

ATTACHMENT 3

**CEQA ADDENDUM TO THE
MITIGATED NEGATIVE DECLARATION FOR THE COMMERCIAL MEDICAL
MARIJUANA LAND USE ORDINANCE**

**Commercial Medical Marijuana Land Use Ordinance Mitigated Negative Declaration (MND)
(State Clearinghouse # 2015102005), January 2016**

**APN 314-191-014; Section 6 of Township 04 North, Range 03 East, H.B.&M., Maple Creek
County of Humboldt**

**Prepared By
Humboldt County Planning and Building Department
3015 H Street, Eureka, CA 95501**

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Background

Modified Project Description and Project History – The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) established specific regulations for commercial cannabis operations in Humboldt County. These regulations were developed in concert with the Mitigated Negative Declaration (MND) that was adopted for the ordinance in order to implement the mitigation measures of the MND. The MND addressed the broad environmental impacts that could be expected to occur from the adoption and implementation of the ordinance. The MND specified that the regulations established in the CMMLUO would mitigate the impacts of existing cannabis operations by establishing regulations for an existing unregulated land use to help prevent and reduce environmental impacts that are known to result from unpermitted baseline cultivation operations. Commercial cannabis cultivation in existence as of December 31, 2015 was included in the environmental baseline for the MND and the MND states that “Bringing existing operations into compliance will help to attenuate potential environmental effects from existing cultivation activities, including aesthetic impacts resulting from improper operation or poor siting.” The current project was contemplated by the MND and compliance with the provisions of the CMMLUO will fully mitigate all environmental impacts of the project to a less than significant level.

The modified project involves a Conditional Use Permit for 22,000 square feet (SF) of existing outdoor cannabis cultivation utilizing light deprivation techniques and 1,170 SF of ancillary propagation. Irrigation water is sourced from a 700,000-gallon natural, off-stream pond. Annual water use is 175,000 gallons and there will be a total of 715,000 gallons of water storage on-site in the pond and a series of hard-sided tanks. Processing with a trim machine occurs onsite. A maximum of two (2) people may be onsite during peak operations. Power is provided by two (2) generators; however, the applicant has long-term plans to switch to solar power. Conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026.

No known significant archaeological resources are in the project area. A Cultural Resources Investigation was conducted by Arsenault and Associates in March 2020 (on file and confidential). No artifacts, features, or sites which would be considered a historical resource under CEQA were identified during the survey. Although the Cultural Resources Investigation concludes that it is not anticipated to encounter significant buried archaeological materials at this location during implementation of the permit, it is noted that the potential for inadvertent discovery of such resources exists. Ongoing conditions of approval are incorporated regarding the inadvertent discovery protocol to protect cultural resources, consistent with the Report and comments received from the Bear River Band of the Rohnerville Rancheria in April 2022.

The project site contains riparian habitat associated with Mad River, which traverses the northeastern-most portion of the subject parcel. All approved cultivation activities and respective infrastructure would occur outside of the required stream setbacks and on slopes less than 5%, per the WRPP prepared by Timberland Resource Consultants in September 2016. Per review of CDFW’s California Natural Diversity Database (CNDDDB) in August 2022, the northeastern cultivation area is located within and the southern cultivation area is located immediately adjacent to potential habitat for the North American porcupine (*Erethizon dorsatum*). The nearest NSO activity center is located approximately 0.37 miles from the nearest cultivation area, with the nearest NSO sighting located approximately 0.29 miles away.

The applicant has enrolled with the State Water Resources Control Board Cannabis Cultivation Policy. A condition of project approval is inadvertent discovery protocols for cultural resources consistent with the recommendation of the Cultural Resources Investigation Report prepared by Arsenault and Associates (not dated) and the Bear River Band of the Rohnerville Rancheria in December 2017.

The modified project is consistent with the adopted MND for the CMMLUO because it complies with all standards of the CMMLUO which were intended to mitigate impacts of existing cultivation. These include ensuring supplemental lighting and security lighting adheres to Dark Sky Association standards and ensuring project related noise does not harass nearby wildlife which will limit impacts to biological resources as a result of light and noise.

Purpose - Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously certified Mitigated Negative Declaration (MND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent EIR or Negative Declaration have occurred. Section 15162 states that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. 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 MND was certified as complete, shows any of the following: A) the project will have one or more significant effects not discussed in the previous MND; B) significant effect previously examined will be substantially more severe than shown in the previous MND; C) 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 D) mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Summary of Significant Project Effects and Mitigation Recommended

A review of Appendix G impacts:

Aesthetics: The project is for 22,000 SF of existing outdoor cannabis cultivation grown utilizing light deprivation techniques within three (3) greenhouses and eighteen (18) beds, in addition to 1,170 SF of ancillary nursery space within a separate greenhouse. The project will not significantly impact scenic vistas or public views as the project will occur within an existing open area that is surrounded by forested land. The project is consistent with the agricultural visual character of the area. The project will not create a source of light or glare. Less than significant impact.

Agriculture and Forestry Resources: The project involves an agricultural activity on a parcel zoned as Timberland Production Zone (TPZ), in which all general agricultural uses are principally permitted. The project will not convert prime farmland or conflict with existing zoning for agricultural use or Williamson Act contract. The project will not result in the loss of forest land or conversion of forest land to non-forest use, as conditions of approval require post-2016 timber conversion to be properly mitigated and restocked at a 3:1 ratio, and no additional timber conversion is authorized under the permit. Less than significant impact.

Air Quality: Minimal construction activities are associated with the project. Construction activities included development of the cultivation and nursery spaces, storage areas, and water storage tanks, which required minimal grading for placement. The project will not expose sensitive receptors to pollutants or create objectionable odors affecting a substantial number of people. The project would not result in significant sources of greenhouse gas emissions. The project does utilize a gravel road, and traffic on gravel roads contribute to PM₁₀, for which the North Coast Air Basin is already in non-attainment. However, there will be a maximum of two (2) people onsite during peak operations and a significant increase in traffic is not expected under the project. As such, the continued use of the gravel road for the project is not a substantial change or additional significant impact not considered under the MND for the CMMLUO. Less than significant impact.

Biological Resources: The project is in the Maple Creek area southeast of the Mad River. The Mad River traverses the northeastern-most portion of the subject parcel; however, all cultivation and associated infrastructure are located outside of the required Streamside Management Area (SMA) buffer. As noted in the Water Resource Protection Plan (WRPP; WDID 1B16444CHUM), prepared by Timberland Resource Consultants in August 2016, both cultivation sites are located on a flat meadow with less than 5% slope and are 150 and 190 feet from the Mad River, respectively.

Although the lower portion of subject site is within a FEMA mapped 100-year flood zone, the existing project will not alter the existing flood area, does not propose any new residential or civic uses, and will not result in any hazardous industrial uses within the existing flood zone. Agriculture is an allowable use in flood zones, and hoopouses are to be removed from the site between October 16th and April 14th or be flood-proofed as required by the Building Inspection Division, which is included as a condition of approval. Additionally, the proposed project will not store generators, hazardous or acutely hazardous materials on site that could be cause for environmental harm during a flooding event.

Per review of CDFW's California Natural Diversity Database (CNDDDB) in August 2022, the northeastern cultivation area is located within, and the southern cultivation area is located immediately adjacent to potential habitat for the North American porcupine (*Erethizon dorsatum*). The nearest NSO activity center is located approximately 0.37 miles from the nearest cultivation area, with the nearest NSO sighting located approximately 0.29 miles away. Conditions of approval require the applicant to describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026, implement light and noise attenuation measures, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife. It was determined that the project and operations will have less than significant impacts with adherence to the recommended conditions of approval. Less than significant impact.

Cultural Resources: A Cultural Resource Investigation was completed for the project area by Arsenault and Associates (not dated). No archaeological or historic resources were identified. However, the project

will adhere to the Inadvertent Discovery Protocol in the event of inadvertent discovery of resources, as recommended in the Report and the Bear River Band of the Rohnerville Rancheria in December 2017. Less than significant impact.

Energy: The project is for outdoor cannabis cultivation with on-site processing. Although power is currently provided by two (2) generators, the applicant has long-term plans for installation of a solar system. Conditions of approval require the applicant to describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026. The project would continue to utilize a generator for emergency purposes which is not uncommon for agricultural operations in rural areas. Less than significant impact.

Geology and Soils: No new structures are proposed that would expose people to risk of life from earthquakes. The project occurs on relatively flat land with less than 5% slopes, as per the WRPP, and cultivation activities are limited to the immediate area surrounding the greenhouses. Additionally, irrigation runoff and erosion control measures are implemented. Less than significant impact.

Greenhouse Gas Emissions: The project currently utilizes two (2) generators; however, the applicant has long-term plans for installation of a solar system. Conditions of approval require the applicant to describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026. The project would continue to utilize a generator for emergency purposes which is not uncommon for agricultural operations in rural areas. Less than significant impact.

Hazards and Hazardous Materials: The proposed project will not store hazardous or acutely hazardous materials on site that could be cause for environmental harm during a flooding event. The project does not expose the public to hazards. The project is in a rural area rated as a very high fire risk area; however, no significant wood framed structures will be constructed as part of this project. Additionally, conditions require fire-resistant materials be utilized for construction of the generator containment structures.

The lower cultivation area (Cultivation Area 2), comprising metal-framed hoopouses with garden beds, is located within the 100-year flood zone. However, all other structures and equipment associated with the operation (generators and where fertilizers and amendments are stored) are located on the upper terrace and outside of the flood zone. According to the WRPP and confirmed by the applicant at the site visit on December 22, 2022, there are no pesticides or herbicides used for the operation or approved for commercial cannabis use in general. There is small amount of fuel storage on the upper terrace in a shed that is required to have secondary containment per State Water Board requirements. The project would also not impair emergency response or create a significant risk from wildfire. Less than significant impact.

Hydrology and Water Quality: The project is for 22,000 square feet of outdoor cannabis cultivation with ancillary propagation and processing activities. The project will not degrade any water sources or contribute to sedimentation, as irrigation runoff, erosion control, and watershed protection measures are implemented by the project, as described in the Cultivation and Operations Plan. Less than significant impact.

Land Use and Planning: The project proposes an agricultural activity on a parcel zoned as Timberland Production Zone (TPZ), in which all general agricultural uses are principally permitted. The project will not physically divide an established community or result in a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. No impact.

Mineral Resources: No mining is proposed. The project will not result in the loss of availability of a known mineral resources that would be of value to the region and the residents of the state. The project will not result in the loss of availability of a locally important mineral resource recover site. No impact.

Noise: The project is located in a rural portion of the County in an existing open area, surrounded by forested land. The project will not result in the generation of excessive groundborne vibration or noise levels. Noise sources from the operation will include those of typical agricultural operations, and the use of two (2) generators; however, the applicant has long-term plans to install a solar system onsite for the project. Processing with a trim machine occurs onsite. However, conditions of approval require the implementation of noise attenuation measures to ensure noise levels remain within allowable levels. Less than significant impact.

Population and Housing: The project is for outdoor cannabis cultivation. No housing is proposed nor is any removal of housing proposed. Up to two (2) people may be onsite during peak operations. The project will not induce substantial unplanned population growth in an area nor displace substantial numbers of existing people or housing necessitating the construction of replacement housing. No impact.

Public Services: The project is for 22,000 square feet of cannabis cultivation with ancillary propagation and processing activities on a site where agriculture is principally permitted. The project will not increase the need for fire or law enforcement services. The project is not within 600 feet of a school or park. Less than significant impact.

Recreation: The project site is private property and contains no recreational facilities nor are recreational facilities accessed through the property. No impact.

Transportation: Up to two (2) people may be onsite during peak operations. Access to the site and two (2) cultivation areas is via two driveways off Black Creek Road (which traverses the site) to Butler Valley Road to Fickle Hill Road. Butler Valley Road and Fickle Hill Road are maintained by the County and are included on the County's list of County-maintained roads that meet (or are equivalent to) road Category 4 standards for cannabis projects. Black Creek Road is privately maintained. Road Evaluation Reports were prepared by the applicant in January 2018 for Butler Valley Road and Black Creek Road, in which both road segments were noted to be developed to the equivalent of a road Category 4 standard and are adequate for the proposed use. The project site will also have adequate emergency access. As Black Creek Road is noted to already be paved at its intersection with Butler Valley Road, therefore, no improvements were requested by Public Works, Land Use Division. Conditions of approval require the applicant to take steps to form or join a Road Maintenance Association for the maintenance of the privately maintained portions of the access roads to the project site. Less than significant impact.

Tribal Cultural Resources: No cultural resources were identified on the site according to a Cultural Resource Investigation completed by Arsenault & Associates (not dated). The lead agency consulted with local tribes through the project referral process. The project will adhere to the Inadvertent Discovery Protocol in the event of inadvertent discovery of resources, as recommended in the Report and the Bear River Band of the Rohnerville Rancheria in December 2017. Less than significant impact.

Utilities and Service Systems: Green waste material is composted onsite within a small area (10' x 10'). Other materials, unsuitable for composting, are stored in conventional lid trash containers along with domestic waste, and hauled to an approved transfer station/disposal facility, as needed. The project will provide portable toilets and handwashing stations for cultivation staff until permanent ADA accessible

facilities are developed. Water for propagation and cultivation is sourced from an onsite natural, off-stream pond and associated storage tanks. Less than significant impact.

Wildfire: The project will not interfere with any evacuation plan. The project will not develop any significant new structures that will increase the risk of wildfire. Less than significant impact.

No changes are proposed for the original MND recommended mitigations. The proposal to authorize the continued operation of an existing cannabis cultivation site consisting of 22,000 square feet of cultivation with ancillary propagation and processing activities is fully consistent with the impacts identified and adequately mitigated in the original MND. The project as conditioned to implement responsible agency recommendations, results in no significantly adverse environmental effects beyond those identified in the MND. Compliance with the CMMLUO ensures consistency with the adopted MND and provides for mitigation of all project related impacts to a less than significant level.

In reviewing the application for consistency with the adopted MND, the County considered the following information and studies, among other documents (see Attachment 3 for a complete listing of document):

- Site Plan prepared by Green Road Consulting, received 6/6/22.
- Cultivation and Operations Plan, not dated, with additional project information provided by the applicant's agent via email correspondence, dated 8/29/22, 10/7/22, and 11/4/22.
- Water Resource Protection Plan (SMP; WDID 1B16444CHUM) prepared by Timberland Resource Consultants, dated 9/17/16, pursuant to the North Coast Regional Water Quality Control Board's Order No. 2015-0023 for the State Water Resource Control Board (State Water Board) Cannabis Cultivation Policy (Cannabis Policy) and Order WQ 2017-0023- DWQ General Waste Discharge Requirements for Dischargers of Waste Associated with Cannabis Cultivation Activities (General Order).
- Final Streambed Alteration Agreement (Notification No. 1600-2016-0517-R1) issued by the California Department of Fish and Wildlife, dated 1/30/17.
- Road Evaluation Reports for Butler Valley Road from Butler Valley Road to Black Creek Road, and for Black Creek Road from Black Creek Road to Butler Valley Road, prepared by the applicant, dated 1/21/18.
- Right to Divert and Use Water issued by the State Water Resources Control Board (Registration ID H500793; Certificate No. H100150), dated 7/18/18.
- Notice of Applicability (WDID 1_12CC419185) issued by the North Coast Regional Water Quality Control Board, dated 9/6/19.
- Aquatic Resources Delineation prepared by Kyle Wear, Botanical Consultant, dated December 2021.
- A Cultural Resources Investigation for the Carnes Commercial Cannabis Cultivation, Humboldt County, California, prepared by Mark Arsenault, M.A., RPA, Arsenault and Associates, Sacramento, CA, not dated.
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Other CEQA Considerations

Staff suggests no changes for the revised project.

EXPLANATION OF DECISION NOT TO PREPARE A SUPPLEMENTAL MITIGATED NEGATIVE DECLARATION OR ENVIRONMENTAL IMPACT REPORT

See **Purpose** statement above.

In every impact category analyzed in this review, the projected consequences of the current project proposal are either the same or less than significantly increased than the initial project for which the MND was adopted.

Project impact analysis of conformance to the Mitigated Negative Declaration Substituted Mitigation Monitoring and Reporting Program

Mitigation Measure 1: Required setback from tribal cultural resources and tribal consultation process (55.4.10(o) and 55.4.10(c)).

- The project is within the historic aboriginal territory of the Bear River Band of the Rohnerville Rancheria. The project was referred to the Northwest Information Center at Sonoma State, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria in July 2017. A Cultural Resources Investigation (not dated; on file and confidential) was performed by Arsenault and Associates, in which no cultural resources were identified and included the standard inadvertent discovery protocol, also requested by the Bear River Tribal Historic Preservation Office in December 2017, which has been incorporated into the project as an informational note (Informational Note C.3).

Mitigation Measure 2: Curing violations of state, county code (55.4.11(a)).

- The project is for existing cultivation and project approval includes a compliance agreement to cure unresolved violations of state or county code.

Mitigation Measure 3: Required setbacks from watercourses, wetlands, and Environmentally Sensitive Habitat Areas (55.4.11(d)).

- The project is located within the inland portion of the County and is subject to the setback standards in the Streamside Management Areas and Wetlands Ordinance (SMAWO) as well as Chapter 10 (Conservation and Open Space Elements) of the General Plan. The Mad River traverses the northeastern-most portion of the subject parcel; however, all cultivation and associated infrastructure are located outside of the required Streamside Management Area (SMA) buffer.

Mitigation Measure 4: Permitting Tiers and related requirements (55.4.8.2 et seq.)

- The project is for 22,000 square feet of existing outdoor cultivation on a parcel zoned Timberland Production Zone (TPZ), which requires a Conditional Use Permit. The project complies with the requirements described in 55.4.8.2 et seq.

Mitigation Measure 5: Retirement, Remediation, and Relocation Program (55.4.14)

- The project is not participating in the Retirement, Remediation, and Relocation program; therefore, this mitigation measure does not apply.

Mitigation Measure 6: Cannabis Cultivation on Forest Lands

- This project is for existing cultivation consistent with baseline conditions which is eligible in a Timberland Production Zone (TPZ) zone. No new increased cultivation will occur. Review of historic aerial imagery dating back to 2004 indicates the subject property contained open areas

within the southeastern and northeastern portions of the property dating back to this time, and that the southern cultivation area occurs within a historic open area. However, it appears that timber removal occurred onsite between 2005 and 2009 within the northeastern and central portions of the site, and between 2010 and 2012, 2012 and 2014, and further expanded between 2018 and 2021 (removal of approximately 4 trees) within the northeastern portion of the site to accommodate the nursery greenhouse within Cultivation Area #1 and the harvest storage building, after the CMMLUO environmental baseline date of January 1, 2016. No additional tree removal is proposed or authorized by this permit. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date, submit a Timber Conversion Report prepared by a RPF to address previously unpermitted timber conversion, and re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. The project was referred to CAL FIRE for review and comment, in which standard project review comments were provided in July 2017.

Mitigation Measure 7: Use of fertilizer, pesticide, fungicide, rodenticide, or herbicide (55.4.11(j)).

- The project operations plan describes measures that will be taken to properly store and handle soil amendments and fertilizers; no pesticides or herbicides are utilized on-site, as per the project's operations plan. Compliance with the operations plan is a condition of project approval. The use of anticoagulant rodenticide is prohibited. The project is conditioned requiring the applicant to provide written compliance with the Certified Unified Program Agency (CUPA) requirements.

Mitigation Measure 8: Diversion of surface water and trucked water (55.4.11(l)-(m)).

- The project utilizes a non-diversionary water source for irrigation. Water for irrigation is sourced from an existing 700,000-gallon natural, off-stream pond.

Mitigation Measure 9: Generator Use (55.4.11(o)).

- The project currently utilizes two (2) generators; however, the applicant has long-term plans for installation of solar, with a generator for emergency backup only. The project is conditioned to require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026. Additional conditions require that noise from the generator will not exceed 50 decibels at 100 feet or edge of clearing whichever is closer.

Mitigation Measure 10: Storage of Fuel (55.4.11(p)).

- The project is conditioned that fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.

Mitigation Measure 11: Performance Standards for Cultivation and Processing Activities (55.4.11(q)-(u)).

- Applicant has provided a statement declaring they are an agricultural employer as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code).

- The project includes onsite cultivation with ancillary propagation and processing, and the operations plan describes operational practices and employee safety standards.

Mitigation Measure 12: Performance Standards for Mixed Light Cultivation (55.4.11).

- The project is for outdoor cultivation and does not use artificial light for cultivation.

Mitigation Measure 13: Humboldt Artisanal Branding Provision (55.4.15).

- The proposed project is for more than 3,000 square feet; therefore, this measure does not apply.

Mitigation Measure 14: Sunset Clause for applications

- The application was received on December 15, 2016, prior to the sunset of the ordinance.

Based upon this review, the following findings are supported:

FINDINGS

1. The proposed project will permit an existing cannabis operation and bring the operation into compliance with county and state requirements intended to adequately mitigate environmental impacts.
2. The circumstances under which the project was approved have not changed substantially. There are no new significant environmental effects and no substantial increases in the severity of previously identified effects.
3. For the current proposed project, there has been no 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 MND was adopted as complete.

CONCLUSION

Based on these findings it is concluded that an Addendum to the certified MND is appropriate to address the requirements under CEQA for the current project proposal. All of the findings, mitigation requirements, and mitigation and monitoring program of the MND, remain in full force and effect on the original project.