning Commission has authority to deny the application for the six (6) CUPs required for this Project because, among other things, it cannot conform to applicable County and State requirements for road access without substantial roadway modifications.<sup>10</sup>

In addition to the substantive deficiencies identified below and in Petitioners' prior comments, the Revised IS/MND also suffers from several procedural deficiencies. For example, the cover page for the Revised IS/MND does not identify the proposed Mitigated Negative Declaration or indicate that the analysis has been revised. Also, the Revised IS/MND does not include a completed checklist summarizing the proposed Project's potentially significant

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<sup>9</sup> See, e.g., *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*), citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75 and *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505.

<sup>10</sup> See *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal. App. 4th 837, 849 [local agency with land use authority has discretion to deny project]; see also Gov. Code § 65800 [a county "may exercise the maximum degree of control over local zoning matters"].)



impacts, in contravention of CEQA Guidelines, § 15063(d)(3) and CEQA Appendix G.<sup>11</sup> In addition, the Revised IS/MND has not been signed by its preparers.<sup>12</sup>

These comments were prepared with input from retained experts in the fields of hydrogeology and civil engineering. The comments of Pacific Watershed Associates (“PWA”) and civil engineer Steve Salzman are provided herein as Exhibits B and C, respectively.<sup>13</sup> Please note that the experts’ comments supplement and support some of the issues addressed below. The experience and expertise of these experts qualifies their comments, as incorporated herein, to serve as substantial evidence of the numerous ways in which the Revised IS/MND does not comply with the procedural and substantive requirements of CEQA. The comments from staff at trustee and responsible agencies, including the California Department of Fish & Wildlife (“CDFW”), concerning the original IS/MND and this Revised IS/MND also serve as substantial evidence supporting the conclusion that the Project may cause unanalyzed and unmitigated significant environmental impacts.<sup>14</sup>

**D. Documents Referenced in the Revised IS/MND Were Not Made Available for Public Review During the Comment Period, as is Required Under CEQA.**

As a preliminary matter, the public’s review of the Revised IS/MND was hampered by the unavailability of referenced studies supporting the analysis of Project impacts. CEQA requires the lead agency to make available for public review the environmental review document as well as all documents referenced in that document.<sup>15</sup> Under Public Resources Code, section § 21092(b)(1), the Notice of Preparation of a MND must specify the location of the MND and “all documents referenced [therein] are available for review.” Here, not all documents referenced in the Revised IS/MND have been made available to the public and reviewing agencies as required.

Through a recently submitted request for public records, Petitioners obtained a July 30, 2018 version of a “Biological Report” that is referenced in the Revised IS/MND.<sup>16</sup> Because a

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<sup>11</sup> See Revised IS/MND, pp. 33-34 [included blank checklist].

<sup>12</sup> See *ibid.*

<sup>13</sup> Please include in the administrative record for this Project all reports and other documents referenced herein and in the experts’ comment letters.

<sup>14</sup> See *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1425 [comments of government officials on a project’s anticipated environmental impacts on their communities constitutes substantial evidence that EIR is inadequate]; see also *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1387 [comments of agency staff constitute substantial evidence].)

<sup>15</sup> See also *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455 [“The lead agency must notify the public of the draft EIR, make the draft EIR and all documents referenced in it available for public review, and respond to comments that raise significant environmental issues.”], citing PRC §§ 21092, 21091(a), (d) and CEQA Guidelines, §§ 15087, 15088.

<sup>16</sup> See Revised IS/MND, pp. 95, 245 [referencing November 2018 revised Biological Report].

later version of the Biological Report was cited as a reference in the Revised IS/MND, and because the Revised IS/MND purports to rely upon the surveys and assessments prepared by the applicant's retained biologists, the unavailability of *any version* of this report during the public review period violates the procedural requirements of CEQA.<sup>17</sup>

**II. Discussion: The Inadequate Revised IS/MND Cannot be Relied Upon to Satisfy CEQA's Requirements as Applied to this Project.**

**A. Because the Project Changed Substantially Since the Original Application for Four CUPs Was Submitted, the CCLUO Applies.**

In its original application for four (4) conditional use permits for the Project, the Applicant described the Project as replacing pre-existing illegal cannabis grow operations and proposing new, expanded, mixed light grow operations with a total of eighteen (18) greenhouses.<sup>18</sup> Since that time, the applicant has abandoned its effort to obtain CUPs for existing cannabis cultivation and now seeks CUPs for an entirely new cultivation and processing operation. Indeed, the Revised IS/MND analyzed the Project as a completely new commercial cannabis project with no existing cannabis cultivation considered as part of the baseline. According to the staff report to the Planning Commission dated August 20, 2020, the current version of the Project now includes the application for six (6) CUPs for the Project's sixteen (16) greenhouses and processing facilities.<sup>19</sup> The substantial changes to the Project, made since the original application was submitted to the County, warrant processing under the County's CCLUO (a.k.a., Ordinance 2.0).

According to the EIR prepared for Ordinance 2.0, the CCLUO, includes more specific and exacting requirements for commercial cannabis projects.<sup>20</sup> For example, Ordinance 1.0 requires the Project to comply with all applicable local land use regulations, including but not limited to the requirement that access roads for cannabis projects meet fire safe standards, whereas Ordinance 2.0 specifically requires access roads for cannabis projects to meet Category 4 standards.<sup>21</sup>

Notably, the County's Ordinance 1.0 (the CMMLUO) under which this Project is being evaluated was passed by using an MND, not an EIR. This means that the cumulative impacts of

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<sup>17</sup> When we inquired about this referenced material in an email sent on December 1, 2020, staff reported that the reference to the Biological Report in the Revised IS/MND was "a typo."

<sup>18</sup> Application Form, dated Dec. 22, 2016, p. 1 [Requesting: "Conditional use permits for Four (4) Replacement Mixed Light 22,000 Sq Ft Greenhouse located on parcels where pre-existing cannabis activities were located."], 3 [document entitled "Cannabis Permitting, describing a total of 18 22,000 s.f. proposed greenhouses"]

<sup>19</sup> See Staff Report to Planning Commission re Project, for Aug. 20, 2020 meeting, pp. 1, 9.

<sup>20</sup> See Draft EIR for CCLUO project, pp. 2-5, 2-14 – 2-30 [describing CCLUO requirements and restrictions]; *see also* FEIR for CCLUO project, pp. 1-2, [project objectives for CCLUO project], 2-5 [key environmental objectives of Ordinance 2.0]. The full EIR for the CCLUO is incorporated herein by this reference.

<sup>21</sup> Compare Humboldt County Code ("HCC") § 55.4.3.3 with HCC § 55.4.6.1.2(c).



projects processed under the CMMLUO have never been comprehensively analyzed under CEQA. This is despite the fact that the CMMLUO precipitated a permitting “rush” in the County.<sup>22</sup> This makes adequate environmental review for this Project all the more important.

**B. The Revised IS/MND Does Not Include Information and Analysis Recommended by the County’s Own “Peer Review” Consultant and by CDFW.**

**1. Inaccurate and Incomplete Project Description**

Even as revised, the IS/MND released for public review and comment fails to consider the impacts of the whole of the Project, as required under CEQA. The problems with the project description in the Revised IS/MND have persisted in spite of clear County direction, CDFW’s specific recommendations, and Petitioners’ detailed prior comments.

On January 15, 2018, the County’s Supervising Planner wrote to the applicant, recommending numerous changes to a second draft of the Initial Study.<sup>23</sup> Shortly thereafter, CDFW prepared a referral checklist concerning the requirements for the Project’s description and environmental impact analysis.<sup>24</sup> A few months later, the County’s own peer review consultant, Transcon Environmental, provided constructive feedback concerning multiple deficiencies in the analysis in at least two memoranda prepared and sent to the applicant.<sup>25</sup> As will be explained below, many of the deficiencies in the analysis in an early draft of the IS/MND identified in the County’s January 2018 letter, CDFW’s referral checklist, and in the Transcon memoranda nearly two years ago have still not been corrected.

It is not coincidental that, during the comment period for the original IS/MND, both CDFW and Petitioners independently commented on many of the same issues concerning the inadequate project description that were raised early in the environmental review process by County planning staff and the County’s own peer review consultant.<sup>26</sup> These issues have

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<sup>22</sup> See Memorandum from Planning Director Ford to cannabis project applicants, dated April 28, 2017, available at: <https://humboldt.gov/DocumentCenter/View/59020/April-28-2017-Letter-Application-processing-Update-and-Concerns?bidId=>, accessed 12/01/20.

<sup>23</sup> See Exh. D – Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018.

<sup>24</sup> See Exh. E – CDFW CEQA Referral Checklist for Rolling Meadow Ranch Project, dated Jan. 24, 2018

<sup>25</sup> See Exh. F - Transcon Environmental Memorandum re Peer Review, dated July 23, 2018 (“Memo #1”); *see also* Exh. G - Transcon Environmental Memorandum re Peer Review – Project Description Deficiencies, dated July 23, 2018 (“Memo #2”).

<sup>26</sup> See, e.g., CDFW comments on IS/MND, dated August 17, 2020, pp. 2 [“The entire Project area should include the “whole of the action”, including all proposed buildings, new powerlines, borrow pits, access roads, and other areas of new ground disturbance”] 6 [“The Alderpoint Road alternative access should be included in IS/MND analyses as part of the whole of the action, particularly due to 1) the age and condition of the existing Eel River seasonal low water crossing at McCann, 2) uncertain timeline of the County building a permanent year-round bridge at McCann, and 3) potential the Alderpoint Road may be the Project’s primary access point”]; *see also* Petitioners’ comments on IS/MND, dated August 17, 2020, p. 5-10; *see also* Petitioners’ Supplemental comments on IS/MND, dated Sept. 10, 2020, pp. 6-9.

remained problematic because many of the deficiencies, identified early in the environmental review process, were never corrected.

Because an accurate, stable, and finite project description is essential for an adequate analysis of Project impacts under CEQA, the project description deficiencies must first be remedied before a complete assessment of environmental impacts can be conducted in the EIR required for this Project. The following is a non-exhaustive summary list of the persistent problems with the Revised IS/MND's description of the Project:

*(a) Road Improvements*

As Petitioners have previously commented, , as the County's Supervising Planner directed, as the County's peer review consultants recommended in their memoranda, and as CDFW has commented the Project description must include, and provide more information about, all road improvements necessary for Project access. This includes those improvements necessary to comply with the requirements of the Humboldt County Code (namely, the CCLUO and the SRA Fire Safe Regulations).<sup>27</sup>

In January 2018, the County's Supervising Planner instructed the applicant as follows:

A complete inventory of the interior road network with respect to width and improvement levels, both existing and proposed, and identification of improvements required to bring the road network into compliance, together with identification of impacts from completion of the improvements (construction impacts) are necessary to review the transportation effects on the environment in order to make a determination that the project will not have a detrimental effect on the environment.<sup>28</sup>

In mid-2018, the County's peer review consultant recommended that the IS/MND be revised to "[s]how that each road, including its water crossings, are able to support a 75,000-pound apparatus. Include all routes that could be used for access during an emergency. Include any needed changes to water crossings (replacement or upgrade of bridges or culverts)."<sup>29</sup> The County itself provided similar direction in another letter to the applicant sent several months later, in February 2019.<sup>30</sup>

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<sup>27</sup> See HCC, Title III, Div. 11, § 3111-1, et seq. (Fire Safe Regulations); *see also id.* at Title III, Div. 1, Ch. 4, § 314-55.4, et seq.

<sup>28</sup> See Exh. D – Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018, p. 3.

<sup>29</sup> See Exh. G – Memo #2, p. 1. The 75,000-pound threshold specified in this comment is established in the Fire Safe Regulations, HCC § 3112-4.

<sup>30</sup> See Exh. H – NRM Response to County Comments on Draft IS/MND, dated Jan. 22, 2020, pp. 4 [County staff commented "The project description should be updated to include all existing and proposed accesses to the



These issues concerning necessary road improvements were not addressed in the original IS/MND, nor were they fully and accurately addressed in the Revised IS/MND.<sup>31</sup> For example, while the Revised IS/MND adds some information concerning some of the culverts that will need to be replaced and limited road modifications including widening (to the Category 2 standard), the description is silent with respect to the capability of Dyerville Loop Road, McCann Road (and bridge), and private ranch roads towards to support a 75,000-pound apparatus, among other requirements of the Fire Safe Regulations. The Revised IS/MND does not describe these improvements with the specificity required under CEQA and does not address the associated potentially significant impacts.

The new Road Evaluations appendix to the Revised IS/MND reveals that the access roads were evaluated for a “minimum 12-foot width.”<sup>32</sup> However, the proposed 12-foot width standard for Project access roads do not satisfy the minimum 20-foot width requirements under the SRA Fire Safe Regulations promulgated by CalFire pursuant to its authority under Public Resources Code, § 4290.<sup>33</sup> The SRA Fire Safe Regulations apply because, as the Revised IS/MND admits, the Project would be located within a State Responsibility Area (SRA) with fire protection services provided by CalFire.<sup>34</sup> (The SRA Fire Safe Regulations preempt local fire safe regulations but “do not supersede local regulations which equal or exceed minimum regulations adopted by the state.”<sup>35</sup>) The Road Evaluations in Appendix C of the Revised IS/MND do not address whether the Project’s access roads, as improved, would comply with the minimum requirements of the SRA Fire Safe Regulations.

Similar to the requirements of the SRA Fire Safe Regulations, under the County’s Fire Safe Ordinance, a “Category 4” or equivalent (i.e., 20-foot wide, etc.) access road is required.<sup>36</sup> The Project site would likely be considered “mountainous terrain” under the County’s Fire Safe Ordinance.<sup>37</sup> As such, it is possible that the Project could potentially qualify for the exception under the County ordinance to the usual requirement for full Category 4 access road.<sup>38</sup>

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subject parcel. Also, please include the improvements required for the Alderpoint Road access to utilize this route as secondary access”, 14 [summary of necessary additional project description information].

<sup>31</sup> See original IS/MND, pp. 10-11; Revised IS/MND, pp. 11-12.

<sup>32</sup> See Appendix C to Revised IS/MND, p. 3. The original IS/MND did not include substantial evidence to support conclusions regarding the sufficiency of Project access roads. The applicant has attempted to cure this major deficiency through new analysis in Appendix C. Unfortunately, the new analysis does not demonstrate that the Project access roads will satisfy Category 4 and fire safe performance standards.

<sup>33</sup> See 14 C.C.R., § 1273.01(a).

<sup>34</sup> See Revised IS/MND, p. 214.

<sup>35</sup> Public Resources Code, § 4290(c); see also 14 C.C.R., § 1270.04.

<sup>36</sup> See HCC, Title III, Div. 11, §§ 3112-3 [the Category 4 standard, which requires a minimum 20-foot wide two-lane travelled way, generally applies].

<sup>37</sup> See *id.* at § 3111-11 [Definitions].

<sup>38</sup> See *id.* at § 3112-3(b)(c) [exceptions for areas in mountainous terrain, where Category 3 standards may be deemed sufficient]. This assumes that this County Code provision is not preempted and that such an exception for

However, this exception still requires the travelled way to be at least 16 feet wide with a two-foot shoulder.<sup>39</sup> As the Revised IS/MND and the Road Evaluations appendix admit, McCann Road, Dyerville Loop Road, and the private ranch roads providing access to cultivation and processing facilities and to Alderpoint Road are in many areas narrower than the minimum 16-foot width under the County's potentially applicable (and exceptional) Category 3 standard. Consequently, the Project as proposed does not satisfy even the minimum width requirements for access roads under the County Fire Safe Ordinance and the CCLUO.

The Revised IS/MND and Appendix C also show that portions of the Project access roads are at grades that exceed 16%.<sup>40</sup> CalFire's SRA Fire Safe regulations generally prohibit grades exceeding 16% and require mitigation for steeper road sections.<sup>41</sup> These steep portions of the access roads must also conform to requirements in the County Roadway Design Manual.<sup>42</sup> The maximum grade standard in the Roadway Design Manual is 12%.<sup>43</sup>

The Revised IS/MND also call for turnouts on the access road every 1,320 feet.<sup>44</sup> However, the County Roadway Design Manual indicates that turnouts can be up to a maximum 1,000 between turnouts.<sup>45</sup>

The County's Department of Public Works Road Evaluation Report form defines the equivalent of a Category 4 road as follows:

An equivalent road category 4 standard is defined as a roadway that is generally 20 feet in width, but has pinch points which narrow the road. Pinch points include, but are not limited to, one-lane bridges, trees, large rock outcroppings, culverts, etc. Pinch points must provide visibility where a driver can see oncoming vehicles through the pinch point which allows the oncoming vehicle to

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a substantially narrower access road would also be acceptable to CalFire, the agency responsible for ensuring the Project complies with the SRA Fire Safe Regulations.

<sup>39</sup> See *id.* at § 3112-3(b);

<sup>40</sup> See, e.g., Revised IS/MND, p. 81 [identifying "steep roadway" but not revealing the grade at RP6 exceeds 16%]; see also Appendix C to Revised IS/MND, Supplemental Field Investigation, dated January 14, 2019, pp. 3-12; see also *id.*, Supplemental Field Investigation, Appendix B: Access Assessment Photos.

<sup>41</sup> See 14 C.C.R., § 1273.03.

<sup>42</sup> See HCC, § 3112-5.

<sup>43</sup> See County Roadway Design Manual, § 2-315.1, p. 63, available at <https://humboldt.gov.org/DocumentCenter/View/58258/Humboldt-County-Road-Design-Manual---1971>, accessed 12/02/20.

<sup>44</sup> See Appendix C to Revised IS/MND, Access Assessment for RMR Project, p. 3.

<sup>45</sup> See County Roadway Design Manual, Table 2-321.3, p. 64, available at <https://humboldt.gov.org/DocumentCenter/View/58258/Humboldt-County-Road-Design-Manual---1971>, accessed 12/02/20



stop and wait in a 20 foot wide section of the road for the other vehicle to pass.<sup>46</sup>

Under the above definition, and the definitions and descriptions provided in the Humboldt County Code and Roadway Design Manual, Petitioners maintain that McCann Road and Dyerville Loop Road do not qualify as “Category 4” access roads or their equivalent, as required for commercial cannabis operations under the CCLUO and under the County’s Fire Safe Ordinance.<sup>47</sup>

Verifying Petitioner’s prior comments, Steve Salzman, a registered civil engineer, has recently evaluated McCann Road for Category 4 equivalency and has concluded that the road does not meet the applicable criteria.<sup>48</sup> This expert opinion is substantial evidence supporting the conclusion that the proposed McCann Road primary access route does not meet the applicable performance standards for access roads specified in the Humboldt County Code. This conclusion has important implications for the analysis of Project impacts. If the Project is to proceed with McCann Road as the primary access route, these roads will need to be substantially widened in some areas, and paved or seal coated, to be considered the “equivalent” of a 2-lane road where cars can safely travel at 25-40 mph (as required under the County’s Category 4 road regulations).

The Road Evaluations appendix to the Revised IS/MND purports to assess the functional equivalence of the Project’s access roads to the County’s Category 4 standards. However, the analysis relies upon the incorrect standard (Category 2)<sup>49</sup> as wells as intentionally skewed (nonrepresentational) data (e.g., selecting unusually wide and unrepresentative “Road Points,” such as RP 1) to characterize the access road as sufficiently wide with limited modifications. The Road Evaluations also completely omit evaluations of McCann Road and Dyerville Loop Road to the west of RP1, such as at the 10- to 11-foot-wide McCann Bridge and adjacent narrow “pinch point” road sections.

The Revised IS/MND does not reveal that the analysis concerning “fire safe” standards relies on meeting the lower Category 2 road standard. The preparers of the Supplemental Field Investigation in Appendix C do not explain how they arrived at Category 2 as the standard, given the plain language of SRA Fire Safe Regulations, § 1273.01, and the County’s Fire Safe Ordinance, § 3112-3, both of which clearly call for Category 4 roads. The County’s Fire Safe

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<sup>46</sup> See Appendix C to Revised IS/MND, p. 48 [Road Evaluation Report, dated Nov. 16, 2017], emphasis added. This description of the Category 4 road equivalency does not acknowledge that a 2-foot shoulder on either side of the 18- to 20-foot wide paved “travelled way” is also generally required. See County Roadway Design Manual, Table 2-321.1, p. 63.

<sup>47</sup> See HCC § 3112-3 [“All roads shall be constructed to a minimum Road Category 4 road standard of two ten (10) foot traffic lanes, not including shoulders, capable of providing for two-way traffic flow to support emergency vehicle and civilian egress”].

<sup>48</sup> See Exh. C – Steve Salzman letter re Evaluation of the McCann Road, dated Dec. 26, 2020.

<sup>49</sup> See Appendix C to Revised IS/MND, Supplemental Field Investigation, dated January 14, 2019, pp. 1-2.

Ordinance may allow for a minimum Category 3 standard in mountainous area (but not Category 2), if deemed at least equally protective as the state fire safe standard. It makes no sense that one of the largest commercial cannabis projects ever to be proposed in the County would have access roads that do not even meet the minimum 16-foot wide Category 3 standard.

As will be discussed in the section concerning Project impacts, below, given the 16-foot minimum standard, the necessary road improvements would likely be more numerous and would potentially cause greater impacts than disclosed, analyzed, and mitigated in the Revised IS/MND. It is essential for the purposes of providing an accurate and complete impact analysis required under CEQA that all Project-related roadway and associated drainage improvements be specifically described and considered. For example, because biologists identified a species of special concern, the threatened foothill yellow-legged frog, as present adjacent to a culvert on the main access road, the analysis must be revised to describe *all* roadway and drainage improvements necessary for the Project and to consider the associated potential to significantly impact this species. As it stands, the Revised IS/MND contradicts underlying facts concerning the onsite presence of this species and fails to consider all aspects of the Project that could impact this and other special-status species.

The Revised IS/MND admits that access via Alderpoint Road will be necessary in the near-term for year-round operations and on an ongoing basis for emergency access.<sup>50</sup> And yet this access road and the undescribed necessary improvements thereto were artificially carved out of the Project as described and analyzed in the original IS/MND with a hollow claim of “independent utility” (i.e., that the road and the bridge will be upgraded for ranch purposes).<sup>51</sup> This claim of independent utility is not consistent with how this concept, and the concept of the “whole of the project” are defined under CEQA.<sup>52</sup>

Unlike the situation in *Banning Ranch*, the applicant here is the proponent for both the Project and the near simultaneously proposed “upgrades” to the private roads and bridge accessing Alderpoint Road. Further, except for the short easements necessary to connect ranch roads to Alderpoint Road, the applicant owns all of the private roads that would provide the Project with access either to the west or to the east. The Revised IS/MND admits that the applicant intends to upgrade and use the private ranch roads to Alderpoint Road for Project access – in fact, year-round operations is currently impossible without the use of this

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<sup>50</sup> See, e.g., Revised IS/MND, p. 13 [description of Project operations].

<sup>51</sup> The Revised IS/MND at least acknowledges necessary access road improvements (albeit to a limited extent because the improvements are not based on a minimum potential 16-foot wide standard).

<sup>52</sup> Compare *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 [holding park and access road would not cause a neighboring proposed development to commence because in part each project had independent utility] with *Del Mar Terrace Conservancy v. City Council* (1992) 10 Cal.App.4th 712, 732 [“[p]iecemealing proposed highway improvements in separate environmental statements should be avoided”], quoting *Daly v. Volpe* (3d Cir. 1975) 514 F.2d 1106, 1109, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564.



alternative access route. As such, the private roads connecting the Project to Alderpoint Road are necessary for the Project and all necessary improvements to those roads to bring them up to Category 4 and Fire Safe standards (as well as provide suitable drainage) are a “consequence” of the Project and must be described and analyzed in the required EIR.

Because the McCann Road and Dyerville Loop Road do not qualify as Category 4 roads or the equivalent, and because bringing these access roads up to required standards would cause multiple significant impacts, Petitioners urge the County and applicant to consider a project alternative that would utilize Alderpoint Road as primary access. This project alternative should be considered in the EIR required for this Project.

In summary, all necessary improvements to the Project’s access roads, including all improvements to drainage features such as culverts, should be designed so that they comply with all minimum regulatory requirements, including the requirement for a Lake & Streambed Alteration Agreement (“LSAA”) through CDFW.<sup>53</sup> The improvements should also adhere to locally adopted recommendations intended to protect the environment.<sup>54</sup> The details of the access road and related drainage improvements must be described in the required EIR.

*(b) Buffers from Watercourses and Wetlands.*

CDFW has previously commented that all greenhouses should be set back at least 200 feet from Class I and Class II watercourses, at least 150 feet from wetlands, and at least 200 feet away from the Eel River.<sup>55</sup> The County’s peer review consultant advised “[t]he setbacks from waterways described in the project description should be revised to match the setbacks described in the biological report and to adhere to the setbacks requested in the CDFW referral.”<sup>56</sup> However, the Project design includes greenhouses that are barely more than 100 feet from the nearest Class I watercourse, one structure that is literally on top of a wetland, and several greenhouses that appear to be within 200 feet of the Eel river.<sup>57</sup> Thus, the description of the proposed Project appears to be inconsistent with regulatory and permit requirements for water resource buffers / setbacks. By describing a proposed Project that is not consistent with applicable regulatory requirements for setbacks, the Revised IS/MND fails to present an accurate view of the Project and its impacts. The revised analysis should take into consideration the necessary relocation of Project facilities outside of setback areas – if any Project facilities cannot adhere to both setback requirements and the requirement to be

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<sup>53</sup> See Exh. I - Letter from CDFW re LSAA required Mattole River Cannabis Project [LSAA required for replacement of undersized culvert].

<sup>54</sup> See Five Counties Salmon Conservation Program, A Water Quality and Stream Habitat Protection Manual for County Road Maintenance in Northwestern California Watersheds (2002), available at: [http://www.5counties.org/docs/roadedu/5c\\_roads\\_manual.pdf](http://www.5counties.org/docs/roadedu/5c_roads_manual.pdf), accessed 11/24/20.

<sup>55</sup> See Exh. E – CDFW CEQA Referral Checklist for Rolling Meadow Ranch Project, dated Jan. 24, 2018, pp. 2-3.

<sup>56</sup> See Exh. G – Memo #2, p. 3.

<sup>57</sup> See Revised IS/MND, pp. 143-145 [Figures 40 – 43].

located on prime agricultural soils outside the TPZ, then those Project facilities should be removed from the Project description.

*(c) Water use and storage.*

The County's peer review consultant recommended the Revised IS/MND "[p]rovide detail on groundwater proposed use, including probable depth to water (based on similar wells in similar strata) and pumping rate per day during peak use (not just annual estimates)."<sup>58</sup> Later, the County's planning staff stated that the analysis lacked "sufficient detail to determine if the water from the wells would be considered connected and require a current documented water right or if the water would be considered a non-diversionary source." The information repeatedly requested by the County was not included in the Revised IS/MND.<sup>59</sup> The revised analysis must describe the Project's peak groundwater use and must consider this demand when analyzing potentially significant impacts to surface water resources, riparian habitat, and wildlife.

*(d) PG&E & Backup Power.*

The Revised IS/MND should have described "[t]he route, approximate number of new poles, time of construction, vegetation clearing including tree removal, grading, temporary road construction to access each pole site, etc."<sup>60</sup> However, the Revised IS/MND did not describe the details of this "connected action" with the specificity requested by the County and required under CEQA.<sup>61</sup> The revised analysis must describe with particularity the electric power and back up power facilities needed for the Project.

*(e) Hours of Operations and Employee Information.*

The peer review consultant recommended that the Revised IS/MND "[i]nclude hours of operation on site as well as typical commute times with and without the McCann Bridge available" and that it "[s]pecify commute routes for each scenario." The Revised IS/MND contains inconsistent information concerning the hours (and season) of operation, and commute times and routes were not specifically described and analyzed in the Revised IS/MND (other than with generalized statements).<sup>62</sup>

The Revised IS/MND was supposed to describe the "[n]umber of employees, likely residences of employees and plans for parking at 'park and ride' shuttle pickup locations, the

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<sup>58</sup> See Exh. G – Memo #2, p. 2.

<sup>59</sup> See, e.g., Revised IS/MND, pp. 14 [no information concerning the peak pumping rates], 197 [reliance on "letters" from Fisch Drilling re hydrologic connectivity with no further substantiation].

<sup>60</sup> See Exh. G – Memo #2, p. 2.

<sup>61</sup> See Revised IS/MND, pp. 51 [electric lines will be buried along access road], 29 [Electric Figure 14], 182.

<sup>62</sup> See, e.g., Revised IS/MND at p. 55.



number of shuttles per day, parking for shuttles on-site, etc.”<sup>63</sup> As we previously noted, the IS/MND provides inconsistent information concerning the number of employees (both before and after the McCann bridge is replaced), and lacks essential information with regard to the shuttle parking area and plans for parking.<sup>64</sup> The “existing turnaround” depicted in the Revised IS/MND does not currently exist and the topography at Facilities #1 and #2 may not support a turnaround at the proposed location.<sup>65</sup>

(f) *Slopes.*

The Revised IS/MND includes inconsistent information concerning the slopes underlying the Project greenhouses and other facilities.<sup>66</sup> These discrepancies need to be resolved through adequate site surveys and the slopes for all greenhouses must be accurately reported in the required EIR. To be consistent with CCLUO, the slopes underlying the Project facilities may not exceed 15%.<sup>67</sup>

(g) *Construction practices.*

The peer review consultant asked a number of pertinent questions, which have been left unaddressed. These questions include the following:

How will you get heavy equipment to the site? What size and type of equipment will be used and approximately how long will each be in use? How many employees will be present during construction? How do they get there? What bathroom facilities and drinking water supplies will be available during construction? What are the hours of construction?”<sup>68</sup>

The section in the Revised IS/MND concerning Project construction does not answer many of these pertinent questions or provide the required level of detail.<sup>69</sup> The revised analysis must provide the information concerning the construction process for this Project.

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<sup>63</sup> See Exh. G – Memo #2, p. 2.

<sup>64</sup> See Petitioners’ initial comments on the IS/MND, dated August 17, 2020, at p. 10.

<sup>65</sup> See Revised IS/MND at p. 23 [Figure 8. Facility #1, #2 Details].

<sup>66</sup> Compare Revised IS/MND, p. 179 with Appendix to Revised IS/MND, Botanical Survey Report, pp. 4-5 [report showing some areas underlying project greenhouse footprints exceed 15% slope].

<sup>67</sup> Humboldt County Code, § 55.4.6.4.1

<sup>68</sup> See Exh. G – Memo #2, p. 2.

<sup>69</sup> See Revised IS/MND, pp. 11-12.

**2. Failure to Identify Necessary Water Right for Project Wells or an Alternative Water Source**

The Revised IS/MND fails to identify the water right required for (1) pumping what is very likely hydrologically connected groundwater from the three Project wells or (2) for any as yet unidentified alternative sources of water for the Project's considerable year-round water needs. This failure violates applicable Humboldt County Code requirements under both cannabis ordinances.<sup>70</sup> As discussed further below, there is substantial evidence supporting the claim that the groundwater underlying the Project site is likely hydrologically connected to surface waters, such as wetlands, streams, creeks, and tributaries to the Eel River. Because well pumping has the potential to divert from surface waters a water right may be required.<sup>71</sup>

The EIR required for this Project must identify any and all water rights required to meet the Project's estimated annual water demands and require as a condition of approval, that the applicant apply for and obtain such water rights. If the source of water is uncertain, then the EIR must also evaluate alternative sources of water and address any water right(s) that may be required for such sources.

**C. The Revised IS/MND is the Result of Piecemealed Environmental Review.**

**1. Project Wells, as Part of the Whole of the Project, Should Not Have Been Approved Prior to Completion of Environmental Review.**

Carving up a larger project in order to claim a CEQA exemption for any of its components is prohibited under CEQA.<sup>72</sup> Courts have given the term "project" under CEQA "a broad interpretation and application to maximize protection of the environment [Citations]."<sup>73</sup> This broad interpretation ensures that CEQA's requirements "'cannot be avoided by chopping up proposed projects into bite-size pieces' which, when taken individually, may have no significant adverse effect on the environment."<sup>74</sup> Accordingly, if infrastructure, such as roads or utility lines, are required for a proposed project, those project components must be described and considered in the environmental impact analysis as part of the "whole of the project."

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<sup>70</sup> See CMMLUO, § 55.4.8.2.1; see also CCLUO, § Section 55.4.12.1.

<sup>71</sup> See Water Code, § 1200; see also Paul Kibel and Julie Gantenbein, Fisheries Reliant on Aquifers: When Groundwater Extraction Depletes Surface Water Flows, Univ. of San Francisco Law Review, Vol. 54, Issue 3, pp. 478-480.

<sup>72</sup> See PRC § 21159.27 ["A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article"].

<sup>73</sup> *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223 [holding road widening was part of proposed project], quoting *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1189 and citing *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643, 653.

<sup>74</sup> *Ibid.*



During the period within which the application for the Project's permits has been pending, the applicant installed the three wells, relying on a separate ministerial process that would consider these water supply wells, essential for the Project, as somehow independent. These permits were apparently granted and the wells drilled, without any consideration to their connection to the larger Project and the water demand that will be required for Project operations. According to a letter from Planning Director John Ford to applicants for commercial cannabis projects, installing such project infrastructure before use permits are granted is a violation of the CMMLUO.<sup>75</sup> In addition, under the CCLUO, no ministerial permits may be granted for improvements.<sup>76</sup>

2. Improvements to Access Roads Should Not Have Commenced Prior to Completion of Environmental Review and Project Approval.

According to documents in appendices to the Revised IS/MND, some of the access roads at Rolling Meadow Ranch were "rocked" using rock from the on-site quarry.<sup>77</sup> As with the installation of the three Project wells in 2019, making these improvements to the access roads prior to issuance of permits for the Project was a violation of the CMMLUO. As proved to be true during this Project's permitting and environmental review process, roadwork prior to environmental review for the Project can result significant and unmitigated environmental impacts.<sup>78</sup>

**D. Substantial Evidence Supports Several Fair Arguments that the Project May Result in Significant Environmental Impacts**

Substantial evidence presented in this letter, the supporting expert comments, documents referenced in this letter, and in prior comments from Petitioners and others support a fair argument that the Project will have significant direct, indirect and cumulative environmental impacts.

1. Downplayed Traffic Safety Hazard Impacts

Because the proposed Project access roads (Dyerville Loop Road, McCann Road, and private ranch roads to Alderpoint Road) do not meet the required performance standards (i.e.,

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<sup>75</sup> See Memo from Director Ford to Commercial Cannabis Applicants, dated April 28, 2017 ["Starting cultivation activity, including related land modifications (i.e. grading), construction, and improvements, without a permit, for either a new cultivation or expansion of an existing site, is a violation of the CMMLUO"].

<sup>76</sup> See HCC, § 55.4.3.12 ["No ministerial permit shall be granted for site development activities, including but not limited to grading or building permits, related to any Commercial Cannabis Activity in advance of issuance of the Zoning Clearance Certificate, Special Permit, or Use Permit required under this section"].

<sup>77</sup> See Appendix I to Revised IS/MND, Assessment of Road Improvement and Maintenance Activity Impacts to Botanical Resources (Oct. 2020), pp. 3-4, 11.

<sup>78</sup> See Revised IS/MND, pp. 146-147 [describing impacts to wetland features during 2019 road improvement activities].

are not Category 4 roads or their equivalent and do not meet applicable Fire Safe standards) and because the proposed Project includes roadways of varying widths with multiple blind curves and obstructed pinch points, the level of traffic generated by the proposed Project, especially when combined with the existing local traffic baseline traffic, will create traffic safety hazards.

Under the County Roadway Standards Manual, “when varying roadway widths are considered, the effect upon safety must be evaluated.”<sup>79</sup> In spite of this specific requirement, and the independent requirements for traffic safety impact analysis under CEQA, the Revised IS/MND fails to evaluate the traffic safety hazards associated with designing Project access roads to the Category 2 standard.<sup>80</sup>

## 2. Unacknowledged Public Services Impacts

While the Revised IS/MND acknowledges that “[t]he isolated location can also pose some limitations in terms of public services,” it downplays the site access challenges that would be encountered by police, fire, and other emergency services.<sup>81</sup> The analysis of impacts to public services does not provide the level of detailed impact analysis that the County has repeatedly requested.

In January 2018, a County planner advised the applicant to improve the discussion of improvements that would be necessary to bring Project roads up to fire safe standards.<sup>82</sup> Shortly thereafter, the County’s peer review consultant recommended that the applicant:

Modify project description to include compliance with Fire Safe Ordinance, including but not limited to internal ranch road standards for width, surface, and grade, water crossings to the minimum load standards, as well as minimum water supply requirements. Add these elements to the environmental analysis in all sections.<sup>83</sup>

Transcon also recommended the following revisions to the draft IS/MND:

Please describe how the interior ranch roads will be improved to meet fire safe standards. Existing roads analysis indicates that fire safe standards are not met. Demonstrate that off-ranch access routes (McCann Road and Alderpoint Road as

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<sup>79</sup> County Roadway Design Manual, § 2-321.2, p. 63, available at <https://humboldt.gov.org/DocumentCenter/View/58258/Humboldt-County-Road-Design-Manual---1971>, accessed 12/02/20.

<sup>80</sup> See Revised IS/MND, p. 224 [concluding, without supporting analysis and substantial evidence, that “[t]his project will not substantially increase hazards due to a design feature”].

<sup>81</sup> See Revised IS/MND, pp. 214-216.

<sup>82</sup> See Exh. D – Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018. P. 2.

<sup>83</sup> See Exh. F – Memo #1, p. 11.



well as roads on adjacent property) meet fire safe standards on all portions, including river crossings, that may be required for fire suppression by Cal Fire firefighting resources.<sup>84</sup>

These instructions from the County's peer review consultant, which were presumably sent to the applicant,<sup>85</sup> could not be more clear, logical, and sound. Yet, the Revised IS/MND relies upon the unsupported assumption that the Project access roads meet "fire safe standards" to justify the conclusion that the Project will not result in impacts related to fire suppression and police services.<sup>86</sup> This factually unsupported assertion, however, does not provide the information required to confirm the Project's compliance with the Fire Safe Ordinance.

As reported in the road evaluation conducted by the civil engineer retained by Petitioners, McCann Road from the McCann Bridge to the guard gate at Rolling Meadow Ranch and Facilities #1 and #2 does not meet the County's Category 4 or equivalent standards.<sup>87</sup> Because this route will provide the primary access to the Project site, it is imperative that McCann Road satisfy applicable fire safe standards. If McCann Road cannot feasibly satisfy Category 4 or equivalent standards, then the route to Alderpoint Road should be considered as for primary access.

The Revised IS/MND states that "[d]uring the winter when the existing low water McCann Bridge is inaccessible and in the years before the new McCann Bridge is built, the project will use the Alderpoint road to access the project sites."<sup>88</sup> The analysis of impacts to public services, however, does not consider the improvements to the access route to Alderpoint Road that would be necessary to bring those roads up to applicable SRA fire safe standards.

The IS/MND prepared for the CMMLUO assumed for purposes of impact analysis that all cannabis projects processed under Ordinance 1.0 would comply with SRA fire safe regulations and all local and state access road performance standards.<sup>89</sup> Repeatedly in the analysis, the County relied upon this assumption to determine that the CMMLUO, as a program, would not

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<sup>84</sup> See *ibid.*

<sup>85</sup> Note: Memo #1 and Memo #2 were among the documents produced by the County in response to Petitioners' request for public records. The County did not produce any documents that verify the memoranda were sent to the applicant or otherwise relayed. Petitioners assume that the County sent both Transcon memoranda to the applicant's consultant, NRM.

<sup>86</sup> See *ibid.*

<sup>87</sup> See Exh. C – Road Evaluation by Steve Salzman, p. 12.

<sup>88</sup> See Revised IS/MND, p. 214.

<sup>89</sup> See CMMLUO IS/MND, p. 31.

cause significant environmental impacts. For example, with respect to potential impacts to public services, the CMMLUO IS/MND states:

Under the draft ordinance, larger cultivation operations will be subject to discretionary permits where neighboring land owners will be given an opportunity to comment and be notified of pending permit decisions. This will provide opportunity for dialogue and mitigation through careful siting and operational restrictions to address potential impacts on public services. It is anticipated that through mitigation, the impacts on public services including fire protection, police protection, schools, parks, and other public facilities, will be reduced to a less than significant impact.<sup>90</sup>

Petitioners hope that, in the case of the presently proposed large cultivation operation, the assumptions made in the above statement and elsewhere in the CMMLUO IS/MND prove to be true. As currently proposed, however, this Project does not meet the assumed “careful siting and operational restrictions” that will “address potential impacts on public services” – it is inappropriate to site an operation that, between cultivation and processing facilities, exceeds 300,000 square feet in size in a remote wildland area with access roads that do not even currently meet a Category 2 standard, and would barely meet that improperly lax standard with the proposed improvements (except for the steeper than 16% grades and infrequent turnouts).

Similarly, when certifying the EIR for the CCLUO, the Board of Supervisors approved a finding that relies on the assumption that all commercial cannabis projects approved under “Ordinance 2.0” would meet the “Category 4 or equivalent” access road performance standard to support its conclusion that impacts to public services, including wildfire response, would be less than significant.<sup>91</sup> The Final EIR for the CCLUO made the following assumptions concerning compliance with Category 4 access road standards:

[W]here access to a site is provided by roads not meeting the Category 4 standard, the commercial cannabis operation would be subject to a Special Permit and preparation of a report prepared by a licensed engineer evaluating whether the design, condition, and performance of all necessary road segments are currently capable of supporting increases in traffic volume created by the site, in addition to the existing traffic using the road(s). The report would detail all substandard conditions and prescribe measures that would be taken to

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<sup>90</sup> See *id.* at p. 29.

<sup>91</sup> See Bd. of Supervisors Resolution 18-40, p.10 [“Compliance with existing building, electrical, and fire code regulations as well as roadway access performance standards set forth in the proposed ordinance would provide a sufficient access for fire prevention and emergency response”].



achieve compliance with the relevant road standards and objectives, or the same practical effect.<sup>92</sup>

Further, in response to public comments, the County asserted in its Final EIR for the CCLUO that “[t]he DEIR identifies that existing and future commercial cannabis operations would be required to meet the County’s Category 4 road standards and the emergency access standards set forth in Chapter 10 – Fire Safe Regulations of the County Code.”<sup>93</sup> The analysis of commercial cannabis project impacts to public services relied upon adherence to this performance standard.

In contravention of the assumptions relied upon in connection with approving the CMMLUO and CCLUO concerning compliance with access road performance standards, this Project, as proposed, will only satisfy only a Category 2 access road standard along the primary access road to the Project’s clustered facilities (at most, given the steep grades, unpaved roads, blind corners, and infrequent turnouts) for one of the largest commercial cannabis projects ever to be proposed in the County. The Revised IS/MND does not explain how satisfying this lower performance standard for this especially large Project in a remote and difficult to access area will result in less than significant impact to public services.

The Revised IS/MND includes the completely gratuitous and unsupported statement: “In its current state the cannabis industry is at higher risk for security to be an issue and place a greater demand on law enforcement services provided by the County Sheriff’s Department.” This unsupported assertion is completely beside the point of the necessary analysis. The environmental review required under CEQA must evaluate this Project’s environmental impacts. The fact that other activities also have impacts on police services is irrelevant and should not be used to minimize this Project’s potentially significant impacts.

The Revised IS/MND, even after pre-release review and comment and after post-release public comment, *still* does not provide the information required (and specifically requested) to demonstrate that the Project will have adequate access for fire suppression and police equipment and personnel.<sup>94</sup> Because the Project, as currently described and defined, will not have Category 4 or equivalent roads and a licensed engineer has not evaluated whether the access roads will perform to the same practical effect, the conclusion that the Project will not have significant public services impacts is unsupported. The analysis concerning the Project’s

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<sup>92</sup> See Final EIR for CCLUO, Revisions to the DEIR, p. 3-21 – 3-22; *see also id.* at p. 2-232 [response to comment 01-10].

<sup>93</sup> See *id.* at pp. 2-309 – 2-310 [responses to comments I17-2, I17-8], 2-381 [responses to comments I31-14, I31-15], 2-385 – 2-386 [response to comment I31-35], *emphasis added*.

<sup>94</sup> See Exh. G, Memo #2, p. 1 [“specify how ranch roads will be improved to meet fire safe ordinance requirements. Show that each road, including its water crossings, are able to support a 75,000-pound apparatus. Include all routes that could be used for access during an emergency. Include any needed changes to water crossings (replacement or upgrade of bridges or culverts)].

potentially significant impacts to public services must be revised in the required EIR and recirculated.

### 3. Unsupported Assumptions Regarding Public Utility Impacts

The proposed extension of electricity power lines to Project facilities is neither described with particularity in the Revised IS/MND nor are the associated impacts analyzed. As the County's peer review consultants pointed out, because

PG&E would not construct these lines 'but for' the project [...] PG&E line construction is a connected action and must be reviewed at least at the planning level in this ISMND. The route, approximate number of new poles, time of construction, vegetation clearing including tree removal, grading, temporary road construction to access each pole site, etc., needs to be disclosed and analyzed in this ISMND.<sup>95</sup>

The Revised IS/MND does not provide the requested detailed information concerning utility line extension to Project facilities. Additionally, despite a request from the County's peer review consultant, the applicant still has not produced a letter from PG&E confirming that utility infrastructure will be extended to the Project facilities.<sup>96</sup>

### 4. Disregarded Water Supply and Related Impacts

Petitioners have previously commented that the Project's heavy reliance on groundwater could cause potentially significant impacts to hydrologically connected aquatic resources.<sup>97</sup> The Revised IS/MND attempts to bolster an otherwise unsupported analysis of Project impacts to groundwater resources and hydrologically connected surface water resources. The only further support offered for the assertion that the wells will rely solely on groundwater in a hydrologically disconnected "perched aquifer" is a conclusory letter from the applicant's well driller that has now mysteriously appeared.

#### (a) The Conclusions in the Revised IS/MND Regarding "Hydrologic Connectivity" Between Groundwater and Surface Water Are Unsupported.

In January 2018, during his review of the "second Initial Study (IS) submittal," dated December 16, 2017, County Supervising Planner Steve Werner stated that:

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<sup>95</sup> See *ibid.*

<sup>96</sup> See Exh. F, Memo #1, p. 8 ["Provide a letter or communication from [PG&E] describing how they plan to provide power to each site"]; see also Revised IS/MND, pp. 10, 182, 229, 237; see also generally Appendix to Revised IS/MND.

<sup>97</sup> See, e.g., Petitioners' initial comments on original IS/MND, dated Aug. 17, 2020, pp. 3, 15; see also Petitioners' Supplemental Comments on Original IS/MND, dated Sept. 10, 2020, pp. 15-18.



The conclusion of the IS with respect to impacts on ground water supplies cannot be supported with the facts provided. Consultation with an engineering geologist is needed to fully document the groundwater supply and impact from the proposed cultivation. It needs to be demonstrated that the wells are not hydrologically connected to the water flow of the river.<sup>98</sup>

Also in January 2018, CDFW commented in its capacity as Trustee Agency that:

If the source is surface water (spring, stream, or hydrologically connected pond or well) CDFW recommends that the applicant notify our Department, pursuant to Fish and Game Code Section 1602, of all unpermitted points of diversion located on the parcel or provide a copy of the nonjurisdictional letter issued by CDFW.<sup>99</sup>

The County's peer review consultants also recognized the need for the applicant to substantiate the claim that the wells are hydrologically disconnected from surface water supplies, and told the applicant to provide this required substantiation in July 2018, more than two years before the Revised IS/MND was finalized and reduced for public review. Specifically, the consultant stated:

Please refer to County's letter dated January 15, 2018 regarding substantiating the claim that the wells are not hydrologically connected to the water flow of the river. We see the letter in the Appendix from Fisch Drilling, however, the County will want to see testing or a technical study to document the existing groundwater supply and anticipated impacts as a result of the new wells and anticipated usage; and to demonstrate that all of the wells are not hydrologically connected. The letter from Fisch drilling needs to be substantiated. CDFW is the Agency [that] determines if the proposed wells will have connectivity with onsite water sources.<sup>100</sup>

And again, in February 2019 comments to the applicant, County planning staff directed the applicant to "[d]escribe the hydrological connectivity of the wells proposed for irrigation use."<sup>101</sup> In September 2020, after the Planning Commission decided to continue its consideration of the Project for approval, a CDFW official once again commented that the

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<sup>98</sup> See Exh. D – Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018, p. 5.

<sup>99</sup> See Exh. E – CDFW CEQA Referral Checklist for RMR Project, dated Jan. 24, 2018, p. 2.

<sup>100</sup> See Exh. F – Memo #1, p. 9, emphasis added. The letter from the County to the applicant dated January 15, 2018 was not produced in response to Petitioners' initial request for public records. Petitioners obtained this letter through a subsequent request for public records that requested this document specifically.

<sup>101</sup> See Exh. H – NRM Response to County Comments on Draft IS/MND, dated Jan. 22, 2020, p. 5.

IS/MND lacks the required substantiation for the assertion that the Project wells are not hydrologically connected to surface waters.<sup>102</sup>

Despite repeated requests for required factual support and transparent analysis for the assertion that the Project wells are hydrologically disconnected from surface waters, the original IS/MND relied upon a mischaracterization of a February 2018 letter from Fisch Drilling as the *sole* support for the conclusion that the Project will have no significant impacts to groundwater or to surface water supplies.<sup>103</sup> Similarly, according to the August 20, 2020 staff report to the Planning Commission, the determination in the Revised IS/MND that the three Project wells are hydrologically disconnected from surface waters is based *solely* on the single inconclusive and unsupported letter, dated February 15, 2020, from Fisch Drilling.\*<sup>104</sup> This letter, which was sent to the County *before* the three project wells were drilled, states:

These wells will be completed in the Franciscan Sandstone; the wells will most likely be drilled into a perched bedrock with little to no hydraulic connection to any surface water or any part of a larger shallow homogeneous aquifer. [¶]  
Considering the depth of the well it appears to fall in line with the guide lines of a nonjurisdictional well of similar depth in the surrounding area.<sup>105</sup>

Again, despite the County's and CDFW's clear direction and repeated specific comments on the subject, hydrologic connectivity of the Project wells to surface waters has *never* been properly investigated by a engineering geologist nor has a substantiating report been prepared. The Revised IS/MND not only fails to provide the required (and specifically requested) substantiation, but now introduces another letter from the Project applicant's drilling consultant, Fisch Drilling (supposedly dated April 6, 2020 <sup>106</sup>), as evidence supporting its claim that the wells are not hydrologically connected to surface water.

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<sup>102</sup> See Exh. J – Email from Greg Mc'Onnell at CDFW to County planner Meghan Ryan, dated September 10, 2020 [commenting that the IS/MND lacks substantiation for the assertion that the Project wells are not hydrologically connected to surface water].

<sup>103</sup> See original IS/MND, pp. 152, 198.

<sup>104</sup> See Staff Report to Planning Commission for August 20, 2020 meeting, p. 4.

\*Note: Again, if the April 2020 Fisch Drilling letter existed prior to the release of the staff report, then why does the staff report only cite to the February 2018 letter from Fisch Drilling? Petitioners' are understandably skeptical of this new self-serving and unsupported evidence from the applicant's well driller.

<sup>105</sup> See Appendix E to Staff Report, Letter from David Fisch at Fisch Drilling to Andy Machata, dated Feb. 15, 2018, emphasis added.

<sup>106</sup> The April 2020 letter from Fisch Drilling was not cited in the original IS/MND and was not cited in the staff report for the August 20, 2020 Planning Commission meeting. Petitioner submitted a request to public records to the County on September 4, 2020 and the second letter from Fisch Drilling was not produced by the County in response to this request. If the second letter from Fisch Drilling existed prior to the initial release of the original IS/MND and prior to Petitioners' PRA request, it presumably would have been included as an exhibit to the original IS/MND and would have been produced in response to Petitioners' PRA request. If this matter is pursued in



According to David Fisch at Fisch Drilling who drilled the wells “The wells were completed in the Franciscan Sandstone. The wells are drilled into perched bedrock with no hydraulic connection to any surface water or any part of a larger shallow homogeneous aquifer. [¶] Considering the depth of the well, it appears to fall in line with the guidelines of a non-jurisdictional well of similar depth in the surrounding area”.<sup>107</sup>

The Revised IS/MND does not describe the qualifications of Mr. Fisch to make the determination regarding hydrologic connectivity nor does it describe the methods Mr. Fisch used to make this determination. The Revised IS/MND does not include any other substantiation for the conclusions reached in the letter and quoted in the analysis. This unsubstantiated and unsupported opinion does not constitute substantial evidence supporting the conclusion that the Project will “clearly” have no significant impacts to groundwater supplies, surface waters, or to aquatic resources, as required under CEQA’s “fair argument” standard of review. Thus, even as corrected with the new evidence (i.e., the second conclusory letter from Fisch Drilling), the Revised IS/MND does not and cannot provide substantial evidence necessary to support the conclusion that the Project’s heavy sole reliance on year-round groundwater pumping will not cause any significant impacts to surface waters (e.g., the Eel River, springs, streams, and wetlands), aquatic resources, and species dependent upon such waters and resources.

Petitioners retained hydrogeologists to evaluate the sufficiency of the Initial Study analysis of impacts that may be caused by Project-related groundwater withdrawal. The experts at PWA have concluded that 1) the sustained yield of these wells and their potential hydrologic connection to nearby surface water features and aquatic resources has never been properly investigated and that 2) the short-term pump tests for the three Project wells were not conducted during the appropriate dry season defined in County regulations.<sup>108</sup>

(b) The Potential for Groundwater Pumping to Cause Impacts to Surface Waters and Aquatic Resources Must Be Analyzed and Either Avoided or Mitigated.

According to the thorough report on groundwater resources in the Eureka area (including within the Project area) prepared by the United States Geological Survey (“USGS”) in

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litigation, Petitioners will seek discovery concerning the origin and date of submission of the second Fisch Drilling letter to the County.

<sup>107</sup> See Revised IS/MND, p. 197 [purporting to quote the letter from Fisch Drilling], *see also* Appendix E to IS/MND, second letter from Fisch Drilling with conclusory statements re hydrologic conductivity.

<sup>108</sup> See Exh. B, PWA Memo, pp. 3-4.

1959, the fractured Franciscan Sandstone formation underlying much of the Project site is likely to bear relatively little groundwater.<sup>109</sup> Indeed,

The oldest rocks exposed [within the Eureka area] are undifferentiated sedimentary and metamorphic rocks of the Franciscan and Yager formations of Jurassic and Cretaceous age. These rocks crop out in the hills and mountains along the east and south edges of the area and underlie most of the mountainous drainage area. However, they do not yield appreciable amounts of water to wells.<sup>110</sup>

The above information directly refutes the unsupported assertions in the Revised IS/MND that 1) the Project's three wells can sustainably pump over 4,000,000 gallons a year without depleting groundwater resources and without diverting from surface waters such as tributary streams and wetlands and 2) the Project will have no significant impact on groundwater supplies.<sup>111</sup> Furthermore, to the extent the Project's use of limited available groundwater depletes or adversely affects the quantity and quality of surface water wetlands, streams, and tributaries (e.g., to adjacent Beatty Creek or to the downslope Eel River), the use of Project wells may also cause significant impacts to biological resources (e.g., fish, birds, and other wildlife) that depend upon those impacted surface waters (discussed further below).

The USGS further found what relatively little groundwater there is to be found in Franciscan formations "occurs along fault zones, in landslide debris, and in joints" and that this water is "discharged in springs or through seepage zones."<sup>112</sup> This finding, while admittedly dated, constitutes substantial evidence that the groundwater the Project will depend upon is hydrologically connected to surface waters and that extracting this groundwater may reduce the discharge of groundwater underlying the three Project well sites to nearby "springs and seepage zones." The geology of the area has not changed appreciably since the report was written in 1959. Further, given increased water demand, prolonged droughts, and the effects of climate change, groundwater availability in these zones cannot possibly have improved.

The applicant and County can use available modelling tools and field techniques to determine or estimate whether and to what degree any of the three Project wells can potentially impact surface waters. For example, USGS Circular 1376 addresses situations where groundwater pumping from wells having a hydrological connection to surface waters may cause

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<sup>109</sup> See generally USGS (prepared in cooperation with the California Department of Water Resources), Water-Supply Paper 1470, Geology and Ground-Water Features of the Eureka Area Humboldt County, California (1959), pp. 1, 3-4, 7, 11-12, available at: <https://pubs.usgs.gov/wsp/1470/report.pdf>, accessed 10/01/20.

<sup>110</sup> See *id.* at p. 12; see also *id.* at p. 13 [Table 1, stating Franciscan Sandstone of the Jurassic age is "Consolidated; not tapped by wells, probably contains *some* water in fractures and in deeply weathered rocks," emphasis added].

<sup>111</sup> See Revised IS/MND, pp. 196-198.

<sup>112</sup> See USGS Water Supply Paper 1470, *supra*, p. 14.



a decline in those surface waters.<sup>113</sup> The circular recommends several modeling and field techniques that can be used to determine whether groundwater pumping from a specific well can potentially impact nearby surface waters.<sup>114</sup> The analysis of this Project's impacts to surface waters should employ modeling and investigation, not rely on speculation and the summary self-serving and unqualified conclusion of the applicant's well drilling company.

USGS Circular 1376 summarizes the "Components of streamflow depletion" as follows:

Both captured groundwater discharge and induced infiltration of streamflow result in reductions in the total rate of streamflow. Streamflow depletion, therefore, is the sum of captured groundwater discharge and induced infiltration. Captured groundwater discharge is often the primary component of streamflow depletion, but if pumping rates are relatively large or the locations of withdrawal relatively close to a stream, then induced infiltration may become an important component of streamflow depletion.<sup>115</sup>

The required EIR must carefully examine all the ways in which the Project's three Wells can cause streamflow depletion.

Because there is evidence of a hydrologic connection between Project wells and surface water features, the Project may be subject to forbearance of groundwater pumping during certain times of year under the State Water Resource Control Board's Cannabis Cultivation Policy.<sup>116</sup> Without an alternative water supply, this forbearance policy may preclude the Project from operating year-round.

Staff has recommended informal, unenforceable mitigation in the event the three wells cannot provide sufficient supply: to either (1) find a secondary source of water or (2) curtail the size of the Project.<sup>117</sup> Even if such statements in a staff report could be construed as an enforceable mitigation measure, such a measure cannot serve as a substitute for the Revised IS/MND's deficient analysis of impacts to water supply. In the seminal *Vineyard Area Citizens* case, the California Supreme Court, rejected the argument that a similar adopted mitigation

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<sup>113</sup> See generally USGS Circular 1376, Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow, available at: [https://pubs.usgs.gov/circ/1376/pdf/circ1376\\_barlow\\_report\\_508.pdf](https://pubs.usgs.gov/circ/1376/pdf/circ1376_barlow_report_508.pdf), accessed Sept. 24, 2020.

<sup>114</sup> See *id.* at p. 35, 50, 54.

<sup>115</sup> USGS Circular 1376, p. 76 [Conclusion].

<sup>116</sup> See SWRCB, Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation, 2019, p. 13, available at: [https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/cannabis\\_policy.html](https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_policy.html), accessed 12/28/20.

<sup>117</sup> See Staff Report to Planning Commission for August 20, 2020 meeting, p. 4.

measure could substitute for a reasoned discussion of the availability of a project's projected water supply.<sup>118</sup>

## 5. Undisclosed Biological Resource Impacts

As CDFW pointed out in its comments on the Revised IS/MND, the analysis does not consider the Project's potentially significant impacts to a number of plant and wildlife species that are known to be present in the Project area.<sup>119</sup> The level of survey investigation conducted here does not even meet CEQA's minimum standards.<sup>120</sup> The Revised IS/MND then uses the determination of no significant Project impacts to species as well as the lack of supporting factual information concerning potentially significant impacts to determine that only limited mitigation is necessary to reduce impacts to less-than-significant levels.<sup>121</sup> This is not the level of impact analysis that CEQA requires.

### (a) Inadequate Surveys to Provide Baseline Information

Establishing an accurate environmental baseline is the starting point for any sound impact analysis. The Revised IS/MND dismisses the possibility of Project impacts without ever having conducted the required surveys for numerous wildlife and rare plant species and after disregarding evidence indicating the likelihood of significant impacts. In its comments on the original IS/MND, CDFW noted that the impact analysis lacked sufficient wildlife survey and wetland delineation information to establish an accurate environmental baseline against which the Project's impacts can be measured.<sup>122</sup> CDFW is correct. The Revised IS/MND fails to determine whether such species and rare plants are present or potentially present throughout the entire area where Project-related construction and operation will occur. Without this information, neither the County nor CDFW have the information required to make their respective permitting decisions with the full environmental impacts of the Project in consideration. Because CEQA requires coordination between agencies when preparing the environmental impact analysis,<sup>123</sup> the Revised IS/MND remains inadequate.

The Appendix to the Revised IS/MND contains a Botanical Survey Report and worksheets for surveys for the Northern Spotted Owl ("NSO"). The Appendix, however, does

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<sup>118</sup> See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444.

<sup>119</sup> See CDFW comments on IS/MND, dated August 17, 2020, p. 2.

<sup>120</sup> See *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1398 ["CEQA simply requires that the public and public agencies be presented with adequate information to ensure that 'decisions be informed, and therefore balanced.' "], quoting *Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.

<sup>121</sup> See Revised IS/MND, pp. 108-157.

<sup>122</sup> See CDFW comments on IS/MND, dated August 17, 2020, pp. 2-4.

<sup>123</sup> See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936, quoting Public Resources Code, § 21003(a).



not include the referenced “revised Biological Report”<sup>124</sup> or any other comprehensive report that describes the qualifications of the biologists involved in conducting surveys and preparing the reports that underly the analysis of Project-related impacts to biological resources.<sup>125</sup> This revised Biological Report, while not included among the appendices to the Revised IS/MND, is part of the administrative record for this Project.

The 2018 Botanical Survey Report that was included as an appendix to the original IS/MND reveals that field surveys were only conducted by botanist Claire Brown on May 28 and July 3, 2018, at the greenhouse sites only and were not conducted along the Project access roads (where Project-related unspecified “upgrades” are planned).<sup>126</sup> Further, this report reveals that the two surveys were conducted mid-growing season and not spaced throughout the growing season as recommended in CDFW’s protocol.<sup>127</sup> The Appendix also does not include any information concerning the surveys conducted for Golden Eagle and other special status species.

The Revised IS/MND now includes an additional 2020 Botanical Survey Report.<sup>128</sup> The 2020 Botanical Survey Report purports to address the Project’s potentially significant impacts to botanical resources within a depicted “study area.”<sup>129</sup> The 2020 Botanical Survey Report is silent with respect to the earlier surveys and states that the “Surveys took place on May 9th, 2019, June 16th, 2020 and June 25th, 2020.”<sup>130</sup> The 2020 surveys purport to have included surveys along the Project access road from the McCann bridge. The 2020 Botanical Survey Report does not reveal how the surveys along the access road were conducted (e.g., on foot or from a moving vehicle) or whether those surveys took account of the areas that would be impacted by the numerous newly proposed roadway widening improvements. This Report also reveals that no botanical surveys were conducted between the facility sites and the Alderpoint Road alternative access routes.

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<sup>124</sup> See Revised IS/MND, pp. 95, 245 [referencing November 2018 revised Biological Report].

<sup>125</sup> NRM, the applicant’s consultant, submitted a revised Biological Report to the County on July 30, 2018. A later version of this report is listed as a reference in the Revised IS/MND.

<sup>126</sup> See Appendix I to original IS/MND, Botanical Survey Report, 2018, pp. 8-11. The cover page for Appendix I describes a Botanic Survey Report dated 2019, but the report itself states that it was prepared in July 2018.

<sup>127</sup> See CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (2018), p. 6 [“Space botanical field survey visits throughout the growing season to accurately determine what plants exist in the project area. This usually involves multiple visits to the project area (e.g. in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present”], available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>, accessed 11/19/20.

<sup>128</sup> See Appendix I to Revised IS/MND, Botanical Survey Report, Supplemental to Botanical Survey report prepared by NRM in July 2018, August 2020 (Revised Oct 15, 2020). p. 23.

<sup>129</sup> See *id.* at Figures 1 through 6.

<sup>130</sup> See *id.* at p. 23.

Surveys for Golden Eagle were conducted in spring and summer, not in within the period that CDFW specifically recommends, January and February.<sup>131</sup> Because CDFW also noted in its comments that “[t]his Project has potential high use areas for birds of prey including, ... golden eagle ...”, it is imperative that sufficient surveys are conducted.<sup>132</sup> Without the necessary surveys, sound analysis of the Project’s impacts to protected species is impossible. For these reasons, the Revised IS/MND did not adequately analyze the Project’s potential to impact a number of special status species, including the Golden Eagle.

Appendix M to the Revised IS/MND is a report concerning a wetland delineation performed on a portion of the Project site in 2020. Unfortunately, the wetland delineation did not cover all areas that would be disturbed by Project construction and operation activities.<sup>133</sup> The wetland delineation, for example, did not include a full delineation for the wetland features adjacent to the access road culverts that will be replaced and adjacent drainage areas. Evidence in the administrative record suggests that wetland areas may be present in areas near road culverts.<sup>134</sup> This too is despite CDFW’s specific request for a full wetland delineation in its comments on the original IS/MND:

[A] formal wetland delineation of the entire Project area using accepted methods and procedures was not included in the IS/MND. CDFW is also concerned that the wetland delineation has not yet covered the entire Project area. The IS/MND should be revised to include the results of complete Project area wetland delineation ....<sup>135</sup>

The wetland delineation report includes the conclusory statement that “the investigation was conducted in full accordance with [USACE] requirements].” However, the Revised IS/MND does not comply with a number of these requirements.

In addition, the wetland delineation report depicts the location of wetlands on the Project site differently than does the Revised IS/MND.<sup>136</sup> The Revised IS/MND appears to identify wetlands that were not identified in the wetland delineation report. These additional

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<sup>131</sup> See CDFW, Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment (2010), p. 29 available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83955&inline>; see also U.S. FWS, Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations, Pagel, et al. (2010), available at: [https://www.fws.gov/southwest/es/oklahoma/documents/te\\_species/wind%20power/usfws\\_interim\\_goea\\_monitoring\\_protocol\\_10march2010.pdf](https://www.fws.gov/southwest/es/oklahoma/documents/te_species/wind%20power/usfws_interim_goea_monitoring_protocol_10march2010.pdf), accessed 11/13/20.

<sup>132</sup> Notably, the Revised IS/MND acknowledges that a golden eagle was observed flying across the Project site on July 16, 2018. See Revised IS/MND, p. 119.

<sup>133</sup> See Exhibit M to Revised IS/MND, Delineation of Waters Report; July 2020, NRM, p. 4 [delineation covered only a “portion” of the Project site], 6 [Figure 1].

<sup>134</sup> See, e.g., NRM, Revised Biological Report, dated July 30, 2018, pp. 6, 12-13, 16-18.

<sup>135</sup> See CDFW Comments on the original IS/MND, dated Aug. 17, 2020, pp. 3-4.

<sup>136</sup> Compare, e.g., Revised IS/MND, Figures 40 and 42 with Appendix M to Revised IS/MND, pp. 7-9, Figures 2 and 4.



wetlands may be those identified in the 2018 Biological Report for this Project (that was not included in the IS/MND appendices).<sup>137</sup> The wetland delineation report in Appendix M of the Revised IS/MND does not describe how the two study areas were defined. These discrepancies and inadequacies must be resolved in the revised analysis.

(b) The Analysis of Impacts to Rare Plants, Special Status Species, Wetlands, and Other Aquatic Resources is Incomplete and Inaccurate.

The Revised IS/MND fails to adequately analyze the Project's potentially significant impacts to biological resources. The shortcomings in the analysis stem from an incomplete description of the Project, incomplete surveys to establish the environmental baseline, and disregarded evidence concerning the presence (or potential presence) of protected habitat and species.

The Revised IS/MND includes a new analysis entitled "Assessment of Road Improvement and Maintenance Activity Impacts to Botanical Resources" prepared in October 2020. While the road assessment acknowledges that "[d]uring the winter months, when access via the bridge is not feasible, the Project area can be accessed via Alderpoint Road," the analysis does not actually include an assessment of potential impacts to botanical resources by necessary roadway and drainage improvements along the alternative access route over private ranch roads to Alderpoint Road.<sup>138</sup> This document also does not assess the full impact of road improvements to botanic resources because it does not acknowledge the number and scope of the improvements that would be required to bring the roads up to "Category 4 or equivalent" standards. Instead, the assessment relies upon the improper (and substantially narrower) Category 2 standard.

The Revised IS/MND acknowledged that "completion of the project will result in unavoidable impacts [to wetlands]."<sup>139</sup> This statement and the analysis that follows it, however, only addresses the Projects *direct* impacts on wetlands (i.e., from the Project footprint itself and from close proximity to Project construction), it does not address or acknowledge the potentially significant *indirect* impacts to wetlands and riparian habitat from encroachment of the Project facilities within the buffer areas recommended by CDFW.<sup>140</sup>

Further, the vague description for possible compensatory mitigation measures for direct impacts to wetlands lack specific performance standards and constitute improper deferral of

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<sup>137</sup> See NRM, Revised Biological Report, dated July 30, 2018, pp. 6 [photo of wetland vegetation adjacent to ephemeral pond], 19.

<sup>138</sup> See Appendix I to Revised IS/MND, Assessment of Road Improvement and Maintenance Activity Impacts to Botanical Resources (Oct. 2020), Figure 1 (Depicting RPs where surveys were conducted).

<sup>139</sup> Revised IS/MND, p. 146.

<sup>140</sup> See Revised IS/MND, pp. 145-148 [indicating use of 100-foot buffer for wetlands and a 150-foot buffer for the Eel River, rather than the CDFW recommended buffers of 150 feet and 200 feet, respectively].

mitigation under CEQA.<sup>141</sup> Thus, while the Revised IS/MND acknowledges a potentially significant direct impact, it ignores indirect impacts to wetlands, and it fails to propose specific enforceable mitigation to reduce both direct and indirect impacts to less-than-significant levels.

With respect to the Project's potential to impact the foothill yellow-legged frog (a species listed as endangered or threatened for several geographical regions in CA under the California ESA and a species of special concern within the Project area),<sup>142</sup> the Revised IS/MND inaccurately states that "[t]his species was not observed during surveys of the project areas."<sup>143</sup> However, according to the 2018 Biological Report prepared by NRM, the applicant's consultant, this species was in fact observed, heard, and even captured at multiple locations on the Project site.<sup>144</sup> This discrepancy between the Revised IS/MND and the underlying survey data must be resolved.

In its July 2018 memorandum, the County's peer review consultant specifically recommended that "[t]he location of the culvert with temporary water where foothill yellow-legged frog was observed should be mapped and explained in relation to the project" in the Revised IS/MND.<sup>145</sup> Yet, despite this specific request for pertinent and accurate baseline information, both the original IS/MND and the Revised IS/MND completely deny the biologist's observation of any yellow-legged frogs on the Project site.<sup>146</sup>

This species was not observed during surveys of the project areas. The watercourses in the project areas (with the exception of the eel River) are

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<sup>141</sup> See *id.* at pp. 148, 152-154.

<sup>142</sup> See 14 C.C.R. § 670.5(a)(D)(E)(F) [endangered listings for this species], 670.5(b)(I), (J); see also CEQA Guidelines, § 15380(b)-(d); see also CDFW Report to the Fish & Game Commission, A Status Review of the Foothill Yellow-Legged Frog in CA (09/20/2019), p. 4 ["The scientific information available to the Department indicates that Foothill Yellow-legged Frog faces varying degrees of imperilment throughout its range. The Department recommends that the Commission find that the petitioned action to list Foothill Yellow-legged Frog as threatened is warranted for the Feather River and Northeast/Northern Sierra clades; that the East/Southern Sierra, West/Central Coast, and Southwest/South Coast clades be listed as endangered; and that listing of the Northwest/North Coast clade is not warranted at this time."], available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174663&inline>, accessed 12/06/20; see also CDFW Press Release re Fish & Game Commission Listing Decision for the Foothill Yellow-legged Frog (12/12/2019), available at: <https://cdfgnews.wordpress.com/tag/foothill-yellow-legged-frog/>.

<sup>143</sup> See *id.* at p. 137.

<sup>144</sup> See NRM, Revised Biological Report, dated July 30, 2018, pp. 6, 12-13, 16-18. The Revised IS/MND cites a revised Biological Report dated November 2, 2018, but does not include this document in the Appendix. As a referenced resource that purports to support the analysis of impacts, this document should have been made available to the public for review during the comment period.

<sup>145</sup> See Exh. F – Memo #1, p. 6.

<sup>146</sup> See Revised IS/MND, pp. 95 [stating that, during the surveys conducted by NRM biologists on October 16, 2017, "No special status species were found"], 137 [discussion of the Project's potential impacts to yellow-legged frog].



unlikely to support foothill yellow-legged frog as they are not permanent (dry by June) and breeding habitat is suboptimal with no rocky substrate.<sup>147</sup>

Because this species has been confirmed to actually be present on the Project site, the impact analysis regarding foothill yellow-legged frog is therefore also inaccurate. The revised analysis must acknowledge the Project's potential to significantly impact this special status species, known to be present on the Project site, and must propose project design changes to avoid impacts to upland areas adjacent to wetlands (within mandatory set back / buffer areas) and, to the extent avoidance does not reduce impacts to less-than-significant levels, the required EIR must propose specific, enforceable mitigation measures to minimize such impacts.<sup>148</sup>

The Revised IS/MND did not consider potentially significant impacts to biological resources that may be caused by the Project's heavy reliance on potentially hydrologically connected groundwater. The 4,628,200 gallons of estimated annual water demand may draw down the water table, potentially reducing or eliminating nearby surface water resources or potentially causing changes in surface water temperature (discussed further below). Withdrawal of hydrologically-connected groundwater may result in depletion of surface water resources, thereby impacting special status species and other biological resources. For example, groundwater pumping could constitute a "diversion" of surface waters that adversely impacts the foothill yellow-legged frog, a special-status species known to be present on the Project site.<sup>149</sup> Of course, such impacts related to groundwater diversion would also affect other species reliant on surface water resources. The Revised IS/MND is silent with respect to how the plant and animal species that depend upon these water resources could be affected by intensive groundwater pumping in an area dominated by Franciscan Sandstone and other sedimentary and metamorphic rock formations with limited potential for groundwater storage and a likelihood to discharge to surface waters. The required EIR for this Project must fully analyze these potentially significant impacts and propose adequate enforceable mitigation to minimize or eliminate them. Proposed Mitigation Measure Bio-15 is inadequate because, among other things, it allows the relocation of any found yellow-legged frogs *before* notification to CDFW.

The Revised IS/MND does not consider the impacts on surface waters, associated riparian habitat, and dependent species that may be caused by the Project's heavy, year-round, and sole reliance on groundwater. The required EIR must address all of this.

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<sup>147</sup> See *id.* at p. 137.

<sup>148</sup> See Exh. I – Letter from CDFW re Draft LSAA required Mattole River Cannabis Project, Draft LSAA, p. 5 [protective measures for foothill yellow-legged frog].

<sup>149</sup> See U.S. Dept. of Agriculture, Foothill Yellow-Legged Frog Conservation Assessment in California (2016), p. 44 ["Diversion of water may also result in modifications to stream habitat (e.g., local reaches may become less lotic in nature). Even small operations, such as those used to divert water for growing marijuana (*Cannabis sativa*), may have significant impacts on foothill streams with limited summer flows (Citation)."], available at: [https://www.fs.fed.us/psw/publications/documents/psw\\_gtr248/psw\\_gtr248.pdf](https://www.fs.fed.us/psw/publications/documents/psw_gtr248/psw_gtr248.pdf), accessed 11/24/20.

## 6. Overlooked Land Use Impacts

The large-scale Project in this remote greenfield location is inconsistent with the intent of the CMMLUO (and the arguably more appropriately applicable CCLUO). When these regulations were passed, the intent was to encourage large-scale cannabis projects in the relatively flat bottomlands of the County not in mountainous, undeveloped, timberland.<sup>150</sup>

The County's Supervising Planner summarized comments on an early draft IS/MND as follows:

The overarching issue is that our analysis of the [CMMLUO] indicates that the CMMLUO did not contemplate the wholesale conversion of a large tract of wildland area to industrial sized cannabis development, where the level of use and the level of impacts may not be consistent with what was envisioned by the CMMLUO; especially at locations without adequate access, public services, and fire protection. We are concerned that the proposed level of development, including establishing extensive human occupations where none currently exist, and the improvement of roads through wild land areas not previously developed to serve the level of development proposed by the project, can result in cumulative effects on the environment that cannot be reduced or mitigated to a level of insignificance.<sup>151</sup>

Several months later, the County's consultant reiterated the above comments and recommended that the Revised IS/MND be revised to address the Project's consistency with the County's land use regulations.<sup>152</sup>

In spite of these prior comments from the County and its peer review consultant, the Revised IS/MND does not address the Project's fundamental inconsistency with the letter and spirit of the CMMLUO (and with the later adopted CCLUO). Instead, the conclusory analysis states, without sufficient evidence or even a discussion, that the Project would have no impacts to land use and, more specifically, would cause no significant impacts due to a conflict with "any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect."<sup>153</sup>

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<sup>150</sup> See Humboldt County Bd. of Supervisors, Resolution 16-14, General Plan Consistency Analysis and Findings, p. 2 ["[the CMMLUO] provides incentives for the retirement, remediation and relocation of existing cannabis cultivation operations to more suitable agricultural land where cannabis cultivation will have few if any environmental effects where the cultivation of field and row crops is a principally permitted use, while providing strong guarantees that the former TPZ cultivation site will be remediated and no future conversion of timberland will occur"].

<sup>151</sup> See Exh. D – Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018, p. 1.

<sup>152</sup> See Exh. F – Memo #1, p. 9.

<sup>153</sup> See Revised IS/MND, pp. 202-203.



The short, unelaborated discussion of potentially significant land use impacts does not address 1) the Project's inconsistency with the CMMLUO based on the conversion of wildlands to an intensive commercial operation and 2) the Project's contribution to cumulative effects caused by the improvement of roads through wildland areas. Again, the County's comments on the draft IS/MND appear to have been ignored or disregarded.

Under both the CMMLUO and the CCLUO, this new Project should not even be possible because most of the Project parcels are designated within a Timber Production Zone ("TPZ").<sup>154</sup> Both the CMMLUO and the CCLUO prohibit new commercial cannabis operations on TPZ property.<sup>155</sup> While the footprints of greenhouses and other Project buildings will technically be just outside the TPZ, to have adequate access and meet fire safe regulations, the Project will require substantial modifications to access roads that cross TPZ areas on the Project site. The Revised IS/MND is silent with respect to this restriction.

Because the Project is inconsistent with applicable land use regulations, the required EIR must disclose those inconsistencies and propose Project changes or mitigation measures to avoid or reduce the impacts to the extent feasible. If the inconsistencies with land use regulations cannot be avoided or rendered insignificant, then the Planning Commission should deny the application for the six CUPs for this Project.

7. Omitted Consideration of Water Quality Impacts from Groundwater Pumping and Access Road Drainage Improvements

Year-round pumping of groundwater from the Project's three wells could cause impacts to hydrologically connected surface waters. According to USGS Circular 1376:

One of the important concerns associated with streamflow depletion by wells is the effect of reduced groundwater discharge on the quality of affected surface waters. Groundwater discharge affects the chemistry of surface water and plays an important role in regulating stream temperature, which is a critical water-quality property [citations].<sup>156</sup>

The USGS circular confirms that "reductions in the rates of groundwater discharge to streams caused by pumping can warm stream temperatures during the summer and cool stream temperatures during the winter."<sup>157</sup> The required EIR must also analyze the Project's impacts on water quality, as it relates to intensive year-round groundwater pumping.

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<sup>154</sup> See *id.* at p. 47 [Figure 20].

<sup>155</sup> See HCC (CCLUO), §§ 55.4.5.1.3, 55.4.6.5, 55.4.6.5.6; see also Resolution 18-40 (Certifying EIR for CCLUO, p. 8; see also HCC, § 55.4.9 [Permit Types, Table summarizing permits types under the CMMLUO]; see also MND for CMMLUO, pp. 9 ["New operations on TPZ-zoned land will not be permitted under this ordinance"].

<sup>156</sup> See USGS Circular 1376, p. 35.

<sup>157</sup> See *ibid.*

The Revised IS/MND also did not analyze the impacts to water quality that may result from necessary access road improvements. Many of the necessary roadway and drainage improvements were not even identified until after the original IS/MND was prepared and released for public review. Now improvements to meet Category 2 standards have been identified, but the analysis concerning potentially significant water quality impacts has not been modified to reflect the much larger area of disturbance now being proposed.<sup>158</sup> To bring the access roads up to the required “Category 4 or equivalent” standard, there would be even greater potentially significant impacts to water quality that have not been disclosed in the Revised IS/MND.

8. Superficial “Analysis” of the Project’s Contribution to Cumulative Impacts

As Petitioners pointed out in their initial comments concerning the Revised IS/MND submitted in August, and again in their supplemental comments submitted in September, the Revised IS/MND fails to identify the relevant past, present, and probable future projects considered in the cumulative impacts analysis.<sup>159</sup> As with the Project description deficiencies identified above, the Revised IS/MND did not incorporate recommendations from the County’s peer review consultant concerning the cumulative impacts analysis.<sup>160</sup>

The cumulative impacts analysis should be revised to cure these core deficiencies. When revising the analysis in the required EIR, consider consolidating the discussion of cumulative impacts, so that the Project’s contribution to cumulative impacts in all categories can be readily ascertained. The Revised IS/MND for the recently approved Hills commercial cannabis project provides a good example of a consolidated analysis of cumulative impacts.<sup>161</sup> That analysis provides much more detail concerning the multiple pending and approved projects that were considered. The analysis of cumulative impacts should also consider this Project’s impacts in connection within the overall commercial cannabis permitting program, rather than in isolation. The County prepared a Mitigated Negative Declaration for the CMMLUO that purported to analyze the environmental impacts of the County’s former permitting program as a whole. That document did not identify the total number discretionary permits that the County expected would be issued under the CMMLUO for cannabis projects nor did it purport to analyze the impacts of large scale new commercial cannabis projects subject to the conditional use permit requirement.<sup>162</sup>

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<sup>158</sup> See Revised IS/MND, pp. 15, 49, 51, 194-196, 199.

<sup>159</sup> See Petitioner’s initial comments on the IS/MND, dated August 17, 2020, pp. 3, 16-17, 19; *see also* Petitioners’ supplemental comments on the IS/MND, dated Sept. 10, 2020, p. 18.

<sup>160</sup> See Exh. F – Memo #1, p. 13.

<sup>161</sup> See, e.g., Exh. K – Cumulative Impacts Analysis for the Hills Commercial Cannabis Project (listing past, present, and future projects and discussing that project’s contribution to various types of impacts).

<sup>162</sup> See, e.g., IS/MND prepared for CMMLUO, pp. 26-29, 31, 33.



Still more permits will be issued for cannabis projects under the CCLUO. In May 2018, in conjunction with approving the CCLUO, the County adopted Resolution 18-43, which resolution set caps on the number of permits that could be issued in each region of the County, including within the Middle Main Eel River watershed. This Resolution set a cap of 360 permits, allowing for 125 acres of cultivation, for the area wherein which the Project will be located.<sup>163</sup> The analysis of cumulative impacts should consider this Project's contribution towards cumulative impacts in the context of intensive commercial cannabis development activities under both the CMMLUO and the CCLUO permitting regimes.

Accordingly, the EIR required for this Project must provide a substantially more robust analysis of the Project's contribution to cumulatively considerable impacts.

**E. The Revised IS/MND Downplays the Project's Growth Inducing Impacts.**

The Revised IS/MND concludes, without support evidence, that the Project will not cause growth inducement impacts.<sup>164</sup> However, as the peer review consultant pointed out, the Project may contribute to growth inducement in several ways. Expansion of roads required for this Project (i.e., to Category 4 or equivalent standards) could lead to more development of this remote area. This development could, include, for example, expansion of the proposed Project to include still more wells and additional greenhouses and processing facilities (potentially processed at a ministerial level, at most, without any additional environmental review). Alternatively, the Project's commercial success could precipitate subdivision of the 6,500-acre Rolling Meadow Ranch into either residential or commercial development. The required EIR should consider the Project's potential to induce growth in the currently largely undeveloped and environmentally sensitive hillsides adjacent to the Eel River.

**F. The MND Does Not Incorporate Adequate Project Design Features and Mitigation Measures to Ensure the Project will Have Less Than Significant Impacts.**

To be adequate under CEQA, proposed mitigation measures must be described in detail, and must enforceable. The Revised IS/MND assumes, with insufficient factual support, that vaguely described "BMPs" and other measures will reduce various impacts to less-than-significant levels.<sup>165</sup> As explained above and in Petitioners' prior comments, the Project will cause potentially significant impacts to air quality, traffic safety, public services, biological

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<sup>163</sup> See County Resolution 18-43, adopted May 8, 2018, available at: <https://humboldt.gov/2124/Medical-Marijuana-Land-Use-Ordinance>.

<sup>164</sup> See Revised IS/MND, pp. 188, 212-213.

<sup>165</sup> See, e.g., Revised IS/MND, pp. 55, 57 [conclusory discussion of avoidance of potentially significant construction period-air quality impacts through compliance with BMPs], 188 [discussion of avoidance of hazards through compliance with BMPs].

resources, water supply, water quality, and land use. These impacts must be mitigated to the extent feasible.<sup>166</sup>

Some of the mitigation measures described in the Revised IS/MND are inadequate under CEQA. For example, Mitigation Measure Bio-1 is unclear -- if sensitive plant species are found during the surveys at Facilities #6 - #9 will those facilities never be constructed? Additionally, the proposed Mitigation Measure Bio-15 for the foothill yellow-legged frog is not sufficiently protective of the species because it allows any frogs found during pre-construction surveys to be relocated prior to contacting CDFW.<sup>167]</sup>

The Revised IS/MND states that the Project “will be powered by grid power derived from 100% renewable resources as provided by the Redwood Coast Energy Authority Repower+ program. However, there is no measure or condition that would require the Project to use renewable energy sources. As with the Adesa project, the Planning Commission should require that 100% of all power necessary for regular operations and in the event of emergencies be generated by renewable sources within 2 years of operation.<sup>168</sup>

To avoid and minimize impacts to potentially hydrologically connected surface water features and aquatic resources, the County should also impose an adaptive management mitigation measure for the Project’s three wells, such as the following:

Mitigation Measure: Annual groundwater monitoring and adaptive management.

The following requirement will be included as an additional performance associated wells that may be hydrologically connected with surface waters: As part of the annual inspection process, the operator shall provide the County with groundwater monitoring data for on-site well facilities that documents well production and changes in groundwater levels during each month of the year. Should this monitoring data identify potential drawdown impacts to adjacent surface waters and indicate a connection to operation of the on-site wells, the operator, in conjunction with the County, shall develop adaptive management measures to allow for recovery of groundwater levels. Adaptive management measures may include forbearance (e.g., prohibition of groundwater extraction from the months of May to October), water conservation measures, reductions in on-site cannabis cultivation, alteration of the groundwater pumping schedule,

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<sup>166</sup> See *San Bernardino Valley Audubon Soc’y v. Metro. Water Dist.* (1999) 71 Cal.App.4th 382, 391 [“CEQA allows the use of a mitigated negative declaration only where the mitigation measures modify the potentially significant impacts of the Project “to a point where clearly no significant effects would occur...” [Citation.] If significant effects remain after mitigation, an EIR is required], quoting CEQA Guidelines, § 15070(b)(1).]

<sup>167</sup> See Jets THP attached to Revised IS/MND, p. 43 [more protective measure for FYLF contained in THP applicable to RMR].

<sup>168</sup> See Staff Report to County Board of Supervisors concerning appeal of Adesa project approvals, for Oct. 27, 2020 meeting, p. 2, incorporated herein by reference.



or other measures determined appropriate. Adaptive management measures will remain in place until groundwater levels have recovered based on annual monitoring data provided to the County as part of subsequent annual inspections.

To avoid potentially significant impacts to water quality and to biological resources in this sensitive area, the County should consider requiring organic cultivation practices.

The County must ensure that mitigation measures concerning potentially significant impacts to biological resources, including special status species, adopted by the County in connection with its adoption of the CCLUO are applied equally to this Project.<sup>169</sup> In addition, the EIR required for this Project should describe mitigation for significant air quality impacts, including offsite fugitive dust (PM 10 and PM 2.5) emissions on McCann Rd during construction and operation.

**G. The Required EIR Must Evaluate a Range of Alternatives That Includes a Reduced Size Alternative and an Alderpoint Road Access Route Alternative.**

When an EIR is required for a project, such as the proposed Project, that has the potential to significantly impact the environment, CEQA requires the lead agency to consider how those significant impacts can be avoided through the consideration of a reasonable range of project alternatives.<sup>170</sup>

Petitioners urge the County and the applicant to consider alternatives to the Project that include less intensive cultivation and processing activities, including a reduced size alternative. The required EIR should also evaluate, as a project alternative among the required reasonable “range of alternatives” that must be considered, a Project design that includes using Alderpoint Road as the primary access route and McCann Road for emergency purposes only.

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<sup>169</sup> See Humboldt County Bd. of Supervisors, Resolution 18-40.

<sup>170</sup> See *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 400 (*Laurel Heights I*) [“One of [an EIR’s] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official”], quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197], emphasis in original.

**III. Conclusion: the Project's Significant Access Issues Justify Outright Denial of the Application for Six CUPs, and its Numerous Potentially Significant Impacts Require the Preparation of an EIR.**

As Petitioners' extensive factually-supported comments demonstrate, substantial revisions to the environmental impact analysis for this Project are necessary in order to satisfy CEQA's requirements. These revisions must be made in the required EIR before this Project can be considered for approval. Alternatively, the County has authority to deny the application for the six Conditional Use Permits required for the Project.

Very Truly Yours,

Jason Holder

cc: (Via e-mail only)  
Client contacts  
Greg O'Connell, CDFW biologist

Exhibits:

- Exh. A. 2014 Real Estate Listing for Rolling Meadow Ranch;
- Exh. B. PWA Rolling Meadow Comments, dated Dec. 28, 2020;
- Exh. C. Letter from Steve Salzman concerning Evaluation of McCann Road, dated Dec. 26, 2020;
- Exh. D. Letter from Supervising Planner Steve Werner to Project applicant, dated January 15, 2018;
- Exh. E. CDFW CEQA Referral Checklist for RMR Project, dated Jan. 24, 2018
- Exh. F. Transcon Environmental, Memorandum re Peer Review, dated July 23, 2018 ("Memo #1);
- Exh. G. Transcon Environmental, Memorandum re Peer Review – Project Description Deficiencies, dated July 23, 2018 ("Memo #2");
- Exh. H. NRM Response to County Comments on Draft Revised IS/MND, dated Jan. 22, 2020;
- Exh. I. Letter from CDFW re Draft LSAA required Mattole River Cannabis Project;
- Exh. J. Email from Greg Mc'Connell at CDFW to County planner Meghan Ryan, dated September 10, 2020; and
- Exh. K. Cumulative Impacts Analysis from Revised IS/MND for the Hills Commercial Cannabis Project.