



Andrea A. Matarazzo

Partner

andrea@pioneerlawgroup.net

direct: (916) 287-9502

January 26, 2018

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

**RE: Appeal of Planning Commission Approval of Special Permit for  
Project SP-16-015**

To the Humboldt County Board of Supervisors:

The Humboldt Bay Municipal Water District (“HBMWD”) appeals the January 11, 2018 Planning Commission decision to approve a special permit for a 5,000-square foot volatile and non-volatile cannabis manufacturing facility, and to approve an Addendum to the Environmental Impact Report (“EIR”) as satisfying the requirements of the California Environmental Quality Act (“CEQA”).

The project approval coincides with a zoning change request requiring Board approval for the subject project. As it pertains to this appeal, HBMWD further opposes the zoning change request by the project applicant, MCMP, LLC, from Agricultural Exclusive (AE) to Heavy Industrial with a Qualified overlay zone (MH-Q). (Project ZR 16-001.) HBMWD reserves the right to submit further objections to the zoning change request and to submit further information in support its appeal of the Planning Commission’s actions before the Board of Supervisors.

HBMWD is a municipal water district supplying high quality water to the greater Humboldt Bay Area. Its responsibilities to the residents and businesses of Humboldt County necessitate that HBMWD vigorously protect the supply and quality of its water sources. HBMWD owns many of the surrounding properties to this proposed project property and operates Ranney wells in the adjoining Mad River that supplies many of the downstream municipalities. This project, the manner in which it was processed, and its attempt to skirt an adequate environmental analysis, threaten the area’s water supply, water quality, and other environmental resources, as well as HBMWD’s ability to ensure it can meet its responsibilities to its consumers.

The project and the County’s truncated process of reviewing it violate state and federal environmental regulations, including but not limited to the state’s Planning &

Zoning Law, commercial cannabis statutes and regulations, federal and state water quality regulations, and CEQA.

**1. Supplemental Environmental Review of the Project is Required Under CEQA. The Addendum is Insufficient to Analyze and Mitigate the New and Substantially More Severe Environmental Impacts of the Proposed Project, Which Conflicts with the County's Policies and Regulations.**

Under CEQA, an addendum to an EIR is only appropriate if none of the following conditions are present:

- Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines, § 15162.)

The County's Addendum fails to analyze the new and substantially more severe environmental impacts peculiar to the proposal to place manufacturing facility (involving a volatile and non-volatile solvents and other chemicals) on a property that sits near the collection wells for a municipal water district servicing approximately 66% of Humboldt County's residents. (See, e.g., Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162-16164, 15168.) A conclusory comparison of the effects of a manufacturing facility to the existing aggregate surface mining is the extent of the Addendum's environmental "analysis." (Staff Report, p. 49.)

The Addendum describes the project and its new uses as a "resource-related industrial use" that has "fewer and less substantial impacts than the existing use." (Staff Report, p. 49.) This project description is misleading, and the conclusions derived from it lack the evidentiary support CEQA requires. The Addendum attempts to sidestep important environmental issues and minimizes potential environmental risks by mischaracterizing manufacturing impacts, including potentially significant offsite and cumulative impacts, and by overstating the overall degraded quality of the existing site due to extensive mining activities. To comply with CEQA and meaningfully evaluate the potential impacts of the project, the County's environmental review must be substantially revised to start with an accurate and meaningful description of the proposed project as well as the existing environmental setting or "baseline." (CEQA Guidelines, § 15125.)

Furthermore, a manufacturing facility and the resulting environmental effects are different from a gravel mine. In many ways, the potential environmental impacts of manufacturing uses are not comparable to those of a quarry, yet the Addendum provides no substantive discussion or analysis of the potentially significant impacts, necessary mitigation, or a reasonable range of alternatives to use of the site as a commercial cannabis manufacturing facility. Nor are these fundamental elements of CEQA compliance provided in any of the previous iterations of the County's environmental review upon which the project purports to rely. For example, no discussion is provided regarding potential water supply impacts, water quality impacts, the project's likely energy demands or air quality emissions, odors, or other critical issue areas such as groundwater and soil resources, land uses (such as agricultural resources), tribal cultural resources, biological resources (particularly fisheries), and impacts related to recreation, climate change and the potential to exacerbate existing hazardous conditions.

Potentially significant impacts to recreation and sensitive uses at the park across the river, and to the public who regularly swim in that portion of the Mad River, have not been evaluated. The impacts of industrial cannabis manufacturing and the odors cannabis facilities produce are potentially significant conflicts with recreational uses in the vicinity, which must be properly evaluated before the project can be approved. The Addendum fails to address the potentially significant impacts of odor from a

manufacturing plant – which the applicant proposes to operate at all hours – will have on neighbors and nearby parks, and what potential mitigation or alternatives are available. These are new and substantially more severe environmental impacts that were not analyzed in the original environmental documents.

As explained below, current drafts of the County's new comprehensive commercial cannabis ordinance require a six-hundred-foot setback of manufacturing facilities from sensitive uses such as schools and public parks. Nothing about this particular project dictates or even suggests that it should be treated differently from other potential cannabis facilities in the County. The project conflicts with the County's policies and regulations regarding commercial cannabis facilities, and the permit should be denied on this basis alone.

## **2. Failure to Provide Proper Notice to Neighbors and Other Agencies, Including HBMWD.**

HBMWD received no notice or information concerning this proposed project until mere days before the January Planning Commission hearing. Any alleged "delay" in the appearance of HBMWD in these proceedings is a delay orchestrated by the County and the applicant, neither of whom can credibly claim "inadvertence" in overlooking notice to HBMWD. HBMWD is a neighboring property owner with intake facilities mere feet from the project site. Moreover, as a municipal water district, HBMWD is a public agency having jurisdiction by law over natural resources affected by this project. When information concerning this project was circulated in June of 2016, it was not sent to HBMWD, the neighboring property owner most directly affected by the proposed project. (See Staff Report, p. 89.) The County's extremely late notice to HBMWD was a prejudicial failure to proceed in the manner required by law, and it delayed HBMWD's meaningful comment as a public agency and as a member of the affected community.

## **3. As Proposed, the County Cannot Make the Required Finding that the Project Will Not Be Detrimental to the Public Health, Safety, or Welfare or Materially Injurious to Properties or Improvements in the Vicinity.**

The Humboldt County Code requires permit applications to evidence that the new use, as proposed and conditioned, will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. (Humboldt County Code §312-17.1.4.) In support of this finding, County staff merely restates this provision, asserts that the project is consistent with the General Plan and the proposed re-zone to MH-Q, and that it is not expected to cause significant environmental damage. (See Staff Report, pg. 49.) The Addendum's conclusory discussions of environmental effects lack the requisite evidentiary support to make the

necessary findings. For example, the Addendum and the prior documents upon which it purports to rely fail to adequately analyze the project's potential adverse impacts to visual resources and aesthetics as well as odors and water quality in relation to HBMWD or the nearby public park and its users.

The nearby Ranney wells rely on the porous groundwater basin surrounding the subject property to filter and collect water. This basin acts as a natural filter to ensure the water supplied to the Humboldt Bay municipalities is of sufficient quality. The potential solvents to be utilized, and the safe threshold of amounts that may be stored, used and discharged must be fully described and analyzed. Potential mitigation and alternatives must be explored. Approving this project without sufficient environmental review puts a significant portion of the area's water supply at risk.

#### **4. The Proposed Project Fails to Properly Describe, and the EIR Addendum Fails to Analyze, Potential Significant Risks to Water Quality from Solvents Associated with Commercial Cannabis Manufacturing.**

The project proposes the conditional use of commercial cannabis manufacturing. In the project application, the applicant provided an Operations Manual; however, the applicant acknowledges that it will not operate the facility. Rather, the applicant will lease the facility to be operated by someone else. It is unclear from the Operations Manual what, how, or in what quantity the actual operator will utilize solvents in the manufacturing of products. The prior EIRs upon which the Addendum purports to rely generally analyzed the effects of gravel mining; they did not assess impacts peculiar to this project or its proposed manufacturing uses. The Addendum fails to comply with CEQA, which requires the County meaningfully discuss and disclose the project's environmental impacts in an environmental impact report.

#### **5. The Addendum Fails to Analyze Potentially Significant Impacts to Water Supply.**

The Addendum purports to rely on previous environmental analysis and assessments regarding the risks associated with surface gravel mining in the area. Those prior documents did not analyze the potential impacts, mitigation measures, and alternatives for the storage, use, and discharge of manufacturing solvents on the water supply. As explained above, the nearby Ranney wells provide water to a significant portion of residents in the Humboldt Bay region. The Addendum fails to account for the potentially significant impacts on water supply and water quality that will occur from a disruption to the operation of the Ranney wells caused by the manufacturing facility. These impacts must be fully analyzed, and appropriate mitigation and alternatives

proposed to ensure a safe and reliable water supply in terms of both quantity and quality.

**6. The EIR Addendum Fails to Analyze Potentially Significant Impacts Associated with Energy Use, Climate Change, and the Potential for the Project to Exacerbate Existing Hazards.**

The Addendum does not analyze the unique impacts associated with energy use, climate change, and the potential to exacerbate existing hazards resulting from the decision to site a 24-hour operational manufacturing facility in an environmentally sensitive area near the Ranney wells. Reliance on prior EIRs that are largely irrelevant to this project as a substitute for examining this novel use fails to account for potentially significant environmental impacts peculiar to the project and the parcel, which violates CEQA.

**7. Approval of the Proposed Project is Contrary to the Public Interest.**

The County is in the process of preparing a comprehensive land use ordinance for the commercial cultivation, processing, manufacturing, distribution, testing and sale of medicinal or adult use cannabis. (Commercial Cannabis Land Use Ordinance, Planning Commission Hearing Draft, Jan. 11, 2018, §55.4.6.4.4, (c).) The County has held public scoping meetings and workshops to intelligently design the ordinance to eliminate numerous potential issues for a complex industry. Recently, at the same night as this project, the Planning Commission reviewed the proposed ordinance.

The current ordinance, drafted in haste in 2016 to protect local rights, is bereft of any substantial discussion on cannabis manufacturing facilities. Approving this project now will contravene the important work of the County staff, the Board of Supervisors, and the public to create a regime that is fair to the public, the industry, and the neighbors of proposed cannabis projects.

A number of important differences between the proposed ordinance and this project exist. First, the current ordinance establishes reasonable setbacks for commercial cannabis cultivation facilities from sensitive uses such as churches, schools, and public parks. (Humboldt County Code, §§ 314-55.4.11, (d).) Although the current code does not extend this rule to manufacturing facilities, this clear oversight is corrected in the proposed ordinance. (*Ibid.*) Under the new code, manufacturing facilities must be six hundred feet from any public park. (Commercial Cannabis Land Use Ordinance, Planning Commission Hearing Draft, Jan. 11, 2018, §55.4.6.4.4, (c).) This is particularly important, because the staff report fails to detail the distance between its proposed manufacturing site and HBMWD's park on the adjacent parcel across the Mad River. The park is regularly used by families who enjoy the area for

picnics and to play in the river. According to the information provided regarding the proposed project, the manufacturing facility will be in close proximity not only to picnickers on the banks, but also the public that regularly wade into the Mad River.

Second, the proposed ordinance only allows flammable (volatile) manufacturing in MH zones that are accompanied by the Industrial General (IG) land use designation in the General Plan. (55.4.8.2.1.) The property is in the Industrial Resource (IR) land use designation and does not propose a General Plan amendment to resolve this inconsistency. Approving this project as proposed will conflict with the public policies that reflect the County's better judgment in the drafting the comprehensive ordinance, as well as the underlying environmental analysis in the EIR for the proposed ordinance.

For the foregoing reasons, HBMWD respectfully requests that the Board of Supervisors deny the project, or in the alternative, continue the matter so that an EIR, Supplemental EIR or Subsequent EIR can be prepared in compliance with CEQA to analyze the project's new and substantially more severe environmental impacts that are absent from consideration in the Addendum.

Sincerely,



Andrea A. Matarazzo