TRINITY COUNTY PLANNING COMMISSION

STAFF REPORT

PROJECT TITLE: Appeal of Director's Decision to Approve CCL-132

APPELLANT: Friends of the Lewiston Grass Valley Creek (Represented by Laurie Wills)

APPLICANT: Emerald Choice, Inc. (Natalie (Koehler) McNamara and Patrick McNamara)

AGENT: The Flowra Platform

PROPERTY OWNER: Emerald Creek, LLC

REPORT BY: Drew Plebani – Cannabis Division Director, Bella Hedtke – Associate Planner – Cannabis Division, Daniel Marvel – Lead Code Compliance Specialist, and Colton Trent – Environmental Compliance Specialist

LOCATION: APN 025-180-038-000 / 200 Coffin Rd., Lewiston, CA 96052

ZONING DISTRICT: Rural Residential 5-Acre Minimum (RR5)

ZONING OVERLAY DISTRICT(S): Flood Hazard (100-Year, No BFEs, Zone A)

GENERAL PLAN DESIGNATION: Rural Residential (RR)

PROJECT DESCRIPTION: The Cannabis Division Director approved the application for commercial cannabis cultivation license (CCL) 132 on February 17, 2023 and was scheduled for license issuance on or after March 9, 2023 after the 10-day appeal period ended. On March 9, 2023, an application for appeal of the approval of CCL 132 was submitted to the Trinity County Planning Department, pursuant to the standards established in Trinity County Code Section 17.34.110. The Directors approval of the license and related Environmental document were rescinded on June 08, 2023 in order for the applicant's agent to update the Appendix C document in order to provide additional discussion within the document. The updated Appendix C document was approved on June 23, 2023

Location	Land Use	Zoning District	General Plan Designation
North	Residential	RR5	RR
South	Residential and Commercial Cannabis	RR5	RR
East	Undeveloped	A10 and AF10	A

West	Commercial Winery	RR5	RR

Table 1: Surrounding Land Uses to Project Site (Attachment 1)

PROJECT BACKGROUND:

The proposed cultivation project described herein (Project) includes the cultivation of 10,000 square feet (sf) of mature mixed-light cannabis and 2,951 sf of support area located in Trinity County on Assessor's Parcel Number (APN) 025-180-038-00. The applicant is seeking renewal of a Small Mixed-Light Cannabis Cultivation License from the County (CCL-132), to cultivate up to 10,000 sf of cannabis mature canopy, and currently holds a provisional Small Mixed-Light Cannabis Cultivation License from the Department of Cannabis Control (DCC; CCL19-0002038). The project site originally received an approved CCL in 2017, transfer application received on June 14, 2021 for the current applicants and received a UO Extension on September 1, 2021, see below for additional project information.

COUNTY ORDINANCE AND CEQA COMPLIANCE:

An Appendix C document was submitted to the Cannabis Division for CCL 132 on February 24, 2022. Throughout the Appendix C review process, two incomplete letters were sent to the applicant and their agent, followed by two resubmittals of the Appendix C document on March 31, 2022 and September 8, 2022. Additional resubmittals were received on March 6, 2023 and June 23, 2023; the submissions updated the description of sensitive receptors and included a more detailed analysis of cumulative impacts respectively.

A site inspection was performed by Cannabis Division compliance staff on June 15, 2022 to ensure that the site plan and project description included in the Appendix C were accurately prepared. All outstanding deficiencies identified during the site visit were completed by September 8, 2022. A completeness review was performed by Cannabis Division staff on July 15, 2022 and determined to be complete on February 17, 2023. Both the site inspection and completeness review processes are designed to verify site and application compliance with Trinity County Code Chapter 17.43 (Commercial Cannabis Cultivation Regulations). The County's contracted environmental consultant company, Helix, prepared a compliance memorandum on February 17, 2023 with a final review performed by County environmental compliance staff, that determined that approval of this project is a "later activity" associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i) all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project, it adequately evaluates all potential environmental impacts, and can be appropriately tiered within the Trinity County Cannabis Programmatic Environmental Impact Report. Based on the application review, site inspection and Helix's review of the Appendix C, County environmental compliance staff recommended license approval to the planning director on February 17, 2023.

The previous staff report incorrectly listed the Appendix C resubmission dates as March 6, 2022 and September 8, 2022. The dates have been corrected above.

REASONS FOR APPEAL:

The appellants' appeal letter outlined six (6) main complaints for appealing the approval of CCL 132 (Attachment 2). Additionally, an email received from Laurie Wills on May 24, 2023 describes the appellant's concerns in further detail, and in which the Appellant summarizes their claims the Recommendation section of their email letter (Attachment 11). The Cannabis Division has investigated each of the complaints and provided a summary of the findings below:

1) Cumulative Impacts: Based on a review of the above referenced cannabis file, it appears the County continues to violate the TAA Settlement Agreement and Judgment in whole or in part by continuing its practice to approve and issue commercial cannabis licenses while ignoring its duty to identify, consider and mitigate cumulative impacts in accordance with CEQA Guidelines. As a comparison, similar findings were discovered after a review of CCL-133 that was approved August 17, 2022. During a recent meeting with staff on March 2, 2023, they acknowledged they do not have the "tools" they need to evaluate and/or measure cumulative impacts. The FEIR is either deficient in this regard or the County is unwilling or unable to address cumulative impacts on a localized or vicinity basis for project specific site inspections before approving projects. This pattern of ignoring cumulative impacts as part of the EIR Appendix C checklist review process is disconcerting on many levels.

   Response:

   Staff directs the reader to **Trinity County Cannabis Program FEIR Vol.2.- ES.3.2 Significant and Unavoidable Impacts and Cumulative Impacts.** Mitigation measures have been identified in Sections 3.1 through 3.16 of this EIR that are intended to mitigate project effects to the extent feasible. For the following environmental issue areas, one or more impacts are considered significant and unavoidable; that is, no feasible mitigation is available to reduce the project's impacts or the project's contribution to cumulative impacts to a less-than-significant level.

   The reference to not having "tools" to evaluate cumulative impacts is erroneous/ misleading. During a file review and in person meeting with the appellant, staff conveyed that we were unable to quantify odor concerns for two reasons 1) operation is currently not operating and therefore not generating cannabis related odors, and 2) at the time of the meeting we did not have an olfactometer (or other analytical device) to quantify odor concerns, staff expects an olfactometer to be received and in use by early August 2023.

   Furthermore, The FEIR addresses Odor in **3.24 Master Response: Odors associated with Cannabis Cultivation**, and the concern stated by the appellant that odors from multiple cultivation sites are cumulative. "Odors with distinct odor characteristics emanating from proximate sources are generally not additive or amplified. However, odors with the same or similar odor characteristics emanating from proximate sources may be additive. Therefore, multiple odor sources in a given geographic area would not necessarily increase the strength of an odor, although a

higher frequency of odor detection would be expected." This evidences that without active cultivation the cumulative effects vs additive effects cannot discerned, and statements related to past odor concerns without quantified data cannot be used to evaluate the subjective concerns stated by the appellant.

A more detailed cumulative impacts discussion was included in the most recent Appendix C Checklist that was submitted to the County. This discussion includes analysis of the following resource categories: Groundwater Withdrawal, Air Quality and Odors, Noise, and Transportation. These resource categories were identified to have the highest potential for limited cumulatively significant impacts to the environment. Upon recommendation by staff, this analysis was conducted by staff and the applicant's consultant modeled on the analysis from an Initial Study/Mitigated Negative Declaration project previously approved by the Trinity County Planning Commission. Cumulative impacts were analyzed at 1,000 feet from the project as that is the most conservative distance identified for setbacks from sensitive receptors [§TCC 17.050(A)(1)]. This updated cumulative impacts analysis was determined by staff to be consistent with the FEIR and the requirements of the Trinity County Cannabis Program.

2) Precedence: Based on a small sampling of approved commercial cannabis licenses within the Lewiston Expansion Opt Out area, it appears the County is once again setting a precedence of not fully and properly analyzing localized and vicinity cumulative impacts in accordance with CEQA Guidelines on a project by project basis. The County is not allowed to limit its identification, analysis and mitigation of significant adverse immediately adjacent or vicinity impacts. This includes sensitive residential, commercial and public facility receptors. As a result, the County's effort to limit the CEQA analysis for area impacts, while disregarding clearly adjoining receptors, cannot simply disregard its obligation to fully and fairly analyze and mitigate significant impacts by limiting such a review to the narrowly and improperly defined "immediate vicinity."

Response:

No specific impacts/ resource categories are referenced.

As discussed above an Appendix C document was submitted to the Cannabis Division for CCL 132 on February 24, 2022. Throughout the Appendix C review process, two incomplete letters were sent to the applicant and their agent, followed by two resubmittals of the Appendix C document on March 6, 2022 and September 8, 2022. The Appendix C for CCL-132 followed the standardized review process, including an initial review by external consultants LACO Associates and a full technical review and subsequent compliance of determination by external consultants Helix Environmental Planning.

Staff directs the reader to the response to **Reason for Appeal 1: Cumulative Impacts** for a discussion of the environmental review of cumulative impacts for CCL-132.

3) Sensitive Receptors: After repeated attempts to work with both staff and the ad hoc committee regarding sensitive receptors identified in the applicant's Appendix C application, we found appropriate action was not taken to correct these inaccurate findings prior to the approval of this license.

   Response:
   Sections 2.3: Existing Setting, and 4.3: Air Quality listed the nearest community with sensitive receptors inaccurately, and was corrected in the final approved Appendix C document. These sections originally listed the nearest sensitive receptor as the town of Weaverville at 5.6 air miles, which was updated to include the nearest neighboring residential dwelling located 357 feet north of the cultivation area. As discussed above in response to **Reason for Appeal 1: Cumulative Impacts** cumulative impacts were analyzed at 1,000 feet from the project as that is the most conservative distance identified for setbacks from sensitive receptors [§TCC 17.050(A)(1)].

4) Habitual Violations: Despite code enforcement violations that were investigated and acted upon by the Trinity County Sheriffs Office (TCSO), no evidence of these violations were found in the official cannabis file under the Violations Tab. Appellants obtained written confirmation that the applicants continued to operate without a license and were forced to self abate their plants in February 2022 and again in August 2022. The applicants have disregarded any and all instructions from the cannabis division to cease operations until which time their license was approved under the EIR Appendix C review process. In addition, the applicants have a history of code compliance nuisance complaints, some of which are in the cannabis file, but the majority are not. Also, some members of the group reviewed the applicant's Hayfork cannabis file (CCL-006 which is currently unlicensed and undergoing its Appendix C review process). Contents of that file include a Warning Notice dated 3/1/2023 that indicated failure to correct the violation within 10 days would result in the violation being sent to the District Attorney's office. Cumulatively, these are prime examples why fines and self-abatement remedies prescribed in the Ordinance allowing for a 7-day correction period are not working. This pattern of habitual violations is very troublesome. As stakeholders, we have publicly requested increased penalties up to and including suspension or revocation of a license for those licensees who habitually violate, especially if they are located within a designated opt out area. We've raised these concerns at appeal hearings, opt-out meetings, ad hoc meetings and with cannabis staff To date no action has been taken to effect change.

   Response:

   1) The Cannabis Division does not keep record of TCSO/CODE citations in cannabis applicant/licensee physical files. The violations tab in a CCL physical file is designated for violations issued by a department or agency with regulatory measures

and performance standards pertaining to commercial cannabis operations. Not monetary citations issued by law enforcement organizations.

2) Cannabis Division staff visited the appellant's property in August of 2022. During this visit staff was able to confirm unlicensed cannabis cultivation was taking place on the parcel associated with CCL-132. On August 24, 2022, Cannabis Division staff requested input from County Counsel on the legality of requiring evidence of cannabis plant destruction as the only option for resolving a Notice of Non-Compliance for unlicensed cannabis cultivation. No license for cultivation also means no license to transport or relocate cannabis off property. On September 2, 2022 County Counsel provided clarification to Cannabis Division staff that evidence of cannabis plant destruction is acceptable as the only option for resolving a Notice of Non-Compliance pertaining to unlicensed cannabis cultivation. The week of September 5, 2022, former Cannabis Division Director Sean Connell was out of the office on sick leave. Additionally, Code Compliance Lead Daniel Marvel (responsible for writing the Notice of Non-Compliance Notifications) tested positive for Covid-19 on September 5, 2022. Daniel Marvel would return to work on September 26, 2022. Director Connell did not return and ultimately resigned from his position in late November 2022. On October 18, 2022, while still uncertain of Director Connell's return, the Cannabis Division forwarded the received complaints to CODE Enforcement Officer Rob Barcellona for resolution/action.
3) Received CODE complaints are not kept in applicant/licensee physical files, as they often contain sensitive information (name, address, phone, email, etc.) related to the complaining party/individual. These complaints are stored digitally, and upon request, redacted copies are provided for individuals requesting CCL physical file review.
4) The Warning Notice dated March 1, 2023 referenced/found in the physical file for CCL-006 was issued by the Trinity County Building Department for unpermitted structure(s) on a separate property, and plays no role in determining compliance for the parcel associated with CCL-132.

5) Variance Regulations: The site map found in the cannabis file for CCL-132 shows the distance between the designated cannabis cultivation area and the neighbor's residence is less than 350 feet which according to County regulations should require a variance. However, the 6/15/2022 Cannabis Division Site Inspection Form shows the distance exceeds the 350 feet requirement. As a comparison, our research found the neighboring farm (CCL-133) on the contiguous property, located on Coffin Rd, was required to obtain a variance. These inconsistencies are cause for concern and therefore are being included in our reasons for appeal.

Response:

Per TCC Code Section (§) 17.43.050(A)(8) and as recently clarified during the April 27, 2023 Planning Commission Meeting, measurements are taken from "cultivation", and not from "designated area". The distances referenced are taken from permitted greenhouse structures and processing/drying structure. All activities identified under "cultivation" were found to be compliant with the 350ft setback when measured on the

ground using a range finder during the June 15, 2022 CEQA inspection and using desktop aerial imagery (Attachment 8).

6) Failure to Comply with State and Local Reporting Requirements: No records were found indicating the applicant is complying with their requirement to file annual reports with the CA State Water Resources Control Board for the years 2021, 2022 and 2023. Not only is this a State agency requirement, it is a requirement pursuant to County Ordinance 315-849, Section 17.43.060 Performance standards for commercial cultivation of cannabis.

Response:

The site is considered active and in good standing based on the State Water resources Control Board (SWRCB) California Integrated Water Quality System (CIWQS) database (Attachment 9). This meets the requirements outlined in TCC §17.43.060 (D) and FEIR mitigation measure 3.10-1a: Demonstrate Compliance with Water Resource Standards.

Mitigation measure 3.10-1a includes two primary aspects: 1) enrollment under SWRCB General Order WQ 2019-0001-DWQ (Order) and 2) identification of drainage and water quality controls for the site, and the prevention of sedimentation or other pollutants from leaving the site as part of project construction and operation. The project has met 1) through the active enrollment of WDID: 1_53CC415130 under the Order. 2) is interpreted and understood to have been met through this same enrollment under the Order; enrollment requirements under Order include the identification of drainage and water quality control, and the prevention of sedimentation or other pollutants through the identification and implementation of best practicable treatment or control (BPTC) measures included in the Site Management Plan (SMP).

7) Appellant's Recommendation: Based on CCL-132's years of operation, historical data and evidence submitted pertaining to the volume of code violation complaints, Appellants recommend the Planning Commission make a motion to reverse the Director's approval of CCL-132 and defer licensing until such time 1) a proper cumulative impact analysis that considers the specific site and vicinity is conducted pursuant to CEQA requirements, and 2) the applicant implements their odor control plan and any other mitigation measures identified.

Response:

An updated Cumulative Impacts Analysis has been incorporated into the Appendix C document approved on June 23, 2023 and noticed on June 28, 2023. The approved odor control plan has numerous methodologies identified; given the historic odor nuisance complaints, the applicant will implement the methodologies concurrent with

commencing operations. Additionally, given that implementation of the Odor Control plan is intended to mitigate odors to offsite receptors, the most effective methodology or combination of methodologies likely will be based on the specific cannabis terpene profiles generated and is intended to be an iterative process, ultimately making quantifiable reductions to odors generated by the cultivation operations. Additionally, as stated above, The FEIR addresses Odor in **3.24 Master Response: Odors associated with Cannabis Cultivation**, "Odors with distinct odor characteristics emanating from proximate sources are generally not additive or amplified. However, odors with the same or similar odor characteristics emanating from proximate sources may be additive. Therefore, multiple odor sources in a given geographic area would not necessarily increase the strength of an odor, although a higher frequency of odor detection would be expected." This evidences that without active cultivation the cumulative effects vs additive effects cannot discerned, and statements related to past odor concerns without quantified data cannot be used to evaluate the subjective concerns stated by the appellant.

PUBLIC COMMENT:

On May 24, 2023 staff received one comment email with a document attached titled 'Brief' (included as Attachment 11) from the Appellant Laurie Wills which raises concerns that have been addressed in the Revised Appendix C document.

On June 7, 2023 staff received a comment letter (included as Attachment 12) from Tom Ballanco, attorney for the Applicants, which responds the May 24, 2023 email received from Laurie Wills.

STAFF RECOMMENDATION:

All concerns referenced in the appellant's letter related to the site-specific environmental review have been deemed by Staff to have been adequately evaluated and analyzed within the associated resource categories of the Appendix C Environmental document for this project, which was approved on June 23. 2023. Staff recommends that the Planning Commission make a motion to deny the appeal (P-23-06), upholding the Director's decision to approve CCL 132, with the findings referenced in this staff report.

ALTERNATIVES:

If the Planning Commission does not wish to deny the appeal, the following alternatives are available:

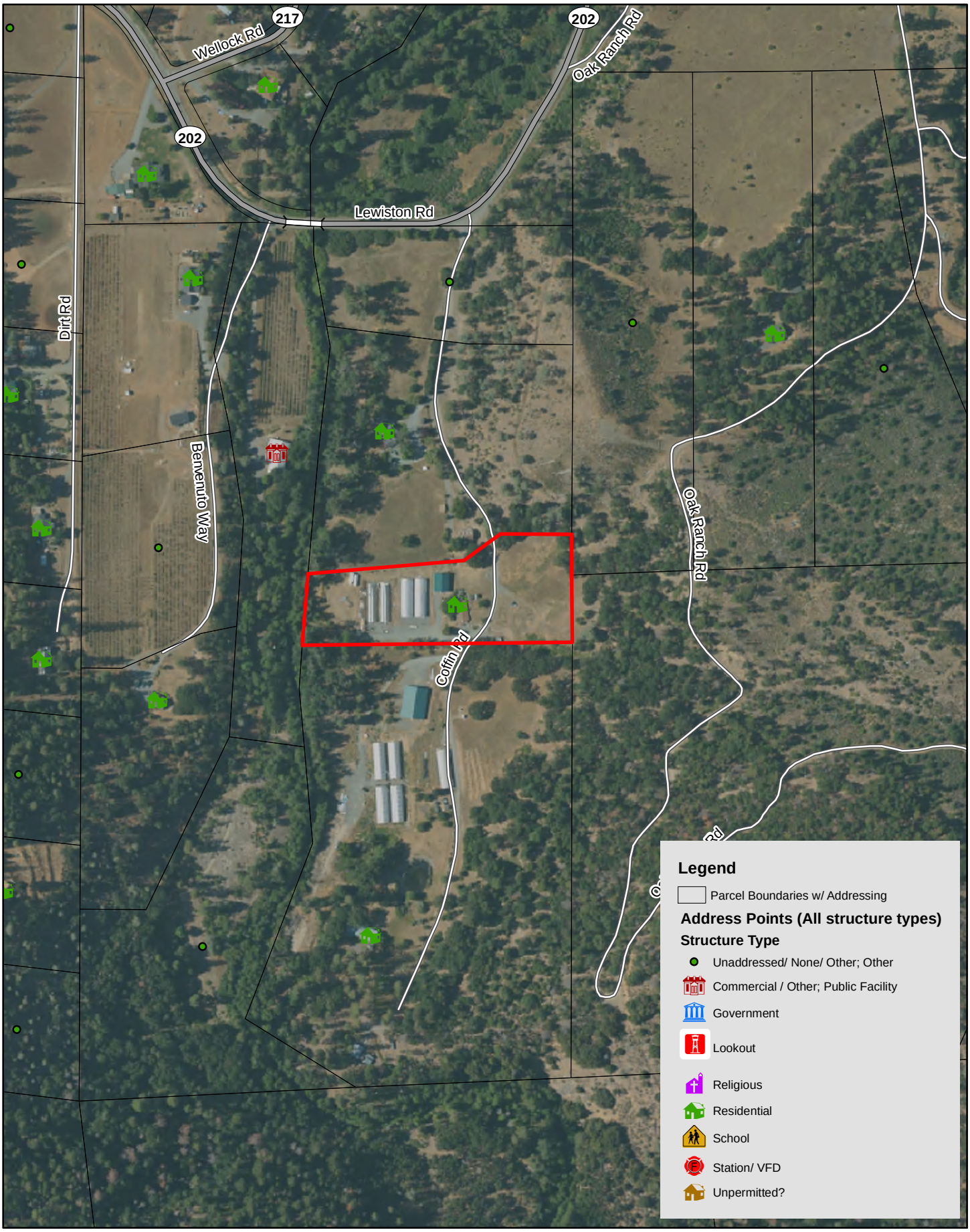
1. The Planning Commission could move to uphold the appellant's request to deny CCL 132, with findings stated by the Planning Commission.

2. In the event that more information or time is required prior to the Planning Commission making a final decision on P-23-06, the Planning Commission could move to continue to a future certain meeting date.

ATTACHMENTS:

1) Surrounding Area Uses Map
2) Appeal of the Planning Director's Decision and Associated Letter
3) Project Location Map
4) CCL 132 Appendix C Site Plan
5) Zoning Districts Map
6) General Plan Designations Map
7) FEMA Layer Map
8) 350ft Residential Setback Map
9) California Integrated Water Quality System (CIWQS) database - Facility Report
10) CCL 132 Appendix C Mitigation Measure Applicability Table (MMAT)
11) Public Comments from June 9, 2023 PC Meeting Memorandum
12) Appellants' Brief (May 25, 2023)
13) Tom Ballanco's Response (June 7, 2023)

APN 025-180-038-000
P-23-06 Appeal of CCL-132
Surrounding Area Uses Map



Staff Author: BH
Date: 5/18/2023

TRINITY COUNTY
COMMUNITY DEVELOPMENT SERVICES
PLANNING & CANNABIS, 530 MAIN ST., PO BOX 2819
WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1351, FAX (530) 623-1353

Received
MAR 9 2023
Trinity County
Planning/Cannabis

APPLICATION TO APPEAL OF DIRECTOR'S DECISION TO PLANNING COMMISSION

DATE: 3/9/2023

APPEAL FEE: $500- due upon filing

Project # or CCL # or CCV # of application decision being appealed: CCL-132, APN 025-180-038-00

Date of Director's decision or action: 2/17/2023

Director's decision was: (X) Approve ( ) Deny

A. **APPLICANT/APPELLANT INFORMATION** *The following information will be used to contact you regarding the status of your appeal (e.g. hearing dates) and is considered public record.*

NAME: Friends of the Lewiston Grass Valley Creek

PHONE: [redacted] EMAIL: [redacted]

MAILING ADDRESS: [redacted]

B. **REASON FOR APPEAL** *Clearly state the basis for the appeal and include/attach any supporting evidence if applicable.*

Failure to comply with CEQA and the TAA Settlement Agreement and Judgment.

Refer to the attached letter prepared by Laurie Wills dated 3/9/2023 with related details.

Signature: Laurie Wills Date: 3/9/2023

FOR OFFICE USE ONLY

Date: 3-9-23 Project number: P-23-06

Received by: DRoss Receipt number: PL-2023-00012

Notice Published: _____ Hearing Date: _____

Thursday, March 9, 2023

HAND-DELIVERED

Mr. Drew Plebani
Cannabis Director
Trinity County Cannabis Division
P.O. Box 2819
Weaverville, CA 96093

RE: Notice of Appeal of the Approved License for CCL-132 (APN 025-180-038-000)

Dear Mr. Plebani,

On behalf of an interested group of property owners organized as the Friends of the Lewiston Grass Valley Creek (hereafter "Appellants"), I hereby submit a timely Notice of Appeal of the above-referenced commercial cannabis license approval for a project located at 200 Coffin Road, in Lewiston.

Reasons for Appeal:

1. Cumulative Impacts: Based on a review of the above referenced cannabis file, it appears the County continues to violate the TAA Settlement Agreement and Judgment in whole or in part by continuing its practice to approve and issue commercial cannabis licenses while ignoring its duty to identify, consider and mitigate cumulative impacts in accordance with CEQA Guidelines. As a comparison, similar findings were discovered after a review of CCL-133 that was approved August 17, 2022. During a recent meeting with staff on March 2, 2023, they acknowledged they do not have the "tools" they need to evaluate and/or measure cumulative impacts. The FEIR is either deficient in this regard or the County is unwilling or unable to address cumulative impacts on a localized or vicinity basis for project specific site inspections before approving projects. This pattern of ignoring cumulative impacts as part of the EIR Appendix C checklist review process is disconcerting on many levels.

2. Precedence: Based on a small sampling of approved commercial cannabis licenses within the Lewiston Expansion Opt Out area, it appears the County is once again setting a precedence of not fully and properly analyzing localized and vicinity cumulative impacts in accordance with CEQA Guidelines on a project by project basis. The County is not allowed to limit its identification, analysis and mitigation of significant adverse immediately adjacent or vicinity impacts. This includes sensitive residential, commercial and public facility receptors. As a result, the County's effort to limit the CEQA analysis for area impacts, while disregarding clearly adjoining receptors, cannot simply disregard its obligation to fully and fairly analyze and mitigate significant impacts by limiting such a review to the narrowly and improperly defined "immediate vicinity."

3. Sensitive Receptors: After repeated attempts to work with both staff and the ad hoc committee regarding sensitive receptors identified in the applicant's Appendix C application, we found appropriate action was not taken to correct these inaccurate findings prior to the approval of this license.

4. Habitual Violations: Despite code enforcement violations that were investigated and acted upon by the Trinity County Sheriff's Office (TCSO), no evidence of these violations were found in the official cannabis file under the Violations Tab. Appellants obtained written confirmation that the applicants continued to operate without a license and were forced to self abate their plants in February 2022 and again in August 2022. The applicants have disregarded any and all instructions from the cannabis division to cease operations until which time their license was approved under the EIR Appendix C review process. In addition, the applicants have a history of code compliance nuisance complaints, some of which are in the cannabis file, but the majority are not. Also, some members of the group reviewed the applicant's Hayfork cannabis file (CCL-006 which is currently unlicensed and undergoing its Appendix C review process). Contents of that file include a Warning Notice dated 3/1/2023 that indicated failure to correct the violation within 10 days would result in the violation being sent to the District Attorney's office. Cumulatively, these are prime examples why fines and self-abatement remedies prescribed in the Ordinance allowing for a 7-day correction period are not working. This pattern of habitual violations is very troublesome. As stakeholders, we have publicly requested increased penalties up to and including suspension or revocation of a license for those licensees who habitually violate, especially if they are located within a designated opt out area. We've raised these concerns at appeal hearings, opt-out meetings, ad hoc meetings and with cannabis staff. To date no action has been taken to effect change.

5. Variance Regulations: The site map found in the cannabis file for CCL-132 shows the distance between the designated cannabis cultivation area and the neighbor's residence is less than 350 feet which according to County regulations should require a variance. However, the 6/15/2022 Cannabis Division Site Inspection Form shows the distance exceeds the 350 feet requirement. As a comparison, our research found the neighboring farm (CCL-133) on the contiguous property, located on Coffin Rd, was required to obtain a variance. These inconsistencies are cause for concern and therefore are being included in our reasons for appeal.

6. Failure to Comply with State and Local Reporting Requirements: No records were found indicating the applicant is complying with their requirement to file annual reports with the CA State Water Resources Control Board for the years 2021, 2022 and 2023. Not only is this a State agency requirement, it is a requirement pursuant to County Ordinance 315-849, Section 17.43.060 Performance standards for commercial cultivation of cannabis.

Summary:

Some members of the group have actively participated in the County's cannabis ad hoc committee meetings, led by Supervisors Frasier and Groves. As stakeholders, we provided input and raised concerns regarding the County's Final Environmental Impact Report (FEIR) and Appendix C Checklist. In these private ad hoc meetings, key cannabis staff members, Sean Connell and Ed Prestley, often participated; as did CAO Kuhns and an attorney from Prentice Long as needed at the request of the Supervisors. Members of the group have repeatedly raised some of the above referenced concerns in an attempt to work collaboratively with the County to resolve issues in advance of the EIR site specific review. In doing so, it was our ultimate goal to mitigate the need for future appeals in the best interest of all parties involved.

As recently as March 2, 2023, members of the group conducted a review of the official cannabis file for CCL-132 (once again) after learning that a ***Notice of Cultivation Licenses*** was published in the Trinity Journal on February 22, 2023; whereby the Cannabis Director approved the license on February 17,

2023, in accordance with the California Environmental Quality Control Act (CEQA Guidelines Section 15168(c) & (e)). The notice indicated the above referenced license has been determined to be later activities and fall within the scope of the certified Environmental Impact Report adopted by the Trinity County Board of Supervisors which adequately describes the activity for purposes of CEQA.

Much to our dismay, we discovered no changes or corrective actions were taken by the County to address many of the above referenced concerns. At our meeting on March 2, 2023, staff acknowledged they did not have the tools needed to evaluate or measure cumulative impacts. We asked staff to withdraw their approval of CCL-132 until which time these issues could be addressed. They stated they could not do that and indicated our only recourse was to file an appeal.

Based on a file review of the two recently approved commercial cannabis licenses (CCL-132 & CCL-133) located on two contiguous parcels on Coffin Rd, in the Lewiston Expansion Opt Out Area (Ordinance No. 315-851); there is no evidence that cumulative impacts were 1.) identified, 2.) taken into consideration on a site-specific basis, or 3.) taken into consideration on a localized vicinity basis, during the EIR Appendix C evaluation process. Furthermore, in this densely populated residential area, there is a long-term vineyard and two commercial cannabis projects; all three of these businesses have adjoining property lines and are situated along a sensitive watershed - the Grass Valley Creek. By approving licenses for the two commercial cannabis projects identified, the County has merely gone through the exercise of accepting Appendix C applications and continues to be deficient in their obligation to conduct a thorough CEQA evaluation that includes environmental cumulative impacts.

For these reasons, we are appealing the Cannabis Director's decision to approve CCL-132, and request that the decision be reversed by the Planning Commission, with possible future license issuance to be considered only at such time that a complete and proper CEQA review has been completed for this project.

Sincerely,

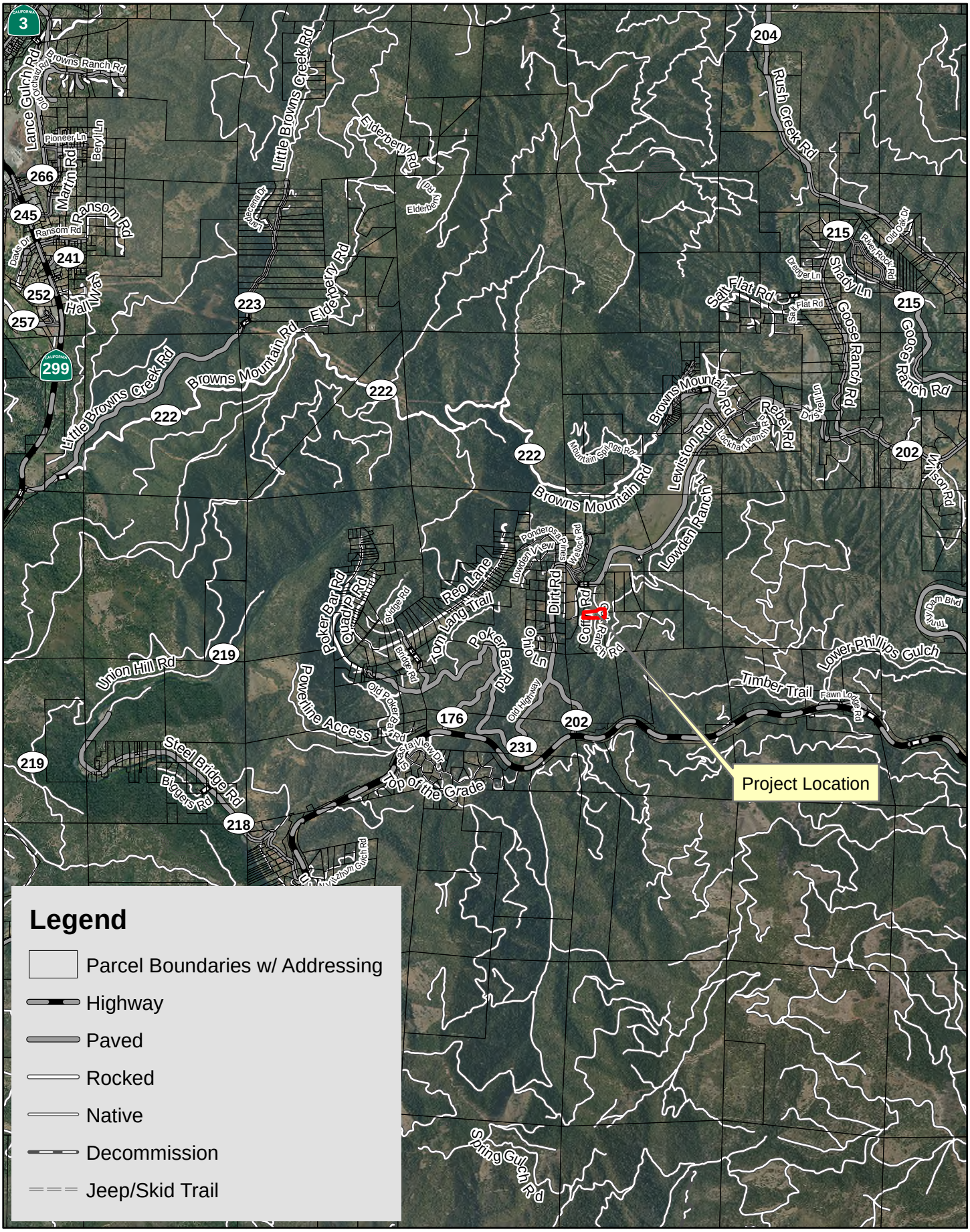
Laurie Wills

Laurie Wills
On behalf of the Friends of the Lewiston Grass Valley Creek

Enclosures: Application to Appeal of Director's Decision to Planning Commission Form
Appeal Filing Fee

cc: Friends of the Lewiston Grass Valley Creek

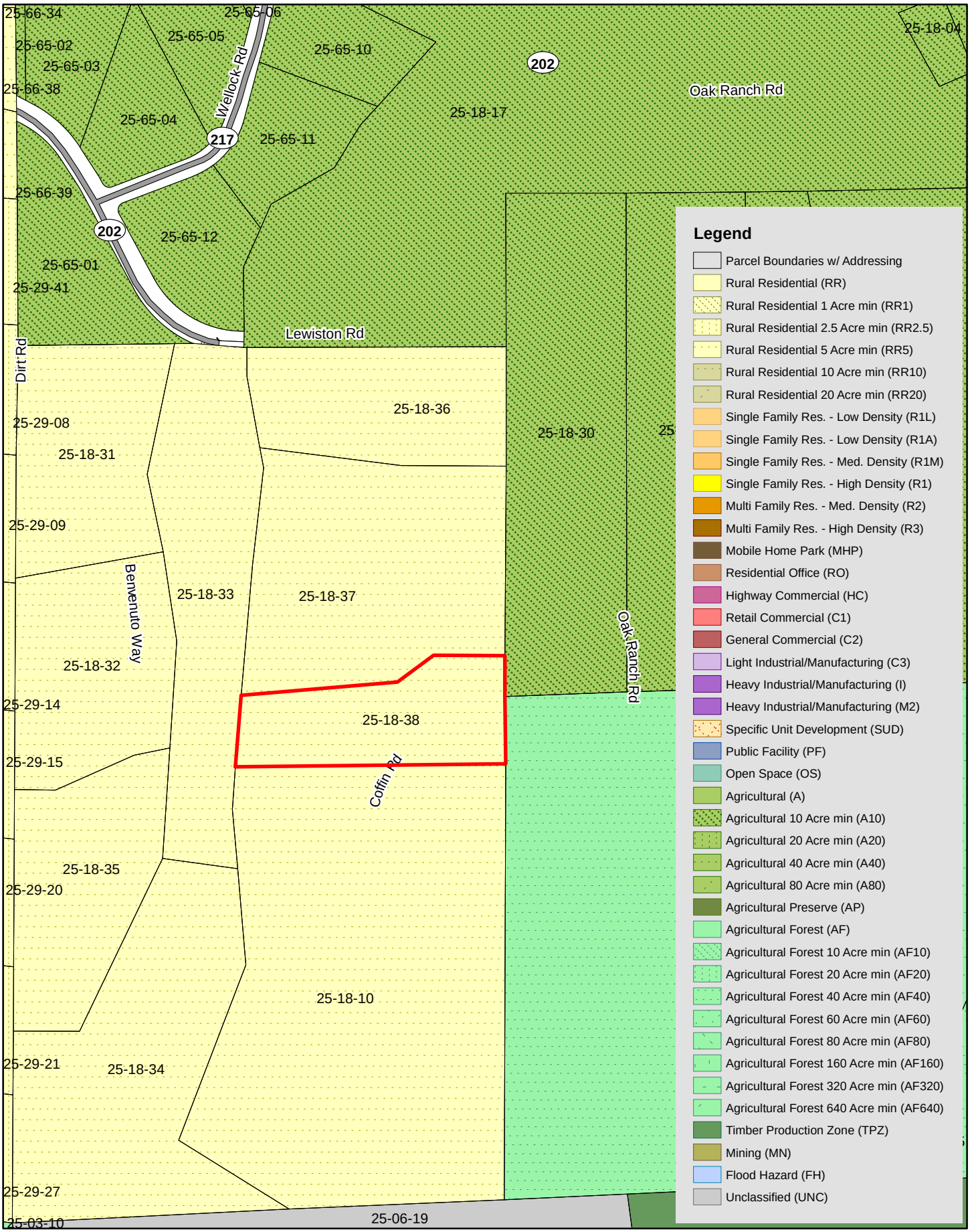
APN 025-180-038-000
P-23-06 Appeal of CCL-132
Project Location Map



Staff Author: BH
Date: 5/18/2023

Figure 4: Project Diagram

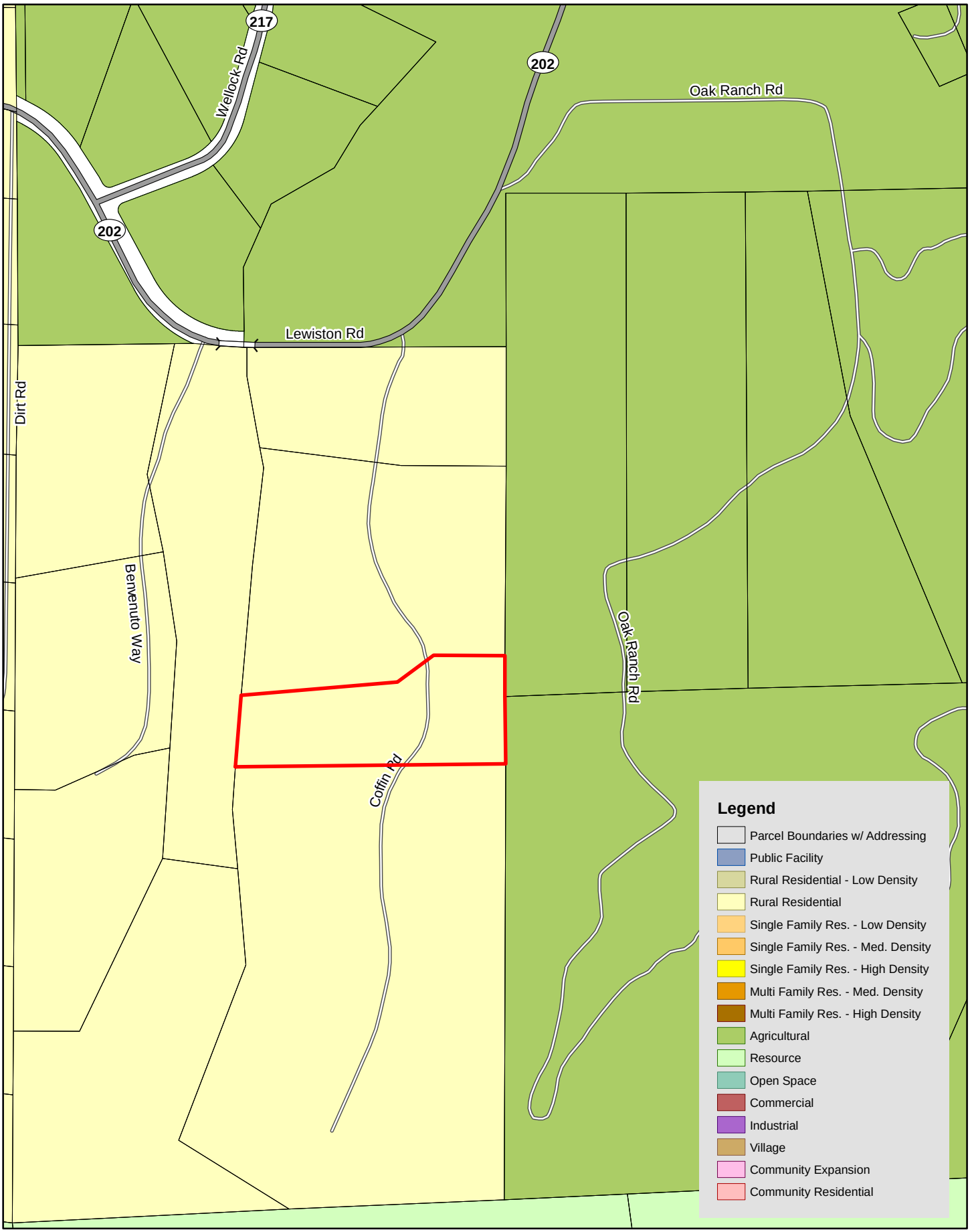
APN 025-180-038-000
P-23-06 Appeal of CCL-132
Zoning District Map



0 290 580 1,160 Feet

Staff Author: BH
Date: 5/18/2023

APN 025-180-038-000
P-23-06 Appeal of CCL-132
GPD Map

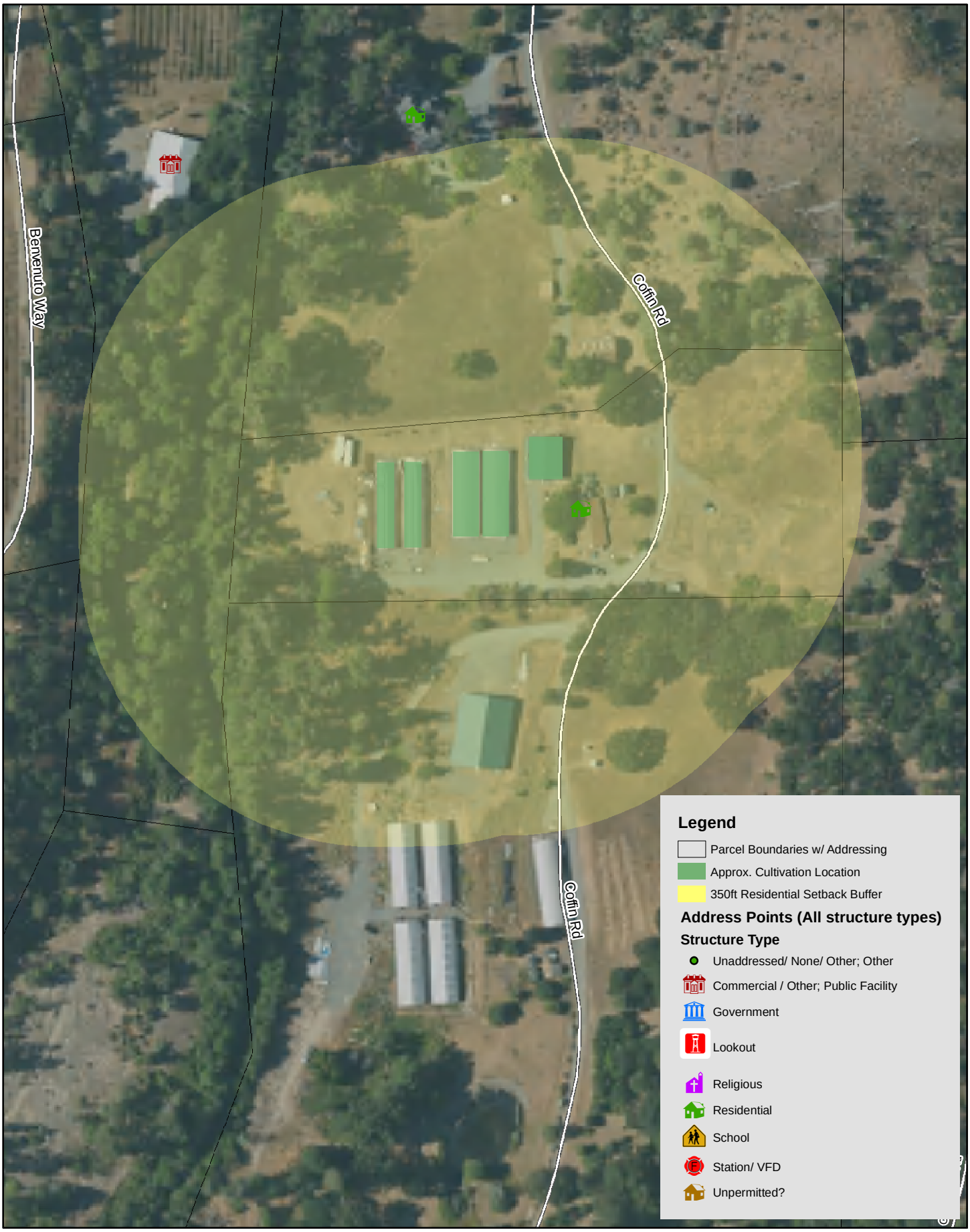


Staff Author: BH
Date: 5/18/2023

APN 025-180-038-000
P-23-06 Appeal of CCL-132
FEMA Layer Map

Staff Author: BH
Date: 5/18/2023

APN 025-180-038-000
P-23-06 Appeal of CCL-132
350ft Residential Setback Map



0 87.5 175 350 Feet

Staff Author: BH
Date: 5/18/2023

Facility At-A-Glance Report

SEARCH CRITERIA:

DRILLDOWN HISTORY:
Place ID **834402**

General Information

Region	Place ID	Place Name	Place Type	Place Address	Place County
1	834402	Emerald Choice Inc.	Cannabis Site	Lewiston, CA, 96052	Trinity

Related Parties

Party	Party Type	Party Name	Role	Classification	Relationship Start Date	Relationship End Date
624645	Organization	Emerald Choice, Inc	Owner and Operator	Privately-Owned Business	05/21/2021	
624646	Person	Natalie Koehler	Contact		05/21/2021	
614217	Person	Marsha Lack	Contact		04/26/2019	05/21/2021
614218	Organization	Jake Davis	Operator	Privately-Owned Business	04/26/2019	05/21/2021
574710	Organization	Jacob Mason-Davis	Owner and Operator	Privately-Owned Business	07/12/2018	05/21/2021
563397	Organization	Brinkley, Sam	Owner and Operator	Private-Individual	03/09/2017	07/12/2018

Total Related Parties: 6

Regulatory Measures

Reg Measure ID	Reg Measure Type	Region	Program	Order No.	WDID	Effective Date	Expiration Date	Status	Amended?
430189	Enrollee - WDR	1	IRRICANNABIS	2019-0001-DWQ	1_53CC415130	06/04/2019	04/15/2024	Active	N
412651	Enrollee - Waiver	1	IRRICANNABIS	R1-2015-0023	1A170220CTRI	02/27/2017	08/13/2020	Historical	N

Total Reg Measures: 2

Violations

Violation ID	Occurred Date	Violation Type	(-) Violation Description	Corrective Action	Status	Classification	Source

Report displays most recent five years of violations. Refer to the Interactive Violation Report for more data.

Total Violations: 0 Priority Violations: 0

*Click the "(+/-) Violation Description" link to expand and contract the violation description.

*As of 5/20/2010, the Water Board's Enforcement Policy requires that all violations be classified as 1, 2 or 3, with class 1 being the highest. Prior to this, violations were simply classified as Yes or No. If a 123 classification has been assigned to a violation that occurred before this date, that classification data will be displayed instead of the Yes/No data.

Violation Types

Enforcement Actions

Enf Id	Enf Type	Enf Order No.	Effective Date	Status

Total Enf Actions: 0

Inspections

Inspection ID	Inspection Type	Lead Inspector	Actual End Date	Planned	Violations	Attachment

Total Inspections: 0 Last Inspection: None

The current report was generated with data as of: 05/18/2023

Implementation of the following applicable mitigation measures will be for the life of the Project, adjusted as practicable for seasonal fluctuations of the cultivation project. Frequency of implementation will be on an ongoing basis, with the exception of Mitigation Measure 3.10-2, Conduct Groundwater Monitoring and Adaptive Management, which will be conducted on a monthly basis.

Aesthetics

Mitigation Measure 3.1-1b: Maintain Cultivation Parcel
This mitigation measure applies. This Project will maintain the parcel clear of trash and debris piles. No trash or debris, including abandoned cars, various woody materials, plastic tarps, cannabis waste, or household appliances, will be allowed to accumulate on this parcel for a period greater than two weeks for the life of the license.

Mitigation Measure 3.1-1c: Fence Cultivation Site
This mitigation measure only applies if the Project applicant desires to fence their cultivation area. If the Project applicant chooses to fence their cultivation site, covered and solid fencing shall be designed to blend with the surrounding rural or natural conditions of the parcel and will be maintained in good working condition. If topography prevents fencing from being adequate screening, a vegetative fence will be maintained in good condition to comply with screening requirements.

Air Quality

Mitigation Measure 3.3-2a: Limit the Use of Fossil Fuel–Powered Outdoor Power Equipment at All Commercial Cannabis Cultivation and Noncultivation Sites
This mitigation measure applies. The Project applicant will do the following to satisfy this mitigation measure:

- Limit the use of off-road equipment that is powered by gasoline, diesel, or other fossil fuels where available. This requirement does not apply to generators.

Mitigation Measure 3.3-2b: Require Use of Low Emission Diesel Back-Up Generators at All Commercial Cannabis Cultivation and Noncultivation Sites
This mitigation measure applies as the Project applicant may use in the future back-up diesel generator(s) for their cultivation operations. The applicant will apply the following mitigation measure:

- All generators shall meet EPA's Tier 4 emission standards as defined in 40 CFR 1039 and comply with the exhaust emission test procedures and provisions of 40 CFR Parts 1065 and 1068. Tier 3 models or best available model can be used if a Tier 4 version of the equipment type is not available. This measure can also be achieved by using battery-electric off-road equipment as it becomes available. Implementation of this measure shall be required in the contract the Project applicant establishes with its constructioncontractors.

Mitigation Measure 3.3-3: Implement Odor Control Plan for the Growing, Cultivating, Processing, Handling of Cannabis

The Project in question has no sensitive receptors in the vicinity of the Project site, as stated in the Project Description. The property is 5.6 air miles southeast of Weaverville, the nearest community with sensitive receptors such as schools, parks, medical clinics and churches. However, in the event sensitive receptors do move into the Project vicinity, the Odor Control Plan found at Attachment A will be implemented. The Odor Control Plan contains the following elements to satisfy this mitigation measure:

- Identify and describe odor-emitting activities and the nature and characteristics of the emissions.

- Location and distance of sensitive receptors (e.g., residents, youth-oriented facilities, schools, churches, residential treatment centers) from the site.
- Demonstrate that the cannabis site's distance to receptors, wind direction, and local topographic conditions would not result in detection of cannabis odors by off-site sensitive receptors that would create a nuisance.
- If off-site odor nuisance impacts cannot be avoided without odor controls, identify procedures and controls for reducing/controlling odors on-site, including the following as applicable to the cannabis use and license type (outdoor, mixed-light, and indoor). The operator may propose a numeric odor detection threshold for on-site operations (such as dilution-to-threshold standard that is verified by persons of normal odor sensitivity as defined by European Standard EN 13725) subject to County review and approval.[1]
- All fully enclosed and secure structures that contain cannabis plants or products that generate odors will employ mechanical ventilation controls, carbon filtration, or other equivalent or superior method(s) to eliminate the detection of cannabis off the parcel. This will include all drying and processing of cannabis plant material recently harvested.
- Outdoor operations may include different plant strains and smaller grow areas or relocation of outdoor activities indoors or, in a mixed-light facility contained within an enclosed structure, use of site design or other technology and/or use of odor easements to address odor impacts.
- Corrective actions to address County-verified off-site odor complaints will be identified. This may include immediate and complete harvest of the cannabis plants or identification of other methods to be applied as part of the current harvest or the next harvest to minimize off-site odor impacts so that they would not conflict with other applicable standards of the County's Cannabis Program or State license requirements.

Biological Resources

Mitigation Measure 3.4-1a: Conduct Preapproval Biological Reconnaissance Surveys

This mitigation measure applies and is satisfied as a reconnaissance-level survey was conducted by a qualified biologist with Siskiyou Restoration Group (SRG) on the Project site September 24, 2020, in order to determine whether there is potential for 2 special-status plants, 25 special-status fish and wildlife species, or sensitive habitats identified in the Biological Assessment prepared for the Project (found at Attachment B) to be present onsite.

The biological reconnaissance survey was conducted by a qualified biologist with SRG. The Biological Assessment report has been provided to the Project applicant and to the County as Attachment B of this CEQA compliance document and provides evidence supporting a conclusion that no special-status plant species, wildlife and sensitive habitats are present or likely to occur within the proposed development area. Evidence supporting findings of existing or non-existing suitable habitat, and detailing the technical analysis of said findings, are found in the Potential for Special Status Species Occurrences Tables 2 and 3 of the Biological Assessment found at Attachment B. The project description in the Biological Assessment may not match the project description in this document, as the project description in the Assessment was relevant to the time of the survey. The validity of the Biological Assessment should not be challenged by this, as these assessments were conducted parcel-wide, as opposed to only Project area assessments. Therefore, the Biological Assessment found at Attachment B is valid even though the project description contained therein may be out of date.

There is the potential for one special-status animal species to occur onsite due to the presence of suitable habitat, though none of these species or any evidence of their presence was seen and identified during the reconnaissance survey. The Biological Assessment report found at Attachment B includes a discussion of potential direct and

[1]The use of a dilution-to-threshold (D/T) standard is based on scientific publications on odor pollution control that have identified that odors above 7 D/T will often result in complaints (i.e., objectionable), with 15 D/T often described as a nuisance, and odors above 30 D/T described as a serious nuisance (i.e., nauseating) (McGinley 2000; Huey et al. 1960).

indirect impacts on these resources, as well as a comprehensive list of cannabis cultivation Best Management Practices that when implemented will avoid any potential adverse impacts to special-status species.

Mitigation Measure 3.4-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

This mitigation measure applies and has been satisfied. See discussion above for Mitigation Measure 3.4-1a; no special-status plant species are present or likely to occur within the proposed development area.

Mitigation Measure 3.4-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant Species

This mitigation measure applies to the Project, and will be satisfied by the following:

- The application will include identification of invasive plant species, as applicable, that occur on the site to the extent practicable and where they are located, including noxious weed species prioritized by the Trinity County Weed Management Association. The application will identify specific measures to be employed for the removal invasive species and on-site management practices.
- All invasive plant species introduced to the site from commercial cannabis activities and/or from land disturbances caused by commercial cannabis activities shall be removed from the site using measures appropriate to the species to the extent practicable. For example, species that cannot easily reroot, resprout, or disperse seeds may be left on site in a debris pile. Species that resprout readily (e.g., English ivy) or disperse seeds (e.g., pampas grass) should be hauled off- site and disposed of appropriately at a landfill site.
- Applicants shall monitor annually to ensure successful removal and prevention of new infestations of invasive species.
- Heavy equipment and other machinery shall be inspected for the presence of invasive species before on-site use, and shall be cleaned before entering the site, to reduce the risk of introducing invasive plant species.
- Only weed-free erosion control materials and mulch shall be used on-site.

Mitigation Measure 3.4-2a: Conduct Preconstruction Surveys for Special-Status Amphibians

This mitigation measure applies. According to the Biological Assessment prepared for the Project and provided at Attachment B, in concurrence with the results of the biological reconnaissance survey conducted by a qualified biologist on the Project site September 24, 2020, this mitigation measure applies as there is suitable habitat along the western border of the property with Grass Valley Creek, and the following will be implemented to satisfy:

- If special-status amphibians are detected during the initial biological reconnaissance survey (see Mitigation Measure 3.4-1a) or are determined to be likely to occur based on the presence of suitable habitat, consultation with CDFW shall be initiated to determine whether mitigation measures, such as Project design modifications, relocation of the site, relocation of individual animals, or installation of exclusionary fencing, will be necessary and appropriate.
- Regardless of detection during the initial biological reconnaissance survey, if suitable habitat for special- status amphibians is present within the proposed development area, a qualified biologist familiar with the life cycle of Cascades frog, foothill yellow-legged frog, Pacific tailed-frog, southern long-toed salamander, and southern torrent salamander shall conduct preconstruction surveys of proposed new development activities 24 hours before new development activities. Preconstruction surveys for special-status amphibians shall follow widely used and accepted standardized protocols that control for habitat type, seasonality, and environmental conditions, including the methods described in *Considerations for Conserving Foothill Yellow-Legged Frog* (CDFW 2018b), and *Visual Encounter Survey Protocol for Rana Boylii in Lotic Environments* (UC Davis 2017). Preconstruction surveys for special-status amphibian species shall be conducted throughout the proposed construction area and at least a 400-foot buffer around the proposed development area. Surveys shall consist of "visual encounter" as well as "walk and turn" surveys of areas beneath surface objects (e.g., rocks, leaf litter, moss mats, coarse woody debris) for salamanders, and visual searches for frogs. Preconstruction surveys shall be conducted within the appropriate season to maximize potential for observation for each species, and

appropriate surveys will be conducted for the applicable life stages (i.e., eggs, larvae, adults).

- If special-status amphibians are not detected during the preconstruction survey, then further mitigation is not required.
- If special-status amphibians are detected during the preconstruction survey, work on the site shall not commence until the applicant has consulted with CDFW as described above. Injury to or mortality of special- status amphibians will be avoided by modifying Project design, relocating the cultivation site, or relocating individual animals. If impacts to Cascades frog or foothill yellow-legged frog (both listed under CESA) are unavoidable, then the applicant will submit an incidental take permit (ITP) application to CDFW and receive take authorization before commencing development of the cultivation site. Conditions of incidental take authorization may include minimization measures to reduce impacts to individual Cascades frogs or foothill yellow-legged frogs, or compensation for loss of the species including but not limited to purchasing credits from a CDFW-approved mitigation bank.

Mitigation Measure 3.4-2n: Implement Generator Noise Reduction Measures
This mitigation measure applies, and the following with be implemented in order to satisfy this condition:

- The cultivation of cannabis will not exceed the noise level standards as set forth in the County General Plan: 55 A-weighted decibels (dBA) from 7:00 a.m. to 7:00 p.m. and 50 dBA from 7:00 p.m. to 7:00 a.m. measured at the property line, except that generators associated with a commercial grow are not to be used between 10:00 p.m. and 7:00 a.m. (Section 315-843[6][b]). The following additional noise performance standards will apply to generator use:
    - Project-generated sound must not exceed ambient nesting conditions by 20-25 dBA.
    - Project-generated sound, when added to existing ambient conditions, must not exceed 90 dBA.

Mitigation Measure 3.4-6c: Implement Mitigation Measure 3.1-1b: Maintain Cultivation Parcel
This Mitigation Measure applies as Mitigation Measure 3.1-1b applies. The satisfaction of Mitigation Measure 3.1-1b thus satisfies the requirements of this mitigation measure, and the project is in compliance.

Geology and Soils

Mitigation Measure 3.7-2: Implement Mitigation Measure 3.10-1a: Demonstrate Compliance with Water Resource Standards
This mitigation measure applies and is satisfied by the implementation of Mitigation Measure 3.10-1a.

Greenhouse Gas Emissions

Mitigation Measure 3.8-1b: Implement Mitigation Measures 3.3-2a and 3.3-2b
This mitigation measure applies and is satisfied by the implementation of 3.3-2a and 3.3-2b.

Mitigation Measure 3.8-1c: Renewable Electricity Requirements
This mitigation measure applies, and will be satisfied through the following conditions:

- As the power supply to Applicant's property and Project site is via a permanent connection to the TPUD grid, which has been providing 100% renewable hydroelectricity to its customers in the Project area since 1982, supplied by power that is generated at Trinity Dam, the Project is therefore already renewable-energy compliant and meeting the requirements of this mitigation measure.

Mitigation Measure 3.8-1d: Lighting Efficiency Requirements
This mitigation measure applies as the Project proposes to utilize artificial lighting in their cultivation site. The following conditions will be implemented to satisfy this mitigation measure:

- Only light-emitting diodes (LEDs) or double-ended high-pressure sodium (HPS) fixtures will be used in all existing and new mixed-light cultivation operations (i.e., sites not seeking relicensing).
- Only high efficacy lighting will be used in all existing and new noncultivation operations (i.e., sites not seeking relicensing). Examples of high efficacy lighting include:
    - Pin-based linear fluorescent or compact fluorescent light sources using electronic ballasts;
    - Pulse-start metal halide light sources;

- HPS light sources;
- Luminaries with hardwired high frequency generator and induction lamp; and
- LEDs.

Hazards and Hazardous Materials

Mitigation Measure 3.9-6: Implement Mitigation Measures 3.14-3 and 3.14-4.
This mitigation measure applies due to Mitigation Measures 3.14-3 and 3.14-4 are being applicable. Satisfaction of Mitigation Measures 3.14-3 and 3.14-4 thus satisfies this mitigation measure.

Hydrology and Water Quality

Mitigation Measure 3.10-1a: Demonstrate Compliance with Water Resource Standards
This mitigation measure applies. The Applicant and the Project are enrolled under the State Water Resources Control Board (SWRCB) General Order WQ 2019-0001-DWQ ("Cannabis Cultivation Policy- Principles and Guidelines for Cannabis Cultivation (Policy), and the General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities") (WDID#1_53CC415130). Documentation is provided at Attachment E.

The onsite septic system is permitted and has more than enough capacity to accommodate the two year-round resident employees of the operation. There are to be no seasonal employees onsite other than these two individuals. Therefore, the Project is in compliance with this mitigation measure.

Mitigation Measure 3.10-1b: Restrict Cultivation Operations in Floodplains
This mitigation measure applies as a floodplain associated with Grass Valley Creek runs along the western border of the property. However, cultivation activities are outside established SWRCB setbacks and not in the floodplain or designated floodway (see Trinity County Water Resources map at Attachment F). Cultivation sites will not place any structures or involve any grading that alters the capacity of the 100-year floodplain. No storage of pesticides, fertilizers, fuel, or other chemicals will be allowed within the 100-year floodplain. All cultivation uses (plants, planter boxes and pots, and related materials) will be removed from the 100-year floodplain between November 1 and April 1 each year.

Mitigation Measure 3.10-2: Conduct Groundwater Monitoring and Adaptive Management
This mitigation measure applies. Both watercourses and the onsite well are sited outside of all stream setbacks as set forth in SWRCB Order WQ 2019-0001-DWQ. The Applicant currently submits to the SWRCB regular annual Cannabis Water Quality Monitoring & Reports as required per their current enrollment under Order WQ 2019-0001-DWQ and will continue to do so as required for the life of the Project. By adhering to the requirements of the SWRCB General Order, groundwater draft volumes will be recorded, reported, and monitored such that the intent of this mitigation measure will be met and thereby with which the proposed project will be kept in compliance.

Mitigation Measure 3.10-3a: Implement Mitigation Measure 3.10-1a: Demonstrate Compliance with Water Resource Standards
This mitigation measure applies, see Mitigation Measure 3.10-1a for how this mitigation measure is satisfied.

Mitigation Measure 3.10-4: Implement Mitigation Measure 3.10-1b: Restrict Cultivation Operations in Floodplains
See discussion above in Mitigation Measure 3.10-1b.

Public Services

Mitigation Measure 3.13-1: Implement Mitigation Measures 3.14-3 and 3.14-4.
This mitigation measure applies and is satisfied by the application of Mitigation Measures 3.14-3 and 3.14-4.

Transportation

Mitigation Measure 3.14-3: Provide Site Access Free of Hazards Due to Geometric Roadway Design
This mitigation measure is applicable, and will be satisfied by the following:

- Applications for new commercial cannabis activities and license renewals for existing cannabis operations will, where appropriate, provide documentation showing that roadways providing site access are in compliance with Chapter 12.10: Design Policies of the Trinity County Code of Ordinances. New roadway water quality control and drainage features or new drainage features on existing roadways will be designed to accommodate peak flow conditions and will be consistent with the Road Handbook, per CCR Title 14, Chapter 4 and SWRCB Order WQ 2019-0001-DWQ.

Mitigation Measure 3.14-4: Provide Adequate Emergency Access
This mitigation measure is applicable, and will be satisfied by the following:

- Applications for new commercial cannabis activities and license renewals for existing cannabis operations will provide documentation showing that site access is in compliance with Chapter 8.30 – Fire Safe Ordinance of the Trinity County Code.

Utilities and Service Systems

Mitigation Measure 3.15-3: Implement a Cannabis Waste Composting Management Plan
This mitigation measure applies and is satisfied by the following:
The Applicant has developed and implements a cannabis waste composting management plan, which is found at Attachment G. The plan meets all state requirements and the following requirements to be confirmed by the County during inspections, which is not limited to but includes the following:

- designation of the composting area on a site plan that is contained within the site boundaries (must be located within the Designated Area for cultivation operations) that is of adequate size to accommodate site cannabis waste needs;
- identification of water quality control features that ensure no discharge of cannabis waste or other pollutants; and
- details on routine management and equipment used in the composting.

Wildfire

Mitigation Measure 3.16-1: Implement Mitigation Measure 3.1-1b: Maintain Cultivation Parcel
This mitigation measure applies and is satisfied by compliance with Mitigation Measure 3.1-1b.

Mitigation Measure 3.16-2b: Implement Fire Prevention Measures for Onsite Construction and Maintenance Activities
This mitigation measure applies and will be satisfied by placing Fire Extinguishers in the following areas: all greenhouses, support structures, the residence and water storage area. Appropriate defensible space will be maintained around all buildings.

Mitigation Measure 3.16-3: Implement Mitigation Measure 3.10-1a: Demonstrate Compliance with Water Resource Standards
This mitigation measure applies, and is satisfied by compliance with Mitigation Measure 3.10-1a.

TRINITY COUNTY

COMMUNITY DEVELOPMENT SERVICES

BUILDING ♦ PLANNING ♦ ENVIRONMENTAL HEALTH
P.O. BOX 2819, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1351 ♦ FAX (530) 623-1353

Ed Prestley, Interim Deputy Director

MEMORANDUM

DATE: June 9, 2023

TO: Project Files P-23-06

FROM: Deborah Rogge Administrative Coordinator-Planning

SUBJECT: Agenda Item 4 P-23-06 Appeal of CCL-132

Dear Members of the Planning Commission and public,

The following public comments have been received as of end of day June 7, 2023.

Deborah Rogge

From: Peggy Wellock
Sent: Tuesday, June 6, 2023 1:48 PM
To: info.planning

As downstream residents of the property and permit to grow in question, my husband and I are strongly opposed to this property ever being permitted to grow cannabis. My husband's grandparents were prior owners of the property in question and we know that there are graves of three people who were buried on the property in question. This fact alone should be cause enough to never allow a marijuana grow on the property.

Also, since we irrigate our property, garden, lawns and orchards with water drawn from the Trinity River near the confluence of Grass Valley Creek, we are also concerned about the health of the water we use daily. We also draw water from a well on our property and have concerns about the possible contaminates that another grow above us could cause. We have lived on our property for 46 years, have paid our taxes, raised six children who attended and graduated from Trinity County Schools, as did both of us. We have been actively involved in our community and our county and the well-being of it has always been with us all this time. We have done this and continue to live here because we have a love of our land and want what is best for it, as well as what is best for all our neighbors. Good neighbors care about each other, not just about themselves and the ways they can profit from detrimental activities.

Sincerely,

Peggy Wellock

Lewiston, CA 96052

Deborah Rogge

From:	Gayl Ward
Sent:	Wednesday, June 7, 2023 8:14 PM
To:	info.planning
Cc:	L Wills; Gayl Ward
Subject:	Re Appeal P-23-06 CCL-132 (Coffin Rd, Lewiston
Follow Up Flag:	Follow up
Flag Status:	Flagged

We, as homeowners and residents of Lewiston, located in an approved opt-out area, absolutely support the appeal of this cannabis license issuance. We do not agree with this license having been approved since they continued to operate prior to approval and have not mitigated the negative environmental cumulative effects that have been repeatedly reported by nearby residents.
We urge you to revoke the approval of this license.

Roy and Gayl Ward

Lewiston, CA 96052

BALLANCO LAW GROUP, APC
P.O. Box 2878
Weaverville, CA 96093
650-296-9782 Bar # 194345

June 7, 2023

Trinity County Planning Commission
530 Main St.
Weaverville, CA 96093

Greetings Commissioners,

This office represents Emerald Choice, Inc. in response to the Appeal of the Director's decision to issue CCL-132, which was noticed in the Trinity Journal on February 22, 2023. The letter accompanying the Appeal identifies 6 separate "reasons," none of which are supported by sworn affidavit or any other evidence.

The first three reasons, titled, "Cumulative Impacts," "Precedence" and "Sensitive Receptors" seem to indicate a general dissatisfaction with Staff's analysis of Cumulative Impacts. There are no specific allegations as to this particular license, so it is unclear whether the letter-writer is upset about this license or Staff procedure generally. There is also a misplaced allegation that "the county continues to violate the TAA Settlement Agreement." The TAA Settlement Agreement was entered into by the Trinity Action Association, Inc. ("TAA") and Trinity County. [Attachment A] By its terms, the TAA Settlement Agreement specifies that it "shall bind the heirs, personal representatives, successors and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns." [Attachment A, pg 6, paragraph 15]

Unlike the Friends of the Grass Valley Creek (hereafter the "Friends"), TAA is a legal entity that is currently active, meaning it does not have any "successors." TAA has more than demonstrated its ability to advocate for, and litigate, on its own behalf and it does not appear anywhere on the purported Appeal. There is nothing to indicate that

TAA has assigned any of its rights or interests to the Appellant. The Friends are not parties to the TAA Settlement and have no interests therein to assert.

If the Friends were parties to the TAA Settlement Agreement, they might be more familiar with its language regarding "Cumulative Impacts." In paragraph 3(G)(ii) on page 4 of the TAA Settlement Agreement, the parties agree that "the County will describe its methodology for determining" where cumulative impact considerations are significant enough to render Categorical Exemptions to CEQA inappropriate. The Director's decision to issue CCL-132 is not dependent on a Categorical Exemption, but rather relies on the compliance determination provided by the Applicant's Appendix C to the TC Programmatic EIR (PEIR). That determination, reflected in the Notice of Decision (NOD) for this license was posted on February 21, 2023. [Attachment B]

Public Resources Code § 21167 specifies the strict timelines that apply to the commencement of actions attacking an NOD. In no case are such actions allowed beyond 30 days. *See* PRC § 21167(b, c & e), *see also* CEQA Guidelines § 15230. Accordingly, even if the Appellants raised valid CEQA issues, they are both in the wrong forum and time-barred.

Despite the lack of justiciability of Appellant's CEQA claims, we will address them briefly. Section 4 of the PEIR titled, "Cumulative Impacts" presents a detailed analysis and discussion of cumulative impacts in each of the CEQA resource areas. Some of these impacts are identified as "cumulatively considerable," "significant and unavoidable." These significant and unavoidable impacts are reiterated in Section 5 of the PEIR titled, "Alternatives."

In short, the cumulative impact of licensed commercial cannabis activities in Trinity County, including those that are significant and unavoidable, were identified, analyzed and discussed in the PEIR. The PEIR was certified on December 28, 2020. The time to challenge any aspect of the PEIR expired 30 days later on January 27, 2021, more than two years ago. The Friends presents no allegation, let alone evidence, that the

operation of CCL-132 would lead to any cumulative impacts not already analyzed under the PEIR and Applicant's Appendix C.

The same is true for sensitive receptors and the potential impacts of licensed commercial cannabis activity. The PEIR discusses sensitive receptors, typically including children, the elderly, asthmatics or others who might be uniquely susceptible to air pollutants or noise and identifies specific considerations when they are present. Some Air Quality and Noise impacts analyzed and discussed in the PEIR are identified as "significant and unavoidable." The time to challenge findings or conclusions in the PEIR expired in January 2021.

The Applicant's Appendix C is consistent with the PEIR and its Project Description states that there are not sensitive receptors in the vicinity of the Project. The Friends seems to question this assertion, while failing to offer any of their own evidence. As discussed above, even if such evidence existed, the time to bring an action based on it has long passed.

Moving beyond the CEQA-based allegations, the fourth reason for the Appeal identified as, "Habitual Violations" is equally unclear as to whether it applies to this specific license, the manner the county applies its rules or the rules themselves. The TC Commercial Cultivation Ordinance identifies violation of its provisions as a nuisance and imposes existent remedies for nuisance abatement in TC Code, specifically Sections 8.64 and 8.90. These TC Code Sections and the associated 7-day cure period were not developed for cannabis cultivation and apply equally to illegal rentals, unpermitted construction and other potential nuisances, see TC Code § 8.90.120(A)(3). To the extent the Friends have a complaint about the procedures in TC Code, those concerns should be addressed directly to the Board of Supervisors. In their most recent filing labeled, "Appellant's Response" (to Staff Report), the Friends attached an exhaustive list of complaints against this property. The list includes 1 complaint from Mar, 2021, 6 complaints from Feb 2021, 32 complaints from 2020 and 2 from 2018. The Applicants

took over this operation on April 27, 2021. None of these historical complaints are relevant to Applicant's operation.

The fifth reason, "Variance Regulations" seems to surmise that since the neighboring cultivation CCL-133 required a set-back Variance from Applicant's residence, then the Applicant's must require a set-back Variance from the neighbors. As properly evaluated by Staff, this is not the case. Applicant's cultivation is more than 350' from the neighboring residence. In contrast, the neighbor's cultivation is within 350' of Applicant's residence and a set-back Variance was required. Based on the "Appellant's Response" to the Staff Report, it seems the Friends are dropping this issue from consideration.

The final reason, titled, "Failure to Comply with State and Local Reporting Requirements" raises concerns about State Water Board requirements for diversions from Grass Valley Creek. In addition to their legal diversion from Grass Valley Creek, the Applicant also maintains a permitted well, where it derives the bulk of the water it uses for its commercial cultivation. Applicant's State Water Board reporting is currently up to date.

Accordingly, we ask that the Appeal be dismissed and that the Director's decision to issue CCL-132 be upheld and the license issued forthwith.

Sincerely,

Thomas J. Ballanco
Attorney for
Emerald Choice, Inc.
CCL-132

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between Petitioner Trinity Action Association and Respondents, County of Trinity and Richard Tippett (collectively, "County"), regarding *Trinity Action Association v. County of Trinity et al.*, Trinity County Superior Case No. CV19-0001 (the "Legal Action"). Collectively, TAA and the County are "Parties" to this Agreement and each is, individually, a "Party" to this Agreement. This Agreement shall be deemed to have been entered into on August 9, 2019 ("Effective Date").

RECITALS

A. TAA commenced the Legal Action on January 3, 2019. The Legal Action seeks traditional mandamus and declaratory relief and injunctive relief concerning (1) the County's obligation to conduct environmental review under the California Environmental Quality Act ("CEQA," Pub. Res. Code, 21000 et seq.) before issuing licenses under the County's Cannabis Ordinances (Trinity County Code Chapter 17.43); and (2) the County's obligations to produce records under the California Public Records Act ("CPRA," Gov. Code, § 6250 et seq.) related to cannabis licenses the County issues.

B. The County filed an answer to TAA's operative pleading on March 26, 2019. The Answer denied the material facts alleged in TAA's pleading and asserted a number of affirmative defenses.

C. Without making any admissions, the Parties through this Agreement seek to resolve the Legal Action in a manner that allows them to forego the expenses, burdens, and time commitment of a trial and any further proceedings in the Legal Action.

D. The County is presently in the process of preparing an environmental impact report ("EIR") for its Cannabis Program. The County commits to, and will act in good faith and use its best efforts to, certify a properly prepared EIR by December 31, 2019. Notwithstanding the County's intention to take this action by the end of 2019, the Parties understand the County must certify an EIR that fully complies with the California Environmental Quality Act ("CEQA") and that the County may need to certify the EIR after December 31, 2019 if additional preparation and consideration becomes necessary in light of:

(i) Public or agency comments received regarding the EIR; or

(ii) New legislation or regulations, new decisional authority, or other related developments.

Should the County not certify the EIR by December 31, 2019, it will act in good faith and use its best efforts to certify the EIR as soon as reasonably possible after that date.

AGREEMENT

1. The Parties agree the Recitals stated above are true and are incorporated by reference as material terms of this Agreement. The Parties further agree as follows:

2. As concerns the CPRA, the parties agree as follows:

A. For purpose of this Agreement, the terms "document," "documents," "information," "writing," or "writings," or any similar term have the same meanings as "writing" (or "writings") as defined in Government Code Section 6252(e) and 6252(g).

B. For purpose of this Agreement, the term "CCL" includes all commercial cannabis license applications, including applications for new or renewal licenses, and all commercial cannabis licenses issued by the County.

C. Public records, as defined by the CPRA, include but are not limited to:

i. All writings relating or referring to CCLs (including but not limited to license applications, staff notes and memoranda, inspection records, emails, text messages, etc.), and/or County Code Chapter 17.43 and any cannabis-related county ordinances; and,

ii. All writings relating to or referring to compliance with CEQA and/or County Code 17.43 with respect to any individual CCL, or group of CCLs, or CCLs in general; and

iii. All writings referring to or relating to policies, procedures, instructions, directions, guidance, or correspondence in any form relating to compliance with CEQA and/or County Code 17.43 and/or any cannabis-related County Ordinance, including but not limited to writings received from or addressed to any State of California agencies or other County officials or employees.

D. Public records related to CCLs may be subject to redaction in accordance with the express provisions of the CPRA. Redactions that may be applied may, to the extent authorized by the CPRA, include personal telephone numbers, copies of drivers' licenses, proprietary information such as custom legal documents, and security plans. Nothing in this Agreement is intended to, nor shall be interpreted to, create any exemption from disclosure not provided in the CPRA. Reliance on any exemption, including the "catchall" provision of Government Code section 6255(a), is permissible only if, in a timely written response to the CPRA request, the County communicates a specific, articulable, and legally supportable basis exists for redaction on the asserted ground.

E. Any person desiring to review and/or copy a Public Record in the County's possession or control will be required to submit a written public records request on a form to be provided at the public counter of the County Planning Department. The form will require the requesting party to provide his, her, or its name, address, telephone number, and email address.

F. The Planning Department shall promptly schedule a time to provide for a supervised inspection of the requested Public Records at its office. Prior to the inspection, the Public Records shall be redacted in accordance with 2(D) above, if redactions are justified. Nothing in this Agreement in intended to, nor shall be interpreted to, limit the public's rights under the CPRA or create any exemption from disclosure not provided in the CPRA.

G. Copies of any requested records shall be made only by Planning Department Staff and shall be provided to the requesting party upon full payment of the cost for the copies charged at the County's published duplication rate, not to exceed the actual cost of such service.

3. As concerns CEQA, the parties agree as follows:

A. The County acknowledges and agrees that an application for a CCL (or renewal of a CCL) constitutes a "project" under CEQA as that term is defined in Public Resources Code Section 21065 and CEQA Guidelines (California Code of Regulations Title 14) Section 15378.

B. In conducting review under CEQA, the County shall follow CEQA, including the CEQA Guidelines, applicable case law, and all formal and informal guidance documents that have been published by, or may in the future be published by, the State Cannabis Agencies (California Department of Food and Agriculture, Bureau of Cannabis Control, and Manufactured Cannabis Safety Branch), which are incorporated herein by reference.[1] The County shall provide TAA copies of all guidance documents it receives from these agencies promptly upon receipt of any such documents.

C. All forms required to be signed by an applicant for a CCL shall be signed under penalty of perjury swearing that all information, documentation, and other records provided by the applicant or the applicant's agents is true and correct. Before issuance of any CCL, the County shall conduct and document at least one site inspection of the property for which the license is requested

D. All printed documents provided by the County regarding new and renewal CCL applications and licenses, including but not limited to the application packet and any associated documents, guidelines, instructions, and Frequently Asked Questions, shall clearly state that the premises containing the cultivation site(s) will be subject to inspections both before and after license issuance, and that providing false or inaccurate information to the County at any time may result in denial or revocation of the license in addition to any applicable criminal penalties.

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[1] As of the Effective Date, the County has received the following documents from State cannabis licensing agencies: California Guidelines, CEQA Practice Recommendations from CDFA for Cannabis Licensing; CEQA Practice Recommendations from CDFA for Cannabis Cultivation – Categorical Exemptions (Dated March 7, 2019), including CDRA Instructions for Completing Categorical Exemption Evaluation Forms for each class of categorical exemption; and CEQA Practice Recommendations from CDFA for Cannabis Cultivation – General Recommendations (Dated March 5, 2019).

E. License applications, including those for new and renewal licenses, shall include appropriate documentation to allow the County to assess whether a categorical exemption is appropriate under CEQA Guideline 15300.2 (and other applicable CEQA Guidelines and State Cannabis Agencies guidance).

F. Prior to issuing any license application, the County Planning Director, or his or her designee, shall give notice by publication, posting, and mailing of its intended approval of the application, in a manner meeting or exceed the notice requirements of CEQA, along with any determination it intends to make under CEQA. All notices (posted, mailed, and published) will advise of the right to inspect license application files at the County Planning Department in accordance with the Public Records Act. Published and mailed notices shall provide the same information as provided by the posted notices. To the extent space limitations for published and mailed notice prevent the same information being included as in the posted notices, the mailed or published notices shall provide a link/URL to the County website where the full amount of information can be obtained on a readily accessible area of the website.

G. The County Planning Department, to facilitate a consistent, defined and certain methodology for assessing whether or not a categorical exemption is appropriate in light of all applicable CEQA Guidelines, shall write and publish on its web-site by no later than August 31, 2019, and thereafter adhere to evaluation standards or guidelines, including but not limited to those addressing how the County will evaluate CEQA Guidelines 15300.2 exceptions (i.e., where otherwise applicable Categorical Exemptions may not be used), including:

i. *Location Based Impacts.* The County will describe in writing its methodology, including documentation to be obtained and considered, for determining if the CEQA Guidelines section 15300.2 (a) exception applies for Class 1, 3, 4, and 5 projects;

ii. *Cumulative Impacts.* The County will describe its methodology for determining, for the purpose of application CEQA Guidelines section 15300.2 (b), "when the cumulative impacts of successive projects of the same type in the same place, over time," in a manner that considers license specific site, vicinity and county-wide impacts;

iii. *Significant Impacts.* The County will describe its methodology for and adopt thresholds of significance to be used in determining, for the purpose of application of CEQA Guidelines section 15300.2 (c) applies, because "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

iv. *Scenic Highways.* The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (d) exception applies, because a project "may result in damage to scenic resources, including but not limited to

trees, historic buildings, rock outcroppings, or similar resources" along applicable corridors.

v. *Hazardous Waste Sites*. The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (e) exception applies.

vi. *Historical Resources*. The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (f) exception applies, because a project "may cause a substantial adverse change in the significance of a historical resource."

4. Within 30 days of the Effective Date, the County shall pay TAA the sum of $95,000, made payable as separately stated in a writing TAA's counsel shall provide the County's counsel, as compensation for TAA's attorney fees and costs in this action.

5. Upon the Effective Date, this case shall be stayed for a period of two years, during which the Court shall retain jurisdiction to enforce compliance with this Agreement. During this period of retained jurisdiction, TAA shall have access to all information relevant to the County's compliance with the terms and covenants herein. In that regard TAA's attorneys may contact County staff directly to obtain documents and/or discuss compliance so long as counsel for the County is informed of such contact. During this period of retained jurisdiction, should TAA assert the County has failed to comply with any terms or covenants within, it may file a motion to compel the County's compliance with any such terms or covenants. The motion must be filed on or before two years of the Effective Date. Should the Court be unable to hear the motion on or before that date, the stay period shall be extended until such time as the Court can finally rule on any motion that is filed. If no motion is filed within two years of of the Effective Date, TAA shall promptly file a Notice of Dismissal of the Legal Action, with prejudice, and serve the same on the County when executed by the Court; provided, however, that the terms of this Agreement shall remain binding on the Parties and enforceable by separate legal action, including any motion brought under Code of Civil Procedure section 664.6, notwithstanding such dismissal. If an enforcement motion by TAA is granted the court may, as a remedy, extend the period of retained jurisdiction. Nothing in this section is intended to, nor shall be interpreted to, limit the number of motions TAA may make to compel County compliance with the terms of this Agreement.

6. Should any action, motion, or other legal proceeding be brought to enforce or interpret the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to recover reasonable attorneys' fees and costs incurred in prosecuting such efforts. Except as outlined in this Agreement, the Parties shall each bear their own attorneys' fees and costs incurred in connection with the Action.

7. Upon the dismissal of the Legal Action, each Party and his/her/its heirs, executors, administrators, predecessors, successors in interest, affiliates, partners, assigns, agents, officers and directors hereby forever generally, completely and mutually release and discharge the other Parties, including, but not limited to, their heirs, executors, administrators, trustees, settlors, beneficiaries, issue, directors, officers, shareholders, agents, predecessors, assigns, employees and attorneys, from any and all demands, debts, duties, and obligations related to the claims, defenses,

facts, events, errors, and omissions asserted in the Legal Action. The Parties expressly recognize and agree that this release applies to and serves as a bar to any challenge by TAA to any cannabis license the County issued to any person, entity, or party on or before the Effective Date.

8. This Agreement pertains to the Legal Action and is the result of compromise. No Party admits any fault or liability with respect to the claims alleged in the Legal Action, and this Agreement does not constitute, and will not in any circumstance be deemed to constitute, an admission or fault or liability by any Party. The Parties expressly recognize that this Agreement does not seek to resolve any claim or dispute concerning the County's compliance with any applicable laws, regulations, or ordinances concerning or affecting the issuance of cannabis licenses on or after the Effective Date. The Parties also agree that the Legal Action was brought by TAA in the public interest and to resolve ongoing disputes between TAA and the County. This Agreement does not resolve any past, present, or future disputes between the County and any other individuals or organizations.

9. The Parties acknowledge they have read this Agreement, have had the opportunity to have the Agreement explained to them by counsel of their choice, are aware of its content and legal effect, and are signing this Agreement freely and voluntarily.

10. This Agreement shall be effective upon its full execution. Each of the undersigned represents that he/she has the authority to bind the Party on whose behalf he/she has executed this Agreement. The Agreement may be executed in counterparts and in duplicate originals. If so executed, then upon proof of execution of at least one copy, the Agreement shall be effective from the date of the last signature. If executed in duplicate, each duplicate copy shall be valid as an original copy.

11. In the event any party seeks enforcement of the terms hereof the confidentiality provisions of Evidence Code Section 1115 *et seq* are expressly waived and this Agreement and each of its terms as well as all communications, documents and writings, as defined by Evidence Code Section 250, shall be disclosed and are admissible in any motion or action seeking such enforcement.

12. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party.

13. This Agreement constitutes the entire agreement between the Parties. No modification of this Agreement shall be valid unless in writing and signed by the Parties. The Parties shall not be bound by any representation, warranty, promise, or statement unless it is specifically set forth in this Agreement.

14. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California. Should any term of this Agreement be deemed unlawful, that provision shall be severed, or construed in accordance with applicable law as nearly as possible to reflect the Parties' mutual original intent, and all remaining

terms shall continue to be valid and fully enforceable. Furthermore, the place of performance shall be the County of Trinity State of California, in the event of litigation.

15. This Agreement shall bind the heirs, personal representatives, successors, and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns.

16. The Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.

17. Failure of any of the Parties to insist upon the strict observance of, or compliance with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a waiver of any of the Parties' right to insist upon such observance or compliance with the other terms of this Agreement.

18. This Agreement may be signed by PDF signatures. This stipulation may be signed in counterparts.

SO AGREED.

TRINITY ACTION ASSOCIATION

By: David Laffranchini,
Secretary

8-7-19
Dated

COUNTY OF TRINITY

By: Judy Morris, Chair
Board of Supervisors

Dated

Approved as to Form.

By: James Underwood

8/7/19
Dated

By: Derek P. Cole

Dated

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SO AGREED.

TRINITY ACTION ASSOCIATION

By: David Laffranchini,
Secretary

Dated

COUNTY OF TRINITY

By: Judy Morris, Chair
Board of Supervisors

8/7/19
Dated

Approved as to Form.

By: James Underwood

Dated

By: Derek P. Cole

August 7, 2019
Dated

THE TRINITY COUNTY CLERK

Ballanco Attachment 2

FROM: 2-21-23 TO: 3-21-23

Notice of Determination

Appendix D

To:

☐ Office of Planning and Research

U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth St., Rm 113
Sacramento, CA 95814

■ County Clerk

County of: Trinity
Address: 11 Court Street, P.O.Box 1215,
Weaverville, CA 96093

From:

Public Agency: Trinity County
Address: 530 Main Street P.O. Box 2819
Weaverville, CA 96093
Contact: Drew Plebani
Phone: 530-623-1351

Lead Agency (if different from above):

Address:

Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2018122049

Project Title: Emerald Choice, Inc, Natalie Koehler

Project Applicant: Natalie Koehler

Project Location (include county): 200 Coffin Road, Lewiston (Trinity), CA 96052

Project Description: The proposed cultivation project described herein (Project) includes the cultivation of 10,000 square feet (sf) of mature mixed-light cannabis and 2,951 sf of support area located in Trinity County on Assessor's Parcel Number (APN) 025-180-38-00. The applicant is seeking a Small Mixed-Light Cannabis Cultivation License from the County (CCL-132) and currently holds a provisional Small Mixed-Light Cannabis Cultivation License from the Department of Cannabis Control (DCC; CCL19-0002038). Existing activities include the cultivation of up to 10,000 sf of mature mixed-light cannabis in four (4) greenhouses of different size, with two (2) being for mature light deprivation canopy and two (2) being for mature mixed-light canopy. The total mature canopy square footage of all four existing greenhouses is 10,000 sf. Existing cannabis support infrastructure includes one (1) 2,000-sf building to be used for immature cannabis cultivation (1,000 sf) and as a harvest drying area (1,000 sf), one (1) 26-sf pump house, three (3) 120-sf sheds to be used for various storage, one (1) 10-sf shelf on the exterior of one of the sheds to be used for petroleum storage, and a 555-sf cannabis waste and composting area. Water for cultivation would be stored on-site in five(5) water tanks of different sizes and would be sourced from an existing permitted groundwater well. Power for the project site is provided through an existing connection to Trinity Public Utility District's grid. There is an existing septic system on-site, and crop irrigation would be conducted by a drip system. No construction or reconfiguration of existing elements is proposed for this project.

This is to advise that the Trinity County Planning Department- Cannabis Division has approved the above
(■ Lead Agency or ☐ Responsible Agency)

described project on February 17, 2023 and has made the following determinations regarding the above
(date)
described project.

1. The project [☐ will ■ will not] have a significant effect on the environment
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [■ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [■ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ■ was not] adopted for this project.
6. Findings [■ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
Trinity County Planning Department- Cannabis Division (530 Main Street, Weaverville CA 96093)

The County finds that the adoption of the proposed project falls within the Trinity County Cannabis Program Environmental Impact Report ("EIR")(SCH# 2018122049). Certified by the Board of Supervisors on December 21. 2020 (Resolution 2020-103). Pursuant to CEQA Guidelines (California Code of Regulations, Title 14) Section 15168, the impacts associated with the proposed project were studied, and mitigation measures concerning such impacts were developed, in the Cannabis Program EIR. No further environmental review is required because the County finds, based on substantial evidence in the Record of Proceedings, that approval of this project is a "later activity" associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i)all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project.

Signature (Public Agency): _____ Title: Cannabis Division Director

Date: 2/17/23 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2011

Deborah Rogge

From: Kristel Bell
Sent: Wednesday, June 7, 2023 8:01 PM
To: info.planning; Carol Fall; Todd Heaton; Rory Barrett; William Sharp; Don Ellis
Subject: 6/8/2023 Agenda Item 4: P-23-06
Attachments: Sean Connell Email Excerpt.pdf; ATT00001.htm

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Commissioners:

First off, I wish to express how disappointing it is to be writing this letter - how unfortunate it is to be in this predicament today, as all elements of the appeal in front of you have been discussed with County representatives numerous times over the past two years. This appeal could have and should have been avoided.

At the time of the Lewiston Expansion Opt Out approval in July 2021, it was confirmed only two licenses were grandfathered into the carve out area, and yes – CCL-132 is one of them. And we accepted that ruling knowing that CEQA analysis would be conducted and impacts would be mitigated.

I and other Appellant members attended the Cannabis Ad Hoc and subsequent private meetings religiously from November 2021 through August 2022. Supervisors Frasier and Groves conducted these meetings, along with varying administrative bodies throughout the time period to include Richard Kuhns, Ed Prestley, Sean Connell and others. We were guaranteed expeditious access to Appendix C files and had a platform to discuss concerns as they arose when we started review of the CEQA documents. This group was fully aware our efforts were to assist in prevention of future appeals.

We first reviewed CCL-132's Appendix C in July 2022 and noted there were issues such as the lack of discussion and documentation regarding the project vicinity - most particularly pertaining to sensitive receptors and cumulative impacts, and the lack of requirements for mitigating impacts such as odor, noise, and aesthetics - areas of major concern within our neighborhood and the basis of the voluminous number of complaints leading to appeals and the approved carve out.

Our concerns were immediately brought forth to the Cannabis ad hoc members who asked the Director at the time, Sean Connell, to research the issues. In the attached email correspondence excerpt you will see that Mr. Connell did indeed reach out to County Counsel and CEQA counsel for answers. Also, please note Prentice Long was cc'd on his email correspondence. Unfortunately, we never received the final outcome.

This brings us to February 2023 when CCL-132's approval was noticed in the newspaper. A new file review was conducted and to our dismay, the issues in contention had not been resolved in the Appendix C. At the time of the file review, we discussed our concerns with Director Plebani and presented a copy of the Sean Connell memo, asking for clarification. We were told they would check into it and would get back to us. No word from staff by the appeal filing date deadline. Now all our attempts at communication and requests for file review are deemed public records act requests and treated as such by submission to Prentice Long for review without our knowledge. And for ordinary citizens such as us, that process takes months.

So here we are.

As we were never granted the privilege of obtaining answers to our concerns, I would encourage the Commission to ask Staff the following:

1. ***What is your procedure to ensure sensitive receptors are properly addressed?*** According to County Counsel's response to Mr. Connell, sensitive receptors must be addressed as they are the reason in which they adopted the mitigation measures to reduce the impacts.

2. ***Have you incorporated any mechanisms or procedures to determine potential noise level impacts, such as for fans, prior to license/permit approval?***

3. ***Have you obtained CEQA counsel legal opinion as to the issue of cumulative impacts – when and how they are to be addressed?*** According to Mr. Connell, he reached out for guidance from both CEQA counsel Cole and County Counsel.

4. ***Have any Appendix C approvals required mitigation measures be implemented prior to license/permit approval (such as odor control)?***

5. ***How are you analyzing the project vicinity for potential impacts prior to license/permit approval?***

In closing, after all the cannabis ad hoc meetings, meetings with Cannabis Directors, emails after emails after emails - all the strides to prevent future appeals were for not.

It's unfortunate we are in front of the Commission yet again. We hope one day we won't need to file appeals, paying $500 each time, to merely get answers to our questions or for the County to deem our appeals "moot".

Please ensure CCL-132's cumulative impacts are properly addressed and outcomes mitigated prior to license/permit approval.

Sincerely,

Kristel Bell

From: **Sean Connell** sconnell@trinitycounty.org
Subject: RE: Update - CCL-132 and CCL-133
Date: August 31, 2022 at 1:21 PM
To: Kristel Bell [redacted]
Cc: Sean Cameron Sean@prenticelongpc.com

Hello Kristel,

I have been away from the office [redacted]. I wanted to provide you answers to your questions. Please see below in blue.

-----Original Message-----
From: Kristel Bell [redacted]
Sent: Monday, August 29, 2022 2:41 PM
To: Sean Connell <sconnell@trinitycounty.org>
Subject: Update - CCL-132 and CCL-133
Importance: High

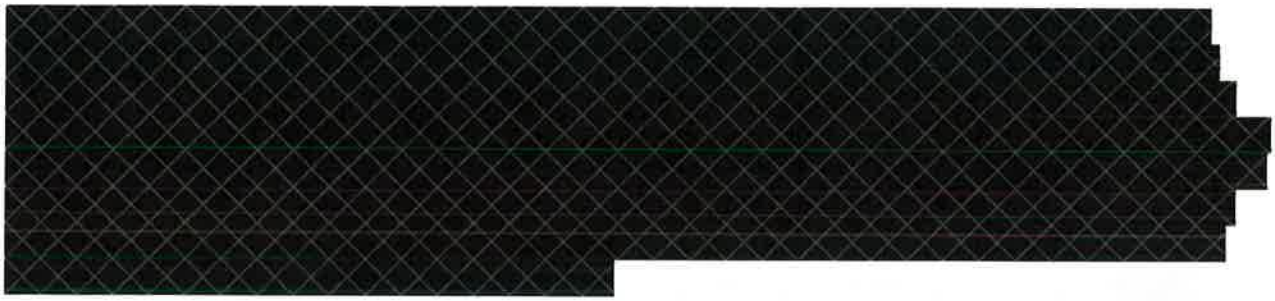
Hello Sean. Checking in to see if you have answers to the questions we discussed last Tuesday. [redacted]

I'm still concerned about the following:

1) The "sensitive receptors" language both 133 and 132 included in their Appendix Cs. Neither give any indication to the fact that they are adjacent to a public business and many, many residents are within the project vicinity. I believe Kern County's language stated the project vicinity for sensitive receptors is within a 2 mile radius of the project site - which is language specified in our EIR. I know you said the State's definition is different from our EIR, but we must adhere and abide by our EIR.- I have reached out to the applicant and the consultant to reflect the changes per the EIR. I did receive confirmation from Counsel that those receptors should be addressed. It is the reason in which they adopted the mitigation measure to reduce the impact.

2) Have you validated decibel levels for fan noise? We discussed a test at their property line to determine what their decibel level is prior to approval of the Appendix C. – To test decibel levels we need to have a monitoring meter, that we do not possess at this time. We have researched and selected a meter and are awaiting on arrival. This is something we should have had on hand already, and this is something we will tighten up on inspections and review.

3) Have you received a legal opinion regarding the need to consider cumulative impacts as neither 133 nor 132 indicate any exist. However, the EIR stipulates two or more should be considered cumulative impacts (especially with the two being adjacent to each other within a rural residential area).- I have reached out to both County Counsel and CEQA counsel Cole for their opinion on the cumulative impacts of the 2 garden sites within the close proximity and the relationship to the Opt-Out area. I will follow their guidance once I receive it. I can keep you abreast of the resulting information once I receive it.



Thank you, and I hope to hear back from you soon.

Kristel Bell

Deborah Rogge

From: Phyllis Swanson
Sent: Wednesday, June 7, 2023 11:48 AM
To: info.planning
Subject: Email in support of Appellant's appeal of Director's CEQA approval and renewal of CCL-132 on Coffin Rd. Agenda Item No.5 (P-23-06)

To: Trinity County Planning Commision
Re: Support of Appellant's appeal of Director's CEQA approval and renewal of CCL- 132 on Coffin Road, Lewiston, CA

Here we go again, sound like a broken record? Well it is...

Here we go again - defending – defending again, **our lives, our quality of life on our own properties that have been here well before this cannabis industry moved in. Well It is worth defending – so we defend, again. I just pray that this is the end. Let me paint the picture again...**

Imagine a neighborhood where…
One can feel safe day and night, where you don't have to worry about your home, car being permeated with the pungent smell of pot odor the next morning every day, where the only sounds at night that you may hear is the creek running, perhaps the call of a fox or the rustle of the breeze, instead of fans.
Sound good?

If you will recall our group has spent many hours attending BOS meetings, several thousands of dollars in legal fees, to fight against these license renewals. As it's been said over and over again the county needs to do the right thing by requiring these cultivators to implement their mitigation plans. The county is turning their heads when they say the above permit is not currently operating. Well we can tell you someone is and we can pretty much tell where that is. There is definitely an odor coming from there again (and again). And if they are operating without that permit it tells me that they blatantly don't care and that they are above the law/rules. Why should they be rewarded with a permit under these circumstances? Doesn't this set a precedent for others to follow suit? They've had numerous odor complaints, they've been told to cease, yet they continue. Please do what's right, deny the renewal until such time they can uphold their end of the deal/CEQA.

I've included below copies a few emails or letters that have been sent to the county on these ongoing matters in our neighborhood, read them if you so choose.

How many more ways, how many more times do we have to say it - Enough is Enough.

Thank you

Phyllis & Don Swanson

Lewiston Rd, Lewiston

February 20, 2023

To: Trinity County Board of Supervisors

RE: Dos Santos/Sabai Family Farms

Here we go again - defending – But, **we believe our lives, our quality of life on our own properties that have been here well before the cannabis industry moved in are worth defending – so we defend, again.**

Imagine a neighborhood where…
One can feel safe day and night, where you don't have to worry about your home, car being permeated with the pungent smell of pot odor the next morning every day, where the only sounds at night that you may hear is the creek running, perhaps the call of a fox or the rustle of the breeze, instead of fans. Imagine a day you don't have to keep looking down your driveway to see who may be coming up that you don't know.
Sound good?
Well, Let's take a step back for a minute, if you will recall our group has spent many hours attending BOS meetings, several thousands of dollars in legal fees, to fight against the license renewal to Dos Santos/Sabai Family Farms. Let's further recall that the county allowed the original license to transfer to Dos Santos under questionable circumstances. Furthermore, there was lack of current compliance for this site and this site had also had numerous neighborhood complaints.

> *Pursuant to the Planning Director's email to the appellant(s) dated back in January 21, 2021,* ***that license was not one of the initial licenses issued in the first two years (2016-2017) of the program. This license was issued in May 2018. This told us that this project is ineligible for the categorical exemption under CEQA.***

We are really hoping that the board does not even consider approving the issuance of a license to Dos Santos. An Opt Out has been approved here and if the BOS were to issue the license despite its previous decision our fear is that it would start a precedent for others who will want to attempt to get grandfathered into our area. As it's been said before, ENOUGH IS ENOUGH, this is an Opt Out, let's keep it that way.

We worked hard to get where we are now, our Opt Out. It's not perfect, but we can live with it. Don't take it away from us. A decision was made – don't go back on it. It's done. Explore the other options that have been discussed about providing incentives to set up their farms outside of residential, rural residential and most importantly designated Opt Out areas.

We ask that all Supervisors please consider the language of the Opt Out Ordinance. For what it is, let's not cause any more damage.

Thank you for your time and attention to this important matter

Don and Phyllis Swanson

Every night starting on July 6, 2022 is when I really started to take notice and began documenting that the fans next door on Coffin Road at one (or all?) of the cannabis grows have been running. With the evening twilight is when they become noticeable and I KNOW they run well into the early morning hours. It's been nice to have a window open at night, but it's annoying to have to listen to fans run all night instead of the crickets, a breeze even a dog barking. Fans running all night outdoors in a rural setting is not normal - this is not an industrial zone. If I can hear them so clearly, I can't even imagine how my neighbors who live closer must feel to have to listen to them much louder. I've heard through the cannabis grapevine that these particular growers are frustrated that they do not have their permits yet, and have basically said "screw it" we're moving forward we need money. In each and every complaint that I had from the last couple of years regarding the cannabis grows at this location I expressed how UNFAIR it is that I have to give up my precious time each and every day to lodge the same complaints regarding the never-ending issues - noise and smell. If they want to go against whatever ordinance, policy, regulation, whatever is the county put in place a few months ago until CEQA and ultimate approvals to get back to growing, then go ahead, but man please be quiet and make sure there is no smell. Being so blatant about it, tells me they have total disregard for the "law" and will do whatever it takes to make their money at the expense of the rest of us in the neighborhood who just want a nice quality of life. Please have Code Violation personnel check it out. They will need to come out at night to hear the fans. But if the cannabis growers are

not supposed to be growing then they need to be held accountable for growing when they do not have a valid permit. Please don't disregard my complaint by doing absolutely nothing about it. I know I speak for some of the neighbors near this location, and I hope they too have lodged complaints. The noise still exists and I'm sure the odor is not far behind. Thanks

---

January 24, 2021

Re: Appeal - Commercial Cultivation License (CCL) 2020-453

Trinity County Planning Dept,

I, like the vast majority in my community, very strongly urge you to deny the renewal of the CCL for the above referenced parcel.

In addition to the known cumulative effects such as noise of dozers working, unsightly viewshed, premature destruction of Lewiston Road including rocks and mud left on the road from rain runoff and truck traffic leaving their access road, unsavory element among others, I would like to address just one. The smell.

What would you do if you had a dead skunk on your porch? You would get rid of it because the smell would be overwhelming. This is the sickening smell that we live with almost every day here. I realize offensive smells are subjective, but this should not be allowed to continue. Nearly everyone who visits us comments on the odor. In the evenings, when the wind subsides and the cooler air settles in, it is nauseating. The stench permeates into our home, our vehicles and out buildings.

It scares me to think of the effects that are not yet known. The ground water we drink, for example.

It is unconscionable to believe that you would allow this to continue by granting this renewal.

Don Swanson

We, Don & Phyllis Swanson live on Lewiston Road next door to Coffin Road where an additional cultivation permit has been requested. We are strong supporters of a future opt-out area in this location. In the meantime, we are writing our letter of support to implore you to consider our feelings on this matter. We have lived in Trinity County for 40 years and have seen and experienced its demise due to the pot farms. Enough is enough. There should be a cap on the number of farms allowed. We chose to live here in Trinity County, settling in the Lewiston Valley for its beauty, peacefulness and the wonderful people that live here. We did not settle here for the noise, the smell, the criminal element that it brings and the destruction of the natural resources the now plague this once peaceful valley. We understand that its legal now, we understand what is here now is here; however as stated before enough is enough – please. Continued approval of additional farms, greenhouses etc impacts our quality of life and we think its only fair that you take that into consideration. Its not fair that the growers get what they ask for no matter what the rest of us think or how we feel. Please don't allow the additional permit on Coffin Road or any others in this zone. Its destroying our neighborhood, our quality of life, our surrounding habitat. Enough is Enough.

Thank you.

Don & Phyllis Swanson

Deborah Rogge

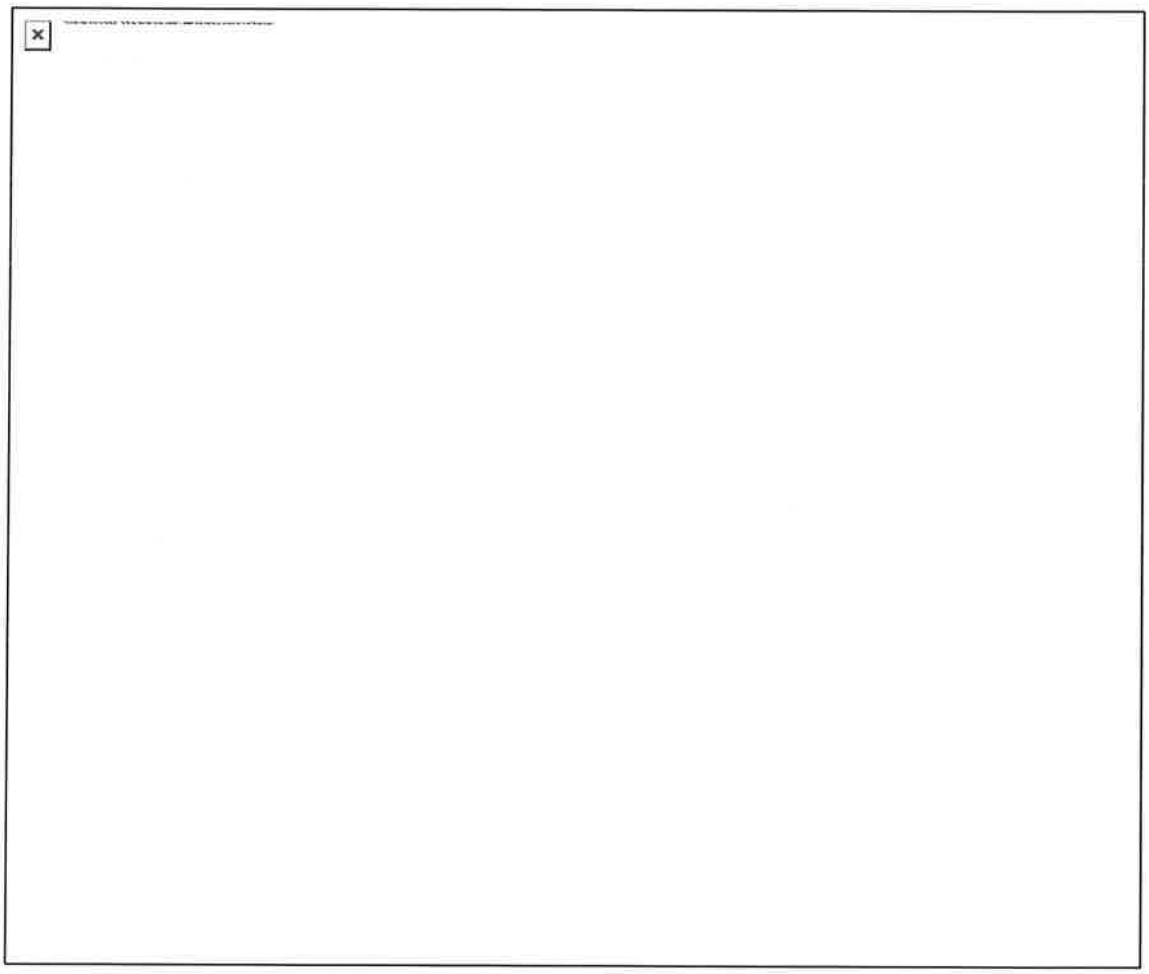
From: L Wills
Sent: Thursday, June 8, 2023 12:53 AM
To: info.planning; Deborah Rogge; Carol Fall; Don Ellis; Rory Barrett; Todd Heaton; William Sharp
Subject: Supplemental Info to Appellants' Brief P-23-06 / CCL-132
Attachments: Code Violation Complaints June2023.pdf; 2-Mile Radius Map.png

Dear Chairman Fall and Commissioners Heaton, Sharp, Barrett and Ellis,

Appellants, in the above referenced appeal, wish to submit updated language to the Primary Reasons for Appeal section, Reason 2. Failure to properly identify Sensitive Receptors, and Attachment B (CCL-132 Project Vicinity Map) as **three additional** cannabis licenses within the two-mile radius of CCL-132 were noticed as approved in the Trinity Journal today which even more so intensifies the evidence of potential cumulative impacts.

> *As of 6/7/2023, eleven (11) approved commercial cannabis farms exist within a two-mile radius of the proposed project [according to the cannabis division's records]. This description does not take into account past and future cannabis farms pending approval, or illegal cannabis sites known or unknown.*

Appellants also question the determination of the CEQA analysis baseline date. The Notice of Preparation for Trinity County's Cannabis Program EIR published 12/21/2018 established the baseline environmental conditions for CEQA analysis to ALL commercial cannabis cultivation projects, thus failing to determine CEQA environmental baseline dates on a site-by-site basis. In doing so, the County has under-represented the environmental impacts when knowingly CCL-132's project site was undisturbed prior to October 2018 as stated in the applicants Appendix C, Chapter 2 Project Description, Section 2.3 Existing Setting: "…and appeared to have been in some state of cannabis cultivation since October 2018". Furthermore, files held by the County contain site maps of the undisturbed area, which were considered when approving the initial provisional license.



Lastly, two additional code violation complaints have been filed this week (attached hereto) that are pertinent to this appeal. As stated in the complaints, if CCL-132 is unlicensed and not legally operating at this time and the neighboring farm, CCL-133, on the adjoining property is approved and operating with an odor mitigation plan, why are the neighbors smelling a skunky odor of cannabis coming from the Coffin Road area? We believe Coffin Rd is the source of the odor complaints and therefore before the license is renewed/issued for CCL-132, the cumulative impacts must be analyzed and mitigated. Furthermore, odors from any one or more of the 11 commercial cannabis sites approved within a 2-mile radius, as depicted in Appellants' map above, may be contributing to the strong odors that settle at the ground level of the valley and further substantiates the need to identify, analyze and mitigate cumulative impacts before issuing a renewal license to CCL-132. Appellants have provided supportive evidence of code violation complaints and the graphical depiction [above] of the volume of commercial cannabis grows approved in the vicinity, by the lead agency, that compels a "fair argument" there are significant adverse environmental impacts the lead agency ***must*** identify, analyze and mitigate to less than a significant level, in order to comply with CEQA.

To reiterate our request, Appellants' recommend the Planning Commission make a motion to reverse the Director's approval of CCL-132 and defer licensing until such time 1) a proper cumulative impact analysis that considers the specific site and vicinity is conducted pursuant to CEQA requirements, and 2) the applicant implements their odor control plan and other mitigation measures identified.

Thank you in advance for your mindful consideration.

Laurie Wills / Friends of the Lewiston Grass Valley Creek

Attachment - Code Violation Complaints June 2023

Gmail [redacted]

Your Trinity County Code Violation Complaint Form was successfully submitted

2 messages

Trinity County <no_reply@trinitycounty.org>
To: [redacted] Wed, Jun 7, 2023 at 9:55 PM

Here is a copy of your submission data for your records.

Submitted on Wednesday, June 7, 2023 - 9:55pm
Submitted by user: Anonymous
Submitted values are:

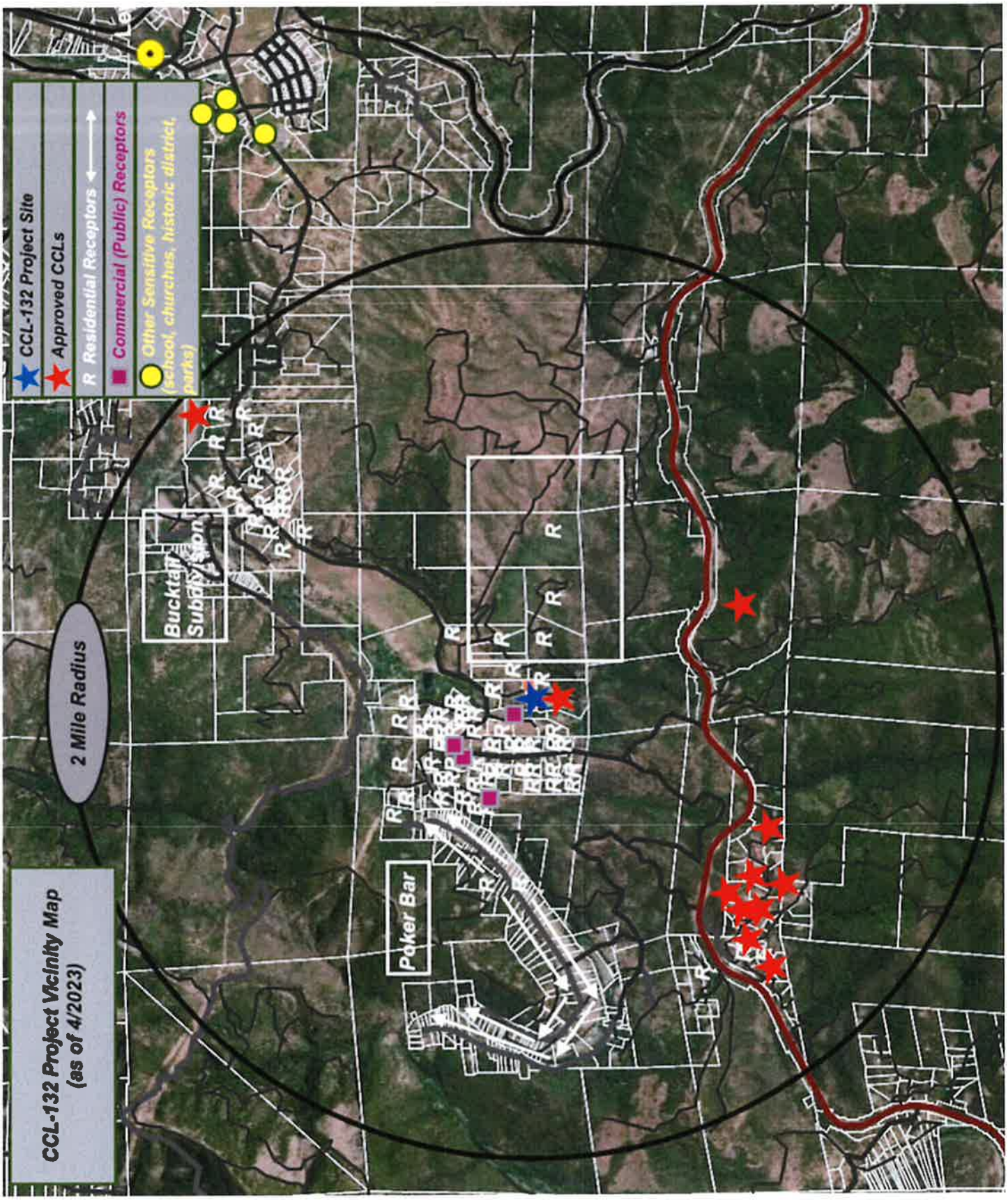
APN Number and/or Address of reported Violation: Coffin Rd Lewiston (CCL-132 and/or CCL-133)
Name of Owner/ Tenant being reported (or enter unknown):
Koehler/MacNamara/Fernandez
Full Name: [redacted]
Address: [redacted]
Complainant Phone Number / voicemail : [redacted]
Email: [redacted]
Date: Sun, 06/04/2023
Time: 5:45 pm
Did you observe any weapons, explosives, traps, shafts, dogs/animals, or anything which appears to be a potential hazard or danger to the inspector on the site? A "YES" response requires a brief explanation: No
COMPLAINT (Please explain): On Sunday, 6/4/2023, while driving to Lewiston Lake with another person in my car, we could smell a strong odor of cannabis when approaching Coffin Rd at approx 5:45 pm. When returning from the lake that same evening I could smell the odor again when approaching Coffin Rd at approx 9:15 pm. If CCL-132 is not currently licensed/operating and CCL-133 is approved and operating with an odor mitigation plan, why are we smelling cannabis specifically at this location in June???? Please investigate and provide a response. Thank you.

Trinity County <no_reply@trinitycounty.org>
To: [redacted] Wed, Jun 7, 2023 at 10:17 PM

Here is a copy of your submission data for your records.

Submitted on Wednesday, June 7, 2023 - 10:17pm
Submitted by user: Anonymous
Submitted values are:

APN Number and/or Address of reported Violation: Coffin Rd Lewiston (CCL-132 and/or CCL-133)
Name of Owner/ Tenant being reported (or enter unknown):
Koehler/MacNamara/Fernandez
Full Name: [redacted]
Address: [redacted]
Complainant Phone Number / voicemail [redacted]
Email: [redacted]
Date: Tue, 06/06/2023
Time: 2:00 pm
Did you observe any weapons, explosives, traps, shafts, dogs/animals, or anything which appears to be a potential hazard or danger to the inspector on the site? A "YES" response requires a brief explanation: No
COMPLAINT (Please explain):
At some point during the 2 o'clock hour I was outside in my front yard with a neighbor and another individual from Redding looking at some baby chicks when all 3 of us smelled a skunky odor. When I asked if the other two smelled the odor, one person replied, "every day" and the other person replied, "that's definitely cannabis." Once again the odor seems to be coming from Coffin Rd and I just submitted a separate complaint for smelling the same skunky odor while traversing past Coffin Rd on Sunday with a different person. I'll ask the same question again. If CCL-132 is currently unlicensed/not legally operating at this time and CCL-133 is approved and operating with a odor mitigation plan, why are we smelling a strong skunky odor (especially in June)? There have been many other days when I have smelled the odor but have not filed complaints. I guess it's time to start filing daily complaints again if that's what it takes for the County to mitigate these odor nuisance issues. Please investigate and report back as to what action is being taken to resolve these complaints.


CCL-132 Project Vicinity Map
(as of 4/2023)
2 Mile Radius
CCL-132 Project Site
Approved CCLs
R Residential Receptors
Commercial (Public) Receptors
Other Sensitive Receptors
(school, churches, historic district, parks)
Buckeye Subdivision
Poker Bar

Bella Hedtke

From: Deborah Rogge
Sent: Thursday, May 25, 2023 11:42 AM
To: Drew Plebani; Bella Hedtke
Subject: FW: Appellants Brief_Responses P-23-06 Hearing Date 5/25/2023
Attachments: Brief P-23-06_052423.pdf; Code Violation Complaints P-23-06.pdf

Debbie Rogge
Admin. Coordinator
530-623-1351 ext. 2824

From: L Wills [mailto:lawills33@gmail.com]
Sent: Thursday, May 25, 2023 1:43 AM
To: Carol Fall ; Todd Heaton ; Don Ellis ; Rory Barrett ; William Sharp ; info.planning ; Deborah Rogge
Subject: Appellants Brief_Responses P-23-06 Hearing Date 5/25/2023

Dear Chairperson Fall and Commissioners Sharp, Heaton, Barrett and Ellis,

Please accept this Appellants' Brief and Response to Staff Report on behalf of the Friends of the Lewiston Grass Valley Creek.

As a note for the record, the unintended late submission is due to the following:

1. Timely access to the official cannabis file and Appendix C records for CCL-132 were not granted to Appellants in a timely manner. After receiving Notice on May 9, 2023, that the appeal hearing had been placed on the May 25, 2023 agenda, Appellants submitted a written request to view the file the same day (May 9). Access was not granted for 6 days after the request was submitted although the County's form states, "***Deadline for Meeting (2 business days)***." The Appendix C records were missing from the official file and not provided despite Appellant's specific request to view the Appendix C records at the time of the scheduled appointment. It took Staff 14 days after the initial request to produce a digital version of the Appendix C records, Monday, May 22, 2023 (three days prior to the Planning Commission hearing date). This response time is not in compliance with the TAA vs. County of Trinity (Case No. 19CV001) Order After Hearing, Attachment B – Settlement Agreement, Section 2(F) which states in part, "*The Planning Department shall promptly schedule a time to provide for a supervised inspection of the requested Public Records at its office …"*
2. Upon receipt of the Appendix C records, Appellants observed the version received was last updated on Saturday, May 20, 2023 with the Title Page notation "Updated March 2023"; this suggests a third resubmittal of the document was received by the County ***after*** the appeal was filed on March 9, 2023. Appellants based their reasons for the appeal on the information found in the redacted Appendix C dated September 2022. According to the Staff report, only 2 resubmittals of the Appendix C were received on March 6, 2022 and September 8, 2022, respectively. There is no indication in the Staff report that a March 2023 version was received. Appellants requested tracking changes of the final version dated

March 2023; however, that request was denied. Therefore, Appellants have been subjected to a restricted reviewing process, resulting in a limited time frame to adequately read, analyze and compare the 165 page March 2023 version to the September 2022 version.

3. As a result of the above factors, a request to remove the matter from the May agenda and place it on the June agenda was submitted to staff on May 21, 2023. When a response was not received from either the Cannabis Director or the Interim Planning Director, the request for a continuance was elevated to the CAO. No response was received. For the record, staff granted a continuance to the Appellant of P-23-09 who simply stated, "I have a scheduling conflict and ***probably*** [emphasis added] won't be able to attend that night."

Due to the fact these are quasi-judicial hearings, and by no fault of our own, have encountered numerous delays obtaining access to the official cannabis documents in the respective file pertinent to this appeal, we believe our request for a continuance was reasonable and justified. Absent a staff response with either a denial or approval to our continuance request, we hereby, in good faith, submit the attached Appellant Brief.

Sincerely,

Laurie Wills / Friends of the Lewiston Grass Valley Creek (Appellant)

Attachments (2)

May 24, 2023 (via email)

RE: Appeal of Planning Director's Decision (P-23-06 / CCL-132)

Chair Fall and Commissioners Heaton, Sharp, Barrett and Ellis,

Please accept this letter as the Appellants' Brief and Response to Staff Report in the above referenced matter. And as such, would like to emphasize:

(1) Appellants are a group of individuals identifying as the Friends of the Lewiston Grass Valley Creek, consisting of property owners within an approximate one mile radius of the proposed project site.

(2) Appellants do not dispute the fact that cannabis can be legally cultivated, sold, and used in the State of California. Nor do we take issue with the County's ability to implement a cannabis program at its pleasure, and to act as the lead agency, to generate income and tax revenues for the County; or allow County residents to profit from the cannabis industry. However, Appellants respectfully insist that as the lead agency, County regulation of cannabis land uses be sound, transparent, and consistent with state laws mandating careful environmental review. Further, that the County abides by the 2021 TAA Order After Hearing and Settlement Agreement in Case No. 19CV001.

(3) Appellants have filed several appeals over the past few years. Each appeal raised the issue that the County either was approving new licenses without a proper CEQA evaluation on a site-specific or vicinity basis; or renewing licenses with Categorical Exemptions without a required CEQA analysis. In the appeal filed against the approval of CCL-169, the County determined the matter was moot after the approval was withdrawn so the County could evaluate cumulative impacts. That license was never issued. In the appeal against the approval of CCL-453, the County determined that appeal to be moot after the applicant asked the Director to withdraw her approval so the applicant could conduct a thorough CEQA analysis to satisfy the concerns of the community. That license was never issued either when the community successfully obtained an Urgency Opt-Out Ordinance.

Although the County has made tremendous strides toward CEQA compliance with the FEIR, it's apparent after review of multiple cannabis files and Appendix Cs, cumulative impacts are still being ignored.

The following Appellants' Brief consists essentially of two sections: A) Primary Reasons for Appeal, and B) Responses to the Cannabis Division Staff Report.

A) The primary reasons for appeal are as follows:

1. <u>Failure to identify and evaluate cumulative impacts</u>.

Section 15355 of the State CEQA Guidelines defines a cumulative impact as the condition under which "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts". The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable

probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

After a review of the official cannabis file and Appendix C in question, it is apparent the County's On-Site Inspection Form does not include any information or fact-gathering about other commercial cannabis farms (legal or illegal) in the vicinity when staff conducts its site-specific inspection as part of the Appendix C Checklist approval process. This relevant information is known, or should be known, either through the cannabis division's official database, Google Earth imagery, or by personal observation while driving to and/or while on the premises of the project site. It appears staff relies solely on the information in the Appendix C Checklist prepared by the applicant and/or their consultants. Appellants assert the onus is on staff, as the lead agency, to not only verify the accuracy of the information in the applicant's Appendix C Checklist but to go a step further and include pertinent information needed in the decision-making process where such information is omitted, either intentionally or unintentionally. Refer to Attachment A – the completed On-Site Inspection form for CCL-132 dated 6/15/2022. Nowhere on this form is there any reference to other commercial cannabis farms in the vicinity. If there was, such information should trigger staff to act on their duty to identify and evaluate cumulative impacts.

Appellants found no record of any staff analysis by use of a checklist or written narrative that takes into consideration cumulative impacts nor validation as to what sensitive receptors exist within a reasonable area surrounding the project.

2. Failure to properly identify Sensitive Receptors.

Applicant's Appendix C contains three varying definitions/statements regarding sensitive receptors.

> **Section 2.3 - Existing Setting** -*"The nearest neighboring residential dwelling is located 357 feet north of the cultivation area. Lewiston Elementary School is also 2.9 miles away. There are no other sensitive receptors in the immediate vicinity of the Project area."*
> **Mitigation Measure 3.3-3: Implement Odor Control plan** -*"The Project in question has no sensitive receptors in the vicinity of the Project site, as stated in the Project Description. However, in the event sensitive receptors do move into the Project vicinity, the Odor Control Plan found at Attachment A will be implemented."*
>
> **Client Specific Activities** - *"The nearest residential dwelling is approximately 357 feet north of the project area. The nearest sensitive receptor other than a residential dwelling is Lewiston School which is 2.9 miles away. "*

Not only do all three statements convey varying characteristics, none of the three are factually complete descriptions of the sensitive receptors surrounding the proposed project site.

County EIR Volume 2, page 3.3-11 Sensitive Receptors section states, in part "Residential dwellings, schools, hospitals, playgrounds and similar facilities are of primary concern…", and page 3-3.10 cites Kern County code as stating in part "…specific cannabis compounds may be detectable at a distance of 2 miles or more depending on weather conditions (Kern County 2017:4.3-66 and 4.3-67)."

Appellants assert Attachment B (CCL-132 Project Vicinity Map), accompanied by the following narrative, depicts a more accurate overview of the project in contention:

> *The project is located in Lewiston, 5.6 air miles southeast of Weaverville, the county seat in Trinity County. The nearest non-residential sensitive receptors in the vicinity of the project area include the Lewiston Elementary School (2.6 air miles), the Lewiston Community Park (2.9 air miles), the Lewiston Community Church (2.8 air miles), the St. Gilbert Church (3.2 air miles), and the Lewiston Historic District (3.2 air miles), which includes 16 contributing buildings and a contributing structure according to the National Register of Historic Places.*
>
> *Adjoining property lines include one parcel to the north with a residential dwelling, one parcel to the west with a commercial business and outdoor public venues, one parcel to the south with a licensed cannabis cultivation farm and residential dwelling, and two parcels to the east - one with a residential dwelling.*
>
> *Within a two mile radius of the project, there are approximately 100 residential dwellings, four commercial businesses with doors open to the public, the Grass Valley Creek, the Hamilton ponds, the Trinity River, and a National Forest scenic byway [SR 299].*
>
> *As of 4/2023, eight approved commercial cannabis farms exist within a two-mile radius of the proposed project [according to the cannabis division's records]. This description does not take into account past and future cannabis farms pending approval, or illegal cannabis sites known or unknown.*

3. Inaccurate/Incomplete Odor Control Plan

County EIR Table ES-1 in discussion of Impact 3-3.3: Exposure of People to Objectionable Odors require Odor Control Plans instructs the applicant to:

- Identify the location and distance of sensitive receptors (e.g., residents, youth-oriented facilities, schools, churches, residential treatment centers) from the site. ***Applicant's Odor Control Plan again fails to identify a true compilation of sensitive receptors.***
- Demonstrate that the cannabis site's distance to receptors, wind direction, and local topographic conditions would not result in detection of cannabis odors by off-site sensitive receptors that would create a nuisance. ***Applicant's Odor Control Plan is silent on this topic.***

The Odor Control plan merely speaks to potential future nuisances and what applicant would be required to do to mitigate odor.

The County maintains an electronic system for public submission of Trinity County Code Violations – a process the Appellants were instructed to utilize starting in 2020. For three years now, neighbors have diligently submitted their complaints as a means to communicate the impacts experienced by cannabis cultivation in our area. Even though more than 100 complaints were filed, CCL-132's cannabis file contains only 11 nuisance complaints, all of which stemmed from activity dating August through September 2022. Missing from the file are all of the complaints filed during the first half of 2022 and previous years. Neither staff nor County Counsel have been able to produce all of the aforementioned copies of online complaints.

Although not inclusive of all complaints filed, Attachment C is a compilation of historical code violation complaints submitted for the adjacent area. Content of the complaints demonstrates

the County is or should be fully aware of the impacts in existence when CCL-132 was operational prior to CEQA.

Applicant's Appendix C fails to mention/include these known complaints in the description of the project, in the Air Quality reporting, and in their Mitigation Measures.

Approval of this Appendix C demonstrates the County does not take nuisance complaints and code enforcement actions into consideration during their CEQA approval process, nor require mitigation measures of known impacts prior to approval of a license.

B) Appellants Response to the Staff Report

1) Cumulative Impacts.

Staff "directs the reader" to FEIR Volume 2, ES.3.2. As it reads, *"one or more impacts are considered significant and unavoidable, that is, no feasible mitigation is available to reduce the project's impacts or the project's contribution to cumulative impacts to a less-than-significant level."*

> Appellants' Response: Appellants refer the reader to the Trinity Action Association, Inc. vs. County of Trinity, et al. (Case No. 19CV001) Order After Hearing filed September 20, 2021, Exhibit A, Statement of Fact No. 65 whereby it states *"The County has acknowledged that it has an obligation to actually implement the mitigation measures set forth in the FEIR and that the inclusion of those mitigation measures within the Amended Cultivation Order itself is required to comply with CEQA."*

Staff claims they are unable to quantify odor concerns as 1) operation is currently not operating and not generating cannabis related odors, and 2) Staff did not have an olfactometer to quantify odor concerns.

> Appellants' Response: 1) CCL-132 has been operating since 2017 and continued to operate without a license in 2022; the County cannot simply ignore historical complaints submitted regarding odor impacts during the time the proposed project was operational; 2) The complaints were and are applicable tools to be used in consideration of sensitive receptor impacts (refer to Attachment C, the compilation of historical code violation complaints).

Staff references 3.24 Master Response: Odors associated with Cannabis Cultivation concluding that *"This evidences that without active cultivation the cumulative effects vs additive effects cannot (be) discerned, and statements related to past odor concerns without quantified data cannot be used to evaluate the subjective concerns stated by the appellant."*

> Appellants' Response: Staffs' conclusion is not a directive or definition of the EIR. Appellants argue that the existing complaints noted (submitted when CCL-132 was licensed to cultivate pre-CEQA, and then again in 2022 when applicant was cited and required to abate their plants on two separate occasions for cultivating without a license), combined with the eight already approved CCLs within a 2-mile radius of the proposed project, is basis enough to require implementation of mitigated odor controls ***prior*** to licensing. Appellants assert mitigation measures must be implemented based on historical data and evidence. The applicant in question submitted a CCL renewal application; this is not a new application. CCL-132 was first licensed in 2017 so this commercial operation has been in existence for 6 years. Therefore, Staff's assertion that Appellant's concerns are subjective and baseless is without merit. If the County fails to require the applicant to implement mitigation controls in this case, Appellants assert the

County is failing to comply with its CEQA obligations when one or more projects create a significant and unavoidable impact.

2) Precedence.

Staff refers the reader back to *"Reason for Appeal 1: Cumulative Impacts for a discussion of the environmental review of cumulative impacts for CCL-132."*.

Appellants' Response. By referring back to the Cumulative Impacts discussion, Staff does little to nothing to explain the County's position on this issue. Again, the Appendix C is silent on the potential impacts to sensitive receptors, and the County fails to analyze the project vicinity for potential acknowledgment and mitigation of impacts as required by CEQA.

3) Sensitive Receptors.

Staff merely informs the Commission that the language has been corrected.

Appellants' Response: Staff makes no mention as to what language was modified, nor why the change was made. However, as noted in the Primary Reasons for Response, element 3 above, the language still does not accurately depict sensitive receptors.

4) Habitual Violations.

Staff Response 1) merely informs the reader that only violations pertaining to regulatory measures and performance standards are maintained in the cannabis file, and

Staff Response 2) is a long narrative pertaining to the August 2022 unlicensed cannabis cultivation occurring at the proposed project site.

Appellants' Response: The staff responses provided do nothing to explain or even acknowledge code violations and citations issued to the applicants for cultivating without a license.

Staff fails to note applicants were also cited February 2022 for unlicensed cannabis cultivation at the proposed project site.

Staff fails to note the reason for the August 2022 site visit is the direct result of numerous odor and noise code violation complaints submitted by impacted property owners. In both instances, code enforcement officers instructed applicant to "self-abate" their mature canopy.

5) Variance Regulations.

Appellants choose not to argue the incorrect residential setback measurement as the Board of Supervisors Resolution enacted May 16, 2023, effectively deems this appeal element moot.

Elements of the County failing to comply with Trinity Action Association, Inc. vs. County of Trinity, et al. Order After Hearing filed September 20, 2021, are as follows:

A) Exhibit A, Statement of Fact No. 65 states *"The County has acknowledged that it has an obligation to actually implement the mitigation measures set forth in the FEIR and that the inclusion of those mitigation measures within the Amended Cultivation Order itself is required to comply with CEQA."*

As stated in Primary Reasons for Appeal, paragraph 3), the County is failing to "actually implement the mitigation measures set forth in the FEIR" as it pertains to the implementation of CCL-132's Odor Control plan.

B) Exhibit B, Settlement Agreement Section 3(G)(ii) Significant Impacts states, "The County will describe its methodology for determining, for the purpose of Application CEQA Guidelines

15300.2(b), “when the cumulative impacts of successive projects of the same type in the same place, over time,” in a manner that considers license specific site, vicinity and county-wide impacts.”

> As stated in the Appellants’ narrative, by not appropriately identifying the sensitive receptors and project vicinity, the County is considering only the county-wide impacts of CCL-132’s project, failing to consider the specific site and vicinity when determining the projects potential impacts and relative mitigation measures. The Appendix C submission is silent in this regard, and the County not requiring the considerations is therefore failing to comply with this section of the Order After Hearing, as required.

Appellants’ Recommendations:

Based on CCL-132’s years of operation, historical data and evidence submitted pertaining to the volume of code violation complaints, Appellants recommend the Planning Commission make a motion to reverse the Director’s approval of CCL-132 and defer licensing until such time 1) a proper cumulative impact analysis that considers the specific site and vicinity is conducted pursuant to CEQA requirements, and 2) the applicant implements their odor control plan and any other mitigation measures identified.

Cannabis Division
Site Inspection Form

Inspector: B. Hedtke

Date: 6/15/22 Applicant Name: Natalie Koehler

License #: 132 Applicant Phone: 5108497075

APN: 025-180-38 License Type: Small Mixed Light

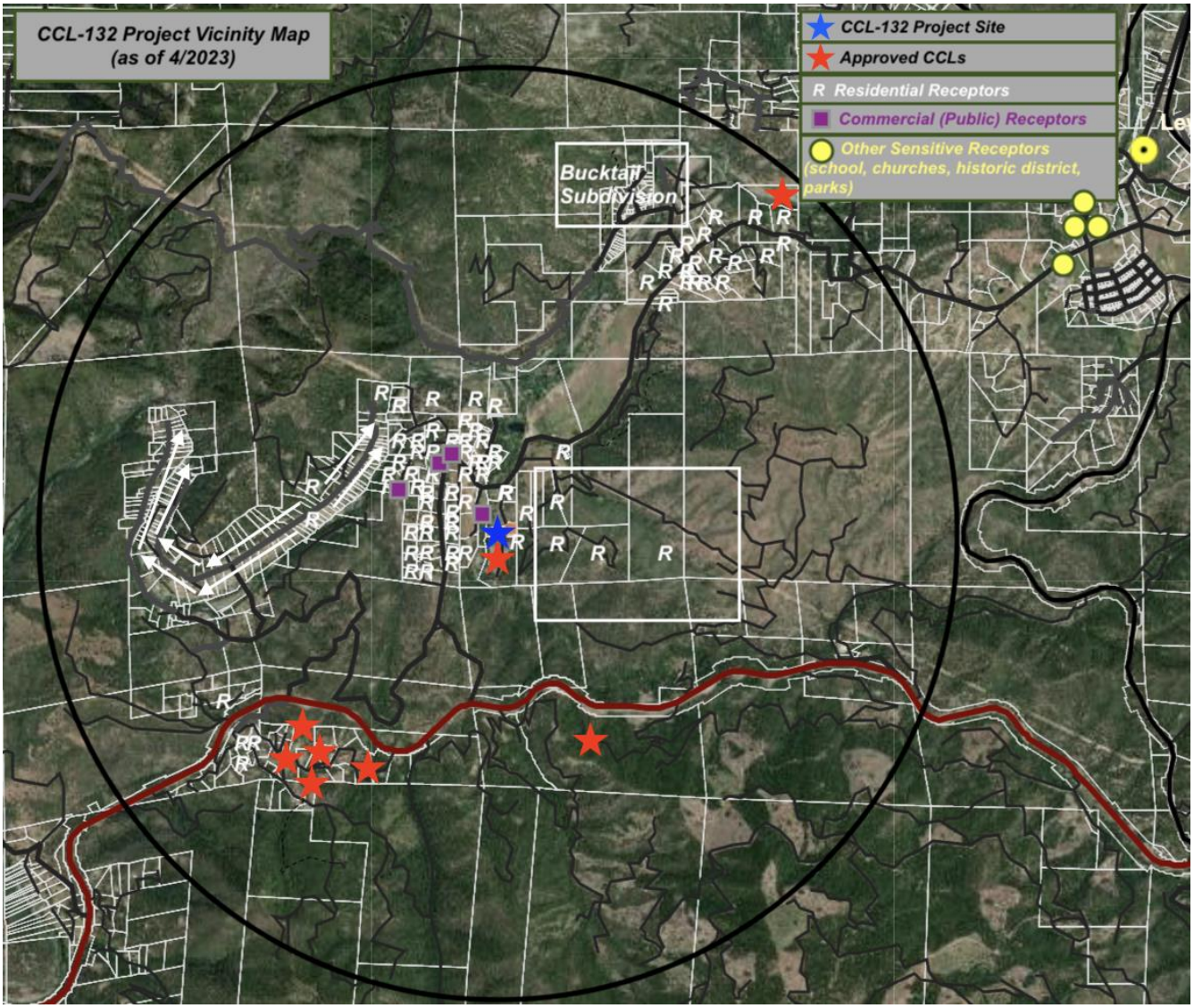
Address: 200 Coffin Rd., Lewiston

State License	☒ Yes – CCL# & Exp. Date: CCL19 2038 exp 6/19/23 ☐ No
Is the cultivation area in a flood zone?	☐ Yes – Circle Zone: Levee Protected/ 500 yr / 100 yr / Regulatory Floodway ☒ No small portion of property – no cult area
County & State Lic Posted Outside Property	☒ Yes ☐ No
Currently Cultivating	☐ Yes ☒ No
Cultivation Area Defined	☒ Yes ☐ No
Canopy (Sq. Ft. of Flowering)	Ø
Total Cultivation Area (sq. ft)	Canopy: Ø + Veg (Immature): Ø = Ø
Waterboard Stream Setbacks	☒ 150ft from Class 1/Perennial Stream – Distance: 175 ft from gravel alley creek to compost ☐ 100ft from Class 2/Ephemeral Stream – Distance: _____ ☐ 50ft from Class 3/Episodic Stream – Distance: _____ ☐ No Streams Found Near Cultivation Site
Setbacks	• 1000ft from ☒ Youth-Oriented Facility ☒ Schools ☒ Churches ☒ Residential Treatment Facility • 500ft from ☒ School Bus Stops • 350ft from Neighboring Dwellings: ☒ Yes ☐ No – How many dwellings and distance(s): 365 ft from closest dwelling from shop finaled
Water Source	☒ Well ☐ Stream Diversion ☐ Other: |Permitted? WP-2019-006
Total Water Storage (gal)	(3) 2500 (1) 500
Legal Septic	☐ Not Permitted ☐ In Progress ☐ Finalled
Legal Dwelling email to Assessor	☐ Not Permitted ☐ In Progress ☐ Finalled ☐ Grandfathered
DUP for RV While Constructing Dwelling	☐ Not Permitted ☐ In Progress ☐ Issued
Hoop Houses	☐ Permitted – How many: ☒ Unpermitted – How many: 2 → pull HH permit for 2022 season, or demo, dry
Greenhouses	☒ Permitted – How many: 2 → AC in GH; permit or remove ☐ Unpermitted – How many:
Other Permitted Structures	
Other Unpermitted Structures	
Updated Site Plan Required	☐ Yes ☐ No

Other Comments:

very clean and organized site!

Attachment B



Attachment C

(see attached Code Violations.pdf file)

Bella Hedtke

From: Tom Ballanco [redacted]
Sent: Wednesday, June 7, 2023 1:39 PM
To: Mitchell Wexler; info.planning; Bella Hedtke
Subject: CCL-133 Appeal Appellee's Response
Attachments: 6-7-23 Response.pdf; TAA Settlement Agreement - Signed.pdf; Koehler 2023-132 posted NOD.pdf

Greetings,

I submitted a Response to this Appeal in advance of the last PC meeting, but the hearing was rescheduled. I did not see Appellee's Response in the back-up materials, so I wanted to send it again. Please let me know if you have any questions.

Thank you,

Tom Ballanco
Attorney for Applicants CCL-132

BALLANCO LAW GROUP, APC
P.O. Box 2878
Weaverville, CA 96093
650-296-9782 Bar # 194345

June 7, 2023

Trinity County Planning Commission
530 Main St.
Weaverville, CA 96093

Greetings Commissioners,

This office represents Emerald Choice, Inc. in response to the Appeal of the Director's decision to issue CCL-132, which was noticed in the Trinity Journal on February 22, 2023. The letter accompanying the Appeal identifies 6 separate "reasons," none of which are supported by sworn affidavit or any other evidence.

The first three reasons, titled, "Cumulative Impacts," "Precedence" and "Sensitive Receptors" seem to indicate a general dissatisfaction with Staff's analysis of Cumulative Impacts. There are no specific allegations as to this particular license, so it is unclear whether the letter-writer is upset about this license or Staff procedure generally. There is also a misplaced allegation that "the county continues to violate the TAA Settlement Agreement." The TAA Settlement Agreement was entered into by the Trinity Action Association, Inc. ("TAA") and Trinity County. [Attachment A] By its terms, the TAA Settlement Agreement specifies that it "shall bind the heirs, personal representatives, successors and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns." [Attachment A, pg 6, paragraph 15]

Unlike the Friends of the Grass Valley Creek (hereafter the "Friends"), TAA is a legal entity that is currently active, meaning it does not have any "successors." TAA has more than demonstrated its ability to advocate for, and litigate, on its own behalf and it does not appear anywhere on the purported Appeal. There is nothing to indicate that

TAA has assigned any of its rights or interests to the Appellant. The Friends are not parties to the TAA Settlement and have no interests therein to assert.

If the Friends were parties to the TAA Settlement Agreement, they might be more familiar with its language regarding "Cumulative Impacts." In paragraph 3(G)(ii) on page 4 of the TAA Settlement Agreement, the parties agree that "the County will describe its methodology for determining" where cumulative impact considerations are significant enough to render Categorical Exemptions to CEQA inappropriate. The Director's decision to issue CCL-132 is not dependent on a Categorical Exemption, but rather relies on the compliance determination provided by the Applicant's Appendix C to the TC Programmatic EIR (PEIR). That determination, reflected in the Notice of Decision (NOD) for this license was posted on February 21, 2023. [Attachment B]

Public Resources Code § 21167 specifies the strict timelines that apply to the commencement of actions attacking an NOD. In no case are such actions allowed beyond 30 days. *See* PRC § 21167(b, c & e), *see also* CEQA Guidelines § 15230. Accordingly, even if the Appellants raised valid CEQA issues, they are both in the wrong forum and time-barred.

Despite the lack of justiciability of Appellant's CEQA claims, we will address them briefly. Section 4 of the PEIR titled, "Cumulative Impacts" presents a detailed analysis and discussion of cumulative impacts in each of the CEQA resource areas. Some of these impacts are identified as "cumulatively considerable," "significant and unavoidable." These significant and unavoidable impacts are reiterated in Section 5 of the PEIR titled, "Alternatives."

In short, the cumulative impact of licensed commercial cannabis activities in Trinity County, including those that are significant and unavoidable, were identified, analyzed and discussed in the PEIR. The PEIR was certified on December 28, 2020. The time to challenge any aspect of the PEIR expired 30 days later on January 27, 2021, more than two years ago. The Friends presents no allegation, let alone evidence, that the

operation of CCL-132 would lead to any cumulative impacts not already analyzed under the PEIR and Applicant's Appendix C.

The same is true for sensitive receptors and the potential impacts of licensed commercial cannabis activity. The PEIR discusses sensitive receptors, typically including children, the elderly, asthmatics or others who might be uniquely susceptible to air pollutants or noise and identifies specific considerations when they are present. Some Air Quality and Noise impacts analyzed and discussed in the PEIR are identified as "significant and unavoidable." The time to challenge findings or conclusions in the PEIR expired in January 2021.

The Applicant's Appendix C is consistent with the PEIR and its Project Description states that there are not sensitive receptors in the vicinity of the Project. The Friends seems to question this assertion, while failing to offer any of their own evidence. As discussed above, even if such evidence existed, the time to bring an action based on it has long passed.

Moving beyond the CEQA-based allegations, the fourth reason for the Appeal identified as, "Habitual Violations" is equally unclear as to whether it applies to this specific license, the manner the county applies its rules or the rules themselves. The TC Commercial Cultivation Ordinance identifies violation of its provisions as a nuisance and imposes existent remedies for nuisance abatement in TC Code, specifically Sections 8.64 and 8.90. These TC Code Sections and the associated 7-day cure period were not developed for cannabis cultivation and apply equally to illegal rentals, unpermitted construction and other potential nuisances, see TC Code § 8.90.120(A)(3). To the extent the Friends have a complaint about the procedures in TC Code, those concerns should be addressed directly to the Board of Supervisors. In their most recent filing labeled, "Appellant's Response" (to Staff Report), the Friends attached an exhaustive list of complaints against this property. The list includes 1 complaint from Mar, 2021, 6 complaints from Feb 2021, 32 complaints from 2020 and 2 from 2018. The Applicants

took over this operation on April 27, 2021. None of these historical complaints are relevant to Applicant's operation.

The fifth reason, "Variance Regulations" seems to surmise that since the neighboring cultivation CCL-133 required a set-back Variance from Applicant's residence, then the Applicant's must require a set-back Variance from the neighbors. As properly evaluated by Staff, this is not the case. Applicant's cultivation is more than 350' from the neighboring residence. In contrast, the neighbor's cultivation is within 350' of Applicant's residence and a set-back Variance was required. Based on the "Appellant's Response" to the Staff Report, it seems the Friends are dropping this issue from consideration.

The final reason, titled, "Failure to Comply with State and Local Reporting Requirements" raises concerns about State Water Board requirements for diversions from Grass Valley Creek. In addition to their legal diversion from Grass Valley Creek, the Applicant also maintains a permitted well, where it derives the bulk of the water it uses for its commercial cultivation. Applicant's State Water Board reporting is currently up to date.

Accordingly, we ask that the Appeal be dismissed and that the Director's decision to issue CCL-132 be upheld and the license issued forthwith.

Sincerely,

Thomas J. Ballanco
Attorney for
Emerald Choice, Inc.
CCL-132

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between Petitioner Trinity Action Association and Respondents, County of Trinity and Richard Tippett (collectively, "County"), regarding *Trinity Action Association v. County of Trinity et al.*, Trinity County Superior Case No. CV19-0001 (the "Legal Action"). Collectively, TAA and the County are "Parties" to this Agreement and each is, individually, a "Party" to this Agreement. This Agreement shall be deemed to have been entered into on August 9, 2019 ("Effective Date").

RECITALS

A. TAA commenced the Legal Action on January 3, 2019. The Legal Action seeks traditional mandamus and declaratory relief and injunctive relief concerning (1) the County's obligation to conduct environmental review under the California Environmental Quality Act ("CEQA," Pub. Res. Code, 21000 et seq.) before issuing licenses under the County's Cannabis Ordinances (Trinity County Code Chapter 17.43); and (2) the County's obligations to produce records under the California Public Records Act ("CPRA," Gov. Code, § 6250 et seq.) related to cannabis licenses the County issues.

B. The County filed an answer to TAA's operative pleading on March 26, 2019. The Answer denied the material facts alleged in TAA's pleading and asserted a number of affirmative defenses.

C. Without making any admissions, the Parties through this Agreement seek to resolve the Legal Action in a manner that allows them to forego the expenses, burdens, and time commitment of a trial and any further proceedings in the Legal Action.

D. The County is presently in the process of preparing an environmental impact report ("EIR") for its Cannabis Program. The County commits to, and will act in good faith and use its best efforts to, certify a properly prepared EIR by December 31, 2019. Notwithstanding the County's intention to take this action by the end of 2019, the Parties understand the County must certify an EIR that fully complies with the California Environmental Quality Act ("CEQA") and that the County may need to certify the EIR after December 31, 2019 if additional preparation and consideration becomes necessary in light of:

(i) Public or agency comments received regarding the EIR; or

(ii) New legislation or regulations, new decisional authority, or other related developments.

Should the County not certify the EIR by December 31, 2019, it will act in good faith and use its best efforts to certify the EIR as soon as reasonably possible after that date.

AGREEMENT

1. The Parties agree the Recitals stated above are true and are incorporated by reference as material terms of this Agreement. The Parties further agree as follows:

2. As concerns the CPRA, the parties agree as follows:

A. For purpose of this Agreement, the terms "document," "documents," "information," "writing," or "writings," or any similar term have the same meanings as "writing" (or "writings") as defined in Government Code Section 6252(e) and 6252(g).

B. For purpose of this Agreement, the term "CCL" includes all commercial cannabis license applications, including applications for new or renewal licenses, and all commercial cannabis licenses issued by the County.

C. Public records, as defined by the CPRA, include but are not limited to:

i. All writings relating or referring to CCLs (including but not limited to license applications, staff notes and memoranda, inspection records, emails, text messages, etc.), and/or County Code Chapter 17.43 and any cannabis-related county ordinances; and,

ii. All writings relating to or referring to compliance with CEQA and/or County Code 17.43 with respect to any individual CCL, or group of CCLs, or CCLs in general; and

iii. All writings referring to or relating to policies, procedures, instructions, directions, guidance, or correspondence in any form relating to compliance with CEQA and/or County Code 17.43 and/or any cannabis-related County Ordinance, including but not limited to writings received from or addressed to any State of California agencies or other County officials or employees.

D. Public records related to CCLs may be subject to redaction in accordance with the express provisions of the CPRA. Redactions that may be applied may, to the extent authorized by the CPRA, include personal telephone numbers, copies of drivers' licenses, proprietary information such as custom legal documents, and security plans. Nothing in this Agreement is intended to, nor shall be interpreted to, create any exemption from disclosure not provided in the CPRA. Reliance on any exemption, including the "catchall" provision of Government Code section 6255(a), is permissible only if, in a timely written response to the CPRA request, the County communicates a specific, articulable, and legally supportable basis exists for redaction on the asserted ground.

E. Any person desiring to review and/or copy a Public Record in the County's possession or control will be required to submit a written public records request on a form to be provided at the public counter of the County Planning Department. The form will require the requesting party to provide his, her, or its name, address, telephone number, and email address.

F. The Planning Department shall promptly schedule a time to provide for a supervised inspection of the requested Public Records at its office. Prior to the inspection, the Public Records shall be redacted in accordance with 2(D) above, if redactions are justified. Nothing in this Agreement in intended to, nor shall be interpreted to, limit the public's rights under the CPRA or create any exemption from disclosure not provided in the CPRA.

G. Copies of any requested records shall be made only by Planning Department Staff and shall be provided to the requesting party upon full payment of the cost for the copies charged at the County's published duplication rate, not to exceed the actual cost of such service.

3. As concerns CEQA, the parties agree as follows:

A. The County acknowledges and agrees that an application for a CCL (or renewal of a CCL) constitutes a "project" under CEQA as that term is defined in Public Resources Code Section 21065 and CEQA Guidelines (California Code of Regulations Title 14) Section 15378.

B. In conducting review under CEQA, the County shall follow CEQA, including the CEQA Guidelines, applicable case law, and all formal and informal guidance documents that have been published by, or may in the future be published by, the State Cannabis Agencies (California Department of Food and Agriculture, Bureau of Cannabis Control, and Manufactured Cannabis Safety Branch), which are incorporated herein by reference.[1] The County shall provide TAA copies of all guidance documents it receives from these agencies promptly upon receipt of any such documents.

C. All forms required to be signed by an applicant for a CCL shall be signed under penalty of perjury swearing that all information, documentation, and other records provided by the applicant or the applicant's agents is true and correct. Before issuance of any CCL, the County shall conduct and document at least one site inspection of the property for which the license is requested

D. All printed documents provided by the County regarding new and renewal CCL applications and licenses, including but not limited to the application packet and any associated documents, guidelines, instructions, and Frequently Asked Questions, shall clearly state that the premises containing the cultivation site(s) will be subject to inspections both before and after license issuance, and that providing false or inaccurate information to the County at any time may result in denial or revocation of the license in addition to any applicable criminal penalties.

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[1] As of the Effective Date, the County has received the following documents from State cannabis licensing agencies: California Guidelines, CEQA Practice Recommendations from CDFA for Cannabis Licensing; CEQA Practice Recommendations from CDFA for Cannabis Cultivation – Categorical Exemptions (Dated March 7, 2019), including CDRA Instructions for Completing Categorical Exemption Evaluation Forms for each class of categorical exemption; and CEQA Practice Recommendations from CDFA for Cannabis Cultivation – General Recommendations (Dated March 5, 2019).

E. License applications, including those for new and renewal licenses, shall include appropriate documentation to allow the County to assess whether a categorical exemption is appropriate under CEQA Guideline 15300.2 (and other applicable CEQA Guidelines and State Cannabis Agencies guidance).

F. Prior to issuing any license application, the County Planning Director, or his or her designee, shall give notice by publication, posting, and mailing of its intended approval of the application, in a manner meeting or exceed the notice requirements of CEQA, along with any determination it intends to make under CEQA. All notices (posted, mailed, and published) will advise of the right to inspect license application files at the County Planning Department in accordance with the Public Records Act. Published and mailed notices shall provide the same information as provided by the posted notices. To the extent space limitations for published and mailed notice prevent the same information being included as in the posted notices, the mailed or published notices shall provide a link/URL to the County website where the full amount of information can be obtained on a readily accessible area of the website.

G. The County Planning Department, to facilitate a consistent, defined and certain methodology for assessing whether or not a categorical exemption is appropriate in light of all applicable CEQA Guidelines, shall write and publish on its web-site by no later than August 31, 2019, and thereafter adhere to evaluation standards or guidelines, including but not limited to those addressing how the County will evaluate CEQA Guidelines 15300.2 exceptions (i.e., where otherwise applicable Categorical Exemptions may not be used), including:

i. *Location Based Impacts*. The County will describe in writing its methodology, including documentation to be obtained and considered, for determining if the CEQA Guidelines section 15300.2 (a) exception applies for Class 1, 3, 4, and 5 projects;

ii. *Cumulative Impacts*. The County will describe its methodology for determining, for the purpose of application CEQA Guidelines section 15300.2 (b), "when the cumulative impacts of successive projects of the same type in the same place, over time," in a manner that considers license specific site, vicinity and county-wide impacts;

iii. *Significant Impacts*. The County will describe its methodology for and adopt thresholds of significance to be used in determining, for the purpose of application of CEQA Guidelines section 15300.2 (c) applies, because "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

iv. *Scenic Highways*. The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (d) exception applies, because a project "may result in damage to scenic resources, including but not limited to

trees, historic buildings, rock outcroppings, or similar resources" along applicable corridors.

v. *Hazardous Waste Sites*. The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (e) exception applies.

vi. *Historical Resources*. The County will describe its methodology for determining if the CEQA Guidelines section 15300.2 (f) exception applies, because a project "may cause a substantial adverse change in the significance of a historical resource."

4. Within 30 days of the Effective Date, the County shall pay TAA the sum of $95,000, made payable as separately stated in a writing TAA's counsel shall provide the County's counsel, as compensation for TAA's attorney fees and costs in this action.

5. Upon the Effective Date, this case shall be stayed for a period of two years, during which the Court shall retain jurisdiction to enforce compliance with this Agreement. During this period of retained jurisdiction, TAA shall have access to all information relevant to the County's compliance with the terms and covenants herein. In that regard TAA's attorneys may contact County staff directly to obtain documents and/or discuss compliance so long as counsel for the County is informed of such contact. During this period of retained jurisdiction, should TAA assert the County has failed to comply with any terms or covenants within, it may file a motion to compel the County's compliance with any such terms or covenants. The motion must be filed on or before two years of the Effective Date. Should the Court be unable to hear the motion on or before that date, the stay period shall be extended until such time as the Court can finally rule on any motion that is filed. If no motion is filed within two years of of the Effective Date, TAA shall promptly file a Notice of Dismissal of the Legal Action, with prejudice, and serve the same on the County when executed by the Court; provided, however, that the terms of this Agreement shall remain binding on the Parties and enforceable by separate legal action, including any motion brought under Code of Civil Procedure section 664.6, notwithstanding such dismissal. If an enforcement motion by TAA is granted the court may, as a remedy, extend the period of retained jurisdiction. Nothing in this section is intended to, nor shall be interpreted to, limit the number of motions TAA may make to compel County compliance with the terms of this Agreement.

6. Should any action, motion, or other legal proceeding be brought to enforce or interpret the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to recover reasonable attorneys' fees and costs incurred in prosecuting such efforts. Except as outlined in this Agreement, the Parties shall each bear their own attorneys' fees and costs incurred in connection with the Action.

7. Upon the dismissal of the Legal Action, each Party and his/her/its heirs, executors, administrators, predecessors, successors in interest, affiliates, partners, assigns, agents, officers and directors hereby forever generally, completely and mutually release and discharge the other Parties, including, but not limited to, their heirs, executors, administrators, trustees, settlors, beneficiaries, issue, directors, officers, shareholders, agents, predecessors, assigns, employees and attorneys, from any and all demands, debts, duties, and obligations related to the claims, defenses,

facts, events, errors, and omissions asserted in the Legal Action. The Parties expressly recognize and agree that this release applies to and serves as a bar to any challenge by TAA to any cannabis license the County issued to any person, entity, or party on or before the Effective Date.

8. This Agreement pertains to the Legal Action and is the result of compromise. No Party admits any fault or liability with respect to the claims alleged in the Legal Action, and this Agreement does not constitute, and will not in any circumstance be deemed to constitute, an admission or fault or liability by any Party. The Parties expressly recognize that this Agreement does not seek to resolve any claim or dispute concerning the County's compliance with any applicable laws, regulations, or ordinances concerning or affecting the issuance of cannabis licenses on or after the Effective Date. The Parties also agree that the Legal Action was brought by TAA in the public interest and to resolve ongoing disputes between TAA and the County. This Agreement does not resolve any past, present, or future disputes between the County and any other individuals or organizations.

9. The Parties acknowledge they have read this Agreement, have had the opportunity to have the Agreement explained to them by counsel of their choice, are aware of its content and legal effect, and are signing this Agreement freely and voluntarily.

10. This Agreement shall be effective upon its full execution. Each of the undersigned represents that he/she has the authority to bind the Party on whose behalf he/she has executed this Agreement. The Agreement may be executed in counterparts and in duplicate originals. If so executed, then upon proof of execution of at least one copy, the Agreement shall be effective from the date of the last signature. If executed in duplicate, each duplicate copy shall be valid as an original copy.

11. In the event any party seeks enforcement of the terms hereof the confidentiality provisions of Evidence Code Section 1115 *et seq* are expressly waived and this Agreement and each of its terms as well as all communications, documents and writings, as defined by Evidence Code Section 250, shall be disclosed and are admissible in any motion or action seeking such enforcement.

12. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party.

13. This Agreement constitutes the entire agreement between the Parties. No modification of this Agreement shall be valid unless in writing and signed by the Parties. The Parties shall not be bound by any representation, warranty, promise, or statement unless it is specifically set forth in this Agreement.

14. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California. Should any term of this Agreement be deemed unlawful, that provision shall be severed, or construed in accordance with applicable law as nearly as possible to reflect the Parties' mutual original intent, and all remaining

terms shall continue to be valid and fully enforceable. Furthermore, the place of performance shall be the County of Trinity State of California, in the event of litigation.

15. This Agreement shall bind the heirs, personal representatives, successors, and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns.

16. The Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.

17. Failure of any of the Parties to insist upon the strict observance of, or compliance with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a waiver of any of the Parties' right to insist upon such observance or compliance with the other terms of this Agreement.

18. This Agreement may be signed by PDF signatures. This stipulation may be signed in counterparts.

SO AGREED.

TRINITY ACTION ASSOCIATION

By: David Laffranchini,
Secretary

8-7-19
Dated

COUNTY OF TRINITY

By: Judy Morris, Chair
Board of Supervisors

Dated

Approved as to Form.

By: James Underwood

8/7/19
Dated

By: Derek P. Cole

Dated

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TRINITY ACTION ASSOCIATION

By: David Laffranchini,
Secretary

Dated

COUNTY OF TRINITY

By: Judy Morris, Chair
Board of Supervisors

8/7/19
Dated

Approved as to Form.

By: James Underwood

Dated

By: Derek P. Cole

August 7, 2019
Dated

POSTED IN THE OFFICE OF
THE TRINITY COUNTY CLERK

FROM: 2-21-23 TO: 3-21-23

Notice of Determination

Appendix D

To:

☐ Office of Planning and Research

U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth St., Rm 113
Sacramento, CA 95814

■ County Clerk

County of: Trinity
Address: 11 Court Street, P.O.Box 1215,
Weaverville, CA 96093

From:
Public Agency: Trinity County
Address: 530 Main Street P.O. Box 2819
Weaverville, CA 96093
Contact: Drew Plebani
Phone: 530-623-1351

Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2018122049

Project Title: Emerald Choice, Inc, Natalie Koehler

Project Applicant: Natalie Koehler

Project Location (include county): 200 Coffin Road, Lewiston (Trinity), CA 96052

Project Description: The proposed cultivation project described herein (Project) includes the cultivation of 10,000 square feet (sf) of mature mixed-light cannabis and 2,951 sf of support area located in Trinity County on Assessor's Parcel Number (APN) 025-180-38-00. The applicant is seeking a Small Mixed-Light Cannabis Cultivation License from the County (CCL-132) and currently holds a provisional Small Mixed-Light Cannabis Cultivation License from the Department of Cannabis Control (DCC; CCL19-0002038). Existing activities include the cultivation of up to 10,000 sf of mature mixed-light cannabis in four (4) greenhouses of different size, with two (2) being for mature light deprivation canopy and two (2) being for mature mixed-light canopy. The total mature canopy square footage of all four existing greenhouses is 10,000 sf. Existing cannabis support infrastructure includes one (1) 2,000-sf building to be used for immature cannabis cultivation (1,000 sf) and as a harvest drying area (1,000 sf), one (1) 26-sf pump house, three (3) 120-sf sheds to be used for various storage, one (1) 10-sf shelf on the exterior of one of the sheds to be used for petroleum storage, and a 555-sf cannabis waste and composting area. Water for cultivation would be stored on-site in five(5) water tanks of different sizes and would be sourced from an existing permitted groundwater well. Power for the project site is provided through an existing connection to Trinity Public Utility District's grid. There is an existing septic system on-site, and crop irrigation would be conducted by a drip system. No construction or reconfiguration of existing elements is proposed for this project.

This is to advise that the Trinity County Planning Department- Cannabis Division has approved the above
(■ Lead Agency or ☐ Responsible Agency)

described project on February 17, 2023 and has made the following determinations regarding the above
(date)
described project.

1. The project [☐ will ■ will not] have a significant effect on the environment
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [■ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [■ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ■ was not] adopted for this project.
6. Findings [■ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
Trinity County Planning Department- Cannabis Division (530 Main Street, Weaverville CA 96093)

The County finds that the adoption of the proposed project falls within the Trinity County Cannabis Program Environmental Impact Report ("EIR")(SCH# 2018122049), Certified by the Board of Supervisors on December 21. 2020 (Resolution 2020-103). Pursuant to CEQA Guidelines (California Code of Regulations, Title 14) Section 15168, the impacts associated with the proposed project were studied, and mitigation measures concerning such impacts were developed, in the Cannabis Program EIR. No further environmental review is required because the County finds, based on substantial evidence in the Record of Proceedings, that approval of this project is a "later activity" associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i)all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project.

Signature (Public Agency): _____ Title: Cannabis Division Director

Date: 2/17/23 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2011