

Appendix A

Bracketed Draft EIR Comments



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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June 24, 2024

Angela McIntire-Abbott
Department of Cannabis Control
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Rancho Cordova, CA 95670
publiccomment@cannabis.ca.gov

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE LICENSING OF COMMERCIAL CANNABIS CULTIVATION IN MENDOCINO COUNTY (STATE CLEARINGHOUSE NUMBER 2023080049)

Dear Angela McIntire-Abbott:

The California Department of Fish and Wildlife (Department) has reviewed the Draft Environmental Impact Report (DEIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County (Project). The Department received the DEIR from the Department of Cannabis Control (DCC) on May 3, 2024. The Department previously commented on the Notice of Preparation (NOP) for the Project.

The Department has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and their habitat. As a Responsible and Trustee Agency, the Department administers the Lake or Streambed Alteration (LSA) Program, California Endangered Species Act (CESA), and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. The Department provides the following comments and recommendations on the proposed Project in our role as a Trustee Agency pursuant to the California Environmental Quality Act statute (CEQA; California Public Resources Code [PRC] section 21000 *et seq.*) and the CEQA Guidelines (California Code of Regulations [CCR], Title 14, section 15000 *et seq.*).

The Department continues to support efforts to effectively regulate cannabis cultivation, and to address the numerous and substantial associated environmental impacts. The Department believes that greater regulatory oversight and enforcement by state and local Lead Agencies can help minimize the environmental impacts of cannabis cultivation.

A1-1

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 2 of 15

Environmental Baseline

As outlined in the CEQA Guidelines (14 CCR section 15002(a)), one basic purpose of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of *proposed* activities. As the DEIR states (page 3-1), “CEQA Guidelines, section 15125(a) states the physical environmental conditions as they exist at the time the NOP is published normally constitute the baseline physical environmental conditions by which a Lead Agency determines whether an impact is significant.” However, unlike a typical CEQA review process, preparation and review of the DEIR for licensing of cannabis cultivation in the County of Mendocino (County) is primarily addressing environmental impacts for existing, ongoing projects.

A1-2

The County adopted a Mitigated Negative Declaration (MND) pursuant to CEQA for its Cannabis Cultivation Regulations¹ (Ordinance) in April 2017. Most of the sites addressed by the DEIR are provisionally-licensed by the DCC and the licensees have submitted a permit application to the County under the 2017 Ordinance, and many have been allowed to continuously operate prior to permit issuance. Applications submitted under Phase 1 of the 2017 Ordinance, which apply to the majority of sites with provisional DCC licenses, were required to demonstrate that cannabis cultivation existed prior to January 1, 2016. The County’s MND defined the baseline as August 26, 2016, the date on which the County submitted requests for early consultation to Trustee and Responsible and agencies and other interested parties.

A1-3

The Approach to the Environmental Analysis narrative (page 3-2) references the date the County approved the 2017 Ordinance (March 27, 2017), and the date the state began accepting applications and issuing licenses (January 1, 2018). The DEIR states there have been 1,708 commercial cannabis cultivation license applications submitted since 2017 and of these, 1,319 application submittals have been submitted to DCC since 2018.

A1-4

The DEIR states, “*For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review.*” Although the DEIR does not appear to identify a specific date as the baseline,

¹ Mendocino County Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation, adopted April 2017, State Clearinghouse number 2016112028.

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 3 of 15

the Department believes the unique circumstances and environmental history surrounding this project make it impracticable to use the date of the Notice of Preparation (NOP) as the baseline date. Whereas the NOP date would be appropriate for projects that are proposed but not yet implemented, the proposed project and associated activities contemplated in the DEIR have been ongoing and continuous prior to the County adopting its 2017 Ordinance.

A1-4
cont.

For this reason, the Department believes that August 26, 2016, is the appropriate CEQA baseline date for cannabis projects with cannabis cultivation that existed prior to adoption of the Ordinance, or with existing applications in the County's cannabis regulatory program, and site-specific environmental review for licensing under the EIR should reflect this date. (**Recommendation #1**)

In the Regulatory Setting section (3.1.1), the DEIR reviews a wide range of laws and regulations that apply to cannabis cultivation sites. The DEIR extensively cites Resource Management policies contained in the County General Plan. It also includes portions of the 2017 County Ordinance related to biological resources. Importantly, the DEIR includes the following quote from the Ordinance: "*A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a CCBL [Cannabis Cultivation Business License].*" The requirements in the DEIR relating to avoidance of significant impacts to biological resources are not a new requirement, but a continuation and clarification of the standards identified by the County upon adoption of its local cannabis regulation.

A1-5

Many projects seeking a County permit and state license are subject to permits previously obtained from other agencies, such as a Lake or Streambed Alteration Agreement (LSAA), or a State Water Resources Control Board (SWRCB) certification. As the DEIR describes, SWRCB Order WQ-20230102-DWQ Attachment A includes requirements for state-licensed cultivation sites that are associated with biological resources. Term 10 requires that "*Prior to commencing any cannabis land development or site expansion activities, the cannabis cultivator shall retain a Qualified Biologist to identify sensitive plant, wildlife species, or communities at the proposed development site. If sensitive plant, wildlife species, or communities are identified, the cannabis cultivator and Qualified Biologist shall consult with CDFW and CAL FIRE to designate a no-disturbance buffer to protect identified sensitive plant, wildlife species, and communities. A copy of the report shall be submitted to the appropriate Regional Water Board.*"

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 4 of 15

Consistent with the above referenced provisions, and the basic purposes of CEQA, the Department urges DCC to ensure its review and approval of projects will yield in the appropriate biological survey information and applicable avoidance, minimization and mitigation measures. Such documentation may be required by DCC for licensing under the EIR or pursuant to a different discretionary authorization. (**Recommendation #2**)

A1-5
cont.

Cumulative Impacts

The CEQA Guidelines (14 CCR section 15355) define cumulative impacts as “two or more individual effects which, when considered together, are considerable...” and may include “the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” This section continues, “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”

A1-6

In its NOP comment letter, the Department expressed concerns about cumulative impacts not only as they relate to licensed cannabis cultivation and associated development, but also unpermitted cannabis cultivation, and cannabis cultivation sites that have been abandoned without remediation. The Department is aware that the County has denied a substantial number of local permit applications. However, many cannabis cultivation sites in the permitting process were allowed to continue operations for years prior to permit denial. To adequately address cumulative impacts, we recommended the DEIR address unpermitted cultivation and abandoned sites, as well as cannabis cultivation sites that will ultimately receive a license.

A1-7

The DEIR (page 3-7) acknowledges unlicensed cannabis cultivation sites and recognizes them as part of the environmental baseline for the Project. In its analysis, Ascent Environmental, Inc. estimated there were approximately six (6) unlicensed cannabis cultivation sites for every licensed site. Because unlicensed cannabis cultivation sites are not considered part of the Project, the DEIR states “they would not result in environmental effects associated with the project that would need to be mitigated.”

A1-8

On page 3-2, the DEIR discloses that “According to Mendocino County records as of April 2023, there have been 1,708 commercial cannabis cultivation license applications submitted since 2017.... Of these County license applications, 1,319 application submittals have been submitted to DCC since 2018. Currently there are 623 provisional licenses and 19 annual licenses that have been issued by the

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 5 of 15

state and are considered active." No additional information is provided regarding the current status of the cannabis cultivation sites for which a County permit or state license was sought and that have not remained in the process. Based on the information in the DEIR, this may include approximately 1,066 unlicensed sites associated with the Project. The Department urges DCC to address these impacts by ensuring that cannabis cultivation sites no longer engaged in permitting processes have been decommissioned and/or restored, based on what is appropriate for the site. **(Recommendation #3)**

A1-8
cont.

Environmental Impacts

The DEIR describes robust requirements for identification of biological resources, and avoidance or mitigation of potentially significant impacts on a site-specific basis. To be effective, these protections must be applied appropriately with regard to all project activities conducted after the baseline. The majority of projects subject to review and potential annual DCC license issuance have been in existence and possibly operating since at least 2017, and potentially 2016.

In several sections, the DEIR includes the statement that "*it was determined that no impact would occur on existing provisionally licensed sites,*" or other language to that effect. For example, the quoted statement is included in the Environmental Impacts and Mitigation Measures section under Impact 3.5-1: Result in Disturbance to or Loss of Special-Status Plant Species and Habitat. The DEIR does not provide evidence to support this claim, and this conclusion is not in line with the Department's observations during project review (see below).

A1-9

The Impact 3.5-1 narrative also acknowledges that "*it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license*" and states that these sites would continue to be subject to Terms 4 and 10 of the SWRCB Cannabis Policy (which prohibit impacts to special status species and require biological surveys, respectively). The Department recommends that each project is carefully assessed for expansion after the baseline date of August 26, 2016, and appropriate avoidance, minimization and mitigation measures applied pursuant to the EIR. **(Recommendation #4)**

This section appropriately determines that "*because potential expansion of existing provisionally licensed and future licensed commercial cannabis cultivation sites could substantially affect the abundance, distribution, and viability of local and regional populations of special-status plant species, the*

A1-10

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 6 of 15

*impact related to these species would be **potentially significant**.*" The Department concurs with the further conclusion that implementation of proposed mitigation measures, including conducting pre-approval biological surveys and implementation of appropriate avoidance, minimization and mitigation measures based on survey results should reduce impacts to a less than significant level.

This pattern is repeated in several sections in the Biological Resources portion of the DEIR, including Impact 3.5-2: Result in Disturbance to or Loss of Special-Status Wildlife Species and Habitat. This section appears to focus on "Expanded and new" sites, and states that "*transitioning to annual licensure would not result in additional impacts to special-status wildlife species and their habitats as operations are not anticipated to be altered through the annual licensing process.*" This statement does not account for past loss of habitat after the baseline, and existing water use and disturbance from light, noise, and other cultivation operation activities.

Similar to comments relating to Impact 3.5-1, the Department concurs with the determination that "*the loss of special-status wildlife species and their habitat could substantially affect the abundance, distribution, and viability of local and regional populations of these species, this impact would be **potentially significant**.*" We also concur that the measures described, including appropriate surveys, avoidance, minimization and mitigation measures, should reduce impacts to a less-than-significant level.

As is described in the DEIR, pursuant to the 2017 Ordinance, certain cannabis projects are referred to the Department for review and comment. Projects are referred for review when they do not meet certain performance standards, as contained in the policy described in the regulation, developed in collaboration with the Department, and adopted by the County in 2020. For example, of approximately 220 projects referred since April 2023, approximately 125 of those were referred, in whole or in part, due to expansion beyond the development footprint that existed on January 1, 2016. Of the 220 projects, approximately 55 were referred due to proximity to a known northern spotted owl (*Strix occidentalis*) activity center. Most of these projects have been operating without having had biological surveys or environmental review conducted. While they will be subject to review, and potentially will incorporate avoidance, minimization and mitigation measures through Department review and DCC licensing, without additional information it is not possible to state that these projects are not currently creating significant environmental impacts.

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A1-11

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 7 of 15

Consistent with the CEQA Guidelines (14 CCR section 15002(a)), the Department urges DCC to disclose information and/or assumptions relied upon to conclude that “no impact would occur on existing provisionally licensed sites.” The DEIR does not appear to include the supporting documentation informing this assertion. The Department would like to underscore the point that cannabis cultivations sites will require biological surveys or environmental review to inform site-specific mitigation measures. The potential impacts of existing cannabis cultivation sites with expansion after the baseline, and potential impacts from ongoing operation, should be assessed and avoided, minimized or mitigated on each site, as described in the DEIR. **(Recommendation #5)**

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Department Consultation

The Department appreciates the opportunity provided in the DEIR to consult with applicants regarding their projects, and to provide recommendations to agency staff regarding appropriate surveys and mitigation measures required to avoid or minimize potential or existing impacts. The Department requests that this process be further clarified, to allow for effective and expedient engagement with Department staff. Given the high number of referrals received by the Department, and those forthcoming, additional transparency on the process for multiagency coordination will enhance public understanding of the measures taken to mitigate environmental impacts associated with cannabis cultivation. For example, further information should be provided regarding how the County, DCC or applicants will request consultation with the Department. It should be made clear what entity will request consultation. In addition, the Department will be most effective and expedient in carrying out its Trustee and Responsible Agency roles when individual project applications are completed prior to consulting with the Department, and consultation regarding all potentially-impacted biological resources are requested at the same time for a given project or site. To ensure the public and agencies have the opportunity to comment effectively on the Project, the DEIR should clarify how consultation provided by the Department will be considered and integrated into the County and DCC processes, how licenses and permits will be implemented in relationship to each other, and how they will interact with other existing permits and processes. **(Recommendation #6)**

A1-12

The Department concurs with the requirement for pre-approval biological surveys in Mitigation Measure 3.5-1a. However, the condition includes the statement “*If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures*”

A1-13

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 8 of 15

identified in the ordinance." The Department urges DCC to ensure that biological reports are reviewed by appropriate, knowledgeable agency staff to determine whether the biological surveys and reports are adequate, prior to accepting the conclusions. **(Recommendation #7)**

A1-13
cont.

Definitions

The DEIR uses the terms "qualified biologist" and "qualified botanist," which are not defined in the document. The SWRCB Cannabis Order, and the Department's General Lake or Streambed Alteration Agreement for Activities Related to Cannabis Cultivation regulatory text, each contain definitions for "qualified biologist" that have been adopted by the respective agency. "Qualified biologist" and "qualified botanist" should be defined in the DEIR. **(Recommendation #8)**

A1-14

The DEIR also uses the phrase "reconnaissance survey," but does not define this term in relation to a "biological survey." The DEIR should provide a description or definition of "reconnaissance survey." **(Recommendation #9)**

A1-15

Water Use and Availability

California has a Mediterranean climate, where most of the state's precipitation falls from October to May (CDFG 2003²), not during the primary cannabis summer growing season. Due to the lack of summer rainfall and the absence of snow, rivers and streams have receding flow from May until September. Water use peaks in the heat of the summer at the same time instream flow is at its lowest, creating a conflict between water demand and water availability for fish and wildlife resources.

A1-16

In the Cumulative Impacts section (page 4-23), the DEIR concludes that "*the contribution to cumulative surface water resource impacts associated with the annual licensing of existing commercial cannabis cultivation sites would not be cumulatively considerable.*" The Department is concerned there is not adequate flow in most streams to meet the water demand for cannabis cultivation at its current levels, as well as the domestic water use for dwellings and other residential and commercial uses associated with or developed to facilitate cannabis cultivation and processing. Based on numerous field observations and ongoing research, the Department believes that overuse of

² California Department of Fish and Game. 2003. Atlas of the Biodiversity of California. Sacramento, CA.

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 9 of 15

surface water diversions for cannabis cultivation has and will continue to have significant direct and cumulative impacts on aquatic resources.

The DEIR references existing laws and regulations relating to water, including Ordinance section 10A.17.080(C)(1)(b), *"which would require a watershed assessment as well as compliance with the flow standards and diversion requirements set forth under SWRCB Order WQ 2023-0102-DWQ standards for water diversions,"* and Ordinance section 10A.17.080(C)(1)(b) which *"would require a watershed assessment to establish that sufficient groundwater supply is available to serve the proposed commercial cannabis cultivation site"* (page 4-23).

In the narrative for Impact 3.10-3: Result in Diversion of Surface Water, the DEIR acknowledges that *"SWRCB has identified the following watersheds, Mattole River, Middle South Fork Eel River, East Fork Russian River, Navarro River, and Dry Creek, as Cannabis Priority Watersheds in Mendocino County because of water quality, low flow, and other related issues."* Following the pattern described above, this section erroneously concludes that *"Continued operation of existing provisionally licensed commercial cannabis cultivation sites transitioning to annual licensure would not result in additional impacts to surface water resources because operations are not anticipated to be significantly altered through the annual licensing process."* This section is inconsistent with the previous statement by acknowledging that *"it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they transition to annual licensure."*

The DEIR does not identify specific avoidance, minimization or mitigation measures for the potential impacts of surface water diversion for cannabis cultivation. Instead, the DEIR relies on existing regulations to conclude that the impact to surface water resources will be less than significant. The Department urges DCC to ensure, during review of license applications, that licensed cultivators are in compliance with SWRCB flow standards, and should review any watershed assessment prepared pursuant to the County regulations, as a condition of license approval. (**Recommendation #10**)

The DEIR did not directly address construction of ponds for water storage, a concern the Department raised in its NOP comment letter. In many cases, the County has allowed the construction of new ponds, which often involve substantial grading and fill, under a ministerial grading and/or pond exemption

A1-16
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A1-17

A1-18

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 10 of 15

permit with no environmental review. These ponds may pose risks to water quality and sensitive habitats if they are designed and constructed without proper engineering. The Department has observed ponds built in inappropriate locations, and failed ponds that have delivered sediment to nearby streams. In addition, these ponds often provide breeding habitat for non-native, invasive species such as American bullfrog (*Lithobates catesbianus*), a species that preys upon native reptiles and amphibians such as western pond turtle (*Actinemys marmorata*), foothill yellow-legged frog (*Rana boylei*), and northern red-legged frog (*R. aurora*), all California Species of Special Concern.

A1-18
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The DEIR should provide a mechanism to regulate the development of ponds as part of cannabis cultivation permitting, including a requirement for engineered designs where appropriate, and invasive species management plans for all ponds. Ponds may be subject to the notification requirement in Fish and Game Code section 1602 *et seq.* if they are filled from, or outlet to a stream or wetland. The Department recommends DCC should ensure that, as a condition of approval for cannabis cultivation permits, required approvals from the Department and any other applicable regulatory agency is obtained prior to pond development. (**Recommendation #11**)

Direct impacts to streams, riparian areas, wetlands

Many areas where cannabis cultivation may be permitted include agricultural and other areas within the 100-year floodplain. Floodplains are an important physical and biological component of riverine ecosystems. All rivers flood, and flooding is an expected and recurring event in natural river systems. Development in flood-prone areas disconnects rivers from their natural floodplains and displaces, fragments, and degrades important riparian habitat. Development in floodplains often eliminates benefits of natural flooding regimes such as deposition of river silt on valley floor soils and recharging of wetlands. In addition, braided channel structure, off-channel fish habitat, and backwaters are eliminated, resulting in higher velocity flows. These changes lower habitat suitability for salmonids, which need low-flow refugia to escape flood flows. Structures in flood plains are vulnerable to erosion and flood damage. Once structures are built and threatened by river flooding, property owners often seek to armor riverbanks or build or raise levees to prevent future property damage. Thus, not only does development displace riparian and floodplain habitat when it is built, it often results in further habitat and floodplain loss through additional development to protect structures.

A1-19

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 11 of 15

By prohibiting cannabis cultivation within the 100-year floodplain, these impacts can be avoided and mitigated. However, the DEIR did not directly address development in the 100-year floodplain, instead deferring to “*Compliance with the requirements SWRCB Order WQ 2023-0102-DWQ and County regulations*” (Impact 3.10-1) to avoid impacts to floodplains. Development and habitat conversion in floodplains results in degradation of riverine and riparian habitats, and negatively impacts the fish and wildlife species that depend on them. The Department recommends that placement of new permanent structures for cannabis cultivation within the 100-year floodplain of any stream or river be prohibited. (**Recommendation #12**)

A1-19
cont.

General Comments

Effectiveness of Mitigation Measures

The County's Cannabis Regulations have been in effect since April 2017. The Department is concerned the County's existing regulatory framework has not resulted in avoiding, minimizing and/or mitigating the environmental impacts of cannabis cultivation. Pursuant to the CEQA Guidelines (14 CCR section 15002), the DEIR must disclose and evaluate all of the project's potentially significant impacts; identify ways to avoid or significantly reduce environmental damage; propose, as appropriate, feasible and effective mitigations for those impacts; and disclose reasons for approving the proposed project if significant environmental impacts will occur. In addition, pursuant to 14 CCR section 15126.4(a)(2), mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.

A1-20

The Department raised this concern in our NOP comment letter and urges DCC to include in the EIR an analysis of the effectiveness of mitigation measures under the current program in avoiding, minimizing or reducing the environmental impacts of cannabis cultivation sites, particularly since the same or similar mitigation measures are proposed for use in DCC's licensing program. (**Recommendation #13**)

Fish and Game Code

Several Fish and Game Code sections apply to activities associated with cannabis cultivation. Fish and Game Code section 1602 *et seq.* requires notification for diversions of water from a surface water source, or of water hydrologically connected to a surface water source (e.g. offset wells), as well as for physical changes to the bed, channel or bank of any river, stream, or lake.

A1-21

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 12 of 15

State licensing through DCC requires that all cultivators obtain either an LSAA pursuant to FGC section 1602, or verification from the Department stating that an LSAA is not required.

Department staff have documented unpermitted non-native aquatic species introductions to ponds used for water storage and water diversion associated with cannabis cultivation. Fish and Game Code section 6400 requires first submitting for inspection and securing a stocking permit from the Department before planting fish. The Department urges DCC to address the potential environmental impacts from existing non-native species in the DEIR and prohibit the introduction of non-native species to ponds.

(Recommendation #14)

A1-21
cont.

To ensure understanding and compliance with the various Fish and Game Code provisions applicable to cannabis cultivation, the Department urges DCC to continue close collaboration and consultation with Departmental staff. Examples of other applicable FGC sections include but are not limited to section 2050 *et seq.* (CESA), section 5650 (prohibits water pollution), section 5652 (prohibits refuse disposal in or near streams), and section 5937 (requires sufficient water bypass and fish passage, relating to dams).

A1-22
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Summary of Recommendations

In summary, the Department provides the following recommendations:

1. The Department believes that August 26, 2016, is the appropriate CEQA baseline date for cannabis projects with cannabis cultivation that existed prior to adoption of the Ordinance, or with existing applications in the County's cannabis regulatory program, and site-specific environmental review for licensing under the EIR should reflect this date.
2. Consistent with the above referenced provisions, and the basic purposes of CEQA, the Department urges DCC to ensure its review and approval of projects will yield in the appropriate biological survey information and applicable avoidance, minimization and mitigation measures. Such documentation may be required by DCC for licensing under the EIR or pursuant to a different discretionary authorization.

A1-23

A1-24

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 13 of 15

3. The Department urges DCC ensure that cannabis cultivation sites no longer engaged in permitting processes have been decommissioned and/or restored, based on what is appropriate for the site. A1-25
4. The Department recommends that each project is carefully assessed for expansion after the baseline date of August 26, 2016, and appropriate avoidance, minimization and mitigation measures applied pursuant to the EIR. A1-26
5. The potential impacts of existing cannabis cultivation sites with expansion after the baseline, and potential impacts from ongoing operation, should be assessed and avoided, minimized or mitigated on each site, as described in the DEIR. A1-27
6. To ensure the public and agencies have the opportunity to comment effectively on the Project, the DEIR should clarify how consultation provided by the Department will be considered and integrated into the County and DCC processes, how licenses and permits will be implemented in relationship to each other, and how they will interact with other existing permits and processes. A1-28
7. The Department urges DCC to ensure that biological reports are reviewed by appropriate, knowledgeable agency staff to determine whether the biological surveys and reports are adequate, prior to accepting the conclusions. A1-29
8. "Qualified biologist" and "qualified botanist" should be defined in the DEIR. A1-30
9. The DEIR should provide a description or definition of "reconnaissance survey." A1-31
10. The Department urges DCC to ensure, during review of license applications, that licensed cultivators are in compliance with SWRCB flow standards, and should review any watershed assessment prepared pursuant to the County regulations, as a condition of license approval. A1-32
11. The Department recommends DCC should ensure that, as a condition of approval for cannabis cultivation permits, required approvals from the Department and any other applicable regulatory agency is obtained prior to pond development. A1-33

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 14 of 15

12. The Department recommends that placement of new permanent structures for cannabis cultivation within the 100-year floodplain of any stream or river be prohibited.

A1-34

13. The Department raised this concern in our NOP comment letter and urges DCC to include in the EIR an analysis of the effectiveness of mitigation measures under the current program in avoiding, minimizing or reducing the environmental impacts of cannabis cultivation sites, particularly since the same or similar mitigation measures are proposed for use in DCC's licensing program.

A1-35

14. The Department urges DCC to address the potential environmental impacts from existing non-native species in the DEIR and prohibit the introduction of non-native species to ponds.

A1-36

We appreciate the opportunity to comment on the Project and look forward to working with DCC to effectively regulate commercial cannabis cultivation while addressing its documented environmental impacts. If you have any questions, please contact Senior Environmental Scientist Supervisor Angela Liebenberg at ceqareferrals@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Tina Bartlett, Regional Manager
Northern Region

ec: Page 15

Angela McIntire-Abbott
Department of Cannabis Control
June 24, 2024
Page 15 of 15

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June 15, 2024

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Re: Comments on the Draft EIR for Licensing of Commercial Cannabis Cultivation In Mendocino County Project

Dear Ms. McIntire-Abbott;

The Willits Environmental Center has reviewed the above referenced DEIR and submits the following comments including two attachments.

1. Thank you for extending the comment period due to the technical difficulties at the start of the “in person” public comment meeting.

O1-1

2. The Range of Alternatives is insufficient. Two Alternatives to the Project, one being “No Project”, is not the meaningful “range of alternatives” required by the California Environmental Quality Act (CEQA). The Project is to license qualified Mendocino County commercial cannabis cultivation in such a way that safeguards the natural and human environment. There are multiple possible paths to that end. For example, alternatives could include capping the number of future State annual licenses in the County generally, or per watershed. Why did the DEIR not include a true “range” of alternatives?

O1-2

3. We object to the use of the concept of “Cannabis Priority Watersheds.” “Cannabis Priority Watersheds” is not defined in the DEIR. Neither the term, nor the concept is used at all in Mendocino County’s cannabis cultivation ordinance. And yet, this undefined concept seems to be central to the preferred (and only!) alternative. The DEIR suggests that future growers would locate outside of “priority watersheds”, thus avoiding further impacts to those watersheds where currently there is a higher concentration of commercial cannabis growers. However, the intent of Mendocino County’s ordinance with respect to new commercial cannabis operations is to encourage new growers to locate in the County’s more accessible, visible, serviceable areas of the County. These two ideas seem to conflict. Please address this issue.

O1-3

4. We do not agree with the DEIR’s claim that Mendocino County’s ground water, including ground water influenced by surface waters, and surface waters are understood, stable and adequate for present and future use by human and non human users. The Ukiah ground water

O1-4

basin is the only basin in Mendocino County required by the State to create a groundwater basin plan. The State did not require groundwater basin studies elsewhere in the County because the other areas are not sufficiently urbanized to warrant the State’s attention, not because these other basins, or the surface water that feeds them, are well understood and deemed to be stable and adequate, now and in a drier, hotter future, based on rigorous hydrologic investigations .

O1-4
cont.

In fact, what we mostly hear from residents around the County, and outside of the Ukiah groundwater basin area, are grave concerns about dropping well water levels, drying springs that have never been known to fail in the past, creeks running dry earlier and earlier in the summer season, and fears regarding the possible intrusion of naturally occurring pollutants such as arsenic, boron, and magnesium being drawn into previously uncontaminated areas of the aquifer by excessive water extraction. There are currently two citizen-driven proposed water extraction ordinances in the wings waiting for consideration by the Board of Supervisors and the public. One of these addresses water extraction county-wide, the other focuses on Round Valley. Clearly the Ascent Environmental team sees a very different County than we residents are experiencing!

The DEIR’s apparent justification for its assessment that the County’s groundwater and associated surface waters are “stable and adequate” is its reference to the multiple regulations and regulatory agencies which monitor and enforce water use in the State, including Mendocino County. For example, the DEIR refers to the daily water use data that cannabis growers are required to send to DWR as a way of monitoring water use in watersheds and sub-watersheds around the County. However, even IF DWR is getting daily water use data from growers, and even if DWR is analyzing that data, that doesn’t mean that water quality and/or quantity is being protected. Because very few sub-watersheds in Mendocino County have ever been thoroughly studied, or studied at all, even with daily data DWR has no way of knowing if that watershed’s cannabis cultivators are presently over-using the resource to the detriment of other users, wildlife, riparian habitat or aquatic life, much less what the cumulative impacts of future water users will be, especially in the context of a warmer, drier California.

O1-5

One thing that we do know about Mendocino County’s water resources is that many of the major watersheds outside of the coastal zone are listed as impaired for sediment and temperature, i.e. they cannot support threatened and endangered fish and other aquatic species in certain dry years, and should be off-limits to new water extraction rights now.

O1-6

A mere listing of regulations, and the agencies charged with enforcing them, is NOT evidence of water and watershed protection and does not in itself justify the continued issuing of licenses that will result in more water extraction from these water-stressed areas. Unfortunately, the regulations exist primarily on paper and appear only to be enforced erratically. (Even the City of Willits, as it turns out, has for years failed to comply with its water impoundment and release agreements with DWR and CDFW. City officials claimed to members of the public that the City’s agreement with the State is a simple “hand-shake” agreement.)

O1-7

As another example, CDFW was to assist the County in identifying which cannabis cultivation applications had the potential to harm wetlands, riparian areas, and/or sensitive species habitat. The County, having no qualified biologist or hydrologist on staff, sent all cannabis cultivation applications to CDFW for review. This quickly overwhelmed the one CDFW biologist with the

O1-8

job of letting the County know in a meaningful and timely way whether or not the proposed cultivation operation even encroached on wetlands or SSH areas let alone be able to propose to the County means to avoid impacts or to advise the County that the applicant revise the application to avoid impacts. Because applicants can continue to cultivate while applications are in review, damage occurred. (It should be noted that the County amended its ordinance to eliminate annual inspections, which will also contribute to lack of enforcement.) If regulations are not able to be enforced, why are they considered to be mitigations?

O1-8
cont.

Justifying the DEIR’s assessment that Mendocino County’s ground water, and surface waters connected to ground water, are stable and adequate to accommodate current and future commercial cannabis cultivation operations, and cumulatively, all other water users, human and non-human, the DEIR also cites the sections of Mendocino County’s cannabis cultivation ordinance that require a “watershed analysis” for new commercial cannabis cultivators. However, the County has never enforced this provision of the ordinance. As in the above examples, unenforced regulations are not mitigations against harm to the environment. (The DEIR notes briefly that the County’s ordinance does not require a “watershed analysis” for cultivation operations on property in the agricultural zone, but then fails to provide any mitigation measures to address this omission in the local regulations.) Please address this issue.

O1-9

5. With regard to the analysis of impacts of the proposed project on other biological resources, specifically forest and woodland communities, the DEIR makes several references to a section of the County cannabis cultivation ordinance that prohibits tree removal for the development of cannabis cultivation operations. Thus the DEIR concludes that no mitigation is necessary. Several months ago the Board of Supervisors amended the County ordinance to “clarify” that the tree removal prohibition applies only to the actual cannabis cultivation area square footage, and not to any other areas disturbed/graded for roads, ponds, structures, support buildings, etc. which support the cultivation activity. Therefore, the County ordinance does not actually avoid loss of tree cover and woodland habitat for the purpose of cultivating cannabis. We recommend that the DEIR include as a mitigation measure for the State’s licensing project a tree removal prohibition that includes tree removal for the development of areas and structures that support and serve the commercial cultivation operation.

O1-10

6. The DEIR states repeatedly and incorrectly that Mendocino County allows commercial cannabis cultivation areas of 22,000 square feet. In fact, the maximum cultivation area per legal parcel is 10,000 square feet, with the exception of nurseries which can occupy up to 22,000 square feet. This repeated error needs to be corrected.

O1-11

The assumption underlying this DEIR is that all existing County permit holders, whether or not they have a state provisional license, are in compliance with Mendocino County’s ordinance 10A.17 and 20.242. This DEIR tiers off the County’s existing ordinance in that any application for state licensure must be compliant with the County’s regulations as a starting point. The State’s licensing process cannot contradict or undermine local land use regulations by allowing weaker or contradictory regulations. Therefore it is essential that this DEIR accurately reflects the County’s cannabis cultivation regulations.

O1-12

Please see two attachments which we are including with these comments that address this new controversial issue of doubling allowable maximum cultivation areas. Attached are: 1) a letter from the Willits Environmental Center to the Mendocino County Board of Supervisors regarding an April, 2024 “re-interpretation” of Sec. 10.17.070(D) by county staff; and 2) an accompanying memo from Rachel Doughty, Esq. to the Board of Supervisors outlining why staff’s “re-interpretation” is illogical, not supported by legislative history, and would be a violation of CEQA.

O1-13

Thank you for your careful attention to these comments. We look forward to your responses.

Sincerely,
Ellen Drell, for the Willits Environmental Center

May 9th, 2024

From: Willits Environmental Center
630 Sound Main Street
Willits, CA 95490
wece@sbcglobal.net

To: Mendocino County Board of Supervisors
501 Low Gap Rd
Ukiah, CA 95482
bos@mendocinocounty.gov

Re: Recent Staff Re-interpretation of 10A.17 Pertaining to Cultivation Size Limits

Dear Chair Mulheren and Members of the Board;

At the April 24, 2024 General Government Committee meeting staff informed the Committee members that staff would be implementing a new interpretation of 10A.17 that would allow in some instances doubling the allowable size of cannabis cultivation areas. For example, instead of limiting a large outdoor grow to 10,000 sq ft per parcel, by applying this re-interpretation, a person could increase, even double, the size of the area of cultivation on a single parcel.

Staff based this re-interpretation on what we believe to be a mis-reading of Section 10A.17.070(D), which is the section of the cannabis ordinance that addresses cannabis cultivation business license (CCBL) density, i.e. the number of licenses allowed per parcel - NOT cultivation area size, except to clarify that if license Type 4 (Nursery with a maximum size of 22,000 sq ft) is one of two license types being sought, the nursery footprint must be reduced such that the total square footage of both types does not exceed 22,000 sq ft, AND the cultivation area of the non-nursery license does not exceed the 10,000 sq ft maximum. (Limits to cultivation area size per license type and zoning district are clearly defined in Section 10A.17.060 and in Tables 1 and 2 of Section 20.242 of the County Code.)

This “re-interpretation” turns seven years of understanding on its head and dramatically alters a fundamental tenant of the ordinance and the underlying justifications of its Mitigated Negative Declaration - and all without any public process. Less than two years ago, citizens of Mendocino County mounted a referendum against adopting a new cannabis ordinance that would have allowed just the kind of expansion that this re-interpretation would now make possible. In thirty days (in the midst of COVID) one hundred citizens volunteers gathered over 6,000 signatures from County voters who said loud and clear that they didn’t want expanded grow sites. The Board responded appropriately, respecting the wishes of the public.

Please see the attached legal analysis that details why we believe that staff’s re-interpretation is not supported by the language of the ordinance itself or its intent as laid out in the legislative history, and why such a fundamental change in the interpretation of the ordinance requires environmental analysis and public participation.

We respectfully request that the Board immediately reject this re-interpretation and inform the Mendocino Cannabis Department to immediately withdraw any public notice referring to the re-interpretation. Furthermore, if any person(s) has applied for multiple CCBL's under this re-interpretation, the Board should direct staff to notify the person(s) that the application will not be processed, and any fees paid to the Department will be returned.

Thank you for acting swiftly so as to avoid renewed confusion and delays, especially when the Mendocino Cannabis Department is making progress on issuing County permits, and the State has just issued its DEIR in preparation to issue annual licenses to hundreds of Mendocino County provisional license holders.

Sincerely,
Kirk Lumpkin, Secretary, Willits Environmental Center Board of Directors

Memorandum

To: Willits Environmental Center
From: Rachel Doughty
Date: May 8, 2024
RE: Staff-proposed reinterpretation of cultivation area limits in Mendocino County Cannabis Ordinance

I was asked to evaluate an April 24, 2024, draft memorandum from the Interim Director of Mendocino Cannabis Department (**Exhibit 1**). The stated purpose of the memorandum is “to provide clarity and to implement a policy regarding Mendocino County Code (“MCC”) Section 10A.17.070(D), which addresses Cannabis Cultivation Business License Density.” It is my conclusion that the interpretation is at odds with the clear language of the Ordinance, with the legislative history of the Ordinance, and with longstanding practice by the County. Additionally, were the County to proceed under this policy, it exceeds the scope of previously identified environmental impacts. Thus, additional environmental analysis would be required under the California Environmental Quality Act, and most likely under other local, state, and national laws.

Analysis

Plain Language of Mendocino Code, Chapters 10A and 20.242 is at odds with Exhibit A.

“CCBL Types” are defined in 10A.17.060. They are defined by size first, and then cultivation method. CCBL types include, for instance:

1. Type C: “small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.”
2. Type 1: “medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one (1) legal parcel not less than five (5) acres in size.”
3. Type 2: “large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one (1) legal parcel not less than ten (10) acres in size.”
4. Type 4: “cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 CCBL. The legal parcel shall not be less than five (5) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction.”



Each of the C, 1 and 2 Types has modified types for (A) indoor and (B) mixed light cultivation. So, for instance, there is a Type 1A, which has the same total square footage of plant canopy coverage as any other Type 1 CCBL dedicated to “medium indoor cultivation using exclusively artificial lighting.” 10A.17.060.

The Mendocino Cannabis Cultivation Ordinance, Chapter 10A.17 expressly addresses “CCBL Density.” 10A.17.070. It first sets the general rule, which allows for only a “maximum density of one (1) CCBL per legal parcel.” 10A.17.070(D). Thus, the general rule is 1 parcel, 1 CCBL, with the maximum total canopy area for each CCBL defined in 10A.17.060. The tables in the zoning ordinance reflect these canopy limits, referring to them as “Cultivation Area Limit (sf).” See, e.g., 20.242.060, Table 2. Those limits are 2,500 sf of canopy on small parcels, 5,000 sf of canopy on parcels of 5-10 acres and 10,000 sf on parcels of 10 acres or greater.

There are three exceptions to the CCBL Density Rule of one CCBL per legal parcel:

1. Two separate CCBLs of different “CCBL Types” are allowed “if the total square footage of the two (2) CCBL’s does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district.” 10A.17.070(D)(1).
2. A person may get one CCBL “of a single size” that may include a combination of all three “cultivation types” which it defines as indoor, outdoor, and mixed light. 10A.17.070(D)(2).
3. A single owner of contiguous legal parcels may get one CCBL. 10A.17.070(D)(3).

Staff’s re-interpretation is that the first exception listed above allows a Person to “obtain a maximum of two separate CCBL types on a single parcel without obtaining a Type 4 CCBL, so long as the CCBL types are allowed in the applicable zoning district.” The upshot of the proposed reinterpretation is that the limits on cultivation area on a single parcel would be the sum of the maximum for each of two CCBLs, not the maximum of the larger limit of the two CCBLs. This is an expressly acknowledged departure from the prior interpretation that the County Code limited total cultivation to 10,000 sf per parcel of mature canopy. For the reasons listed below, this reinterpretation is not lawful.

First, read in context, the most natural understanding of the first exception to the Density Rule is to allow for two CCBLs on one parcel where a grower wishes to engage in more than one cultivation method—for instance 7,500 sf in outdoor cultivation and 2,500 sf in mixed light cultivation. This would be permissible on a 10-acre or larger parcel because the total square footage of the two CCBLs—one a Type 2, and one a Type 2-B—when added together, does not exceed the 10,000 sf of “the largest maximum square footage permitted on a parcel for the relevant zoning district.”

Read in context, the language “if the total square footage of the two (2) CCBL's does not exceed the largest maximum square footage authorized on a parcel for the relevant zoning district” would be superfluous under the new interpretation. That’s because there is already a limit on the cultivation area any CCBL may permit. That is not a problem if the language is interpreted to mean the *sum* of the “total square footage of the two” cannot “exceed the largest maximum square footage permitted on a parcel” for the larger of the two CCBL types. This is, after all, an exception to the limit of one *CCBL* per parcel. So, that “maximum square footage permitted on a parcel” must refer to something, and the most natural reference is to the “cultivation area limit”

listed in the tables in Chapter 20.242, and the canopy square footage limits stated in the definitions of each CCBL Type. And “of the two” was chosen for a reason. “Of each” or something similar would have been used, had the re-interpretation sum of the two CCBL limits been the intended policy.

Second, the re-interpretation would produce an absurd result. Under the proposed re-interpretation, a Person could apply for both a Type 1 CCBL (medium outdoor, cultivation limit 5,000 square feet) and a Type 2 (large outdoor, cultivation limit 10,000 sf) on a single 10-acre parcel, thus engaging in outdoor cultivation of a total of 15,000 sf on a single parcel. Or on a 5-acre parcel, one could cultivate under a CCBL Type C (small outdoor, limit 2,500) and a CCBL Type 1, thus growing up to 7,500 sf—more than could be cultivated with a single Type 1 CCBL. Thus, the exception would swallow the general rule.

Third, exception 1 is an exception to the general rule of *CCBL* density—it is presented as a subsection to the “CCBL Density” paragraph. It is intended to allow a greater number of *CCBLs* per legal parcel, not more cultivation area. The definitions of the CCBL types refer to “maximum” square footage in the context of the density limit of one CCBL per legal parcel. The language describing the first exception also references “maximum square footage” which is a reference back to the CCBL types in section 10A.17.060. All the limitations on the exceptions support the existing interpretation over the suggested reinterpretation. Under the first exception, where a Type 4 CCBL (Nursery, allowing up to 22,000 sf of nursery stock and/or seed production) is combined with another Cultivation Type, the maximum combined cultivation area for mature plants is 10,000 sf—exactly what it would be under the normal CCBL density. This shows that there was no intention to expand total mature cultivation area by permitting two CCBLs to allow for varied cultivation type.

Fourth, Section 10A.17.080(B)(4) (addressing phases) discusses an allowance for multiple CCBLs on a single legal parcel in Phase 1 (sites where there was cultivation prior to the Ordinance being adopted). Multiple CCBLs on a single parcel would normally violate the Density Rule. However, the County acknowledged that there might be multiple owners of a single parcel and each of those owners might be able to prove past cultivation on the same legal parcel, making them eligible for Phase 1. Under that circumstance, each owner would be limited to Type C CCBL “unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.” Again, “*maximum* square footage permitted on a parcel for the relevant zoning district” (emphasis added) only makes sense here if it is the sum of the CCBLs’ combined square footage on a single parcel and the limit is the square footage of the under 5, 5-10, or over 10-acre legal parcel. Since the number of potential owners is unlimited, any other reading would render an absurd result.

Legislative History

At the time the ordinance was adopted, county staff, including Deputy County Counsel, explained to the Board of Supervisors in a memorandum (**Exhibit 2**) for a March 21, 2017, meeting the precise intention behind the language of Section 10A.17.070(D):

Paragraph (D) contains the pre-existing requirement that a person may obtain two cultivation permits and are limited to one permit per parcel. Pursuant to Board direction, this paragraph now also allows 2 permits to be on the same parcel so

long as the total square footage of the 2 permits does not exceed the largest maximum square footage permitted on a parcel in that zoning district. For example, a person could obtain two 5,000 square foot permits in a zoning district that allowed a person to obtain a single 10,000 permit.

(Exhibit 2, Staff Memorandum p. 8, emphasis added). No subsequent environmental document or language change negates this interpretation or changes the language it supports. And, until recently, this interpretation has comported with that understood by the public and County staff at all times through the present.

Scope of Prior Environmental Review

The 2017 interpretation in Exhibit 2 was the project that was proposed to local, state, and federal agencies in considering the environmental impacts of the ordinance. The Initial Study and MND for the MCCR (Mar. 21, 2017) makes clear that on one parcel, the total area of cultivation would be a maximum of 10,000 sf on even the largest parcels:

Table 1. Area of Zoning Districts Potentially Available for Cannabis Cultivation

ZONING	PHASE 1		PHASE 2		PHASE 3	
	Existing Cultivation Only		New Indoor Cultivation Only		New Cultivation: All Types	
	AVAILABLE ACRES*	AVAILABLE PARCELS**	AVAILABLE ACRES*	AVAILABLE PARCELS**	AVAILABLE ACRES*	AVAILABLE PARCELS**
RR-2	1,931	1,136	-	-	-	-
RR-5	8,460	1,970	-	-	8,460	1,970
RR-10	10,050	1,263	-	-	10,050	1,263
AG	56,738	3,124	-	-	56,738	3,124
UR	94,771	3,793	-	-	94,771	3,793
RL	714,842	8,073	-	-	714,842	8,073
FL	62,415	1,540	-	-	-	-
TPZ	836,850	5,959	-	-	-	5,959
I1	584	203	584	203	584	203
I2	1,342	193	1,342	193	1,342	193
PI	69	24	69	24	69	24
TOTAL***	1,788,052	27,278	1,995	420	886,856	24,602

*Acreage numbers are based on GIS polygon calculations and are estimates only.

**Available parcels counts GIS Assessor's Parcel Numbers which differ from legal lots of record.

***Minimum parcel sizes, maximum cultivation areas, mandatory setbacks and other restrictions significantly reduce the actual area potentially available for development.

While the above acreage may imply extensive opportunity for cultivation in the County, under the proposed cultivation ordinance, the permitted cannabis plant canopy area will be substantially limited by the type of cultivation permit to 2,500, 5,000, or 10,000 square feet. Therefore, "Available Acres" includes the gross acreage of all parcels potentially eligible for permits while a maximum 10,000 square feet of cultivation (less than a ¼ acre) or 22,000 square feet in nursery (cannabis in vegetative state only) on any parcel will be eligible for a permit. Similarly, the number of "Available Parcels" is based on the number of separate Assessor's Parcel Numbers (APNs) assigned in each zoning district. Actual cultivation permits will be based on legal lots of record which may vary from the number of APNs.

(Draft Initial Study and Environmental Checklist (Nov. 7, 2016), adopted by Board on March 21, 2017, item 5F, referenced by board in adoption of amended ordinance on Apr. 18, 2018).

If the County wishes to change its policy, it will need to consider the environmental impacts of functionally doubling the potential cultivation area on every single available legal parcel in the county, as that has not been analyzed. And it will need to circulate that change to all responsible agencies for review as well.

Standard of Review

If a court were to review the re-interpretation, it would apply the same rules of interpretation that it applies to statutes. *Ocean St. Extension Neighborhood Ass'n v. City of Santa Cruz* (2021) 73 Cal. App. 5th 985, 1025.

It would “first examine the language of the ordinance, giving the words their usual and ordinary meaning, in the context of the ordinance as a whole and its purpose. In addition, [it would] ‘apply common sense to the language at hand’ and interpret a provision in a manner that makes ‘it workable and reasonable’ and avoids an absurd result.” *Id.* at 1025-1026 (internal citations omitted). As discussed above, the most logical facial interpretation is the one everyone used until recently.

If there is any ambiguity at all, then the court will look to documents like the MND and the 2017 staff memo presented to the Board at the time of adoption to determine intent.

Although we consider the plain language of the statute, we consider it in context and with reference to its purpose. [courts can determine if literal meaning of statute comports with its purpose.] Moreover, we recognize that sometimes the meaning of a statute is not properly determined from a word or phrase in a sentence; a literal construction should not prevail when it is contrary to the statute’s intent.

Id. (Internal citations omitted).

Courts are unlikely to defer to a interpretation “contained in an advice letter prepared by a single staff member.” *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 13. And, “evidence that the agency ‘has consistently maintained the interpretation in question, especially if [it] is long-standing’ (ibid.) [indicates a more reliable interpretation] (“[a] vacillating position . . . is entitled to no deference” *Id.* at 13.

Exhibit 1



COUNTY OF MENDOCINO CANNABIS DEPARTMENT

860 NORTH BUSH STREET
UKIAH, CALIFORNIA 95482
[department](https://www.mendocinocounty.org/departments/cannabis-department)

CONTACT INFORMATION

PHONE: 707-234-6680

mcdpod@mendocinocounty.gov

<https://www.mendocinocounty.org/departments/cannabis-department>

Date: April 24, 2024
To: Cannabis Department Staff/ Contract Planning Staff
From: Steve Dunncliff, Interim Director Mendocino Cannabis Department
RE: Internal Procedure #[XX] – CCBL Density

PURPOSE

The Mendocino County Cannabis Department (“MCD”) provides the following memorandum to provide clarity and to implement a policy regarding Mendocino County Code (“MCC”) Section 10A.17.070(D), which addresses Cannabis Cultivation Business License Density.

DEFINITIONS

“Cannabis Cultivation Business License” or “CCBL” shall have the definition set forth in MCC §10A.17.020 as it may be amended from time to time.

“CCBL Holder” shall have the definition set forth in MCC §10A.17.020 as it may be amended from time to time.

“Department” shall have the definition set forth in MCC §10A.17.020 as it may be amended from time to time.

“MCCO” means Chapter 10A.17 of the Mendocino County Code as it may be amended from time to time, which is also referred to as the Mendocino Cannabis Cultivation Ordinance

“Person” shall have the definition set forth in MCC §10A.17.020 as it may be amended from time to time.

“Type 4 CCBL” shall have the definition set forth in MCC §10A.17.020 as it may be amended from time to time.

ORDINANCE SECTIONS

Sec. 10A.17.070 – Requirements for All CCBL’s.

(D) CCBL Density. A Person may apply for and obtain a maximum of two (2) CCBL's listed in section 10A.17.060 at any given time, with a maximum density of one (1) CCBL per legal parcel; provided, however, that:

- (1) A Person may obtain two (2) separate CCBL's of different CCBL types on a single legal parcel if the total square footage of the two (2) CCBL's does not exceed the largest maximum square footage authorized on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 CCBL in combination with any other CCBL, shall not exceed a total square footage of twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity. Plants may be grown to maturity by a Type 4 CCBL Holder for seed production



or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate CCBL.

- (2) A Person may apply for one (1) CCBL of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to Chapter 20.242, the entire CCBL shall be subject to review under Chapter 20.242.
- (3) A Person may obtain one (1) CCBL for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the CCBL, subsequent CCBL's shall be required to modify the cultivation site to adhere to required setbacks.

Sec. 20.242.040 – Existing Cannabis Cultivation Sites.

(B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District
and Cannabis Cultivation Ordinance CCBL Type

MCCO CCBL Type	C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
	Min Parcel Area (ac)* 1, * 2, * 3	NA	NA	NA	5	5	5	10	10	10	5
Cultivation Area Limit (sf)	2,500	500	501— 2,500	2,500	2,501— 5,000	2,501— 5,000	2,501— 5,000	5,001— 10,000	5,001— 10,000	5,001— 10,000	22,000
Zoning District	RR 5* 1	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	RL	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	FL* 4	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP
	TPZ* 4	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP
	I1* 5	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC
	I2* 5	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC
	P1* 5	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC



Sec. 20.242.040 – Existing Cannabis Cultivation Sites.

(C) Cultivation sites, operated in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit, as required for the zoning district in which the cultivation site is located and listed in Table 2.

TABLE 2
Zoning Permit Requirement for New Cannabis Cultivation by Zoning District
and Cannabis Cultivation Ordinance CCBL Type

MCCO CCBL Type	C Sm Outdoor	C-A Sm Indoor, Artificial Light			C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac)	2	2			2	5	5	5	10	10	10	10
Cultivation Area Limit (sf)	2,500	500	501— 2,500		2,500	2,501— 5,000	2,501— 5,000	2,501— 5,000	5,001— 10,000	5,001— 10,000	5,001— 10,000	22,000
Zoning District	RR 5* 1	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	I1* 2	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC
	I2* 2	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC
	P1* 2	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC

STAFF INTERPRETATION

This policy is intended to clarify the interpretation of MCC § 10A.17.070(D) and to revise any past interpretations that were inconsistent with this policy. Previously, MCC § 10A.17.070(D) was utilized to limit a Person’s mature cannabis cultivation area to 10,000 square feet per parcel. However, after further review, the plain meaning of the text does not prescribe such a limit. Rather, the only 10,000 square foot limit on mature cannabis cultivation in MCC § 10A.17.070(D) applies to Type 4 CCBL Holders who have an additional non-Type 4 CCBL on a parcel. In that case, the total cultivation area is limited to 22,000 square feet and the non-nursery cultivation space is limited to 10,000 square feet. There is no such limit prescribed to a Person who obtains two non-nursery CCBLs on one parcel.



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As MCC § 10A.17.070(D)(1) plainly states, “[a] Person may obtain two (2) separate CCBL's of different CCBL types on a single legal parcel if the total square footage of the two (2) CCBL's does not exceed the largest maximum square footage authorized on a parcel for the relevant zoning district.” MCC § 10A.17.070. Further, the same subsection contemplates that a Person may have a Type 4 CCBL in combination with any other CCBL with certain limitations.

Based on that language, it is clear that a Person can obtain two separate CCBLs of different types on the same parcel and that combining CCBL types is not limited to nursery and non-nursery CCBLs. A Person can obtain two different CCBL types on one parcel so long as the cultivation area square foot limit is not exceeded.

Other than placing the aforementioned limit on Type 4 CCBLs, the MCCO does not contain cultivation area square foot limits on parcels. As such, we look to the zoning code to find square-foot cultivation area limits for parcels because the zoning code regulates commercial cannabis uses in the particular zoning district.

When reviewing the zoning code, however, rather than finding cannabis cultivation area square foot limits on parcels, it contains square foot limits for each CCBL type. Therefore, the cultivation area square foot limits per parcel are determined by the CCBL types allowed in the applicable zoning district and the CCBL limit found in MCC § 10A.17.070(D). For example, a parcel of 50 acres could have a Type 4 CCBL and a Type 2 CCBL provided that the total square feet licensed does not exceed 22,000 square feet and no more than 10,000 square feet may be grown to maturity.

Based on the above, MCD's updated interpretation of MCC § 10A.17.070(D) is that a Person can obtain a maximum of two separate CCBL types on a single parcel without obtaining a Type 4 CCBL, so long the CCBL types are allowed in the applicable zoning district and all requirements found in the MCCO are satisfied.

AUTHORITY

Procedure Approved: _____ Date: _____

Steve Dunicliff
Interim Cannabis Department Director

Exhibit 2

DIANE CURRY

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COUNTY OF MENDOCINO
DEPARTMENT OF AGRICULTURE
890 N Bush St.
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DATE: MARCH 21, 2017

TO: BOARD OF SUPERVISORS

FROM: DIANE CURRY, Interim Agricultural Commissioner
MARY LYNN HUNT, Chief Planner
MATTHEW KIEDROWSKI, Deputy County Counsel

SUBJECT: AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER 10A.17-MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242-MEDICAL CANNABIS CULTIVATION SITE OF THE MENDOCINO COUNTY INLAND ZONING ORDINANCE (OA-2016-0003), COLLECTIVELY CALLED MCCR, INCLUDING REVISIONS TO POLICIES AND PROCEDURES FOR AGRICULTURAL PRESERVE AND WILLIAMSON ACT CONTRACTS REGARDING CANNABIS CULTIVATION AND THE ADOPTION OF AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION RELATED THERETO

PROJECT:

The Mendocino County Board of Supervisors (Board) intends to establish the Medical Cannabis Cultivation Regulation (MCCR) to govern the cultivation of medical cannabis in unincorporated Mendocino County, outside the coastal zone. The MCCR will be established through proposed Mendocino County Code amendments to add two new chapters.

Chapter 10A.17—Medical Cannabis Cultivation Ordinance (MCCO) of the Mendocino County Code—will be administered by the Agricultural Commissioner’s Office to regulate cannabis cultivation, establish a permitting program, and require compliance with environmental and public health regulations.

Chapter 20.242—Medical Cannabis Cultivation Site Regulation (MCCS), of the Mendocino County Inland Zoning Ordinance—will be administered through Planning and Building Service (PBS) to regulate land use and zoning to ensure the location and scale of cannabis cultivation is compatible with the County’s land use and environmental setting.

An ordinance adopting the proposed MCCR has been prepared for today’s meeting, as well as a resolution for the approval of the Initial Study/Mitigated Negative Declaration prepared for the MCCR and a resolution adopting certain amendments to the County’s Williamson Act Policies and Procedures.

An Initial Study of the potential environmental effects of the adoption of the MCCR has been prepared pursuant to the California Environmental Quality Act (CEQA). A related Mitigation

Monitoring and Reporting Program (MMRP) has also been prepared to summarize measures needed to minimize or avoid potentially significant effects of the project.

The Initial Study was circulated for review and comment by the public and by a variety of State and Local agencies. The comment period ended January 5, 2017. Public Hearings were held by the Planning Commission and at their January 19, 2017 meeting, the Commission voted (5-2) to recommend approval to the Board of Supervisors with proposed recommendations as outlined with their Resolution.

DISCUSSION:

The Board reviewed the report and recommendation of the Planning Commission regarding the MCCR, the Initial Study and proposed Williamson Act Policies and Procedures revisions at its meetings of February 7 and February 14, 2017, and provided direction to staff.

Pursuant to Board direction, staff has prepared revisions to the MCCR and the Initial Study and proposed Mitigated Negative Declaration. Redlines and clean versions of various documents are attached to this memorandum as listed at the end of this memorandum, and will be discussed in the proposed order for adoption by the Board.

Revisions to Williamson Act Policies and Procedures:

Changes are proposed to the County's Policies and Procedures for Agricultural Preserves and Williamson Act Contracts ("Policies and Procedures"), which are currently silent regarding cannabis cultivation.

The proposed changes would make cannabis cultivation a use compatible with a Williamson Act contract, but not a use that would qualify property for a contract. Changes are proposed to the definition of "agricultural use" for the Policies and Procedures that would specify that cannabis cultivation is not an agricultural use. Other sections of the Policies and Procedures, including Sections 5.2 (eligibility), 8.2 (qualifying agricultural uses), and 9.4 (compatible uses), refer back to this defined term. Cannabis cultivation would include planting, growing, harvesting, drying, curing, grading and trimming of cannabis in its natural state. Specifically excluded would be manufacturing, distributing and dispensing of cannabis or cannabis products. Lastly, the Policies and Procedures make cannabis cultivation (and other cannabis uses) incompatible with a Williamson Act contract for open space purposes.

One reason to make cannabis cultivation a compatible, but not qualifying use, is that cannabis cultivation will only be able to occupy a relatively small portion of contracted land. The largest cultivation permit sizes under the MCCR are 22,000 square feet (or ½ acre) for a nursery permit, or 10,000 square feet for a large cultivation permit. These sizes establish that cannabis cultivation on its own cannot meet the requirement that at least 50% of contracted property be used for agricultural purposes. For example, a 10 acre parcel of prime agricultural land would be required to have at least 5 acres of the property in agricultural use, but the largest MCCR permit currently proposed would be a 0.5 acre nursery. An additional 4.5 acres of agricultural uses would need to be on the property to meet the 50% requirement. Because cannabis cannot be the primary agricultural use on the property, it is appropriate to make it a compatible use.

Current Williamson Act contract holders were provided notice of the January 19, 2017, meeting of the Planning Commission. The Planning Commission's report and recommendation on the proposed MCCR included a recommendation regarding the proposed Policies and Procedures changes.

During its February 2017 meetings regarding the proposed MCCR, the Board provided direction to staff to further revise the Policies and Procedures to allow limited, non-volatile manufacturing on parcels, where the manufacturing would only be for the cultivator on the property.

Because the review of the changes to the Policies and Procedures has been limited to cultivation, staff is recommending that any change to the Policies and Procedures regarding manufacturing be done in conjunction with an ordinance regulating cannabis-related manufacturing in the County. As such, the proposed revisions to the Policies and Procedures shown in the attached documents do not include changes reflecting Board direction.

Current Williamson Act contract holders were provided notice of today's meeting.

The resolution prepared for the adoption of the revised Policies and Procedures includes several findings required by the Williamson Act related to compatible uses. In general, these findings can be made because the Policies and Procedures require that all compatible uses occupy no more than 15% of the contracted land or 5 acres, whichever is less. The largest permit type allowed by the MCCR is approximately one-half acre, which could easily fit within the area allowed for compatible uses. In addition, the Policies and Procedures require at least 50% of the contracted property to be used for agricultural uses. This will ensure that property under a Williamson Act contract will still be used for agricultural purposes.

A redline version of the Policies and Procedures showing proposed changes is attached to this memorandum as Attachment 1. The proposed resolution adopting the revised Policies and Procedures is attached to this memorandum as Attachment 2. Exhibit A to Attachment 2 is a clean version of the Policies and Procedures. Formatting has been revised and the table of contents updated to reflect different pagination resulting from the revisions.

CEQA Review:

The Initial Study, which concludes that a Mitigated Negative Declaration can be prepared (together, the Initial Study and Mitigated Negative Declaration are referred to as the IS/MND,) was updated to include changes to text and section references based on reorganization of the MCCR chapters, typographical corrections, and to match the direction provided by the Board at meetings held on February 7, 2017, and February 14, 2017. The direction included clarifications to the project description, individual impact sections, and substitution of mitigation measures.

Attached to this memorandum as Attachment 3 is a redline draft of the IS/MND, showing changes by strikethrough and underlined text. Attachment 4 to this memorandum is a proposed resolution adopting the IS/MND, and includes a clean version of the IS/MND as Exhibit A and the Mitigation Monitoring and Reporting Program as Exhibit B.

Based on the changes contained in the IS/MND, as lead agency under CEQA, the Board has the authority to determine whether or not to recirculate the IS/MND. The requirements regarding re-circulation are outlined in the CEQA Guidelines Section 15073.5:

- (c) Recirculation is not required under the following circumstances:
 - 1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
 - 2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

- 3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The changes to the MCCR described later in this staff report, require changes to the project description in the IS/MND. These changes are in response to written and verbal comments received at multiple Planning Commission and Board hearings and subsequent Board direction. These changes have not resulted in new avoidable significant effects and have clarified permit requirements or procedures. Therefore, they may be considered insignificant modifications under CEQA.

Mitigation measures must be replaced with equal or more effective measures pursuant to CEQA Guidelines Section 15074.1, which provides:

- (a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.
- (b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:
 - (1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.
 - (2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.
- (c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.
- (d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a

greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

Described below are the mitigation measures that were revised for various impact categories and a finding regarding if the new measure is equivalent or more effective in mitigating or avoiding a potential significant effect and that it in itself will not cause any potentially significant impact on the environment. The full text of these changes appear as strikethrough and underlined text in the IS/MND and a complete list of the final mitigation measures is presented in the Mitigation Monitoring and Reporting Program.

Aesthetics

Mitigation Measure AES-1 was changed to expand the requirement to fully contain light and glare from structures used to cultivate medical cannabis to apply to all new and existing structures. A requirement to have motion-activated and fully shielded security lighting was also added.

Finding: The proposed mitigation measure is more effective at mitigating or avoiding potential significant effects and will not in itself cause any potentially significant effect on the environment.

Agriculture and Forestry Resources

Mitigation Measure AG-4, which required the County to begin participating in reviewing Cal Fire Timber Conversion permits, was proposed to ensure the MCCR was not contributing to unnecessary timberland conversions. As a substitute for this, Mitigation Measure AG-4 has been revised to prohibit removal of any commercial timber species or oak species for the purposes of cultivating medical cannabis.

Finding: The proposed mitigation measure is more effective at mitigating or avoiding potential significant effects and will not in itself cause any potentially significant effect on the environment.

Air Quality

Mitigation Measure AIR-1 continues to require consultation with the Mendocino County Air Quality Management District (MCAQMD) and require necessary permits be obtained. However, in consultation with the MCAQMD, the language was refined to explicitly require any MCAQMD permits as part of the cultivation permit application process. It also allows for MCAQMD to waive the initial consultation requirement in the future once MCAQMD has developed an objective set of criteria for the County to be able to determine when a permit or other approval by MCAQMD may be necessary.

Finding: The proposed mitigation is equivalent at mitigating or avoiding potential significant effects and will not in itself cause any potentially significant effect on the environment.

Mitigation Measure AIR-2, which prohibited burning of excess medical cannabis plant materials, was removed. Upon further analysis, compliance with existing MCAQMD requirements, including limitations on burning any type of plant debris, are sufficient to avoid impacts related to burning of excess medical cannabis plant materials. Additionally this mitigation measure was redundant with Mitigation Measure AIR-1, which already outlines a consultation process with MCAQMD.

Finding: Because standards are already in place, including AIR-1, even with the proposed removal of this mitigation measure, equivalency at mitigating or avoiding potential significant effects has been achieved and the change will not in itself cause any potentially significant effect on the environment.

Biological Resources

Mitigation Measure BIO-1 required an automatic referral of cultivation permit application to California Department of Fish and Wildlife (CDFW) for each proposed cultivation site to evaluate the possible presence of sensitive species. This language has been modified to have qualified County staff or qualified third party inspectors complete the initial review. If these qualified individuals determine there is a likelihood of sensitive species to be present at the site, CDFW will be consulted. The effectiveness of the mitigation remains. If the project would cause impacts to sensitive species, a cultivation permit would not be granted.

Finding: The proposed mitigation is equivalent at mitigating or avoiding potential significant effects and will not in itself cause any potentially significant effect on the environment.

Mitigation Measure BIO-3 requires that in instances of relocation, that the origin site be restored. Language was added to clarify that only illegal ponds, dams or other in-stream water storage would need to be removed. The requirement to take additional site specific steps as recommended by the North Coast Regional Water Quality Control Board (NCRWQCB), CDFW, County staff or third party inspectors to restore natural function has been removed. The mitigation measure already requires that the restoration plan be completed in a way that complies with the standard conditions and best management practices specified in NCRWQCB Order No. R1-2015-0023. If there are violations related to unpermitted activity, all agencies with jurisdiction will have enforcement authority and the ability to require remedial measures. It does not need to be tied to this mitigation measure.

Finding: The proposed mitigation is equivalent at mitigating or avoiding potential significant effects and will not in itself cause any potentially significant effect on the environment.

Based on the above analysis, it does not appear that the threshold to require recirculation of the IS/MND has been met.

MCCR Ordinance Revisions:

Pursuant to general Board direction, County staff has worked to revise and reorganize the MCCR. Attached to this memorandum as Attachments 5 and 6 are redlines of Chapter 10A.17 and Chapter 20.242, respectively.

Attachment 7 to this memorandum is a form of ordinance to adopt the MCCR. This version shows Chapters 10A.17 and 20.242 in a clean format.

As shown on the redline of the ordinances, this has resulted in significant changes to both Chapters 10A.17 and Chapter 20.242. However, the vast majority of these changes to both chapters are the result of eliminating duplicative requirements or references or shifting requirements from one chapter to the other or within each chapter. The following review of both Chapters discusses the more significant of the changes being proposed.

Chapter 10A.17

Section 10A.17.010

This section has been shortened to lessen discussion of state law provisions and more specifically provides that the MCCR is the governing structure for the cultivation of cannabis for medical use within Mendocino County.

Section 10A.17.020

Definitions have been added and modified. In particular, the definitions of “Legal Parcel,” “Park” and “Plant Canopy” have been added/revised to reflect Board direction. The definition of “Zip-Ties” has also been deleted; please see below for a brief discussion.

Section 10A.17.030

This section has been simplified to reflect that under the MCCR, persons may cultivate cannabis for medical use either under a permit issued under the MCCR (“Permit”) or under the exemption for qualified patients and personal caregivers (“personal exemption”). Other requirements previously in this section have been moved to other locations.

Section 10A.17.040

As in prior versions, this section contains the general limitations on the cultivation of medical cannabis that apply to all cultivation, whether done under a permit or under the personal exemption. The expanded setbacks that apply as of January 1, 2020, to new permit applications have been moved to this section.

Several requirements previously located in Chapter 20.242 have also been moved to this section. Chapter 20.242 previously included language that setbacks also apply from access easements, and included requirements related to indoor cultivation site setbacks (matching those of the zoning district) and accessory structures (also generally conforming to existing zoning code standards). Chapter 20.242 also included an allowance for a reduction in setbacks with an administrative permit; this is now referred to in this section.

Paragraph (B) has been revised to make the language regarding odor match that of the Section 41700 of the California Health and Safety Code, which is the standard that governs the Mendocino County Air Quality Management District. Staff recommends consistency between the County and the District on this issue.

Paragraph (I) has been added to incorporate the Board’s direction on prohibiting tree removal.

Section 10A.17.050 – Former

This section formerly included language regarding a Track and Trace program and the voluntary acquisition of zip-ties for persons cultivating under the personal exemption. Compliance with a County Track and Trace system has simplified and been moved into Section 10A.17.070 regarding requirements for all permits. Staff is proposing deletion of the zip-tie provision, as persons cultivating under the personal exemption are already required to register with the Agricultural Commissioner.

Section 10A.17.050 – Revised (Former Section 10A.17.060)

Paragraphs regarding the medical marijuana collective system have been replaced with a simpler introductory sentence.

Section 10A.17.060 – Revised (Former Section 10A.17.070)

A primary goal of reorganizing Chapter 10A.17 was to place all permit types into a single section. Section 10A.17.060 provides general requirements on the ability of a permittee to have an area for medical cannabis plant starts. It also provides the basic information on the requirements for the cultivation permit types.

Paragraph (10) regarding Type 4 Nursery permits retains the most specificity from the earlier versions of the ordinance and has been revised to reflect revised definitions. There is also an allowance for growing plants to maturity for the purpose of verifying genetic expression, pursuant to the approval of the Agricultural Commissioner.

The Nursery permit type has included a restriction that sales of products on nurseries located in the Timberland Production and Forestland zoning districts may be limited to permitted cultivators only.

Staff would note that including the Rangeland zoning district on this list may be appropriate. Direction would need to be given at the March 21 meeting to do so.

Section 10A.17.070

This is a new section where requirements applicable to all Permit types have been placed. This begins with a general reference that adherence to the zoning district requirements of Chapter 20.242 is required, and that all other applicable requirements of Chapter 10A.17 must be adhered to.

Paragraphs (B) and (C) have been added from Chapter 20.242. These require that permitted cultivation sites cannot include habitable spaces or required parking spaces. These provisions could be added to the requirements for all cultivation in section 10A.17.040, and would then apply to permittees as well as persons cultivating under the patient exemption. Direction would need to be given at the March 21 meeting to do so.

Paragraph (D) contains the pre-existing requirement that a person may obtain two cultivation permits and are limited to one permit per parcel. Pursuant to Board direction, this paragraph now also allows 2 permits to be on the same parcel so long as the total square footage of the 2 permits does not exceed the largest maximum square footage permitted on a parcel in that zoning district. For example, a person could obtain two 5,000 square foot permits in a zoning district that allowed a person to obtain a single 10,000 permit.

Paragraph (E) contains the dwelling unit requirement as well as exceptions to the requirement pursuant to Board direction.

Paragraph (F) contains additional language regarding generator requirements. Requirements regarding generators has been shifted within Chapter 10A.17 in an effort to better describe how the requirements apply to all cultivators versus permittees and as to between application standards and performance standards.

Subsequent paragraphs contain provisions related to Track and Trace, fees, inspections by the Agricultural Commissioner, and third-party inspector consultations. One addition regarding Agricultural Commissioner inspections is that for a pre-permit inspection, a representative from the Department of Planning and Building Services shall be present to inspect all indoor cultivation sites, as well as mixed-light cultivation sites.

Lastly, paragraph (K) includes, pursuant to Board direction, provisions regarding the non-transferability of permits.

Section 10A.17.080

Former Section 10A.17.080 contained a recitation of each permit type. This section has been replaced with a description of the three phases the MCCR will operate under, in addition to compliance with all other requirements of Chapter 10A.17.

Paragraph (A) reviews the three phases of permit issuance. In response to Board direction, staff considered a cut-off point for the issuance of permits under Phase One and determined that, instead of a 90-day window for applications, that a cutoff date of December 31, 2017, was a reasonable amount of time to finalize an application to the Agricultural Commissioner.

Paragraph (B) states requirements specific to Phase One permits. Included is the definition and requirement of providing “proof of prior cultivation,” references to zoning code requirements of Chapter 20.242 and the two year sunset provision for residential districts.

Paragraph (B)(3) - Relocation

The Board specifically requested more information describing the process for relocation of an existing cultivation site. The relocation provisions are now found in MCCR Section 10A.17.080(B)(3) *Relocation*. Relocation applies only in Phase 1 and allows for cultivation sites to be transferred from an origin site to a destination site on a different parcel. The destination site must comply with zoning and development standards that apply to a new cultivation site and the cultivator must release rights to resume cultivation on the origin parcel. The permittee must provide the Agricultural Commissioner with an agreement to release the rights for further cultivation on the origin parcel. The form of the agreement will be approved by County Counsel and the Agricultural Commissioner, which may take the form of a document that can be recorded against the parcel containing the origin site. In addition, an internal County database could be created, listing parcels where cultivation rights have been extinguished.

Mitigation Measure BIO-3 requires that prior to adoption, the MCCR be revised to include a requirement that any origin site for which relocation is proposed be restored. This is described in Section 10A.17.080(3)(b). The origin site would be restored based on a restoration plan the permittee would have prepared consistent with the stand conditions and BMPs listed in the NCRWQCB Order No. R1-2015-0023.

At Board direction, relocation was clarified to include provisions that allow origin sites in the Rangeland (RL) District and Rural Residential Districts, lot size five acres (R-R:L-5) with conforming parcel sizes of five acres or more, to relocate to existing cultivation sites in the RL District. This would maintain the baseline in the RL District with no new cultivation sites established.

Staff recommends that applications involving relocation be subject to an application deadline. This could be the same timeframe as other sunset provisions identified in the MCCR. If accepted by the Board, relocation would be allowed consistent with applicable requirements for cultivation permits if applied for within two (2) years after the effective date of the ordinance, consistent with the sunset provision for certain residential cultivation sites.

In response to Board direction, Paragraph (B)(4) provides that multiple owners of a parcel who each live on the parcel may each apply for a cultivation permit, but would be limited to a Type C, Type C-A or Type C-B permit, unless an owner had previously enrolled in a permit program pursuant to the County’s Chapter 9.31, in which case such an owner could apply for a permit commensurate with their prior cultivation under the prior Chapter 9.31 permit.

There are no requirements specific to Phase Two permits. Phase Three permits require compliance with the water-specific requirements of paragraph (C)(1). These require either the watershed assessment, the groundwater availability analysis or a will-serve letter from a water provider.

Section 10A.17.090

This section remains regarding the cultivation permit application and zoning review. Introductory paragraphs have been synthesized and now include the requirement for referrals or consultations to outside agencies to be returned within 30 days of the request. This section also

includes the requirement for a referral of applications to the Department of Planning and Building Services, as well as the Air Quality Management District, the latter pursuant to a mitigation measure.

Staff has revised paragraph (D) to include additional information, which conforms to what the Department of Planning and Building Services requires for development site plans and what is needed to do a zoning clearance review.

Paragraph (F) has been revised to include a synthesis of language regarding generators that was previously located in the performance standards section.

Paragraph (K) has been revised so that the approximate date of installation of a well used as a water source must be provided.

Section 10A.17.100

This section has been revised to include the review by the County regarding sensitive species or habitat, pursuant to Board direction and mitigation measures.

Section 10A.17.110

This section also includes revisions regarding generators. Pursuant to section 10A.17.070 (F), generators are allowed as a primary source, although users must work to phase out generators over a stated period of time. Language in paragraph (E) regarding the acoustical analysis previously required ensuring conformance with the County's General Plan Policies has been synthesized.

Paragraph (G) has been revised to remove the North Coast Regional Water Quality Control Board's Order No. 2015-0023 as an appendix to Chapter 10A.17. The Order is a public document and can be made available on the Agricultural Commissioner's website.

Paragraph (N) has been simplified to rely to a greater extent on the references to State law and regulations.

Section 10A.17.120

This section has been simplified pursuant to Board direction that cannabis labeled as Certified Mendocino County Grown must be grown pursuant to standards similar to those used by the United States Department of Agriculture as organic.

Section 10A.17.130

This section only received minor revisions.

Sections 10A.17.140 through 10A.17.160

The Board provided direction to staff respecting certain enforcement provisions of 10A.17.140 - 10A.17.160. Staff undertook further review of these provisions, considered comments by the public, and made additional changes to sections 10A.17.140 and 10A.17.160. No additional changes were made to 10A.17.150.

Additional changes to Section 10A.17.140 include the following: clarification that a notice of non-compliance will provide a time frame in which the permit holder may cure the identified non-compliances; clarification and further delineation regarding the responsibilities of a permit holder after receipt of a notice of non-compliance; clarification and further delineation regarding the authority of the Agricultural Commissioner to grant a permit holder additional time to cure non-compliances, if deemed appropriate, after issuance of a notice of non-compliance.

Additional changes to Section 10A.17.160 include the following: clarification about when the Chapter might be violated in the absence of a permit; removal of unnecessary language describing the remedy of injunctive relief; clarification that permitted cultivation of cannabis will not be declared a public nuisance under County Code sections 8.75 or 8.76.

Sections 10A.17.170 through 10A.17.190

These sections received no changes.

Chapter 20.242

Section 20.242.040 -Former

This section has been deleted because similar provisions either already existed in or could be moved to Chapter 10A.17.

Section 20.242.040 – Revised

This section contains the zoning requirements for MCCO permit types for existing cultivation sites in Table 1. Certain provisions have been deleted because similar provisions exist or have been moved to Chapter 10A.17, in particular, provisions regarding relocation and setbacks.

Rural Residential, lot size 2 acres, has been deleted from Table 1. Pursuant to Board direction, this places any such lots into the exception language of paragraph (C), which refers to the requirements of Chapter 10A.17. An asterisk has been placed next to Rural Residential, lot size 5 acres, to reflect that under Table 1, only parcels with a minimum conforming size of 5 acres are permitted; lot sizes less than 5 acres would also be subject to the exception language of paragraph (C).

Table 1 has been revised pursuant to Board Direction to eliminate medium outdoor cultivation sites from the Industrial zoning districts.

Staff is recommending changes to Table 1, MCCO Permit Type C-A, for 501 – 2,500 square feet, for the Forestland and Timberland Production zoning districts, to elevate the planning permit from an administrative permit to a minor use permit. This is to create conformance with all other zoning districts which require a minor use permit.

The paragraph regarding planning permit requirements has been deleted as these issues are largely covered by Chapter 10A.17. In addition, the Board has provided direction that existing cultivation sites that may have been smaller than the permit types being considered by the Board are able to go to the full permit size, subject to meeting all MCCO requirements.

The referral to CalFire regarding conversion to timberland has been removed, since Chapter 10A.17 now includes language prohibiting removal of timber species.

Language regarding transferability of permits has been added, so that planning permits are treated similarly as MCCO permits.

Section 20.242.070

Certain provisions have been deleted because similar provisions exist or have been moved to Chapter 10A.17, in particular, provisions related to the watershed assessment requirement and setbacks.

Table 2 has been revised pursuant to Board Direction to eliminate medium outdoor cultivation sites from the Industrial zoning districts.

Section 20.242.080

The provision regarding zoning clearances has been modified to reflect that the Department of Planning and Building Services will confirm the legal parcel on which the cultivation site is located.

Added to the administrative permit findings list is the finding requirement for the dwelling unit exception for parcels in the Rural Residential, lot size 10 acres, zoning district.

RECOMMENDATION:

Staff recommends that, following the public hearing and taking testimony from the general public, the Board of Supervisors: (1) Adopt a Resolution Adopting Amendments to the Mendocino County Policies and Procedures for Agricultural Preserves and Williamson Act Contracts Related to the Cultivation of Cannabis; (2) Adopt a Resolution Adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation; and (3) Introduce and Waive First Reading of an Ordinance Adopting Chapter 10A.17 – Medical Cannabis Cultivation Ordinance and Chapter 20.242 – Medical Cannabis Cultivation Site

ATTACHMENTS:

- 1) Redline Draft of Revised Mendocino County Policies and Procedures for Agricultural Preserves and Williamson Act Contracts
- 2) Resolution Adopting Amendments to the Mendocino County Policies and Procedures for Agricultural Preserves and Williamson Act Contracts Related to the Cultivation of Cannabis
 - a) Exhibit A: Mendocino County Policies and Procedures for Agricultural Preserves and Williamson Act Contracts
- 3) Redline Draft Initial Study and Environmental Checklist for the Mendocino County Medical Cannabis Cultivation Regulation
- 4) Resolution Adopting a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation
 - a) Exhibit A: Initial Study/Mitigated Negative Declaration
 - b) Exhibit B: Mitigation Monitoring and Reporting Program
- 5) Redline Draft of Chapter 10A.17 – Medical Cannabis Cultivation Ordinance
- 6) Redline Draft of Chapter 20.242 – Medical Cannabis Cultivation Site
- 7) Ordinance Adopting Chapter 10A.17 – Medical Cannabis Cultivation Ordinance and Chapter 20.242 – Medical Cannabis Cultivation Site



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June 18, 2024

Department of Cannabis Control
c/o Angela McIntire-Abbott
2920 Kilgore Road
Rancho Cordova, CA 95670
publiccomment@cannabis.ca.gov

RE: Draft Environmental Impact Report (EIR)
for the
Licensing of Commercial Cannabis Cultivation in Mendocino County Project

Dear Ms. Abbott,

Thank you so much for receiving public comment on the Draft EIR (DEIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County project.

We wholeheartedly support the Project Objectives, which are:

- Implement the California Department of Cannabis Control's (DCC) cultivation licensure program in the County, in an effort to **minimize the public health and safety risks associated with unlicensed commercial cannabis activity**, while **promoting a robust and economically viable legal cannabis industry in the County**;
- **Effectively transition qualified existing provisional cannabis cultivation licenses to annual licenses** through a **streamlined cannabis licensing process** to ensure that such provisional cannabis cultivation license holders complete the annual license process by the statutory time frames identified in Business and Professions Code, section 26050.2;
- Provide a **mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process**;
- **Ensure that cannabis cultivation by licensees is conducted in accordance with applicable state and local laws** related to land conversion, air quality, electricity usage, water usage, water quality, biological resources, agricultural discharges, and similar matters;
- **Protect natural and built resources** in Mendocino County; and
- **Minimize potential adverse effects of cannabis cultivation activities on the environment.**

However, we see that some of these objectives will not be met if the recommendations in the DEIR are not refined and revised.

In addition, though it is beyond the scope of the DEIR, it has become evident upon our review that there must be a statutory change to extend the State-mandated deadline for applicants to transition to annual licensure in order to comply with site-specific review and mitigation measures.

O2-1

O2-2

A. MINIMIZE RISKS ASSOCIATED WITH UNLICENSED CANNABIS ACTIVITY WHILE PROMOTING A ROBUST AND ECONOMICALLY VIABLE LEGAL CANNABIS INDUSTRY, WHILE PROTECTING THE RESOURCES WE HOLD DEAR

We cannot create a licensure program that is so difficult and expensive to navigate that a good operator cannot obtain their annual license. Applicants who abandon the licensure effort leave a void that may be filled by illegal operators.

- The cohort of applicants who are currently in the licensure program are truly the best of the best. They have been in the legalization program since the end of prohibition. This cohort is the antithesis of the stereotypical image of illegal cultivators. They have complied with (or tried to) every requirement that has been presented to them; however, the goal post of compliance constantly changes, making it exceedingly difficult for them to reach ultimate compliance and annual licensure. Keep in mind that many of these small cannabis farmers are mom-and-pop operators who moved to remote Mendocino County as part of the back-to-the-land movement in the 1970s. Their goal was to live simply, close to the land, in an environmentally friendly manner. To support their off-grid and simple lifestyles, they grew and sold cannabis, which was an easy crop to maintain and sell. The farmers who have entered the legalization process are proud of their work and their continued efforts to produce a high-quality product in an environmentally respectful manner.

It is important to note that Mendocino County's Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential.

- As stated in the DEIR (Section 3, Page 3-2):
 - o *Ascent identified that for every licensed cannabis cultivation site, there were approximately six unlicensed cultivation sites as of September 2023.*
 - o *According to this ratio, the unincorporated area of the County could contain roughly 3,850 unlicensed cannabis cultivation sites.*
 - o *According to Mendocino County records as of April 2023, there have been 1,708 commercial cannabis cultivation license applications submitted since 2017....*
 - o *Of these County license applications, 1,319 application submittals have been submitted to DCC since 2018.*
 - o *Currently there are 623 provisional licenses and 19 annual licenses that have been issued by the state and are considered active....*
 - Nearly 99% of the original applicants (1,689 out of 1,708) have not transitioned to annual licensure.
 - Approximately 62% of the original applicants (1,066 out of 1,708) have dropped out of the process.
 - Just over 1% of the original applicants (19 out of 1,708) have transitioned to annual licensure.
 - **QUESTION: How many of the remaining 623 provisional licensees are expected to be able to meet the requirements laid out in the DEIR?**

O2-3

- Should the path to annual licensure for this group prove to be unattainable due to an overly complicated and/or expensive and time-consuming process, it is easy to envision yet more of these farmers abandoning the process altogether, selling their properties, leaving a void to be filled by illegal cultivators.
- Envision the voids being filled by illegal farms that operate in a simpler, more affordable world, but that have the clear potential to impact the resources that we hold so dear in protecting. This is what we seek to avoid.
- Keep in mind that Mendocino County’s regulations limit cultivation to a maximum of 10,000 square feet of canopy. This is considered a small farming operation. In the context of all of the costs involved with obtaining and maintaining annual licenses (fees, taxes, etc), there is little budget remaining for these small farms to absorb the high costs of site-specific studies and impact avoidance and mitigation measures laid out by the DEIR.
- When imposing mitigation, lead agencies must ensure that there is a nexus and rough proportionality between the measure and the significant impacts of the project (Nollan and Dollan).
- If a potential farm operation has limited potential to impact a biological resource, then the impact avoidance measure should also be minimal.

O2-4

B. FEASIBILITY, PROPORTIONALITY & STREAMLINING

We do not see the “streamlined cannabis licensing process” objective being met in the recommended Mitigation Measures presented in the DEIR.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.’ (2024 CEQA Statute & Guidelines, AEP, Section 21061.1)

- **QUESTION:** Are the impact avoidance and mitigation measures both roughly proportional and feasible for the remaining 623 provisional licensees?
- **COMMENT:** We believe that some of the impact avoidance and mitigation measures are neither roughly proportional nor feasible for the remaining 623 provisional licensees. Nor are some of the protocol-level studies required proportional to the potential impact.

O2-5

In order to achieve these Project Objectives under consideration of the EIR, it is essential to ensure that the Final EIR and resulting permitting process does not place a disproportionate burden on legal farmers, including any requirements that are impossible to meet due to logistics. For instance:

- The agency should keep in mind the cost and time that it takes to perform various studies and implement impact avoidance and mitigation measures;
- The State has conveyed that it will pay for the Biological Studies.
- **QUESTION: Has the State adequately considered the true cost of such studies in setting aside this budget?**
 - A biological study may cost, on average, approximately \$10,000.
 - According to the DEIR, as of April 2023, there are 623 commercial cannabis cultivation sites within the unincorporated areas of Mendocino County that hold provisional state cannabis cultivation licenses.
 - Projecting 623 Biological Studies at ~\$10K each brings the cost to approximately \$6.5 million.

O2-6

- If only half of those 623 farms require a Biological Study costing half the average (i.e., 312 farms @ \$5K each), the cost is still \$1.625 million.

O2-6
cont.

- **QUESTION:** Has the state set aside over \$1.5 million to perform biological studies?

- The State deadline for applying to convert from provisional to annual licenses is December 31, 2024.

- **QUESTION:** Has the State taken into consideration the time that it takes to perform the protocol level Biological Studies as specified in the DEIR, including multi-year studies and floristic windows?

O2-7

- **QUESTION:** Are there enough consultants to perform the specified site-specific studies?

- **QUESTION:** Has the State taken into consideration the agency time required to review and comment on Biological Studies?

- **QUESTION:** Has the State taken into consideration the applicant time required to respond to agency commentary on Biological Studies?

C. BASELINE DATE

Section 3 of the DEIR (Page 3-1) states that the “*environmental setting generally serves as the baseline against which environmental impacts are evaluated. State CEQA Guidelines, section 15125(a) states that the physical environmental conditions as they exist at the time the NOP [Notice of Preparation] is published normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.*”

- The Notice of Preparation of the EIR is August 2, 2023.
- The DEIR does not make clear what the baseline date should be for studies and analyses required to determine if potential impacts may occur.

O2-8

- The possibility of there being a minimum of 623 different baseline dates for the various applications seeking transition to full licensure, will not result in a streamlined review. The applicants, consultants and agencies will consume valuable time going back and forth in attempts to accurately and judiciously determine baseline dates for individual projects.

- It is unreasonable to attempt to perform forensic site-specific biological studies for actions performed prior to the Notice of Preparation.

- Therefore, the Streamlined objective of the EIR will not be met.

- **COMMENT:** The baseline date for the purposes of studies and analyses required to determine if potential impacts may occur as the result of a proposed licensee’s project should be the EIR’s Notice of Preparation, which is August 2, 2023.

D. BIOLOGICAL MITIGATION MEASURES

As stated above, as we consider potential impacts to biological resources, it is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential. The potential for future operations to impact species are limited to these zoning districts. As you will see, some of the

O2-9

biological restrictions are limiting enough that even more parcels within these districts will be prohibited from obtaining licenses without the ability to utilize biological best management impact avoidance measures that are available to other discretionary permit types. The restrictions that the DEIR suggests placing on these properties is disproportional to the potential impact of the operations, especially when simple impact avoidance BMPs are readily employable.

To truly streamline the process of transitioning commercial cannabis cultivators to annual licensure, we recommend the following:

- **Assume presence of certain sensitive resources, rather than perform protocol-level surveys that are both disproportionately expensive and time consuming.**
- **Implement best management practices as impact avoidance measures.**
- **Implement best management practices as impact mitigation measures, including compensatory mitigation.**
- **Change some EIR determinations to Significant and Unavoidable Adverse Impacts.**
 - **COMMENT** Allow for compensatory mitigation for Biological resources that the Biology Mitigation Measures do not currently provide.
 - **Change Mitigation Measures 3.5-1b, 3.5-2a, 3.5-2c and 3.5-4 to allow for best management impact avoidance measures as well as compensatory mitigation and potential Take.**
 - **COMMENT** Change the Biological Resources determination to “significant and unavoidable.”

O2-9
cont.

The DEIR states that if there are to be certain impacts, then the proposed expansion or new development must be denied. This is more restrictive than other types of agricultural uses. The DEIR states that Impacts to the following resources will result in denial:

Special status plant species (MM 3.5-1b):

*If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial cannabis cultivation site improvements that shall be reflected in application materials to DCC. If the special-status plant species cannot be avoided, the application **shall be denied**.*

- **COMMENT:** Allow for typical Best Management Practices (BMPs) to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Transplanting and relocating species from area of impact to another location within the subject property, restoration areas
 - Removal and management of invasive species
 - Symbolic fencing to prevent development from encroaching into restoration areas

O2-10

CA red-legged frog (MM 3.5-2a):

*If CRLF are detected during the initial biological survey... or are determined to be likely to occur (i.e., aquatic or **upland habitats potentially suitable** for the species are present on the site), then it shall be assumed that commercial cultivation activities could result in a take of this species, and **the application shall be denied**.*

- **NOTE:** this species is known to migrate over land upwards of 1.7miles between aquatic habitats. We do not have any land within the CRLF range that is more than

O2-11

1.7miles between aquatic habitats. Therefore, assuming presence of CRLF, all expansion and new projects would be denied in the CRLF range. See DEIR Figure 3.5-4 (Aquatic, Riparian, and Meadow).

- **COMMENT:** Allow for typical BMPs to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Qualified biologist train site personnel in the identification of CA red-legged frogs, and on actions and communications required to be conducted in the event that such frogs are observed during ground disturbing activities
 - Perform pre-disturbance searches around the potential impact area
 - Careful debris removal
 - No ground disturbance during a rain event.
 - Create habitat and refugia for amphibians.

O2-11
cont.

Western pond turtle (MM 3.5-2c):

If western pond turtle, which is currently a candidate for listing under the ESA, is listed as threatened in the future, take shall be prohibited. If take cannot be avoided, the application shall be denied.

- **COMMENT:** Allow for typical BMPs to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Qualified biologist train site personnel in the identification of western pond turtles, and on actions and communications required to be conducted in the event that such turtles are observed during ground disturbing activities
 - Perform pre-disturbance searches around the potential impact area
 - Careful debris removal
 - No ground disturbance during a rain event.
 - Create habitat and refugia for turtles.

O2-12

Northern Spotted Owl (MM 3.5-2e)

If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal could cause harm to northern spotted owl populations in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

- **QUESTIONS:** If NSO habitat is not being removed, why would a commercial cannabis cultivation site not be permitted? Could there still be an impact to the habitat by operations even if the habitat isn't removed? Is what is proposed how this is dealt with in other projects? Are there other alternative measures/mitigations?

O2-13

Generator Noise Reduction (MM 3.5-2p)

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler.

O2-14

Additional measures for noise attenuation may include additional muffler features and/or a structure to enclose the generator designed for sound suppression (MCCR section 10A.17.070(F)(1)).

- MCCR Section 10A.17.070(F)(1) includes the following provision:
 - *If a generator is being used pursuant to the conditions set forth in this paragraph, CCBL Holder shall have conducted an analysis of the noise levels produced by the generator at full operational speed, showing compliance with Mendocino County General Plan Policies DE100, 101 and 103. **This analysis shall be performed by an accredited acoustical engineer or using some other mechanism or device as provided for on a list to be prepared and published by the Department.***
 - **COMMENT:** Mendocino County has few to no acoustical engineers. It seems out of scale for the DEIR to require that each project engage an acoustical engineer to evaluate the noise levels of generators operated at full operational speed. Manufacturers make these evaluations when they design these pieces of equipment. Why duplicate the effort on a per-generator scale? This is disproportionate to the potential level of impact.
 - **COMMENT, ADD LANGUAGE:** Match the language of MCCR Section 10A.17.070(F)(1) by adding *“Conformance with these standards shall be confirmed by an acoustical engineer **or using some other mechanism or device as provided for on a list to be prepared and published by Mendocino County.**”*

O2-14
cont.

Old-growth habitat (embedded within Sensitive Natural Communities) (MM 3.5-4)
Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied.

- Consider an example of an otherwise compliant project that by necessity must trench a utility line from one non-old growth habitat area to another, for which the only feasible route is through an old-growth habitat area.
- **COMMENT:** Define what alteration of old-growth habitat means. Consider whether potential low-impact activities may be permissible through an old-growth habitat area, such as trenching for utilities. Consider listing examples of low-impact activities that are not expected to alter old-growth habitat.

O2-15

E. GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

Again, as we consider potential greenhouse gas emissions and climate change, it is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential. The potential for new on-site natural gas and propane use is thereby already limited in the context of future cannabis operations.

There is no discussion within the document about why on-site natural gas and propane use shall be prohibited; please add and note what exceptions are currently granted.

Many properties in unincorporated Mendocino County rely upon propane and natural gas as supplemental energy sources. These properties utilize on-site tanks, typically 250 gallons to 500 gallons. There must be a provision for natural gas or propane use on properties that 1) are not connected to public utilities, and 2) cannot generate their own solar energy due to siting limitations and vegetative shading.

O2-16

- **COMMENT:** Change Mitigation Measure 3.8-1 to allow for limited use of on-site natural gas and/or propane (delete first bullet point: “Prohibit on-site natural gas or propane use”).
- With this revision, the Greenhouse Gas Emissions and Climate Change determination will remain “significant and unavoidable.”

O2-16
cont.

F. SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS

Section 6.2 of the DEIR (Page 6-3) states that “[a]s described for Chapter 3, most of the impacts identified in Chapter 4 would be less than significant or would be reduced to a less-than-significant level with implementation of mitigation. The following impacts would be significant and unavoidable; that is, no feasible mitigation is available to reduce these impacts to a less-than-significant level.”

With the above recommended revisions to the Biology Mitigation Measures, the following discussions will need to be added to Section 6.2:

- **ADD: BIOLOGICAL RESOURCES**
 - Potential land use conversion and development from potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and distribution transport-only operations as part of implementation of the project could result in disturbance to or loss of special-status plant species if they are present. ~~Although mitigation (Mitigation Measures 3.5-1a through 3.5-1c) have been recommended to reduce this impact to less than significant would assist in reducing this impact, it is uncertain whether all special-status plant species could be retained. This impact would be significant and unavoidable~~ (Impact 3.5-1).
 - Land use conversion and development from potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and distribution transport-only operations as part of implementation of the project could result in impacts on or loss of special-status wildlife species and habitat. ~~Although mitigation (Mitigation Measures 3.5-2a through 3.5-2p) have been recommended to reduce this impact to less than significant would assist in reducing this impact, it is uncertain whether all special-status wildlife species and habitat could be retained. This impact would be significant and unavoidable~~ (Impact 3.5-2).

O2-17

G. ALTERNATIVES CONSIDERED BUT NOT EVALUATED FURTHER

While indisputably reducing potential impacts to resources as compared to the Proposed Project, neither of the considered Alternatives meet the Project Objectives. However, Mendocino County has a long history of illegal cannabis operations. The County currently maintains an estimated 3,850 unlicensed cultivation sites, which legalization has not been able to change. It would be naïve for the State to think that adoption of either of the considered Alternatives would result in less environmental impact than the Proposed Project, even with our recommended revisions.

Alternative 1: No Project Alternative.

Should allowable cannabis cultivation sites be limited to those currently in the licensure program (the 623 provisional licensees and 19 annual licensees), with no capacity for new provisional or annual licenses, this alternative would clearly leave a void that would be filled by illegal operators. This alternative would not allow licensees to relocate their operations. Resources would continue to be impacted.

It is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning)

O2-18

and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential.

Alternative 2: Siting Limitation for Cannabis Cultivation Sites Alternative.

Limiting cannabis cultivation sites to areas outside the Cannabis Priority Watersheds designated by the State Water Resources Control Board does not guarantee cessation of illegal cannabis operations. As per the No Project Alternative, the void would be filled by illegal operators.

O2-18
cont.

We look forward to the State's careful consideration of our suggestions for how to most effectively achieve the Project's Objectives, which we paraphrase are: to promote a robust and economically viable legal cannabis industry in Mendocino County, while minimizing the risks to public health and safety associated with unlicensed commercial cannabis activity; effectively transitioning qualified existing provisional licenses to annual licenses through a streamlined process; providing a mechanism for future cannabis cultivation applicants to obtain licensure through a streamlined process; ensure that licensed cultivation is conducted in accordance with state and local laws; protects natural and built resources in the County; and minimizes potential adverse effects of cannabis cultivation on the environment.

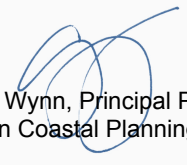
O2-19

Thank you for receiving and reviewing our public comment.

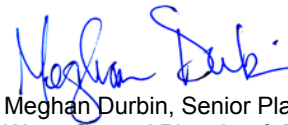
All the best,



Steven Amato, President
Mendocino Cannabis Alliance



Amy Wynn, Principal Planner
Wynn Coastal Planning & Biology



Meghan Durbin, Senior Planner
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Letter
O3

June 24, 2024

% Angela McIntire-Abbott
Attorney
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670

Re: Concerns Regarding the CEQA Environmental Impact Report and Permit Application Considerations

Dear Angela McIntire-Abbott,

We represent clients who currently are engaging in the permitting process, who have actively pursued State and Local permits for numerous projects all over the state of California, including but not limited to Mendocino County. Our office is in the city of Ukiah, county of Mendocino. Many of our clients are and have been seeking State and Local permits to cultivate and operate in Mendocino County. Our client's have invested considerable time and resources into complying with all relevant regulations and have submitted the necessary applications for State and Local permits. Some have paid fees to the County and the State and still do not have Annual or Provisional licenses on the State level and as a result can not begin operations. These entities are not being addressed as a class of applications because they do not have a Provisional or Annual license, but have applied for a cultivation permit. We also represent many clients who have Provisionals but do not have a practical path to obtaining an Annual permit.

We write to express our significant concerns regarding the current California Environmental Quality Act (CEQA) Draft Environmental Impact Report (DEIR) for Mendocino County. It has come to our attention that the DEIR does not adequately consider the impacts on stakeholders like our clients, who are in the process of obtaining State and Local permits but have not yet secured Provisional or Annual licenses.

Additionally, we are concerned for stakeholders who are in the process of attempting to obtain and/or maintain Annual and Provisional licenses. As well as those who have yet to apply for a license or commence cultivation but wish to do so. Mendocino County desperately needs an achievable path towards licensing. The fact that there has not been such a reasonably achievable path has hindered applications from ever getting submitted. The proscribed approach does not address or deal adequately with the vast illegal

O3-1

O3-2

cultivation industry, which could be remedied with a reasonable, and achievable path to licensing. Instead, cultivators face impossible and nearly impossible hurdles for permits and compliance. Some of our clients have had to sue for writ of mandate just to get an application processed on the county level. I do not believe a single Phase 3 permit was issued to date on either county or state level. This is unacceptable and way more detrimental than the negative implications of sensible overseable operations.

O3-2
cont.

Farms and operators desperately want an opportunity to be compliant. Many have given up due to the lack of licensing opportunity and costs of compliance and as implied the DEIR may permanently make such a path impossible. Making what has been a nearly impossible path towards licensing now actually impossible. Setting up stringent complications forces growers back into the dark shadows of an illegal market that does not make law makers of its citizens better off.

O3-3

Those that have applied for both Local and state permits, but have neither, are not considered by the DEIR. This failure to consider in DEIR's could have serious implications, including:

1. **Inequitable Treatment:** The failure to include permit applicants who have not yet received Provisional or Annual licenses creates an uneven playing field. Our client and others in similar positions are unfairly disadvantaged, as the DEIR does not recognize thDEIR potential contributions and impacts. Many of these farms have expensed considerable fees and costs to both state and local agencies and for operations. The DEIR does not address a path towards licensing for them other than considering them as brand new applicants, which they are not. Causing even more farms to die before they can even get started by further delaying operations from commencing.
2. **Incomplete Impact Analysis:** An DEIR that does not consider all relevant stakeholders cannot provide a comprehensive analysis of environmental impacts. By excluding those with pending permit applications, but no state annual or provisional license, the report risks failing to estimate the true scope of the project's environmental footprint. Additionally the report fails to consider the number of applications that have resigned due to the state and local failing to provide a path towards licensing and perhaps addressing providing these applicants and other new applicants once the process is properly streamlined and achievable. To date the number of applicants has been stagnant because it is universally known within the farming community that such an effort is futile. This is not adequately considered in the DEIR.
3. **Regulatory Inconsistencies:** State and Local regulatory frameworks should encourage businesses and individuals to comply with permit requirements. By not considering applicants in the permitting process, the DEIR undermines these regulatory efforts and may inadvertently discourage compliance. By not having a reasonable affordable path towards licensing for new applications the same would be true. Particularly in industrial and agricultural zoned properties where the county has encouraged people to invest in cultivation, not having a pathway towards success would be devastating and encourage a prolific black market.
4. **Legal and Procedural Deficiencies:** CEQA mandates thorough and inclusive environmental review processes. Excluding certain stakeholders from consideration may constitute a procedural flaw, potentially exposing the DEIR and the associated

O3-4

O3-5

O3-6

O3-7

project to legal challenges. Applicants who have submitted state and local permits but do not have provisional and annual have not been properly notified of these proceedings. Parties who have purchased property in compliant zones and have been

O3-7
cont.

awaiting applying have not been properly noticed of the effect implementing the suggestions in the DEIR could have on thDEIR property.

We respectfully request that the DEIR be revised to include and adequately assess the impacts on all stakeholders, including those with pending State and Local permit applications. This adjustment is not only fair but necessary to ensure the DEIR meets CEQA's rigorous standards for comprehensive environmental review. We do not wish to delay the proceedings and a path towards approval for Provisionals and organizations applying for Annual should happen forthwith and without delay. A common sense approach and applicable exemptions should be considered to be effective immediately to allow for temporary operations while these complicated environmental considerations are finalized.

O3-8

Perhaps having an interim path towards licensing or having a phased approach towards licensing for New and Pending Annual permits will allow operations to commence as many provisionals have done. Allowing this with an interim compliance requirement and provisional period to exclude environmental disturbances could allow farms to operate. Economic necessity for both the county and the state as well as the operator exist and encourage temporary operations for all applicants. There should be a probationary period for operations rather than a preclusion. This would stimulate the local economy and allow for business continuity and growth through a cooperative encouraging process. It would further allow operators to avoid economic hardships that come with the delay of operations. This could have significant financial impact to the county and for jobs in our county. There are investment opportunities that could be brought into Mendocino County that are not happening because licensing is stagnant and there is no path towards licensing for new businesses. As partially proposed this DEIR further perpetuates this negative economic impact on the county. This negatively impacts the community as it impacts the economy in a negative fashion. The vast amount of public support for restrictions come from individuals not involved in the legal industry. Many of the complaints are not about licensed operations, but rather merge illegal operations and legal operations into one negative category, and should not be considered.

O3-9

If mitigation measures and robust interim mitigation measures are put in place it is possible to minimize any potential environmental impacts during the temporary operations period. Additionally, there can and is monitoring and reporting requirements that can and are in place that can mitigate any environmental impact.

03-10

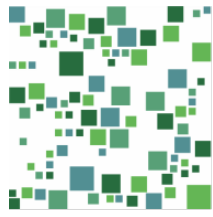
We would appreciate any opportunity possible to discuss our concerns in greater detail and explore possible solutions. Our goal is to ensure that the DEIR is robust, inclusive, and equitable for all affected parties and implemented in as timely a fashion as possible recognizing the stakeholders need for this to happen immediately. As well as recognizing the stakeholders' need for temporary emergency orders to immediately take effect so that businesses can start and continue to operate.

03-11

Thank you for your attention to this matter. We look forward to your prompt response and to working collaboratively towards a resolution.

Sincerely,

Editte Lerman
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NEIGHBORHOOD COALITION

NeighborhoodCoalitionSonomaCounty.com

To: California Department of Cannabis Control,
publiccomment@cannabis.ca.gov
Charisse.Diaz@cannabis.ca.gov

Re: Comments on Mendocino County Draft Cannabis EIR and Ordinance

Dear California Department of Cannabis Control:

The Neighborhood Coalition advocates for sustainable, environmentally sound, and neighborhood-compatible cannabis policies in conjunction with education of the public on the health impacts of cannabis use.

This letter provides comments on the “Draft Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County Project” and the accompanying draft Cannabis Ordinance.

Proposed Ordinance provisions are inconsistent with the EIR

The EIR points out many of the significant, non-mitigatable harm from Odor, yet the draft ordinance does not incorporate these findings into sound, defensible policies. Specifically, the setback distances being proposed are inadequate to protect neighboring properties and their residences from odor as well as other impacts of having a high-risk commercial operation near residences.

The EIR (page 8) acknowledges the odor problem: “Given that detection of cannabis odors cannot be completely eliminated for expansion of existing provisionally licensed and new licensed outdoor and mixed-light commercial cannabis cultivation sites not contained within buildings or greenhouses, **this impact is significant and unavoidable**”.

The EIR (Page 158) outlines Impact # 3.3-3: “Expose a Substantial Number of People to Odors Considered Objectionable and That Have Adverse Effects: The cultivation, processing, and distribution of cannabis by existing provisionally licensed, potentially expanded of existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. **This impact would be significant and unavoidable**”

O4-1

The Cannabis Odor Research outlined in the EIR (Page 150+), provides four important points: 1) Cannabis includes **terpenes**, especially myrcene, 2) cannabis compounds have been **detected at 1 to 2 miles distances** (Nevada County 2019 study and Kern County 2017 study), 3) cannabis odors have **not been researched enough** to truly know the health concerns for off-property residential receptors or systemic effects of inhalation of the volatile compounds and 4) Mendocino Code Enforcement has **received odor complaints**.

Ordinance Section 20.242.070 covering the approval of permits for cultivation sites based on the following special findings: Section (C) (3) “The cannabis cultivation **will avoid or minimize odor** and light impact **on residential uses**.”

The draft Ordinance (also referenced in the EIR) acknowledges that limitations are required:

Section 10A.17.040 of the MCCR outlines general limitations of cannabis cultivation operations:

“They include but are not limited to: 1) Location near youth facilities, schools, or parks; 2) Required setbacks from neighboring uses; 3) Emission of objectionable odors;”

“(C) The outdoor, indoor or mixed light cultivation of cannabis **shall not propagate objectionable odors** which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger **the comfort, repose, health, or safety** of any of those persons or the public.”

State law is clear, [MAUCRSA § 26011.5](#) provides:

“The protection of the public shall be the highest priority for the department in exercising licensing, regulatory, and disciplinary functions under this division. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

State nuisance law is also clear: a nuisance as defined in Civil Code § 3479 provides a single property owner with the legal right to sue a neighbor or governing authorities for creating and maintaining a nuisance.

Nuisance is defined in § 3479 of the California Civil Code as (emphasis added):

“Anything which is ***injurious to health***, including, but not limited to, the illegal sale of controlled substances, or *is* indecent or ***offensive to the senses***, or an *obstruction to the free use of property*, so as **to interfere with the comfortable enjoyment of life or property**, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.”

O4-2

Finally, the Draft Ordinance proposes setbacks to address these issues which are inconsistent with the EIR and inconsistent with protecting the health and safety of nearby residences:

Section 10A.17.040 General Limitations on Cultivation of Cannabis

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

(A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:

(1) Within one thousand **(1,000) feet of a youth-oriented facility, a school, or a park** as defined herein that is in existence at the time a CCBL is initially applied for.

(2) Outdoors or using mixed light within one hundred **(100) feet of any occupied legal residential structure** located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all CCBL applications but shall not apply to renewals of CCBL’s originally issued before that date.

(5) Outdoors or using mixed light within fifty **(50) feet from any adjoining legal parcel** under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all CCBL app

O4-3

First, the EIR acknowledges cannabis contains beta-myrcene. Yet it does not point out that this is Prop 65 carcinogen component! We trust this is just an oversight and that it will now be acknowledged as significant risk to both the workers and the nearby residences. Inhalation of volatile carcinogens results in much higher levels throughout the body than from ingestion.

O4-4

Second, the EIR acknowledges the long distances cannabis chemicals can travel, up to 2 miles in some conditions, yet establishes setbacks at ridiculously shorter distances. 100 ft from residential structures can not protect the “health and safety” of a family from exposure to a carcinogen and certainly can’t allow them to “comfortably” enjoy their property as required by Section 10A.17.040(c) of the MCCR.

O4-5

Third, Section 10A.17.040 General Limitations on Cultivation of Cannabis, apply inconsistent protections to families based on where they happen to be. The ordinance provides at least reasonable protections of 1,000 feet when children and families are at school or at parks. Yet when these same people are at their homes, where they spend substantially more time, they get significantly less protection of only 100 ft. This makes no sense. 100 ft is no protection at all.

Fourth, Section 20.242.060 “New cannabis cultivation sites”, includes item (d) which allows for reductions in setback requirements under certain conditions but does not include a similar provision for conditions when setback should be increased. For example, areas that have become primarily residential in nature need increased setbacks. And any setback distance should be considered a minimum distance but not necessarily the right adequate distance. Such language should be incorporated into the Ordinance to allow the residents and County officials to intervene when necessary.

Fifth, the stated goal of Section 20.242.070 (C) (3) “The cannabis cultivation will avoid or minimize odor and light impact on residential uses” cannot be met at 100-feet.

O4-6

Odor Problems, Controls and Monitoring

Residents in their homes should not be subjected to a foul stench that includes the carcinogen Beta-Myrcene. See [“‘Dead Skunk’ Stench From Marijuana Farms Outrages Californians,”](#) New York Times (Dec. 22, 2018); and [“What’s it Like to Live 100 feet from 15,000 Cannabis Plants?”](#) (North Bay Biz, Dec. 4, 2020). The ordinance must require odor from both indoor and outdoor cultivations be sufficiently controlled so as not to pass the parcel boundary. Quantitative, real-time measuring of odor and carcinogens at neighboring parcel lines must be required to demonstrate compliance. We do not believe that residents should be forced to smell cannabis and inhale carcinogens in their homes.” We cannot fathom how the DCC or County of Mendicino could hold a different view.

O4-7

The rural residents of Mendicino County should not have to put up with foul odors because this is a rural agricultural county. The comparison to odors from animals such as poultry and cows is inapt. The odors from livestock such as chickens,

ducks, and cows are ammonia, hydrogen sulfide, methane, and carbon dioxide.¹ None of these are classified by the State of California as a carcinogen.

O4-8

While the proposed cannabis ordinance states that indoor building and greenhouse cultivations must use Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism, it completely fails to require quantitative measurements of odors; it fails to require that filters be properly maintained; and it fails to require odors from indoor and mixed light cultivations be confined to the premises. These measures and protections must be added to the proposed ordinance. For example, one can simply look at the situation in Santa Barbara County, where the odor control measures used by indoor/greenhouse grows were inadequate to protect neighbors, forcing the county back to the drawing board to look at new odor-control requirements. Finally, the current proposed cannabis ordinance is silent on controlling odor from outdoor cultivation. This must be analyzed and appropriate controls including larger setbacks with quantitative monitoring established to have a valid EIR ordinance.

O4-9

Proposed Setbacks are Insufficient to Mitigate Problems.

In addition to the need to increase the setbacks specified in the proposed ordinance, the permitting process must include quantitative testing for terpenes (with specified accepted testing methods), such that levels at parcel line are below limit of human detection (10-20 PPB).

O4-10

Mendocino County has several years of cultivation experiences, including significant lack of compatibility between cannabis operations and sensitive receptors (including residences). Those experiences make it is obvious that 100 feet is insufficient to protect neighboring residents from noxious odors in their yards and homes. Many factors influence odor impacts on neighboring parcels including local topography, wind, and weather conditions affecting distance odor travels, as well as the strain of marijuana being cultivated. There are many documented instances of homes 2,500 feet, 1 mile, 2 miles from a cultivation site being subjected to noxious odors. The permitting process must include a mechanism to determine safe and healthy distances for neighboring residents, and each outdoor permit should include mandatory cannabis odor compliance monitoring and abatement procedures. Each permit must include prompt and

¹ Wikipedia, [Manure Management](#).

effective revocation provisions if the permit setbacks prove to be insufficient and cannot be increased to contain odors to the cultivation property.

O4-10
cont.

Health and Safety Protections clause should be honored

Section 10A.17.010- Title, Purpose and Intent, states (emphasis added):

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis within the unincorporated areas of Mendocino County in a manner that is consistent with State law and **which promotes the health, safety, and general welfare of the residents** and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, **the needs of neighbors and communities to be protected from public safety and nuisance impacts**, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

O4-11

The overall guiding intention stated in the ordinance is the health and general welfare of the all the residents of the county, not just the benefits for a few business owners. We urge the DCC and County to strengthen the operational provisions of the Ordinance to assure this overall goal of the health and safety will be achieved.

Thank you for considering and addressing our concerns.

Neighborhood Coalition

Nancy and Brantly Richardson, Communications Directors

SonomaNeighborhoodCoalition@gmail.com

From: [Chantal Simonpietri](#)
To: Public Comment@Cannabis
Subject: Mendocino draft EIR
Date: Wednesday, May 8, 2024 1:05:29 PM
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Hello Angela,

I'm curious if there is a table of the Mitigation measures, apart from what is included in the executive summary?

Something that tables: Impact with identifier number and description, mitigation measure with number and short description, significance after mitigation.

Also, where is the term expansion defined?

Thanks

Chantal



I1-1

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Submitted to publiccomment@cannabis.ca.gov June 4, 2024

**Comments on Draft EIR “The Licensing of Commercial Cannabis in Mendocino County
Project Environmental Impact Report”**

Version posted at:

<https://cannabis.ca.gov/2023/07/mendocino-county-environmental-impact-report/>

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The author is a resident of Mendocino County. These comments are those of the author alone and do not necessarily represent the views of the University of California, the U.S. Department of Energy, or the Lawrence Berkeley National Laboratory.

Thank you for the opportunity to review and provide feedback on this important document. Please take the following comments in the constructive spirit in which they’re offered. It is my hope that they help you improve this document and achieve clear, accurate communication with stakeholders.

12-1

At the highest level, my concerns relate to structural problems with the boundary conditions of the analysis, i.e. what is and isn’t considered. It appears that a number of important emissions sources have been overlooked, along with frequent injection of statements about homes or conventional commercial buildings that are not relevant to the situation with cannabis production and could thus easily be inadvertently misleading. It is unfortunate not to see references to the rather extensive peer-reviewed literature as well as many excellent reports. Implausible energy use and solid-waste-production assumptions underlying the model-based analysis appear 20- to 30-times lower than indicated in the literature for indoor facilities based on measured data from actual cannabis cultivation facilities as well as other model-based studies. The energy use estimates for outdoor production are 10- to 15-times higher than reported elsewhere. The model thus appears to be unvalidated as to whether it reflects real-world conditions.

12-2

I imagine that largely similar EIRs are, have been, or will be issued for all other counties in the state. As it would be burdensome to review those, I intend these comments to pertain to identical or analogous parts of those documents.

12-3

System Boundary Issues

Following are general questions and concerns about sources of emissions not included or perhaps not correctly included in the assessment. Some are discussed further in the page-specific notes.

12-4

- *Energy uses.* It would be quite helpful to have a clear diagram indicating which uses of energy (and other sources of emissions) are included in the analysis. Within the energy sphere, peripheral energy uses often excluded are curing, processing, refrigerated storage, water purification/recovery, associated non-cultivation spaces (offices), etc.
- *Non-cultivation processes in these facilities.* Many cannabis cultivation operations also house extraction and processing activities. Extraction is often done with solvents that have unique environmental profiles and impacts, and should be included in the analysis.
- *Forest carbon displacement.* Analysis for coastal forests suggests carbon releases resulting from replacing young forest with outdoor cannabis cultivation equal up to 65% of one year’s carbon emissions from the cannabis cultivation, i.e. a significant adder.
- *Landfill emissions.* It appears that these may be omitted because the county has transfer stations but no official landfills. If so, it seems to be skirting the issue to not count associated methane emissions, or to take credit for carbon sequestration. Clarify.
- *Trucking emissions.* It appears that only passenger-car and perhaps light truck emissions are included in the analysis. For 71 geographic locations in California evaluated by Summers et al. (2021), trucking represents an 8.4% to 18.9% addition to the direct emissions from energy in cannabis-warehouse facilities (and a far larger fraction for mixed-light or outdoor operations).
- *Fugitive HFC emissions.* To ensure accuracy and realism, the report’s stipulated values seem inexplicably low and should be compared to actual data (Canopy Growth 2022).
- *Zero Net Energy scenarios.* The report alludes repeatedly to the potential for solar energy to power cannabis facilities. In practice, this would require vastly increased land area at the cultivation location (perhaps 20-times the canopy area) (Mills and Zeramy 2022), and thus those environmental impacts related to markedly expanded land use should logically be included in this report.
- *Indoor environment.* Unless legally precluded from the scope of EIRs, indoor environmental pollution should also be evaluated. Cannabis workers (predominantly lower-income and non-white, and thus relevant to this document’s efforts to address equity and justice issues) are exposed to a wide range of workplace safety issues (see CalOSHA list: <https://www.dir.ca.gov/dosh/cannabis-industry-health-and-safety.html>), many of which are certainly “environmental”, including biogenic VOCs from the plants and non-biogenic VOCs from extraction processes, pesticides, fungicides, etc. See, for example, Samburova et al. (2019) and Wang et al. (2020). Even if not a requirement for EIRs, it is hoped that the State recognizes and considers these factors in assessments of the implications of cannabis policy choices for human health and environment.

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12-11

12-12

Page-specific Comments

Page ES-3. The statement:

“Impact 3.8-1: Conflict with an Applicable Plan, Policy, or Regulation Adopted for the Purpose of Reducing the Emissions of Greenhouse Gases”“This impact would be significant and unavoidable (Impact 3.8-1) and cumulatively considerable and significant and unavoidable (CUM-8)”: [emphasis added]

12-13

is not defensible if applied equally to all four cultivation practices you define in Appendix C (outdoor, mixed-light, indoor, and nursery). While the impacts are indeed significant, those of indoor and mixed-light facilities are also avoidable in large part by outdoor cultivation. The report should explain why limiting further expansion of this industry to outdoor cultivation as a means to capture enormous environmental benefits is not a viable policy pathway.

Pages ES-3 and ES-39. I would suggest that some of the mitigation measures proposed for Impact 3.8-1 are not applicable, or are based on flawed reasoning.

12-14

- *Prohibit on-site natural gas or propane use:* Per note below on zero net energy, even all-electric buildings cannot be consistent with state goals given grid-based emissions.
- *Implement Tier 2 requirements for CALGreen EV charging standards:* These appear to apply only to passenger cars, whereas (per Summers et al. 2021) most vehicle emissions associated with cannabis cultivation arise from heavy trucking. For example, in the assessment for Long Beach, CA by Summers et al. (2012) trucking is responsible for 18% as much emissions as the facility itself.
- *Using low-flow appliances:* This vague wording seems to apply to residential contexts, not cannabis cultivation (or is otherwise *de minimis*). Please clarify.
- *Using Energy Star appliances:* This applies primarily to residential buildings and minor equipment for non-residential buildings. Energy Star also offers “whole-building” benchmarking and rating for ordinary buildings (schools, offices, etc), but to my knowledge they have not developed a system applicable to HVAC, windows, and building envelope measures vastly more energy-intensive cannabis facilities.
- *Implementing zero net energy buildings:* The literature shows that there is no way to achieve the State’s long-term GHG reduction targets in indoor cannabis facilities, particularly at scale. Roof areas are only ~1/20th that required to self-power with photovoltaics, and existing grid-based renewables capacity is insufficient to meet state targets more broadly, even before adding the tremendous new loads created by indoor or mixed-light cannabis grows (Mills and Zeramby 2022).

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Many of these items are similarly referred to elsewhere in the report, e.g. on page 3.8-15.

12-20

Page ES-54. The single listed mitigation for Impact CUM-8 is incorrect. Significant emissions from these facilities are not “unavoidable”. Outdoor cultivation avoids on the order of 95% of direct cultivation emissions, and is shown in multiple peer-reviewed publications (e.g., Zandkarimi et al. 2023) to be able to produce high-potency, high-quality cannabis.

12-21

Page 3.3-14 and 3.8-9. In the spirit of transparency, these highly impactful “default” values should be stated and discussed. There are huge uncertainties around these kinds of numbers and many published values are flawed (Mills 2021). My examination of Appendix C appears to have identified some serious issues with the default values being used (see below).

12-22

Page 3.6-3. Invoking on-site solar for homes in this paragraph and in multiple other points in the document (3.8-3, 3.16-11, etc.) is not relevant to cannabis facilities, and is potentially quite misleading.

12-23

Page 3.6-5, section 16305(b): Deeming “weighted greenhouse-gas intensity” sufficient is not defensible here. While electric utilities in California have done relatively well (compared to other states) in reducing the embodied carbon in electricity, emissions factors remain high, and rely heavily on nuclear power, which is itself an environmental issue not recognized in this analysis (Mills 2022a).

12-24

In addition, many facilities use direct fuel combustion, which cannot be minimized. If, per page 3.8-11, the vision is to eliminate those fuels and fully electrify, this also not a sufficient solution and not something that the industry will embrace any time soon, particularly for mixed-light facilities where are heavily reliant on natural gas. In addition, there are significant emissions from associated cultivation inputs (industrial CO₂, fertilizers, etc), transportation, processing, and retailing, and waste disposal that are ignored here. In an extensive national assessment by Summers et al. (2021), facility-level energy emissions represent 45% to 71% of total emissions associated with cannabis for the 71 modeled California locations, and many non-facility sources of emissions (e.g. production of extracts) are not included in that analysis.

12-25

Moreover, it is not credible to allow cultivators to comply by purchasing carbon offsets. The media and scientific literature are full of examples of examples of fraud and ineffectual projects in that industry. It is not clear that the three registries listed are immune from these problems, and more broadly, carbon offsets simply shift emissions elsewhere – they do not address the actual problem and will not ultimately align with the state, national, and global goals for emissions reductions. In the past year, large and small businesses have been rapidly backing away from the use of offsets, making this an awkward time for the State to be promoting them. According to one recent study, the market has recently shrunk by 61%.

12-26

Page 3.6-10, Table 3.6-2. This table appears to be substantially incorrect and underestimates the energy use. Please see details in comments on Appendix C. Note also that some of the cases developed in Appendix C include natural gas, but this table only lists electricity usage.

12-27

Page 3.6-11. The statement:

“ ... energy consumption associated with the construction and operation of commercial cannabis cultivation sites that would be licensed under the project would not be considered wasteful, inefficient, or unnecessary. This impact would be less than significant.” [emphasis added]

12-28

is arguably not defensible. Indoor “warehouse-style” cannabis grows use 100-times the energy of typical warehouses (Mills 2012). It is surely significant that cannabis emits ~2,300-5,200-times its weight in carbon dioxide nationally (2,300-3,500-times in California (Summers et al. 2021)), exceeding that of manufacturing aluminum (the most energy-intensive metal). The carbon emissions are prodigious and the industry has shown little willingness and ability to manage them. This comment also applies to the statement on page 3.8-12, 5-13 and the findings in Table 5-1, page 5-17.

Page 3.6-11, Impact 3.6.2 (and, by association, Section 3.8.1 with respect to Statewide GHG Emissions Targets). This reasoning is flawed. In practice, the renewable energy availability in California is finite, oversubscribed, and yet far more is needed to reach State goals, even before the cannabis industry is considered. Adding tremendous new electrical demand from cannabis facilities will effectively starve pre-existing sectors (homes, schools, offices, hospitals, etc....) of access to clean power. Consider that diverting a unit of renewable electricity to a cannabis facility deprives ~100 conventional warehouses of an equal amount of finite renewable electricity. It is a zero-sum game, and the state will struggle to meet its climate goals even without considering the rapidly increasing demand of the cannabis industry. While Mendocino County may have no formal renewable energy promotion activities, the State clearly does. There is no conceivable way – at any efficiency or with every cannabis grow rooftop completely arrayed with solar panels – that this industry could comply with the year-2045 goal of carbon neutrality invoked on page 3.8-10.

12-29

Regarding the statement:

“Therefore, the construction and operation of licensed commercial cannabis cultivation sites would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. This impact would be less than significant.”

12-30

While indoor cannabis cultivation does not literally conflict with or obstruct state or local plans for renewable energy or energy efficiency, there is a zero-sum game pitting cannabis against other energy-using segments of the California economy. There are finite dollars for these clean technologies, e.g. rebate programs are funded and often are depleted before all wishing to participate are supported.

12-31

Moreover, renewable energy systems, while essential, have their own well-documented environmental, social, and cultural impacts and thus it can indeed be deemed “wasteful” if they are developed to serve wasteful uses of energy for which there are viable alternatives. Every cannabis operation established outdoors instead of as an indoor or mixed-light operation reduces these problems materially.

Page 3.8-3. This creates a false sense of security with respect to Building Efficiency Standards achieving adequate emissions reductions. A recent major government- and utility-funded study of mixed-light cannabis facilities (Tiessen et al. 2021) found only a 11.4% “technical potential” energy savings potential in Oregon and 9.6% in Washington (and lower “economic”, i.e. cost-effective, potentials of 8.3% and 6.5%, respectively). This is not nearly enough energy demand reduction to align energy-intensive indoor and mixed-light cultivation with the State’s climate goals.

12-32

Page 3.8-3. As noted above, while on-site solar is normally a very effective method of achieving net-zero building performance, indoor cannabis cultivation is a stubborn exception to the rule. Approximately 20-times an indoor cannabis facility’s roof-area is required to achieve enough electricity production to offset a site’s grid-based energy use. The associated environmental impacts must be considered (land use, soil carbon, etc). To my knowledge, there are no documented examples of highly solarized operations (most are in the 5% range), which presumably reflects a perception in the industry of unaffordability and the extraordinary amounts of land needed. Purchasing 20-times more land than occupied by the building footprint is a non-starter for these businesses, and, in any case, would substantially change the scope of this EIR.

12-33

Page 3.8-12. References to homes, offices, and retail projects are not relevant to the topic of this report and are thus potentially misleading.

12-34

Page 3.8-12. The statement:

“Existing provisionally licensed commercial cannabis cultivation sites transitioning to annual licensure would not be altered through the annual licensing process, so no new construction- or operation-related climate change impacts are expected. Therefore, no

12-35

impact from construction- or operation-related GHG emissions are associated with existing provisionally licensed sites.” [emphasis added]

does not reflect what happens on the ground. Processes are routinely changed and equipment is routinely swapped out within these facilities. Over time-frames of importance, this includes virtually all energy-using equipment such as lighting and HVAC. Large indoor facilities in Oakland were found to actually *increase* energy use as they installed more “efficient” but higher output and wattage LED lighting systems (Mills 2022b). Even a change of plant genetics (strain) can have an enormous (factor-of-two) effect on carbon footprint - up or down (Backer et al. 2019).

There is also considerable broader analysis and discussion underway regarding environmental and social conditions (air quality, housing displacement) in areas with intensive warehouse development in California (Barboza 2021).

Page 3.9-9. “Solvents and processing chemicals” are listed as residues found on cannabis products. Many cannabis cultivation operations also house these activities. Extraction is often performed with solvents that have unique environmental profiles and impacts. It does not appear that this is anticipated or addressed in the analysis. Relevant assessment should be included for workers as well as neighboring populations, both of which are typically non-white and lower-income demographics.

Pages 4-19 to 4-20. The CalEEMod “black-box” modeling exercise does not disclose underlying assumptions and thus is not particularly useful. See concerns regarding the referenced Appendix C, below.

Page 5-13. The statement:

“ ... the potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and/or distribution transport-only operations would not result in significant project or cumulative impacts on energy use.”

is indefensible. See discussion of previous references to this information.

12-35
cont.

12-36

12-37

12-38

Comments on Appendix C: Air Quality, Energy, and Greenhouse Gas Modeling Data

Much of "[Appendix C: Air Quality, Energy, and Greenhouse Gas Modeling Data](#)" is inscrutable, lacking any introduction or orienting text, together with sprawling tables with no underlying documentation. Here are things that impeded my review:

12-39

- Engineering units and quantities are often not provided on the data tables other than the vague headers. E.g., throughout the document are headers reading "Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)" above a table with 18 columns. What are the units for each column? What does the unconventional notation "CO2T" stand for ?

12-40

- What do the various "Detailed Report" sections (Outdoor, Indoor, Nursery, etc) physically represent? They're not defined in the Table of Contents and here is no introductory text. Are these workups perhaps modeling "prototypical" sites, are they actual data for particular real locations, or ? I see square-footages, so they are clearly individual buildings of some sort. Are the square-footages gross values, or do they represent the canopy area?

12-41

- Without presenting cannabis *yields* corresponding to the energy numbers, there is no way to gauge whether the stipulated facilities are representative or otherwise "in range" with values found in the literature, or to meaningfully scale these numbers up to statewide levels of forecasted cannabis production. The cannabis yield data for these cases should be stated – along with the market projections underlying the stipulated growth in consumption in California – and incorporated into the metrics. It would be prudent to add a scenario for Federal legalization, indicating what would happen to production levels in California were interstate transport to become legal. Since roughly 75% of the cannabis grown in California is in the illicit market, this change would be very impactful.

12-42

- Fugitive HFC emissions from refrigerants are a non-trivial issue, and I'm glad to see an attempt to include them here. Ambiguity in the table formatting makes it impossible to review this information in that it is unclear whether the values shown are lb/day or MT/yr, as well as to what level of cannabis yield they correspond. No (clear) units are given for the "unmitigated leakage rates" shown (e.g. table on page 49), so one cannot assess their significance. Please be aware of one known report of fugitive emissions by Canopy Growth, at the time the second largest cannabis producer in Canada. Canopy Growth reported 5,118 tonnes CO₂-equivalent per year for 34 tonnes sales (excluding overproduced amounts never reaching market), about half of which was indoor-cultivated (Canopy Growth 2021). This translates roughly to normalized emissions of ~300 kg CO₂e/kg-flower. You should either benchmark your numbers against this or otherwise

12-43

provide some validation for the numbers assumed. Using this emissions factor, these fugitive emissions represent 11% to 24% of indoor facility's direct emissions from energy consumption across the 71 California locations modeled by Summers et al. (2021), which would likely mean a much higher fraction for mixed-light facilities.

12-43
cont.

In an attempt to better understand the data in Appendix C, I have extracted floor area, energy use, and solid waste estimates from the document into the following table and calculated normalized indices of energy in terms of kBTU/sf-year and waste generation in terms of lbs/sf-year.

12-44

Extract of data from "Draft EIR for the Licensing of Commercial Cannabis Cultivation in Mendocino County Project, Appendix C: Air Quality, Energy, and Greenhouse Gas Modeling Data" First set of rows reflect pages 2-113, second set pages 114-254.

Facility Type	Land Use	Square feet*	kWh/y	kWh/sf-y	kBTU/sf-y (at site)	Natural gas use (kBTU/y)	Natural gas (kbtu/sf-y)	TOTAL (kBTU/sf-y)**	Waste (t/y)	Waste (lb/sf)	PDF pages
Outdoor	R&D	23,500	495,283	21.1	72	0	0.0	72	1.79	0.15	7, 21
Mixed-light operations	R&D	51,830	1,092,363	21.1	72	0	0.0	72	3.94	0.15	35, 49
Indoor	R&D	31,790	670,002	21.1	72	0	0.0	72	2.42	0.15	63, 77
Nursery	R&D	10,450	220,243	21.1	72	0	0.0	72	0.79	0.15	91, 105
Outdoor	R&D	79,714	6,738,593	84.5	288	7,453,464	93.5	382	6.06	0.15	121, 144
Mixed-light operations	R&D	36,590	771,167	21.1	72	852,977	23.3	95	2.78	0.15	160, 182
Indoor	R&D	31,789	669,981	21.1	72	741,057	23.3	95	2.42	0.15	198, 222
Nursery	R&D	10,800	none listed			none listed			none listed		235, 247

* Assumes square footage given is canopy area. If not, then these values might increase ~10%.

** Field data for 125 measured indoor facilities per Schimelphenig et al. (2022) averaged 2,090 kBTU/sf-y (all fuels) and for 57 mixed-light facilities averaged 262 kBTU/sf-y (electricity only, no fuel data included).

The table raises the following questions and observations

- What is the distinction between these two sets of four facility types (outdoor, mixed-light, indoor, and nursery)? The first set (through PDF page 113) reports only electricity use while the second set reports electricity *and* natural gas, yet all (with one exception) use the same amount of electricity. This is not plausible. It is not at all realistic to assume that cannabis facilities are all-electric or will be in the near future. Natural gas is particularly common in greenhouses. The investment costs to shift to all-electric are enormous, and with electricity prices rising so steeply in recent years, the cost-benefit argument is

12-45

increasingly hard to make. In any case, it is not correct that these widely differing facility types would be using the same amounts of energy per square foot. See below for more on this.

12-45
cont.

- Energy values are missing for the second instance of “Nursery” facility type.

12-46

- All of these sites are given a sub-type as "R&D". Does this mean the facilities being evaluated are not for cultivation uses? This is confusing.

12-47

- Energy data are missing altogether for the second “Nursery” case.

12-48

- In dividing the kWh numbers by the square footage numbers, each facility type (outdoor, mixed-light, indoor, and nursery) all result in an energy intensity of 21 kWh/square foot per year (equivalent to 72 kBTU/sf-y) and values including gas are 95 kBTU/sf-y – aside from two apparent errors, noted below. These are implausibly low given that average household energy intensities are 42k BTU/sf-y (EIA 2023). On the other hand, these values are implausibly high for outdoor cultivation. And, on a relative basis, indoor facilities are vastly more energy-intensive than mixed-light facilities, which is also not reflected in the numbers underlying this assessment.

12-49

For perspective, an estimate from the literature (Mills 2012) puts indoor all-electric facility at 537 kWh/ft²-y (1,832 kBTU/sf-y), while Summers et al. (2021) estimates 582 kWh/ft²-y for electricity, *plus* substantial amounts for natural gas. Measured data from a collection of 125 indoor cannabis facilities from around the country (some of which are all electric and others use gas as well), average 2,090 kBTU/sf-y (Schimelpfenig 2022). That same source reports an average of 262 kBTU/y for 57 cannabis greenhouses around the country – electricity only; typically substantial gas data for space heating is *not* included. Another published source reports an average 2.36 kWh/sf-y average electricity use (median 1.5 kWh/sf-y) for 20 outdoor cultivation operations, or about 8 kBTU/sf-y – this about one-ninth to one-twelfth of the values used in Appendix C (NFD 2018). An important caveat is that the last two of these datasets are self-reported samples of convenience and scrutiny of earlier versions suggested that their energy intensity estimates trend low compared to transparently modeled estimates (Mills 2012; Summers et al. 2021).

12-50

Other issues with the data:

- Electricity use intensity increases fourfold for the second Outdoor site. This appears to be an error.

12-51

- Gas use intensity varies, but in one case (the second Outdoor site) is nearly four-times higher. This appears to be an error.] 12-52
- For the remaining cases, why is an identical amount of energy used for these highly different cultivation processes?] 12-53
- A peer-reviewed analysis by Summers et al. (2021) reports 4.3 lbs/sf-y of dried biomass solid waste from indoor cannabis facilities (see published supporting appendices), which is 30-times higher than the value that appears to be used in Appendix C. Of course there are many additional sources of waste, including artificial or natural growing media, spent lamps, empty packaging, netting, and miscellaneous equipment and supplies. The total amount of waste is easily three or more times that of the biomass alone. If there is not an error in the Appendix C treatment of this topic, explanation should be given for such a wide divergence from the other published values.] 12-54

Based on the above, to be useful for policy evaluation the values in Appendix C need to be validated and the underlying assumptions made more transparent.] 12-55

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6/17/24

Comments on DEIR for Licensing of Commercial Cannabis Cultivation in Mendocino County

Enclosed below are comments on this Draft EIR. All acronyms are those listed at the beginning of the DEIR.

1. This DEIR doesn't mention that the Mendocino County Ordinance specifies that Cannabis security lighting must be on a motion detection basis. Will this oversight be corrected? Why is this not a Statewide requirement for DCC to significantly reduce light pollution and habitat disturbance in the State? Studies have shown that more crime occurs in well-lit areas so the criminal can see what they are doing. 13-1

2. The Mendocino County Cannabis Ordinance references mature canopy of 10,000 SF, except for in a seedlings greenhouse where 22,000 SF is allowed, but with a mature canopy of 10,000 SF. Why does the DEIR indicate 22,000 SF is allowed for mature canopy? 13-2

3. This DEIR provides a comprehensive list of laws and regulations designed to protect plants, animals, fish, water quality, and the environment, including new regulations on cannabis designed to do the same. However, the DEIR fails to disclose that as the list of laws and regulations has increased dramatically, plants, animals, fish and water quality have all continued to decline, some to extinction and many on the verge of extinction. Words on paper do not protect anything in the environment, if they are not enforced. 13-3

4. How many Cannabis site inspections have occurred in Mendocino County by the County Cannabis Department from 2018-2023, by year? By DCC? By Fish and Wildlife? By the RWQCB? What percentage is this of licensed Cannabis grows? 13-4

5. How many Cannabis enforcement actions have occurred in Mendocino County from 2018 to 2023, by year, by the County Cannabis Department, County Sheriff, DCC, Fish and Wildlife and the RWQCB? What percentage is this of estimated illegal Cannabis grows in Mendocino County? 13-5

6. How many water rights violations has the SWRCB and Department of Fish and Wildlife conducted in Mendocino County from 2018-2023, by year? What percentage is this of estimated illegal water diversions? 13-6

7. What specific website does the public go to find out the number of Cannabis related inspections that have occurred in Mendocino County by each of the departments listed above? Does each department have a public link showing Cannabis related site investigations? If not, why not? 13-7

8. If the answer to question 7 is that each agency has their own dedicated link showing Cannabis related site investigations, why doesn't DCC consolidate all of the above for each County in the State and post it on their website? This will allow the public to evaluate the effectiveness of DCC, Mendocino Cannabis Department, these DEIR mitigations in Mendocino County, and inform all residents throughout the State of actions in their counties. 13-8

9. What is the estimated percentage of legal to illegal grows in Mendocino County? Can asset forfeiture and fines help pay for enforcement on illegal grows in Mendocino County? In the other Counties in the State by DCC or other agencies? 13-9

10. Why are illegal growers not prompted to enter the legal Cannabis system by enforcement or other measures? [13-10
11. Can enforcement be considered an effective mitigation measure for this EIR? [13-11
12. What is the direct e-mail and telephone number for each agencies' personnel involved in enforcement of this program? Are they all listed on the DCC website for each County in the State so residents can evaluate the effectiveness of the DCC program in their county? [13-12
13. Some of the listed Federal, State and Local laws, regulations, ordinances and policies cited as mitigation in this DEIR have been in effect for over 50 years. How many plants, animals, fish and water bodies in Mendocino County have been delisted from the species of concern, threatened, endangered or impaired listings in the last 25 years? How many of the same above have been added to these listings? [13-13
14. Given that the listed Federal, State, and Local laws, regulations, ordinances, and policies have proven to be ineffective to protect plants, animals, fish and water bodies from diminishment, what is the basis for this DEIR to claim that the additional words on paper they provide as mitigation will succeed, where all of these other words on paper have failed? [13-14
15. Many EIRs provide a monitoring plan to demonstrate to the public that the proposed mitigation measures will occur. The monitoring plans provide timelines, benchmarks, milestones and entities responsible for mitigation measures to assure the public the mitigation measures will be implemented. This DEIR fails to provide such a monitoring plan. What is the monitoring plan for this project? What are the timelines, benchmarks and milestones for the mitigation measures in this DEIR? [13-15
16. If the mitigations proposed in this DEIR prove ineffective, what actions will be taken? [13-16
17. This DEIR fails to explicitly state that environmentally superior project is Alternative 2. Is this an oversight? [13-17

Thank you for the opportunity to improve this DEIR. I look forward to your responses to these questions.

Dennis Slota
Retired Mendocino County Water Agency Hydrologist

cc: John Haschak, 3rd District Supervisor

Fwd: EIR Public Comment Hearing

Victor Ruffa <vruffa@my.hpu.edu>

Thu 6/20/2024 3:21 PM

To: Public Comment@Cannabis <publiccomment@cannabis.ca.gov>

[EXTERNAL]: vruffa@my.hpu.edu

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-Victor Ruffa

----- Forwarded message -----

From: **Diaz, Charisse@Cannabis** <Charisse.Diaz@cannabis.ca.gov>

Date: Thu, Jun 20, 2024 at 5:54 PM

Subject: RE: EIR Public Comment Hearing

To: Victor Ruffa <vruffa@my.hpu.edu>

Hello Victor,

It was at 10 a.m. It has ended now but please feel free to submit your public comment(s). The Draft EIR is still under public review and comment for the 45-day period until June 24, 2024.

If you wish to submit your comment by email, please send it to publiccomment@cannabis.ca.gov. You can also send it by mail to the following address:

Department of Cannabis Control

c/o Angela McIntire-Abbott

2920 Kilgore Road

Rancho Cordova, CA 95670

Regards,

Charisse Diaz

Legal Affairs Division

desk: 916-251-4530

844-61-CA-DCC (844-612-2322)

www.cannabis.ca.gov



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From: Victor Ruffa <vruffa@my.hpu.edu>
Sent: Thursday, June 20, 2024 12:48 PM
To: Diaz, Charisse@Cannabis <Charisse.Diaz@cannabis.ca.gov>
Subject: Re: EIR Public Comment Hearing

[EXTERNAL]: vruffa@my.hpu.edu

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Wait what time is this est?

-Victor Ruffa

14-1

On Wed, Jun 19, 2024 at 7:45 PM Diaz, Charisse@Cannabis <Charisse.Diaz@cannabis.ca.gov> wrote:

Greetings Victor,

Thank you for contacting the Department of Cannabis Control (Department). The following are the details of the June 20, 2024, WebEx online meeting:

Webinar topic:

Virtual Meeting for a Draft Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County

Date and time:

Thursday, June 20, 2024 10:00 AM | (UTC-07:00) Pacific Time (US & Canada)

Join link:

<https://events-cannabis.webex.com/events-cannabis/j.php?MTID=m63c5d6ca698a105455bdba09dbff0b5c>

Webinar number:

2660 431 1373

Webinar password:

MendoEIRPC2 (63636348 when dialing from a phone or video system)

Join by phone

+1-650-479-3208 United States Toll

Access code: 266 043 11373

Regards,

Charisse Diaz

Legal Affairs Division

desk: 916-251-4530

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From: Victor Ruffa <vruffa@my.hpu.edu>
Sent: Wednesday, June 5, 2024 9:52 AM
To: Diaz, Charisse@Cannabis <Charisse.Diaz@cannabis.ca.gov>
Subject: Re: EIR Public Comment Hearing

[EXTERNAL]: vruffa@my.hpu.edu

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Received thanks .

-Victor Ruffa

On Wed, Jun 5, 2024 at 12:51 PM Diaz, Charisse@Cannabis <Charisse.Diaz@cannabis.ca.gov> wrote:

Greetings,

Thank you for contacting the Department of Cannabis Control (Department). The Department has noted your request and will forward the link to you when it becomes available.

Charisse Diaz

Associate Governmental Program Analyst

Legal Affairs Division



desk: 916-251-4530

844-61-CA-DCC (844-612-2322)

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Draft Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County

laura@martyjuana.com <laura@martyjuana.com>

Fri 6/21/2024 10:15 AM

To:Public Comment@Cannabis <publiccomment@cannabis.ca.gov>

[EXTERNAL]: laura@martyjuana.com

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.....
June 21, 2024

Dear DCC, Ascent Consulting & all other interested parties,

Thank you for the opportunity to share public comments on the Mendocino County cannabis cultivation CEQA EIR (California Environmental Quality Act – Environmental Impact Report). Thank you for taking the lead and doing the work necessary that many of us have been asking for since Prop 64 passed.

15-1

We have participated in meetings on this issue at the County and State level up to this point. We are not land use experts, and so we must start with our support for the comments made by the Mendocino Cannabis Alliance, Hannah Nelson and the consultants from Wynn Coastal Planning on the technical issues they have identified and we agree with their solutions oriented insights.

15-2

It has been an incredibly long lag time, local and state programs have had multiple directors and the process many directions. We hope this EIR document finally moves clarity forward for regulators and stakeholders. It's imperative to allow the small farms in our County, who have been operating legally while under unimaginable stress the entire time, to do what the goal this CEQA document outlines: to transition from the legacy Prop 215 medical cannabis farms to the Prop 64 recreational use legal status of annual licenses by the DCC.

15-3

Our farm dates back to even before the Mendocino County Sheriff's zip tie 9.31 program, the 1st ever regulated cultivation in the America. We've had a County permit since 2017 and a State Temporary, then Provisional license since they became available. We have been inspected countless times by multiple agencies and were recently renewed for our CCBL and our State Provisional license. We also recently got our final LSAA approvals by CDFW. Yet we are still unclear what is left for us to do to qualify for an Annual license with the State.

15-4

We hope all our bases have been covered between the MND, SSHR, LSAA & other biological reports we have done now that this EIR is concluded. And we hope that any new requirements arising from this EIR are covered by LJAGP grant monies or future funds from the DCC. Those grant monies were already greatly depleted to create this EIR, but have yet to fulfil their designated use, to transition Provisionals to Annuals license. We did not complete an Ap.G, but we also hope for the farms that did, that those reports count toward an annual license as well. It seems we should all be already there, or at least very

15-5

close to the finish line of the licensing process.

15-5
cont.

As you know, Mendocino's small farms who entered the original program were told that the requirements of the County were so strict that if we met them, we would be automatically approved for State license. That did not happen. We were also told, repeatedly, for many years, not to worry about CEQA, the County and State would figure it out. We have jumped through every hoop on this always evolving obstacle course of legalization. The few hundred farms that are still operating deserve to continue to grow; in fact we'd argue that exceptions should be made to help boost viable business opportunities to these license holders who have been stymied by the perceived risks and confusions caused by the government's lagging actions.

15-6

Rather than being destructive to the land as cannabis farming has been often described, we, and many of the phase one outdoor farms, are environmentalists working in tandem with nature. We farm 10k square feet, less than 1/4 acre of our 27 acres of pristine mountain landscape. We are 3rd party certified by Sun + Earth and use regenerative practices, including, organic amendments, companion planting, integrated pest management etc. We are also a certified National Wildlife Habitat. We tested our cannabis long before required and have always passed all COAs lab tests because we grow clean cannabis. Through the Mendocino Producers Guild we have created our own best management practices guidelines that farms who are part of this group follow. Cannabis is Agriculture and needs to be treated with parity to other crops, like tomatoes or strawberries or hemp. Please approve the most broad uses in the EIR for existing legal cannabis farms to be able to survive this tumultuous climate.

15-7

It's good to see the EIR discuss the 23 farms that now self-distribute. It would be good to be able to make allowances for all small farms in our County to self-distribute and to have direct to consumer availability. We need as broad leeway as possible to be reflected in the EIR for the future viability, not by expanding footprints of our farms, but expanding allowed activities (processing, distro, delivery, etc).

15-8

Since the State is the lead agency, we suggest creating a pilot program for Mendocino County to incorporate aspects of a micro-business license, but design it for rural small farms. This could measurably level the playing field. Through loopholes, the mega farms & multi-state brands, have co-opted and vertically integrated via the micro-business license as an unintended consequence, not its original intent. It's the license type that is often mischaracterized by politicians and regulators as saving small farms. But there are ways to fix it now that would allow small businesses to get ready for Federal legalization and streamline the supply chain that has failed us.

15-9

As the recent Origins Council research reported in "The Rural Land Use Trap, Micro-business, Direct Sales and the Future of Craft Cannabis" states,

"The Department of Cannabis Control can immediately facilitate microbusiness licensure and on-farm vertical integration, without further statutory action, by implementing regulatory reforms that remove barriers to the underlying manufacturing, distribution, and retail activities that most affect small, rural farmers. While these reforms in themselves are not a silver bullet solution to enabling microbusiness licensure for small farmers, they can serve as an incremental step that, combined with additional action at the local level, can increase and sustain the relative viability of on-farm vertical integration over time."

15-10

There are changes that could happen right now on these small farms in ways that would not increase their footprint or environmental impacts, and it would increase access to market & profitability. Our present Mendocino Cannabis Department and our current Board of Supervisors are more open than ever to collaboration with the State about creative ways to assist farmers. A pilot program like we've

15-11

described is one such shift that can be made internally within the agency, without needing to go through the legislature. And can be created with stakeholder input as to what our real needs are based on our experience over these past few years as part of the fledgling cannabis industry. As we watch with horror the downfall of whole towns in our area, like Laytonville and Garberville losing grocery stores and gas stations, we beseech you to help preserve what's left. Let's use this EIR as a springboard. Save our small farms. Save our rural towns. Let's try this in Mendocino County now!

15-11
cont.

Thank you for your consideration,

Laura & Marty Klein, Martyjuana™



Department of Cannabis Control
c/o Angela McIntire-Abbott
2920 Kilgore Road
Rancho Cordova, CA 95670
publiccomment@cannabis.ca.gov

June 22, 2024

RE: Draft Environmental Impact Report (EIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County Project

Ms. McIntire-Abbott and all reviewing staff of the Department,

Thank you for the opportunity to comment. These comments are intended to assist the Department in its analysis of the proposed project. It is critical to bear in mind the stated Project Objectives of the Draft Environmental Impact Report (“DEIR”), with particular emphasis on the portions of those Project Objectives highlighted below:

- Implement the California Department of Cannabis Control’s (DCC) cultivation licensure program in the County, in an effort to minimize the public health and safety risks associated with unlicensed commercial cannabis activity, while promoting a robust and economically viable legal cannabis industry in the County;
- Effectively transition qualified existing provisional cannabis cultivation licenses to annual licenses through a streamlined cannabis licensing process to ensure that such provisional cannabis cultivation license holders complete the annual license process by the statutory timeframes identified in Business and Professions Code, section 26050.2;
- Provide a mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process;
- Ensure that cannabis cultivation by licensees is conducted in accordance with applicable state and local laws related to land conversion, air quality, electricity usage, water usage, water quality, biological resources, agricultural discharges, and similar matters;
- Protect natural and built resources in Mendocino County; and
- Minimize potential adverse effects of cannabis cultivation activities on the environment.

I6-1

The Proposed DEIR As Proposed Fails to Accomplish the Project Objectives

With all due respect, the DEIR fails to sufficiently accomplish those Project Objectives. Specific section by section comments follow, but broadly, the current draft, if adopted without modification would likely lead to large numbers of existing cultivators falling out of the regulated system and discourage bringing unregulated cultivation into the regulated licensing system.

I6-2



Specifically, attempting to apply mitigations to activities prior to the baseline date, giving insufficient consideration to the positive impact licensed cultivation has on the environment as compared to unlicensed cultivation and the specific potential impact of the loss of regulated cultivators in the analysis of determining thresholds of significance, the feasibility of mitigations, and the project alternatives is not just demoralizing to cultivators, but will directly impact the number of licensed cultivators that will be retained. The potential adverse effects of losing an effective means of keeping licensed cultivators in the regulated system and making it feasible for unlicensed cultivators to enter the regulated system is an important consideration when effectuating the Project Objectives.

I6-2
cont.

A Statutory Extension For Mendocino County Licensees To Transition To Annual Licensure Is Necessary If The DEIR Is Adopted As Proposed

The most immediately relevant concern is the likelihood that there is little hope, without a statutory extension, to accomplish the proposed mitigations before the termination of the Provisional licensing program. Based on the information contained in the DEIR with respect to the volume of sensitive species and habitat located in Mendocino County, it is probable that a very large percentage of cultivation sites could be implicated. Biological surveys are proposed to be conducted on all sites where expanded activities have occurred since issuance of the Provisional license.¹ If in fact the proposed mitigations, particularly Mitigation 3.5-1a, and 3.5-1b (if required after 3.5-1a) are applied to all licensees that have expanded activities “since issuance of the provisional license” in addition to those that “may want to expand” prior to annual licensure, there would likely be many hundreds of biological surveys that would need to be conducted by a qualified biologist and likely some hundreds of those would require field studies during specific times of year.

I6-3

In my experience about 90% of provisional licensees have expanded activities or development in one way or another since issuance of their Provisional license. The vast majority of Provisional cultivation licenses were applied for from 2018-2020 and issued from 2019-2022. Not only was it common for cultivators to slowly and deliberately phase into the total canopy size allowed for under their license, adding drying sheds (especially since state licensure required them to have separate secure

I6-4

¹ The DEIR treats sites that have had expanded activities or development prior to the Notice of Preparation date the same as those sites that may wish to expand activities prior to issuance of the annual state license. The DEIR repeatedly refers to existing provisional licensees that have made changes “since issuance of their provisional license” and lumps those baseline conditions in with those that will seek to make changes after the Notice of Preparation date and before issuance of their annual licensing. See, 3.1-15, 3.1-17, 3.1-18, 3.1-20, 3.2-16, 3.2-17, 3.3-16, 3.3-19, 3.3-21, 3.4-22, 3.4-25, 3.4-26, 3.4-27, 3.5-68, 3.5-72, 3.5-98, 3.5-100, 3.5-104, 3.5-106, 3.5-109, 3.6-9, 3.6-11, 3.7-19, 3.7-21, 3.7-24, 3.7-25, 3.7-26, 3.8-12, 3.9-18, 3.9-20, 3.9-21, 3.9-23, 3.9-24, 3.10-40, 3.10-43, 3.10-44, 3.11-9, 3.12-17, 3.12-21, 3.12-25, 3.12-27, 3.13-8, 3.14-15, 3.14-17, 3.15-14, 3.15-16, 3.15-19, 3.15-21, 3.16-14, 3.16-16, 3.16-18, 3.17-22, 3.17-24, 3.17-26, 3.17-27. The section below discusses whether application of mitigation measures is applicable to sites that have seen changes or expanded activities prior to the Notice of Preparation date, but the number of potential biological surveys and field studies must be considered based on the Mitigations as proposed in the DEIR.



storage), solar panels (to replace generators as primary source of power), and other infrastructure over time was not at all uncommon between 2018-2023. Even operators that had only limited, contiguous expansion often had expansion since issuance of their Provisional license. It is true that some sites already have had biological surveys and review under the SSHR process at the local level. However, it is believed that the total number of biological surveys already conducted on the entire site² is a fraction of those that would need them if the Mitigation measures were adopted as proposed.

I6-1
cont.

The DEIR asserts there are 623 Provisional licenses in Mendocino County. Even if only two-thirds of them needed biological surveys and only half of the total still needed field studies,³ it is hard to envision how all of those would be completed in the time left under the provisional licensing program given the time of year constraints.

I6-5

While not within the power of the Lead agency to extend the statutory deadline, the DEIR has the obligation to consider these issues both as a marker of feasibility of the Mitigation measures proposed and in the context of evaluating the impacts of the potential for losing so many Provisional licensees. An analysis of the number of potential biological studies, including field studies, and the required timing of field studies would render those impacts non-speculative. That information can reasonably be assessed given the mapping and other data available to the lead agency.

I6-6

The DEIR Improperly Fails To Include Activity Prior To Notice of Preparation Date In Baseline

As stated above, the DEIR repeatedly includes expanded activities and development of Provisional licensees that occurred prior to the Notice of Preparation (“NOP”) date in the same category as those that may want to expand prior to transition to an annual license. Specifically, the DEIR addresses Provisional licensee expansion that has occurred “since issuance of their Provisional license.”⁴ Unless the issuance of the Provisional license was after the NOP date, the inclusion of this category of

I6-7

² Some licensees had biological surveys conducted as part of their Lake and Streambed Alteration agreement process. However, often those surveys were often limited to the location of the culverts, bridges, or onstream ponds at issue and did not assess the location of the cultivation activities and development.

³ In my experience about 80% of the files reviewed under the local SSHR program are required to conduct a biological survey and field studies. While one would hope that those studies would have been conducted already, the delay of grant funding that was intended to be used for those purposes prevented many applicants from being able to complete them.

⁴ See, 3.1-15, 3.1-17, 3.1-18, 3.1-20, 3.2-16, 3.2-17, 3.3-16, 3.3-19, 3.3-21, 3.4-22, 3.4-25, 3.4-26, 3.4-27, 3.5-68, 3.5-72, 3.5-98, 3.5-100, 3.5-104, 3.5-106, 3.5-109, 3.6-9, 3.6-11, 3.7-19, 3.7-21, 3.7-24, 3.7-25, 3.7-26, 3.8-12, 3.9-18, 3.9-20, 3.9-21, 3.9-23, 3.9-24, 3.10-40, 3.10-43, 3.10-44, 3.11-9, 3.12-17, 3.12-21, 3.12-25, 3.12-27, 3.13-8, 3.14-15, 3.14-17, 3.15-14, 3.15-16, 3.15-19, 3.15-21, 3.16-14, 3.16-16, 3.16-18, 3.17-22, 3.17-24, 3.17-26, 3.17-27.



licensee activity and development is improper and the application of proposed Mitigations to those licensees, which are more properly included in the baseline, should not occur. The activities or development prior to the NOP date should be included in the baseline. The outcome of the analysis when comparing project impacts to the baseline may result in a change of findings in some impact sections from Potentially Significant or Significant to Less Than Significant.

I6-7
cont.

The date of the baseline conditions is generally the date of the NOP. Title 14 California Code of Regulations⁵ §15125 (a)(1) in part reads:

Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.

I6-8

The same subsection in fact allows for defining existing conditions by referencing historic conditions or conditions that exist when the project becomes operational. 14 CCR §15125 (a)(2), sets forth when future conditions beyond the date of the project may be used. No provision exempts actual conditions prior to the NOP date from inclusion in the baseline information. 14 CCR §15125 (a)(3) excludes hypothetical conditions that might be allowed but have not actually occurred.

Here, expansion of activities or development prior to the NOP date are not hypothetical, but expansion that Provisional licensees MAY want to make but haven't prior to annual licensure are. The two categories (those that have already expanded activities prior to the NOP date versus those that may wish to prior to the implementation of the project (annual licensure), must be treated differently. The former must be included in the baseline conditions and the analysis must take those conditions into account when conducting the analysis of comparing the baseline to the project impacts.

I6-9

The importance of establishing the correct baseline is well articulated in the Association of Environmental Professionals CEQA Portal Topic Paper on Baseline and Environmental Setting⁶

Establishing an appropriate baseline is essential, because an inappropriately defined baseline can cause the impacts of the project either to be under-reported or over-reported. A considerable number of CEQA documents have been litigated over the choice of a baseline for a given project, and many CEQA

I6-10

⁵ Hereafter, Title 14 of the California Code of Regulations will be abbreviated to 14 CCR.

⁶ <https://ceqaportal.org/tp/Baseline%20and%20Environmental%20Setting%20Topic%20Paper%2008-23-16.pdf>



documents have been invalidated for the use of an inappropriate baseline (see *Important Cases* below).

AEP CEQA Portal Topic Paper, Baseline and Environmental Setting, P.1

The AEP CEQA Portal paper goes on to explain how deviations from the use of the NOP date to establish the baseline may be appropriate. Those include either inclusion of historical occupancy and multi-year averages in the baseline, the inclusion of conditions after the NOP date where a lapse in time from the NOP date until the study occurred, and the use of “future baselines” under certain circumstances. None of the scenarios involves EXCLUSION of an existing condition from the baseline.

I6-10
cont.

Here, with respect to existing Provisional license holders, the “project” is to transition the licensee into an annual license. The impacts of this project must be analyzed in comparison to the baseline conditions, which include the expansion of activity and development since issuance of Provisional licenses until the NOP date.

Inclusion of Unregulated Cultivation Is Proper But Not Sufficiently Analyzed

The DEIR rightfully includes unregulated cultivation activities as part of the baseline (DEIR pages 3-2 – 3-8). In fact, the DEIR provides substantial evidence that there might be 3850 unregulated cultivation sites in Mendocino County (DEIR P.3-2). Despite this specific and substantially supported evidence, most sections of the DEIR analysis, the inclusion of unregulated cannabis cultivation is only mentioned in a cursory manner if it is mentioned at all.

I6-11

In one section, Diversion of Surface Water, it is explicitly stated that unregulated cannabis cultivation and its impacts on diversion of surface water are well documented (DEIR, 3.10-44), but no analysis of the comparison of the baseline including this existing condition is conducted. While the findings in this section found no impact of existing provisional license holders that have not expanded and a less than significant impact of those that have or want to as well as for future licensed sites due to adherence to regulations and due to the county’s cultivation size limitations, it is a good example of how the analysis failed to take into consideration even “well documented” impacts of unregulated cannabis cultivation.

I6-12

Likewise, the DEIR outlines impacts that use of rotenticides and insecticides on unregulated cultivation sites has on fishers and other carnivores but concludes that due to adherence to regulations, there would be a less than significant impact to those species but goes on to find a potentially significant impact due to “[p]otential expansion” because of the potential for tree or vegetation removal (DEIR pp.3.5-87-88). If a proper analysis of the baseline conditions were utilized, including sites that

I6-13



had expanded prior to the NOP date and unregulated sites, would the comparison of this project result in a different level of significance?

I 16-13
cont.

In the context of the sections analyzing cumulative impacts, the DEIR finds that the extent of the environmental impact of unregulated cannabis cultivation was too speculative⁷ despite specific substantially supported evidence regarding how many unregulated sites there are, available mapping that could determine sizes of those sites, and other studies and articles that have “well documented” the impacts.

I 16-14

Just as it is unknown without a correct analysis if the findings of significance would change if expanded activities and development prior to the NOP date in the baseline conditions had not been improperly excluded from the baseline, it is not known whether the inclusion of a full analysis of the comparison of the baseline conditions, including unregulated cultivation sites would change the findings of significance. To the extent that those findings might be different, it is important to properly define the baseline and thoroughly conduct the comparative analysis.

I 16-15

Some Of The Proposed Mitigations Are Infeasible

14 CCR §15126.4 requires the proposed mitigations to be feasible. 14 CCR §15364 defines feasible:

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Mitigation measures 3.5-1a and 3.5-1b, as applied to existing Provisional licensees are infeasible given the end of the Provisional licensing program and the amount of time it will take to conduct the number of studies that are likely to be needed. Additionally, unless those studies are fully paid for by the state, the economic reality render them infeasible. Even if the funding is provided, the amount of time it might take after the EIR is final to contract with the qualified biologists if directly contracting with them, or the amount of time to have the funds flow through the local jurisdiction to the cultivators to pay for the studies, together with the amount of time needed to conduct the studies is insufficient to feasibly accomplish completion of those studies prior to the end of the Provisional licensing program, based on prior DCC, local jurisdiction, and other agencies’ contracting timelines.

I 16-16

While the regulations allow a project to move forward when there has been incorporation of mitigations and other measures to avoid or substantially lessen each significant adverse environmental effect identified, 14 CCR §15091 identifies the findings that must be made. As one of the possible alternatives, 14 CCR

⁷ DEIR, 4-4



§15091(a)(3) explicitly provides for a finding that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”

Here, the current legal framework, without a statutory change, render the mitigations infeasible as applied to existing Provisional license holders. Even if the mitigations can be satisfied as to some of the current Provisional license holders, the evaluation must be conducted under the presumption that such requirements (mitigations) will apply to all similarly situated Provisional licensees.

At the very least, Mitigation measures 3.5-1a and 3.5-1b as applied to Provisional license holders who have already expanded activities or development prior to the NOP date, or that received authorization from the Department and local agencies to make those changes after the NOP date but prior to the publication of this DEIR, are infeasible under the definition provided in 14 CCR §15364 based on that authorization as a legal factor.

Specifically, building permits have been issued and licensing site plans have been approved in applications or amendments. It is reasonable to require studies when expansion has not occurred or has not been included in plans, permits and licenses that have been approved with those expansions. However, the legal consideration of reliance on authorizations that did occur is certainly a consideration as a legal factor impacting feasibility.

For all of these reasons, a finding that any Potentially Significant or Significant impacts of the cannabis cultivation of those that already are licensed, and operating are Significant but Unavoidable is warranted.

As a separate matter, Mitigation 3.5-p should align with 10A.17.070 (F)(1) which does not require an accredited acoustical engineer analysis but as the DEIR correctly indicates, can be done using some other mechanism or device.⁸ Additionally, the portion of Mitigation Measure 3.8-1 that prohibits onsite natural gas or propane use⁹, should, at a minimum, be modified to exempt sites that share existing natural gas or propane sources with residential use of such existing facilities.

16-16
cont.

16-17

⁸ DEIR, 3.5-13 correctly lists the ordinance requirements but the proposed Mitigation Measure 3.5-p listed at DEIR, 3.5-95, fails to incorporate the allowance for means of demonstrating adherence to the standard other than requiring an acoustic engineer.

⁹ DEIR, 3.8-15.



The Lead Agency May Find That Unavoidable Adverse Environmental Effects Are Acceptable Without Applying Mitigation Measures To The Transition Of Current Provisional Licensees To Annual Licenses And A Statement of Overriding Considerations Should Be Included In The Notice of Determination

14 CCR §15093 mandates that the lead agency balances the benefits of a project against any unavoidable environmental risks to the environment:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Here, given the feasibility problems articulated above, it is appropriate to consider removal of the mitigation measures in 3.5-1a and 1b **as they are proposed to be applied to existing Provisional license holders**, or at least to those that have received building permits, or authorization after licensing or application or amendment submission and still approve the project.

The loss of those regulated cultivators would likely result in catastrophic abandonment of environmental protections currently in place on those sites, if not through the actions or inactions of current licensees, then through the forced



abandonment or sale of those properties if licensure is lost and there is no viable small business income source. The issue is so significant, a County Supervisor has brought forward an Agenda Item to the Mendocino County Board of Supervisors General Government Committee Meeting to emphasize the problem.¹⁰

The loss of economic, cultural and social value of the remaining licensed cultivators would be catastrophic to not only the many hundreds of Provisionally licensed cultivators and their families, but to the broader business community and to the County tax base as well. In many public hearings related to the County's commercial cannabis licensing and taxation, members of the business community have stressed the importance of retaining the existing small cultivators in the county.

One need only look to the economic devastation that has already occurred in the Laytonville area, with the loss of so many non-cannabis businesses, including basic services such as grocery stores, properties for sale (and price reductions) to understand the economic and cultural importance of cannabis cultivation. While it is true that some of the devastation is a result to the shuttering of both unregulated and previously licensed cultivators, it is undeniable that this community can ill afford to lose additional businesses, such as those that are currently licensed as Provisional licensees. The county has received millions of dollars per year in tax revenue. While the total tax revenue has decreased based on both loss of licensed cultivators, and a temporary reduction in the tax imposed, one need only to look to the County's budget deficit to see that the loss of the revenue that does come from licensed activity would compound a budget crisis.

Socially, the family-based farm is a hallmark of Mendocino County. The local licensing structure severely limits the total cultivation allowed as compared with many other jurisdictions. Additionally, many of these small farmers practice organic and sustainable cultivation methods that go far beyond the licensing requirements.

The benefit of ensuring that adherence to requirements to obtain building permits and obtain approval of site expansions is meaningful and should be preserved and considered. If such approvals are meaningless with respect to the application of infeasible Mitigation measures, erosion of the adherence to regulations may proliferate. Here, Mitigation Measures 3.5-1a and 3.51b should not be applied to Provisional license holders that already received building permits and other approvals for expanded activities and development on their site.

In the case of Provisional license holders, or at least to those that have received building permits, or authorization after licensing or application or amendment

¹⁰ 6/26/24 Mendocino County Board of Supervisors General Government Committee Agenda Item 2c: Discussion and Possible Action Regarding Illegal Cannabis Cultivation Sites within Unincorporated Areas of Mendocino County, Potential Environmental Impacts, and the Need for Property Owners to Prioritize Cleanup Efforts (Sponsor: Supervisor McGourty).

I6-18
cont.



submission, a finding that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of those proposed projects outweigh the unavoidable adverse environmental effects, and the lead agency should make a finding that the adverse environmental effects are "acceptable" without the need to require those mitigation measures.

I6-18
cont.

Neither Alternative 1 Nor Alternative 2 Should Be Adopted

Without doubt, four out of the six Project Objectives involve maximizing retention of current licensees and allowance of future licensure of cannabis cultivation in Mendocino County. Arguably, the remaining two objectives are also achieved through feasibly preserving current and future licensure.

It is in fact important for the Department to consider Alternatives to the Project. California Public Resource Code § 21002, 14 CCR §15126.6. However, two factors relevant to this project are important for the Department to consider when deciding whether the proposed alternatives should be adopted. Both feasibility of the alternative and whether the alternative would achieve most of the project's objectives are necessary to consider even if a proposed alternative might avoid or substantially lessen the significant effects of the project. 14 CCR §15126.6(a).

It is because a ban on commercial cannabis cultivation was determined to not feasibly achieve most of the project objectives that it was considered and rejected for further evaluation.¹¹ The law and rationale for that decision was well articulated in the DEIR:

I6-19

Alternatives that fail to meet the fundamental project purpose need not be addressed in detail in the EIR (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165–1167)... The decision maker(s), for example, may conclude that a particular alternative is infeasible (i.e., undesirable) from a policy standpoint and may reject an alternative on that basis provided the decision maker(s) adopts a finding, supported by substantial evidence, to that effect and provided that such a finding reflects a reasonable balancing of the relevant economic, environmental, social, and other considerations supported by substantial evidence (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 998).

DEIR, 5-4 – 5-5.

Alternative 1, the No Project Alternative, could preserve Project Objective two and **portions** of some of the other Project Objectives **IF** continued licensure of existing

¹¹ DEIR, 5-5.



Provisional licensees was feasible and did not contain infeasible mitigation measures, but would completely eliminate the third Project objective. It is likely that given that only portions of most of the Project Objective would be met, and the consideration of the infeasibility of proposed Mitigation Measures as stated in the sections above, it is not possible to conclude that most of the Project Objectives will be met by adoption of Alternative 1.

Likewise, after balancing “the relevant economic, environmental, social, and other considerations” of not just keeping current Provisional license holders in the regulated system but encouraging the continued transition of unregulated cultivators to enter licensure as a means of fulfilling greater environmental protections, and greater economic, and social benefits, the Department should reject this alternative.

An elimination of future licensure would not only prevent unlicensed operations from entering the more environmentally protective conditions of licensure but would completely prevent current licensees from obtaining a different license type going forward.¹² Small Mendocino County Cultivators who had to shut down due to the market crash and other factors that were not a reflection of their environmental stewardship or adherence to regulations, would be unable to reenter the licensing system.

It is also important to factor in the fact that Mendocino County has restricted the allowable zoning and has placed additional requirements (water availability studies) on all Phase 3 license applicants. Any future state license applicants for sites not already in the licensing systems would be required to apply for a Phase 3 local license. The result is that no resource land zoning is allowed for future cultivation. When balancing these relevant economic, environmental, social, and other considerations, it is appropriate for the Department to approve the Project and reject Alternative 1.

The analysis of the potential of future licenses is flawed. As a result, the Project cannot be properly weighed against this alternative. The DEIR states “Historic County licensing data indicates that implementation of the project (i.e., streamlining the annual licensing process) could result in a development potential of up to 1,075 new commercial cultivation licenses...”¹³

¹² It is acknowledged that currently, the Department has implemented SB 833, which allows for a one-time change of expiration date, allows a licensee to enter a limited operations status, and allows a reduced license size change while retaining the ability to return to the original license size. However, these options do not allow a change in cultivation style. For example, a Mixed Light Cultivator may not change to a Mixed Light operation or vice versa without applying for a new license. Any new license change of cultivation style would require a new annual license application and therefore under this proposed alternative, be impossible.

¹³ DEIR, 2-3.

I6-19
cont.



There is a serious question of whether the assumptions regarding the quantity of reasonably foreseeable cannabis cultivation applications are correct. The DIER asserts 1075 reasonably foreseeable cannabis cultivation applications is assumed based on the total license applications submitted in Mendocino County since 2017 and allocated the type of license applications in accordance with the types of state licenses held. However, the license application numbers in 2017 and 2018 at the local level included Phase 1 applicants. As stated above, only Phase 3 applicants may apply and many of the potential locations are no longer eligible. Further, Appendix B reflects that vast majority of state licenses were applied for in 2018-2021. In fact, only 35 cultivation licenses applied for in 2022 or 2023 as listed in Appendix B.

I6-19
cont.

Given all these factors, the Department should reject Alternative 1 and allow the project to move forward.

With respect to Alternative 2, current law already prevents issuance of a state license if there is substantial evidence that the cultivation is causing significant adverse impacts on the environment in a watershed. California Business & Professions Code § 26060 (a)(2). Therefore, whether it is an “impacted” watershed or not, no new license can be issued if substantial evidence supports a finding that the cultivation is having a significant adverse impact on the watershed. In this sense, Alternative 2 is not really an alternative.

I6-20

If the proposal is to go further than existing law and to eliminate the requirement that there be substantial evidence that the cultivation is in fact having an adverse impact and to prevent issuance in an impacted watershed even if there is no such substantial evidence, then each of the arguments listed above apply and on balance, the Department should reject Alternative 2.

Factual Issues That Should Be Corrected

Adding expanded activities and development prior to the NOP date to the baseline as existing conditions to be weighed against project impacts should occur. Also, as stated above, the assumptions regarding future cannabis cultivation licensing applications and potential should be reexamined considering the Phase 3 zoning and other restrictions and timing of the bulk of the prior state applications for current licenses and applications at the County were existing legacy cultivators and not new cultivation sites. In addition, the following factual items should be corrected:

I6-21

1. Mendocino County Code Section 10A.17 no longer requires fencing. While it is true that fencing is desirable by the licensee for security and attractive nuisance reasons, it is no longer a requirement of 10A.17.
2. Waterboard rules for setbacks from wetlands is only 50’ if the cultivator was enrolled in a prior Regional Waterboard Order, such as that which was in

I6-22

I6-23



place for the region in which Mendocino sits and that many of the current Provisional licensees were enrolled in.

| 16-23
| cont.

3. It may simply be the way that the text is formatted that gives the impression that Watershed assessments are required of all Phase 1 applicants, but in fact, only Phase 1 applicants that relocate and that are not in AG zoning and Phase 3 applicants not in AG zoning must conduct the assessment.

| 16-24

4. The MCCR setback requirements for applications received prior to 1/1/20 were 50' from the property line and 100' from a neighboring occupied legal residence. Applications received after 1/1/20 require 100' and 200' respectively to those sensitive receptors.¹⁴

| 16-25

Conclusion

It is excellent that an EIR study has finally been conducted for Mendocino County cannabis cultivation. I appreciate the immense amount of work that this entailed and the state funding that was provided to have it done. The issues raised in this comment letter are not meant to disparage the drafters but are intended to ensure a proper review and analysis are considered for the final draft adopted.

| 16-26

Thank you for your careful consideration of these issues and for you hard work in getting us to this point.

Respectfully,

Hannah L. Nelson

¹⁴ DEIR, 3.12-21 suggests only the greater setbacks apply to all existing cultivation. Existing cultivation that was applied for after January 1, 2020 would need to meet the greater setbacks in accordance with the MCD Policy Memo dated 8/3/23, but applications before 1/1/20 would not. <https://www.mendocinocounty.gov/home/showpublisheddocument/59849/638267621234000000>

Mendocino County EIR

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I am a state provisional licence holder and applicant for a Mendocino County permit.

Having read through the majority of the EIR, I have the following comments:

Please consider how drastically reduced the current impact today's volume of cultivation, microbusiness, manufacturing, and distribution is compared to the large volume of only a few years ago when the original Mendocino ordinance was written. Should we not have used the inception of the Mendocino ordinance as a baseline date?

17-1

Also please note the estimated ratio of 6 unlicensed cultivation to every one that is regulated. This limits the ability of any policies that follow to regulate and protect the environment since most cultivators are not participating in the regulated market. Currently licensed operators are generally some of the most environmentally sensitive actors. Please understand that additional red tape or imposed criteria may lead to the failure of businesses trying to follow regulations while most other businesses are not leading to loss of tax revenue for the county and state.

17-2

Please consider the micro businesses that we have been operating on our land since before proposition 64. When considering land use please allow the most space possible for all small cultivators to transition to micro business license holders reflecting the use types that they have exercised for decades. There should be no additional impact to transition a licence from cultivation to micro business licence.

17-3

Finally, please consider adding verbiage to reflect the agricultural nature is cannabis cultivation. Cannabis is agriculture. Right to farm should apply.

17-4

In summary please:

- consider a start date for analysis at the inception of the Mendocino county ordinance
- limit additional restrictions and compliance for good operators in the regulated market
- ensure Microbusiness licences for current cultivation licencees do not trigger additional CEQA review
- add language affirming the rightful agricultural status of cannabis cultivation

17-5

Virtual Public Comment Meeting on the Draft EIR for the Licensing of Commercial Cannabis Cultivation in Mendocino County - June 04, 2024

Dina Lemke

Good morning. It looks like we have a couple of folks that are attending through a call in basis. We are having a little bit of a technical difficulty here. So appreciate your patience. Just hang on. We're hoping that that we can get this technical glitch taken care of so we can move forward with this meeting today. Stand by, please.

Good morning, everybody. I appreciate your patience. I know that you we have about 5 call in users. We are having some technical difficulties on the Webex platform today. So if you'll give us a couple minutes, we're trying to work this out. So Please be patient and we'll keep you updated. But thank you very much. We know you're here and we will try to get started as soon as possible.

Good morning everybody. It looks like we've found a bit of a work around, so we will get started with this meeting in just a couple seconds. Let us have a chance to get our ducks in a row and we'll be right on with you. Thank you ever so much for your patience. All right, welcome and good morning, everybody.

My name is Dina Lemke and I will be facilitating today's public comment meeting. This is a public comment meeting for the Department of Cannabis Control's draft EIR Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County project. For the record, the date is June 4th, 2024 and it is 10:10 AM. At this time, Kirsten Burrowes, from Ascent Environmental will provide a brief overview of the draft environmental impact report. All right, Kirsten, thank you.

Kirsten Burrowes, Ascent

Hi, everyone. I'm going to provide an overview of this presentation on the phone, so I will just get started. So today we're going to cover some characteristics of the project and introduction to the California Environmental Quality Act, an overview of the draft programmatic Environmental Impact Report, or as you may hear throughout this presentation, the EIR and opportunities on how you may provide input.

So before we start just kind of providing an overview on how to obtain a cannabis license through the Department of Cannabis Control, the first step is to apply for a license with your local jurisdiction and comply with local jurisdiction ordinances.

The next step is to complete an online application with the Department of Cannabis Control, pay an application fee, and respond in a timely manner to any information requests from the Department of Cannabis Control. And then the last step is of course to pay your licensing fee.

As some background to the project, the Department of Cannabis Control and Mendocino County have been working in partnership to support provisional cultivation licensees transition to annual licensure with within the unincorporated area of the county under the California Code of Regulation title 4, section 15002.

A programmatic EIR was prepared to address this transition from provisional to annual licensing as well as to probe programmatically evaluate future cannabis cultivation in the unincorporated area of Mendocino County.

The program EIR will provide environmental review streamlining for actions on annual licenses transition for existing provisional licenses as well As for future new annual license application requests.

So a little bit of an overview of the CEQA process. The purpose of CEQA is to evaluate a project's environmental effects, reduce significant effects where feasible, provide opportunity for public and agency involvement and disclosure and provide an opportunity for informed decision making.

If a project has the potential to result in a significant impact and EIR is prepared and as a little side reminder, a significant impact is a substantial and adverse change in the physical environment.

So a little bit about what CEQA does versus what CEQA does not do. CEQA discloses information about the effects of a project could have on the environment. CEQA identifies mitigation measures. It describes feasible alternatives to the proposed project, and it solicits agency and public input throughout the CEQA process.

CEQA does not require mitigation for existing environmental conditions, it does not advocate for the project under evaluation, it does not require project denial due to significant environmental impacts, and it does not address economic and social issues such as property values.

So a little bit of the CEQA process overview to date. The scoping period was held to gather public and agency input on the scope of the EIR. The Notice of Preparation for the Draft EIR was released last year in August on August 2, and a public scoping meeting was held on August 22, 2023.

Since then, the Draft EIR was prepared and it was released for public review on May 3, 2024. The public review of the Draft EIR is intended to disclose potential impacts and allow for the public to comment.

The Notice of Availability of the Draft EIR was released when the Draft EIR was released on May 3. Today, on June 4, we are having the public meeting and the draft EIR comment period. We have noted on the website that it ends on June 17. However, we may extend that review date depending on this meeting. I know that there was a little bit of access issues, so

please be aware for any updates that would be communicated through the Department of Cannabis Control website on that.

The next step in the sequel process is to prepare a final EIR. The final EIR will include formal responses to comments that are gathered in response to this draft EIR. After that, the EIR will be certified and the project will be considered.

So the EIR format is set up to include an executive summary and introduction, a project description, a chapter that discloses environmental impacts and mitigation measures, cumulative impacts, project alternatives, other sections required by CEQA statute, a section that includes the report preparers and any appendices to the document.

OK Environmental impact areas that were addressed in the draft EIR include aesthetic and visual resources, agricultural and forestry resources, air quality, biological resources, cultural resources and tribal cultural resources, energy, geology, soils and mineral resources, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise and vibration, population and housing, public services, recreation, transportation, utilities and service systems, and finally, wildfire.

The significant and unavoidable impacts that were identified in the draft EIR include the generation of objectionable odors at project and cumulative conditions, impacts to historic resources under project conditions, and greenhouse gas emission increases under project and cumulative conditions.

Two alternatives were evaluated in the draft EIR alternative. Alternative 1 included the no project alternative, which would involve continued operation of existing provisional and annual licensed commercial cannabis cultivation sites and associated distribution uses in Mendocino County. However, no new annual licenses would be permitted. Alternative 2 includes a siting limitation for cannabis cultivation sites outside of the Cannabis Priority Watersheds that are designated by the State Water Resources Control Board.

All right, so today and through the end of the public review period, the Department of Cannabis Control is seeking public input. Verbal comments may be offered today during this meeting and in addition to if you provide verbal comments during this meeting, we're highly encouraging that you also provide written comments and those can be submitted to the contact information provided on the DCC website. I can also go through that contact information now because I know a lot of people are joining over the phone.

So if you do decide to provide written comment, please address written comments to Angela McIntyre Abbott with the Department of Cannabis Control. The address is 2920 Kilgore Road. That is in Rancho Cordova, CA 95670. You may also e-mail any public comments to public comment at cannabis.california.gov. We ask that any comments provided today and in writing, please focus on the adequacy of the draft EIR. And again, please stay tuned for an update from DCC about the end of the public comment review period.

So I think with that, we can open it up if there are any comments. Just a reminder, the comments today, we'll be gathering comments, but we'll take all the comments that are

gathered today and through the end of the public review period and we will formally respond to them in the final EIR. So thank you.

Nina Lemke

Thank you so much, Kirsten. All right, the public comment meeting will now be open to take oral and written public comment by any person interested in the draft environmental impact report for the record to provide written public comment.

I'm going to reiterate the e-mail address for that is public comment at cannabis.ca.gov. For oral comments, the Department will record the public comment meeting and all oral comments will become part of the Environmental Impact Reports administrative record. Please note that any information you provide orally or in writing will be part of the public record. All oral and written comments will be considered by the Department of the in the final Environmental Impact Report.

Today's public comment meeting is a public forum to receive comments on a draft Environmental Impact Report. Please be aware that this public comment meeting is not intended to be a forum for debate or defense of the proposed project or its draft Environmental Impact Report. All comments, whether received in written or oral form, will be considered equally. Therefore, you do not need to resubmit the same comment more than once.

All right, if you'd like to make a comment, please raise your hand by clicking the hand icon next to your name. If you've logged on, but you haven't logged on, do so pressing the star three number If you've called into the meeting. when it's your turn, you'll be set to request to unmute. Each commenter will have 3 minutes to speak with a 30 second warning, and when your 3 minutes are up, your microphone will be muted. Requests will be taken in the order they are received and initially we're going to ensure that each person has one opportunity to speak and if we have time, we will add a second. You can do a second comment as a reminder. Again, all written public comments must be received by June 17. Written comments can be submitted electronically via hard copy.

Please refer to the Department's Notice of Availability for the draft Environmental Impact Report for instructions on submitting written oral comments and stay tuned on our website For more information on this specific next meeting.

So with no further ado, all right, we can go to call in user number three. I've sent you a request to unmute. Call in user #3 There you go.

Steven Amato, Mendocino Cannabis Alliance (MCA)

Hello, can you hear me?

Nina Lemke

Yes, Hi.

Steven Amato, Mendocino Cannabis Alliance (MCA)

My name is Steven Amato, calling on behalf of the MCA, the Mendocino Cannabis Alliance. We have a few general comments we'd like to point out during this verbal.

Nina Lemke

Oh, you dropped off during this?

Steven Amato, Mendocino Cannabis Alliance (MCA)

Am I still here?

Nina Lemke

Yeah.

Steven Amato, Mendocino Cannabis Alliance (MCA)

Sorry, I don't know it. It keeps asking me to raise my hand. So there's a couple of items we'd like to point during this verbal comments, but we will be also submitting written comments with more detailed analysis that we feel is important for this EIR process.

PM1-1

Some priorities that we see here at the MCA is that you need to ensure that the EIR is efficiently transitions people from provisional licenses to annual licenses with a very streamlined process. You know to provide a mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process. If the site specific review requirements and the proposed mitigations which are not feasible or adopted from this draft EIR in order to achieve the objective of transitioning people from our provisional to annual license, there'll be a need for a statutory change to the deadline to meet the requirements. It just won't be possible for people to do these things in time with some of the proposed requirements that are being put set forth here.

PM1-2

As stated by the project objectives, these goals are the main priorities and objectives. These goals, although our other objectives are also just as important. These ones in particular will help to mitigate impacts by keeping people in the licensing system and help toward accomplishing the other listed objectives.

PM1-3

Another item that we feel is extremely important is the baseline look back date should be the notice of the preparation date which was August 2, 2023. The EIR here is proposing mitigations be required before that baseline date in certain instances improperly before the NOP date. You know, some of these things were cannot conducted, you know during the cursor, you know which couldn't be considered now.

PM1-4

And what the baseline means is ensure that the existing conditions including non-licensed are accurately depicted by looking at a license or a new license and hearing to regulated system that can act as mitigation.

And as far as the mitigations or measures need to be achievable and feasible so that the determination of insignificant and unavoidable determinations are maximized. There needs to be specific guidelines to make determinations. Are the mitigations feasible? Are they cost? Are they doable time wise? Are they, do they allow enough time for people to even hire

PM1-5

contractors to accomplish these goals? A lot of mitigations can only be done during certain times of year. And being that we're just starting this draft EIR now and it's not even finalized, it might be difficult for people to even get this accomplished by the proposed date of, you know, January 1st of next year.

PM1-5
cont.

When people when they have to start renewing their licenses have to make sure you have to be able to do that to a state annual rather than no longer be able to do a provisional, which is also another reason why we feel there need to be a change in the statutory change.

PM1-6

One last point is applying mitigations before the NOP or after NOP or for future, you know for people that did changes after the NOP or for future sites. It is unreasonable to study what has already been done. For people who are who have done projects before this NOP date, changes made after the NOP date or for future mitigations required or not feasible to get people from provisional state and annual.

PM1-7

There could be more feasible BMP best management practices or alternatives that are as effective as suggested. The requirements provisional licenses obtained for provisional license seem to be minimized suggesting some of the mitigations. In order for provisional license holders to meet some of the suggested mitigations, it will be necessary for a statutory change to the deadline to meet requirements. Thank you.

PM1-8

Nina Lemke

All right, public comment is now open. If you'd like to make a comment, please press *3 on your phone and I will send you a request to unmute.

Nina Lemke

All right, call in user number two. I've just sent you a request to unmute. Call in user #2 There you go. Go ahead.

Unidentified Commenter 1

Am I being heard?

Nina Lemke

Yes

Unidentified Commenter 1

Good. Just wasn't sure. Thank you very much for this opportunity. Following the last speaker, we'd like to drill down just a little bit more. For many of us who remain with provisional licenses and we've lost over half of those people for primarily economic reasons and bars that were impossible to reach particularly for very small or heritage cultivators. And we are small heritage cultivators.

PM1-9

So what we would like to suggest is that in as much as many of us have practiced regenerative farming for all of our crops, cannabis as well as fruits, vegetables, etcetera, and in every way practiced very best practices keeping abreast of newer ways to protect the soil, the air, etcetera, growing in the sun, not using energy unwisely.

We would like to suggest that there be a provision made that farmers could submit an affidavit outlining in detail of their practices going back as far as they go, back some five years, many 10 to 20 years or more, and have that be considered when we're looking at mitigation. That's needed because as the previous speaker mentioned, most of us are completely unable to hire outside entities to do biological surveys, etcetera. But we do have the generational knowledge and we'd like to be able to submit documentation via affidavit to be considered as we move from provisional to annual. Thank you.

PM1-10

Nina Lemke

Thank you so much. All right. User #14 I've just sent you a request to unmute.

Meghan Durbin, Mendocino County Land Use Consultant

Hello, my name is Meg.

Nina Lemke

Hi, good morning.

Meghan Durbin, Mendocino County Land Use Consultant

My name is Meghan Durbin. I'm a land use consultant in Mendocino County and some of my comments will echo some of the earlier comments made.

I want to reiterate first that the baseline date or the look back date, really needs to be the notice of preparation date to have a variety of different dates based on when various different cultivators and farmers obtained their provisional license dates that spans back until 2018. So over the last six years, just as a matter of logistics and processing, it needs to be one universal date, especially given all of the changes that have happened with regulations and the general tumultuous nature of the industry through this legalization process. So very important that the baseline date is the NOP date of August 2, 2023.

PM1-11

One of the purposes of the EIR is to provide a streamline process both for transitioning the provisional current provisional licensees to annual licenses as well as for future, future licenses. Excuse me, we think, I think that the EIR is missing the mark on streamlining. Many of the mitigation measures create problems as far as timing and cost, as was also mentioned by previous commenters.

PM1-12

I understand that this time is to comment on the adequacy of the EIR, but that goes hand in hand with the Department of Cannabis Controls efforts and what they will or will not be able to do in helping to fund these biological studies and mitigation measures, biological studies that will inform individual mitigation members on different farms. So we really need to look back and really take to heart the streamlining nature of the purpose of this EIR.

PM1-13

As also mentioned before, the mitigations need to be achievable and proportionate. The definition of feasibility is the standard degree of being easily or conveniently done. What this is setting up as far as timing in tandem with the current deadlines of the provisional license system is not feasible. It is not easily or conveniently done based on cost, timing, and other factors.

PM1-14

I think that it would be important to also establish some allocation in the EIR for a substantially in conformance relative to when a farm wants to expand that there is a certain area, not thank you, but there is a relative area that is properly addressed by mitigation measures or whatever it is so that small changes as farmers adapt with each season, each year with this annual crop that they would be able to work within that footprint.

PM1-15

Lastly, one of the other objectives was to make sure that cultivation is conducted in accordance with the laws. In order to do that, this still needs to be streamlined more and made feasible so that you do not make the program so difficult good operators can't get permitted. Thank you very much.

PM1-16

Nina Lemke

All right, we are taking public comment. If you would like to make a public comment, please press *3 on your phone. There we go. Call in user #12 I've sent your request to unmute.

Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg

Hi, thank you. My name is Amy Wynn, I'm calling in from Wind Coastal Planning and Biology in Fort Bragg, And thank you very much for preparing this draft EIR. So overall, I'd like for the preparers and the state to keep in mind that this particular cohort of applicants are really the cream of the crop. They are the best of the best and they are not the gross violators that typically envisioned when people think about, you know, illegal cannabis growth. So please do keep that in mind as we endeavor to bring these folks to from provisional to annual in a streamline process. I agree that this draft EIR is the, you know, misses the mark of.

PM1-17

Meeting that streamlined process goal of the project and I do have some recommendations for how it might be able to be more adequately meet that goal, which does include the pot that please when it comes to biological resources include a or change the potential impacts from no impact to or less than significant to significant and unavoidable.

PM1-18

Specifically for resources that are run to automatic denial if they cannot be avoided, there are some opportunities where best management practices can be utilized to either avoid or minimize impacts as typical mitigation measures.

PM1-19

Specifically for special status plant species, California red legged frog, western pond turtle and state and federally protected wetlands, there should be the ability to utilize these best management practice impact avoidance measures for these species so that even though there might be a potential for those for those items to be impacted, the potential is minimal. So while you can't say that there will be a less than significant impact, the draft EIR should know that they are significant and unavoidable in order to bring this specific cohort of operators to full licensure.

PM1-20

Also to allow for compensation as other types of development such as you know, other agricultural types of development might be able to utilize.

PM1-21

So new topic generator noise reduction. Mendocino County has very few, if any acoustical engineers working within our county. We recommend that the state or the county provide a

PM1-22

list of the most frequently used generators and their design noise levels at full operational speed and note which ones of those generators meet the requirements to commercial tree species. Is there an opportunity through this draft EIR to make a recommendation to this county that 10A.17 be revised to allow for some minimal impact to commercial tree species?

PM1-22
cont.
PM1-23

And lastly, old growth habitat. Please define what constitutes altering old growth habitat. Do does trenching for utility lines constitute alteration or putting in a driveway or shed? Thank you.

PM1-24

Nina Lemke

Thank you. All right, we are open for public comment. If you have a comment, please press *3 on your phone. We will get you up here. All right, call in user #5 I've just sent you a request to unmute. Call in user #5 There you go.

Hannah Nelson

Good morning.

Nina Lemke

Good morning.

Hannah Nelson

This is Hannah Nelson, and I would like to make numerous comments regarding the adequacy of this draft. EIR as previous speakers indicated, the goals some of the goals that were enunciated are not adequately being reflected in the analysis, specifically leading to a serious consideration of analyzing whether or not a statutory extension for the provisional licensing team for Mendocino County cultivators and operators may be necessary.

PM1-25

Specifically, some of the issues in the draft EIR regarding the baseline are quite concerned. First, as several speakers indicated previously, while the draft EIR acknowledges that both non regulated and regulated cannabis make up the baseline, the draft EIR in its later portions when dealing with issues of mitigations, tries to use a date that is not the notice preparation date, which is in fact the accurate legal baseline date that must be used.

PM1-26

In fact, it refers to looking to apply mitigations from the time that individuals had received or licensees and initially received their state provisional license. That is an inaccurate legal standard. There is no authority for applying mitigations to pre baseline dates. There is case law of instances where a delay between the notice of preparation and the study itself may require a different date, but not prior to the base. I'm sorry, the notice of preparation in terms of applying mitigations to activities that have occurred before that.

PM1-26

Additionally, I believe that the utilization of the existing baseline was inadequate in terms of comparison. I'm sorry, comparing the impacts of the existing

PM1-27

Nina Lemke

30 seconds.

Hannah Nelson

Thank you activities with respect to both lawful and unlawful cultivation and its impact on whether or not there was a less than significant impact, potentially significant impact or significant impact, which then in turn affects the mitigations. I have several other topics and I'll raise my hand again. Thank you.

PM1-28

Nina Lemke

Thank you. All right, call, call on user #14 I'm sent just sent you a request to unmute call on user #14 there you go.

Meghan Durbin, Mendocino County Land Use Consultant

Hello, hello. This is Meghan Durbin, land use consultant in Mendocino County. Again, seeing as there are not, there does not seem to be a line for comments, I'm going to expand on my earlier comments, the first being the baseline date. What my comments were referring to. Is that just aside from the legality or aside from the appropriateness, the inappropriateness of using the date of provisional licensing being issued?

PM1-29

The simply the feasibility of being able to for the Department of Cannabis Control and any other agencies to review and process the transition of the provisional in licenses to annual licenses with a variety of different start dates is problematic. This process for these farmers who have been trying to do their best to do right, by the way, the world of the law and what is changing in our in the industry have been waiting very patiently and have been through a very convoluted complex roller coaster of the process. So a simple thing such as setting the baseline date as the NOP date, August 2 of 2023, I could feel it's very important in making sure that the streamlining can actually be achieved in this.

In regard to the streamlining, many of the biological studies that are part and parcel of the mitigation measures or would prompt the mitigation measures, it need to happen in particular blooming seasons throughout the year, through the spring and the summer, early and late spring and summer.

PM1-30

With the way that the provisional licensing dates are right now that they will go, that the whole mechanism will go away as of December 31, 2025, that is problematic seeing as we are already in a blooming season for this year that would push over to the next year.

PM1-31

And there are 623, I believe, provisional licenses in Mendocino County that we need to be transitioned purely as a matter of logistics and the capacity of consultants to do the biological studies, to finish the reports and determine the mitigation members for the farmers to be able to afford any of these efforts and then for any mitigation.

PM1-32

Nina Lemke

30 seconds.

Meghan Durbin, Mendocino County Land Use Consultant

Thank you. The timing just is not sufficient as everything stands right now. So inherently with the way that this is set up currently, there is a lack of streamlining. And that's a problem because that is one of the key goals of this programmatic EIR. Thank you. I will raise my hand again. Thank you.

PM1-33

Nina Lemke

All right, call on user #5 I've just sent you a request to unmute. Call on user #5 thank you.

Hannah Nelson

This is Hannah Nelson again. And moving on to the topic of utilization of the ability to find under Section 15091, either it's, I'm sorry, I keep getting interrupted by a recording on the Webex. The EIR does not utilize the ability.

The draft EIR does not utilize sufficiently the ability to find, under Section 15091 either a significant and unavoidable impact or infeasibility of various mitigations suggested. Request that a better analysis of the significant and unavoidable impacts, particularly with respect to losing licensed operators, should the project not go forward or the project go forward in a manner in which the mitigations are infeasible under Section 15091.

PM1-34

One subject in a three specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report. Those, of course, are the specific items which can be referred to in findings of finding either significant and unavoidable impact or that mitigations are infeasible.

Additionally, Section 15364 defines feasible is capable of being able to be accomplished in a successful manner within a reasonable period of time taking into account the economic, environmental, legal, social and technological factors.

So we believe that this the draft EIR does not leverage the existing factual information has not really analyzed the economic and social subject factors particularly of losing these licensees. If this is not able to, if people are not able to be transitioned and quite frankly, even if future licensing is not permitted.

PM1-35

Additionally, Speaking of not permitted, some of sure some of the alternatives have not been adequately flushed out and additional alternatives not explored. The two alternatives listed do not take into account the factors that I described above, including alternative mitigations and alternative modes of processing annual applications pursuant to a statutory extension.

PM1-36

Nina Lemke

Thank you. I'll make for the all right call in user #12 I've just sent you a request to unmute.

Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg

Thank you preparers. This is Amy Wynn with Wynn coastal planning and biology. Again, thank you.

I'm sorry that we have so few members of the public commenting, but I'm grateful that you're allowing us to comment more than once because this is dense and we appreciate the work you've done in order to, to, to, you know, some more recommendations for helping

PM1-37

this document meet its goals for the state effectively transitioning provisionals to annuals in a streamlined process.

PM1-37
cont.

I think that it's important for the mitigation measures to also consider that with this being an annual crop where the regulations and interpretations of regulations continue to change, where the annual can be shaded out by trees that are nearby.

I think it's important for the mitigation measures to, to, to utilize substantially in conformance as a tool and for to, to, to recommend that analysis, analyze building envelopes, operational envelopes rather than very, very specific footprints as an annual means to, you know, like as the operations needs to change in its footprint year after year. There really needs to be the ability to allow for substantial conformance within a building envelope that has been addressed by any sort of resource impacts analysis. So please, please do consider including that throughout the mitigation measures as a tool for.

PM1-38

So as I spoke earlier about some potential biological impacts that I would like for you to consider being significant and unavoidable. And otherwise we will not be able to meet the goal of transitioning people to annual and especially not in a streamlined manner.

For instance, for the California red legged frog, with the work that we do here on the coast of Mendocino County, there's a significant portion of the South Coast where we are all within the potential migration route of the California red legged frog because they moved from aquatic, aquatic resource to aquatic resource over up to 1.7 miles.

PM1-39

We do not anywhere in this well, there's a little bit of space in this county where we actually have a have room where we're more than 1.7 miles between aquatic features. Therefore, anyone that is proposing develop proposing an operation or has an operation that needs to transition that's within the range of California red legged frog will need to be denied. In this case, significant and unavoidable utilizing best management practices is a tool that really should be considered. And I'll speak again later.

Nina Lemke

Thank you. All right, call in user #14 just sent your request to unmute. There you go.

Meghan Durbin, Mendocino County Land Use Consultant

Thank you. Hello Meghan Durbin again, Wind, coastal planning and biology. There are a number of mitigation measures in the biological mitigation measures that include verbiage stating that the permit shall be denied. This is problematic in many ways, especially for this level of an EIR. And I know that this feeds in with the local regulations, but I don't believe that there should be any reference anywhere in the ER about something being flat out denied.

PM1-40

There are various different things that can mitigation measures that can be established. These are not different protected species or biological resources that we are unfamiliar with or have not interacted with and found suitable mitigation measures for on a variety of different projects throughout the county. So there should be no caveat for a project or an application being denied. And in relation to that, if it is at all possible, there should be some

addressing or some reference in the EIR about the adaptability of the ERR as future local regulations change. PM1-40
cont.

It is common knowledge that our local regulations can otherwise known as 10A-17 are broken and they're not fitting and there are some really problematic issues within those ordinances. PM1-41

We are a small rural county. It is a major lift to change ordinances unfortunately, but this is something that will need to be changed in the future and however there is any way to make this EIR adaptable. Obviously, no one can tell the future, but to make some adaptation for as with local regulations, change is really important to make this again streamlined and feasible for both the existing provisional licensees looking to transfer transition to annual as well as the future licensees so that we can continue to support this industry in our region. Thank you. PM1-42

Nina Lemke

Thank you. All right, call in user #5 I've just sent you a request to unmute.

Hannah Nelson

Thank you for calling on me once again. This is Hannah Nelson and us coastal gals here are just riffing back and forth. So let's stay on the issue of mitigation measures as both Megan and Amy have been discussing. PM1-43

According to the CEQA Portal topic paper on mitigations measures, really the mitigation measures not only seek to avoid the impact altogether, but they could just minimize the impact by limiting its degree or magnitude or rectify the impact by repairing, rehabilitating or restoring. Or reduce or eliminate the impact over time through actions that preserve or maintain the resource or compensate for the impact. PM1-44

And I think that both Amy and Megan have alluded to instances where perhaps a thorough examination of compensatory actions and offsets or alternatives, both in terms of best management practices and other issues have not necessarily been explored in detail as they should be in the draft EIR. PM1-45

Additionally, when imposing mitigations, lead agencies must ensure that there is a Nexus in a rough proportionality between the measures and the significant impacts of the project according to Sequel guidelines, Section 1516, I'm sorry, 126.4 and that has been upheld by case law. PM1-45

In addition to, as mentioned earlier, that all mitigation must be feasible and fully enforceable and all feasible mitigation must be imposed by lead agencies. So I think that with respect to the issue of feasibility, we have a situation particularly as it's applied and this relates back down to the NOP date where the draft EIR is proposing mitigations be applied to activity that's already occurred just as a logical consideration. PM1-46

There's no way to actually mitigate something that's already occurred and actually should be considered part of the baseline. With that said, for those activities that have not yet occurred,

a sensible approach and an important approach is to still make sure that the mitigations are feasible. And once again, referring to my prior comment regarding the factors that can be looked at in terms of the economic, social and other factors.

PM1-46
cont.

Additionally, really we're looking at what whether or not the environmental impact of not licensing folks given and, and certainly the draft does refer to other regulations, but a thorough analysis of the impacts being reduced and findings of less than significance and or mitigations already having been imposed on the program really needs to be more carefully looked at.

PM1-47

Nina Lemke

Thank you. All right, call in user #12 you're up.

Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg

Thank you Amy Wynn again with wind coastal planning and biology. And I believe this will be my last. I believe I'll get on my points and with this one and I want to continue with the California red legged frog example.

PM1-48

In the coastal zone, we are able to utilize impact avoidance measures for our projects for the California red legged frog, which include onsite inspections for the frog, contractor training, calling Fish and Wildlife. If the frog is found on the construction site when you're moving materials. So that those kinds of impact avoidance measures are used all the time on the Southern California coast in the range of California Lake red legged frog and can be transitioned to this this use type as well.

Two questions. Northern spotted owl, if the Northern spotted owl habitat is not being removed, why would a commercial cannabis cultivation site not be permitted? And then my last question is relative to propane use.

PM1-49

I understand the state has prohibition on using propane and I'm wondering about the use of onsite propane tanks remote Mendocino County which almost everybody is in remote resident around Mendocino County. We need to be able to utilize propane when we are not connected to Public Utilities and when we cannot generate our own solar energy due to citing limitations of vegetative shading. Wondering if the state's energy and building code regulations allow for new on site propane tanks typically are two and 250 to 500 gallon tanks. You know, is that something that we can use? We understand that backup generators can use diesel or biodiesel, but do the state regulations that I understand go beyond the cannabis?

PM1-50

Do they allow for onsite natural gas and propane when a property is not connected to Public Utilities and cannot generate their own solar energy due to siding limitations? Believe that does it for me. Thank you very much.

Nina Lemke

Thank you. All right, call in user #14 I've sent you a request to unmute.

Meghan Durbin, Mendocino County Land Use Consultant

Hello, Meghan Durbin again. I believe this is also my last comment. As far as a more specific adequacy of the EIR, there are a number of places in Chapter 3 under environmental impacts and mitigation measures. Of course, there are certain information that is applicable to various different aspects of this section and often it talks about that the Mendocino County cannabis regulations limit commercial cannabis cultivation and nursery sites to 22,000 square feet.

PM1-51

I believe that this sentence is a little bit misleading because as far as I know, only nurseries can be 22,000 square feet. As typical as cultivation, I can be a maximum of 10,000 square feet if you have the right zoning and the right parcel size. So I just feel on the topic of adequacy, this is a little bit misleading because as I understand it, our jurisdiction is one of the places with the smallest Max cultivation canopy and that is really telling.

Also, I want to speak more to the information about illegal farms. While, you know, this information that was determined through a sense studies of aerial imagery was really telling whether or not the one legal farm for every six illegal farms existing today is accurate, whether it's a little bit less, a little bit more, a lot more.

However it is, I believe that that information is very telling as to the state of the industry in our county, what is going on in the regulatory setting and how drastically important it is for the streamlining to be achieved. Mendocino is world renowned for the cannabis that is grown here, and it has been for decades, long before legalization.

PM1-52

But unfortunately, all of our farmers and other entrepreneurs and folks who want to bring economic growth to this county, their hands are completely tied because the farmers are just barely able to survive as they go through this complicated, convoluted process wherein they're not even barely able to think about how they could expand, how we could start to promote agrotourism.

There is a need and a demand. People want to come to our county for the scenic beauty and for the cannabis. They want to be involved with that.

If we can sort out these regulatory issues, we will free all of our farmers, all of our dedicated residents who want to do right by this, this very specific cohort who has been trying to stay in when, as the previous comments are mentioned, actually 2/3 of the original applications have dropped out. There is only about 30 to 40% remaining. And there's a lot of opportunity for economic growth through this, but not as long as they are shackled by the current regulatory situation. Thank you very much for your time today.

Nina Lemke

Thank you. All right, call in number, call in user #5 I've sent you a request to unmute.

Hannah Nelson

Hello, thank you once again. This is Hannah Nelson. Two last points. One is I would ask that the reviewers really scour every section of the DEIR for inclusion of the specific context of the ongoing cultivation that has occurred under licensure.

PM1-53

So the existing provisional licensees and at particular have actually conducted their activities under licensure for all of these years, both at the local and the state level.

And the activities that they have engaged in have been continually approved through renewals, through science amendment approvals, through modifications at the local level, through whatever means necessary. And I don't think that the draft EIR really mentions the context of the impact of the existing already approved activity that has occurred and that no further requirements were enunciated as being relevant, including additional new mitigation so many years after the fact.

PM1-53
cont.

Secondly, with respect to mitigations, I hope that the reviewers can narrowly tailor each suggested potential mitigation that is in fact necessary or desirable once a funding has been made. Particularly, here's an example, there are a lot of assumptions regarding construction activities and the amount of construction and the type of equipment that might be used.

And while I think it's useful to include and be over expensive in the amount of potential instruction when evaluating the impacts, I do think when it comes to applying specific mitigations in this context and in other topic areas that it's important to narrowly tailor the mitigation to the actual impact in that instance.

PM1-54

So for example, requiring somebody to conduct a vibrational study if they're not going to be thank you, if they're not going to be utilizing any equipment in the installation of their constructions that has any vibrational activity would just cause an unnecessary mitigation to be applied to them. So I hope that the review of each mitigation as it's implemented to each specific site specific review is narrowly tailored. Thank you.

Nina Lemke

Great, thank you. All right, call in user number two. I've sent you a request to unmute. Call on user number two. There you go.

Susan

Hello, thank you so much. This is Susan again, and thank you for this opportunity to take a second bite of the apple.

As climate factors and water availability or, you know, continue to change, obviously we need to alter and improve our practices on our farms.

However, we are a remote county and so we request that the state codify us being able to use electronic images and videos rather than repeated visits. Too much gas, too expensive, not necessary in this day and age.

PM1-55

We also would like to see an appeal process where we can share what we're doing in terms of best practice rather than being penalized because we don't exactly match what is in the EIR.

Because again, as climate continues to change and farmers see this first before anybody else, we are on top of it. We are aware of the changes that are needed. And sometimes the EIR

PM1-56

can be a bit punitive and we need to expand a little bit and take a look at what individual farmers and cultivators are doing.

PM1-56
cont.

So thank you again for this opportunity and look forward to working with the state and having them finally understand that we are individuals that many of us have farmed for decades and we're on top of best practices and we want to share that with the state. Thank you.

PM1-57

Nina Lemke

Thank you. All right, Michelle Shot, I've just sent you a request to unmute.

Michelle Shot

Apologize in advance, I had trouble signing on. So I may have, this may have been covered, but in general, I think some of these mitigation measures are kind of overly broad. And I just have concern that that the sites are looked at individually when we're talking about this transitioning and also new license licensees. And I'm going to give you an example that probably doesn't apply to very many people, but it could. ES-9 is talking about protecting historic resources and it's calling for a study done by an architectural historian. So that type of a professional would be very difficult to find in Mendocino County. And there's some, there's others that refer to these kinds of professionals that may or may not be available to us.

PM1-58

That's one thing. But the sense of just tightening it up a little bit and not making things so over broad that it's going to kick people out of the program who have really been striving to do this right. What's happening is you're encouraging the unlicensed grows because they can't survive in the licensed world. And I think we don't want to do that. That's one thing.

PM1-59

And the other thing about the greenhouse emissions, I think we have to be really careful in that as well because these are small farmers that are striving to keep all that reduction in mind when they're building out their cultivation sites. And I think that again, we have to be careful about being over broad in these mitigation measures.

PM1-60

And I guess I was putting too much stuff in the chat because with my chat disappeared, but I will make comments in writing before the 17th. So thank you. That's all I have.

PM1-61

Nina Lemke

Thank you very much, and thank you for bearing with us with some technical difficulties to say. Bill, I've sent your request to unmute. All right, Bill, if you want to raise your hand again, I'll send you a request to unmute. And in the meantime, we'll go back to call in.

Nina Lemke

User #12 I've sent you a request to unmute Paul and user 12.

Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg

Hi, this is Amy Wynn. I didn't realize that my hand was still up. So I, my, I don't really have another comment except that I really, I want to reiterate what, what some of the more recent

PM1-62

commenters have said about this. You know, keep in mind this cohort, they're the best of the best. These are the people that are minimizing their impacts and when, when I, when I request that the, that the EIR, the final EIR change the, the significance level for some of these resources to significant and unavoidable the impact, the potential impacts will still be quite, quite, quite small.

It's just to allow us to utilize some of these more common impact avoidance measures to allow us to utilize compensation, allow us to utilize behavioral changes to minimize impacts. But where there might be a, a minor impact.

However, if we don't have an efficient path towards final licensure for this cohort and it will simply encourage the illegal operators to, to expand and to take over the space that's left by the good behavior behaviors vacating their spaces.

So in that instance, there will be great impact. So I encourage that we all do everything we can to keep this cohort in the game and get them to their final licensure and as streamlined and process as possible. They're the best of the best. The impacts will be in a mole. We just need to find a way to let them do it. Thank you very much. And I, how do I lower my hand?

PM1-62
cont.

Nina Lemke

I'll take care of that. Thank you. All right, Bill, I've just sent you a request to unmute *3. Bill, do you see the request to unmute? I just sent you another one. One more time. Bill, I'm going to try this. You've been sent to request to unmute. You want to accept that request? There you go. We got you.

Bill

Oh, hey, thank you. Thanks for hanging in there with me. I couldn't figure out how to make it work. Yeah. I'd like to comment a little bit on the setbacks that they're being proposed and things like that. You're talking about the 1,000 feet from schools and parks, but yet the only, you know, 50 to 100 feet from residence. And obviously the people who are at the schools in the parks, the families, the kids, they spend a lot more time at their homes. I think, I think I think they deserve the same protection that at their home or more than at the schools and parks.

PM1-63

I comment like to comment on the older issue there too. There's some comments about it being unavoidable smell. One way to avoid is to make sure there's enough distance between them and residents and businesses and things like that. I don't understand how they're going to how you take care of the issue with and myrcene, which is a Prop 65 chemical found in cannabis odor. And that's something that has to should be avoided or the from a health and safety perspective, the people should be protected. So I hope you can address that. And again, one of the mitigations may be distance. Thanks a lot.

PM1-64

Nina Lemke

All right: user #5 I've just sent you a request to unmute.

Hannah Nelson

Hello, Hannah Nelson one last time. I think First off, I just want to express some gratitude for

PM1-65

the difficulty that you all as administrators of this particular Webex session are having to encounter, and your explained patience and kindness towards people who are having difficulty is greatly appreciated.

I would, however, like if there could be an announcement regarding how the public comment period is going to be more meaningfully undertaking, given the technological difficulties and the fact that so many people in rural areas cannot call in. They had to do an online thing and there and they were kind of shut up from that.

I know that some people have gotten in, but I think that it would be important to have some public announcement with respect to how full and robust meaningful public comment period is going to occur given the technological difficulties. But again, great appreciation for the kindness that you've shown and the patients and I'm so sorry that you've had to endure that. Thank you very much.

And yes, if you check on the website, we couldn't really make an announcement during this time frame because we were trying to, we get the opportunity for the folks, about 20-7 people that are on this call. So we do have a, a, a plan in place. If you check the website, we're going to post it this afternoon to ensure that we get everybody's comment on this important issue. So thank you very much.

PM1-65
cont.

Nina Lemke

If there's anyone else that has a comment, actually call in user #5 I've just sent you a request to unmute. Oh, it's just her. Oh, never mind. All right, we're about 11:20. This goes until noon. If anyone else would like to make public comment, the comment period is open *3 on your phone. All right, calling user number two. I've just sent you a request to unmute.

Susan

Hello, this is Susan. Thank you for this opportunity. And as there can be too many more callers, I appreciate being able to weigh in one last time. I'm going to briefly reference an article in this weekend's New York Times. We have lost more family farms in America than ever in America, way more than the dust ball in the 30s. We are just hemorrhaging small family farms.

And please state of California, be aware that whatever the iconic images of the pot farmer, you know, maybe from the past, many, many of us are family farms, small family farms. We are part of a very, very small cohort that is left in the United States. And so we really appreciate that as you go forward, please be flexible in how interpretations are arrived at and allow us to share our knowledge with you. Many of us are second generation and they are third generation farmers as well that are still hanging on, counting on the state to help them go from provisional to annual. So thank you very much.

PM1-66

Nina Lemke

Thank you. Good morning. Just to let you know, we still have public comment period opened for comments on the draft EIR for the licensing of commercial cannabis cultivation in Mendocino County project.

Nina Lemke

So if you'd like to make a comment, please raise your hand by pressing *3 on your phone and I will send your request to unmute and you'll have 3 minutes to speak. Thank you. Hi, Michelle, I've just sent you a request to unmute.

Michelle Shot

This is a question I don't know if you can answer it or not, but after this these comments are made. What happens with these comments does is do you guys take them back and do what with them And then is there going to be another draft released or what happens? That's my that's a question. If you can answer it, I'd really appreciate it. Thank you.

PM1-67

Nina Lemke

Today's public comment meeting is a public forum to receive comments on the draft Environmental Impact Report. Please be aware this public comment meeting is not intended to be a forum for debate or defense of the proposed project or its Draft Environment Environmental Impact Report. All comments, whether received in written or oral form, will be considered equally and therefore you do not need to submit your comments more than once. Comments received will be considered as part of the final EIR.

Nina Lemke

Bill, I've just sent you a request to unmute.

Bill

Yeah. Hi, this is Bill. And again, I apologize for joining a little bit late. I had a little hard time getting in. Can you provide a recap of where to find the information in your presentation? Thanks.

Nina Lemke

All the information will be posted on our website and that's cannabis.ca.gov. You'll be able to see all the information, comments, all the everything that's in that's involved with this.

Nina Lemke

Just to remind everybody, we are having hosting public comment for the draft EIR for the licensing of commercial cannabis cultivation in Mendicino County. If you have a comment, please press *3 to raise your hand and we will call on you for your comment.

Nina Lemke

Good morning. It's about 11:45 and we are taking public comment for the draft DIR of the Licensing of Commercial Cannabis Cultivation and Mendicino County Project. If you have a question or excuse me, not a question or comment, please do *3 on your phone and we will call on you and you can make that comment here.

Nina Lemke

All right, good morning. A 5 minute warning, this meeting will conclude at noon. If anyone has any comments that you'd like to put into public record on the draft EIR of the licensing

of Commercial Cannabis cultivation and Mendocino County Project, please press *3 on your phone and that will raise your hand and I can call on you for comment.

Nina Lemke

All right, it is now 12 noon on June 4t and we will conclude the public comment for the license again Commercial Cannabis Cultivation in Mendocino County Project. Thank you very much everybody for your participation.

Virtual Public Comment Meeting on the Draft Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County – June 20, 2024

Nina Lemke

Good morning and welcome. My name is Nina Lemke and I will be facilitating today's public comment meeting. This is a public comment for the Department of Cannabis Controls Draft Environmental Impact Report for the licensing of commercial cannabis cultivation in Mendocino County project. For the record, the date is June 20th, 2024 and the time is just 10:00 AM. At this time, Pat Angel from Ascent Environmental will provide a brief overview of the draft environmental impact report. Pat Yes, good morning.

Pat Angell, Ascent

My name again is Pat Angell. I am the project manager for the draft, the EIR, working for Department of Cannabis Control. And today we will provide. This morning we'll provide an overview of the draft, the EIR and methods in which you can comment on the draft. The EIR next slide, please.

So the presentation is an overview of the project's characteristics and introduction to the California Environmental Quality acronym CEQA and an overview of the program EIR that was prepared for this project. And providing again a description of how you can provide input both today as well as to the end of the comment period, which was extended to June 24.

So this is an overview of how to obtain a cannabis license through Department of Cannabis control. So apply with the local jurisdiction, comply with the local ordinances. Submit an application to Department of Cannabis Control, pay the appropriate fees, respond to information requests and then upon completion of the application and review by DCC, there is the final license pay upon issuance of the license.

So the state has been working with Mendocino County in partnership to support the provisional license transition into the annual license program is provided for under the code County Code of, excuse me, the California Code of Regulations.

This program, the EIR addressed address this transition from the provisional to the annual license process, to expedite the process and to streamline the process as well as to provide for the opportunity for streamlining future cannabis cultivation license request for the unincorporated area of Mendocino County. Be clear, this is just the unincorporated area of Mendocino County.

So very quickly, what is CEQA? The purpose of CEQA is to evaluate the environmental effects

of a project. In this case, it is the state's activities going from provisional to annual license approvals associated with applications have been submitted to reduce significant effects that are identified associated with a project's environmental effects, provide an opportunity for public and agency involvement and disclosure, what those effects are and provide for informed decision making.

In the case of this circumstance, when there's potential significant impacts identified, environmental impact report is required. It is by far the most robust environmental analysis process that CEQA has to offer. And again, a significant impact is a substantial adverse change to the physical environment.

So it's important to understand what CEQA does and what CEQA doesn't do. As I mentioned before, it discloses the effects of a project that it could have on the environment. It identifies mitigation measures to address those impacts. It also goes through a process of defining alternatives to address impacts of the proposed project. Now there are variations that can be done to the project. And again, the process solicits public and agency input throughout the process to ensure that all issues are being addressed appropriately.

What CEQA doesn't do is it does not require mitigation for existing environmental conditions. For example, if there's already an existing air quality violation issue in an air basin, CEQA does not require the project to fix a pre-existing condition.

CEQA does not advocate for the project under evaluation. It also doesn't require project denial due to significant environmental effects. There are certain findings need to be made in regards to those environmental effects as part of the project approval. It also doesn't address economic and social issues such as commonly brought up property values and general opposition to a project. Not that those aren't important issues, they're just not dealt with in the environmental review process.

So an overview of where we are in this process is a notice of preparation that the draft EIR would be prepared was released back in August 2. We held a public scoping meeting on August 22, 2023. The draft the EIR was released on May 3 of this year. And I just realized we did not update these slides.

So we released a notice of availability noting that the draft EIR was available for public review. This is actually our second hearing to receive comments. There was 1-2 weeks ago. Unfortunately, we were having technical issues, so we scheduled the second one to provide additional opportunity to provide input. This slide is incorrect. Again, the comment period was extended to June 24. Once the comment period is up and we receive all the comments, the finally EIR contains written responses to those comments received and any final edits we need to make to the final EIR.

Then we'll come project certification and after EIR certification then project consideration which is evaluation of the licenses and approval of the licenses to the annual process.

Next slide. So this is an overview of the format of the EIR, the key sections of it. The executive summary is probably by far the best section to start with when you're reviewing an EIR to read that, understand what the impact summary is. And then I always recommend once you read that you have questions about that to go to the individual sections, which is in the environmental impacts and engage measure sections. There's also cumulative impacts that are addressed in the document alternatives, as I mentioned, it also provides a just a couple of other environmental issues that are required under sequence. Next slide.

This is a listing of the environmental issue areas the draft the EIR evaluated, which we can leave this up for a minute so you can completely absorb the information on this slide or there are several points here.

The draft EIR identifies three significant unavoidable impacts, generation of objectionable odors under both project and cumulative of conditions, impacts to historic resources under project conditions and greenhouse gas emission increases due to both project and cumulative conditions.

Next slide, there are two alternatives evaluating the project. The first alternative is the no project that just would continue with the existing provisional annual license sites that already exist in the county. However, there are no new annual licenses issued.

Alternative two is some site limitations for new cannabis sites to basically not be allowed to occur in the Cannabis Priority Watersheds designated by the State Water Resources Control Board. Next slide one more.

So the state is seeking your input on the adequacy of the draft EIR. We are going to be taking public comment today. We also recommend that you provide written comments to Angela and the address that's provided here.

The focus of these comments should be on adequacy of the environmental analysis that's provided in the draft EIR. And again, as I mentioned, my apologies, the slide was not updated, but the comment period ends on June 24, not June 17. With that, I think we are now ready to receive public comments. Thank you.

Nina Lemke

All right, thank you very much. The public comment meeting will now be open to take oral and written public comment by any person interested in the draft Environmental Impact Report for the record to provide written public comment, please submit that to public comment at cannabis.ca.gov.

For oral comments, the Department will record comment. This comment meeting and oral comments will become a part of the Environmental Impact Reports Administrative Record. Please note that any information you provide orally or in writing will be part of public record.

All oral and written comments will be considered by the Department in the final Environmental Impact Report.

Today's public comment meeting is a public forum to receive comments on the draft Environmental Impact Report. This is a public comment meeting and it is not intended to be a forum for debate, to answer questions, or to be in defense of the proposed project or the draft Environmental Impact Report. All comments, whether received in written and oral form, will be considered equally. Therefore, you do not have to submit the same comment more than once.

There is a slide on the screen that tells you how you can make a public comment. But if you'd like to make a comment, please raise your hand by clicking the hand icon next to your name if you've logged into the meeting, or by pressing star three if you've called into the meeting. For this meeting, every speaker will have 3 minutes to speak with a 30 second warning. And to ensure each participant has an opportunity to provide comment, we will initially limit oral comments to one per person.

This is a 2 hour session, so if time allows, participants will be given the opportunity to provide additional oral comments and with that we will go to our first commenter. So if you have a comment, please raise your hand and I will send you a request to unmute. Good morning. Again.

If you would like to make a comment, please raise your hand by clicking on the hand icon next to your name or if you've logged on to the meeting or by pressing star three if you've called into the meeting. Each commenter will have 3 minutes to speak with a 30 second warning. And as a reminder, all written public comments must be received by June 24, 2024.

Nina Lemke

Emerald Law Group. I've just sent you a request to unmute. There you go.

Editte Lerman, Emerald Law Group

Hi. Sorry, this is Editte Lerman. I just wanted to inquire if I'm understanding properly that all of the Gray area is going to make it cannabis prohibited from being cultivated in those areas. And then if that's the case for licenses that already exist in those areas, that would be potentially would, would they lose their licenses, I guess is my question. And also there's entire like cities and counties that are included in that, or maybe not entire counties, but entire areas like Potter Valley and Redwood Valley. And so I'm, I'm just concerned about that. Thank you.

PM2-1

Nina Lemke

Good morning again. If you would like to make a comment, please raise your hand by clicking the hand icon next to your name if you've logged into the meeting, or by pressing star three if you've called into the meeting. All commenters will have 3 minutes to speak for the 30 second warning and Emerald Law Group. I've just sent you a request to unmute. There you go.

Editte Lerman, Emerald Law Group

Hi, sorry looking at what I'm seeing as alternative one in the DCC Mendo cultivation DEIR meeting 6.20.24 14 out of 18 it says alternative one: No project continued operation of existing provisional and annual license commercial cannabis cultivation sites and associated distribution uses in Mendocino County. However, no new annual licenses. That doesn't really make sense.

If your intention is that people who have provisional will be able to get annuals, and especially folks in Mendocino County that have already applied for annual licenses but haven't received them. I think those people should definitely still get their license. Some of them are years and years into attempting to get that license.

And to say no new annual licenses implies that provisional licenses can't convert to annual licenses, that people who have already applied for annual licenses but don't have them yet, which is the majority of the license holders in Mendocino County. There's too much ambiguity with that language and it should get changed. Thank you.

PM2-2

Nina Lemke

Thank you. Good morning everybody just want to make sure that you know if you'd like to make a public comment, please indicate that by raising your hand, clicking on the hand icon next to your name if you've logged into the meeting or by pressing star three if you've called into the meeting.

If you have a comment, you will have 3 minutes to speak with a 30 second warning and each participant will have one opportunity to speak on a on to comment initially and looks like we'll have plenty of time if you want to make a second comment, so we'll raise your hand if you have a comment. Thank you.

Nina Lemke

Zee Handoush, I've just sent you a request to unmute. There you go.

Zee Handoush

Hello. I really didn't have a question. I'm just listening in, but I don't hear anybody speaking. So I'm, I'm just kind of pushing buttons here to see what's going on. So, I guess there is something going on, but I haven't heard anybody speak yet.

PM2-3

Nina Lemke

If you would like to make a public comment, please indicate by raising your hand by clicking the hand icon next to your name. If you've logged on to the meeting by pressing star three. If you've called into the meeting. All commenters will have 3 minutes to speak with a 30 second warning. We are taking public comment. Anyone interested in making a public comment on the draft environmental Impact report, please do so at this time. Thank you.

Emerald Law Group I've just sent you a request to unmute Emerald Law Group.

Editte Lerman, Emerald Law Group

Also I happen to be a property owner in Mendocino County and I guess I came really late to the game with all the hurdles to buy a multi-million dollar piece of property and planning to build cannabis businesses.

PM2-4

But with the burdens that are being put before me, I thought my understanding was that this report was going to make it so that we could actually move forward in the permitting process and that the county would issue it. But it, it just seems like there's so many burdens we're, we're never going to be able to move forward. And I, I don't understand it. And I'm really interested in a nursery cultivation permit. And there's four, only four licensed annual licenses for the nursery permits in Mendocino County with like 63 approximately nursery licenses, maybe even less than that.

PM2-5

So even less than 10% of the operating nurseries in Mendocino County are even having annual light or have annual licenses versus provisional. And so this report, my understanding of it is that we're not going to be able to move forward with our property because the burdens are too high. Only four nurseries in Mendocino will be able to operate as there's no plan to continue issuing provisional licenses in the near future. And this just seems untenable. And then I have to look at our clients of our business who have been fighting for months, year and years and they have no path forward to licensing. And I just think this is unreasonable. Thank you.

Nina Lemke

Emerald Law Group. I've just sent you a request to unmute.

Tiffany Kowalski, Client of Emerald Law Group

Hello. My name is Tiffany Kowalski and I am a prospective employee of cannabis businesses and also a client of Emerald Law Group. And I have watched your bureaucratic government stand in the way of process of progress in this county for years. And I think that it is no less than gatekeeping something that should be easier.

I see other government programs doing handouts and trying to make it easier for businesses to start in this county. And I don't see you guys doing that. I see you constantly putting up one hurdle and another and making it really impossible for the common man who's bringing this plant here for medicine for people and making it impossible for them to actually do that because you're too busy trying to collect your profits.

PM2-6

Removing your ability, like the responsibility of the county to provide environmental like claims towards getting our properties actually able to be up and functioning to your standards is, is making it even more difficult and it will remove that much more people if the point of this industry is not to just continue making it harder and harder for people to succeed.

You've watched mom and pop grows constantly be shut down and completely ruined families who have been in this industry for decades, and you should be offering people help and easier ways for them to access this to make it more realistic for them to start their businesses because otherwise all you're going to be doing is ending them. Thank you.

PM2-6
Cont.

Nina Lemke

Thank you. If you'd like to make a comment, please raise your hand by clicking on the hand icon next to your name if you've logged on to the meeting, or by pressing star three if you've called into the meeting. All commenters will have 3 minutes to speak with a 30 second warning. If you would like to provide written comment, please do so by submitting your comment to Public comment at cannabis.ca.gov. We will be taking public comment through June 24, 2024.

Nina Lemke

Emerald Law Group, I have just sent you a request to unmute.

Leon Acosta, Emerald Law Group

Hi, this is Leon Acosta again with the Emerald Law Group. And I was just looking at the numbers and basically for the, if you look on the Cannabis Control Department's dashboard of financial numbers, they're saying that in the time period they're showing, which I believe is a year, that \$32 million worth of clones have been sold in the state of California. And I was looking in Calaveras County about a week or two ago and there was an illegal bust of a nursery that has doing 30 that was doing \$10 million a year worth of clone sales.

So, you know, it's no joke or no, no like hidden fact that almost every report that you read, whether you're looking at the comments section for this report here and the Mendocino County Sheriff's Department is saying that there's so many illegal cultivations going on.

PM2-7

Well, why? Because legal cultivators can't even start, you know, to start for any of these cultivation, for any of these cannabis products that are being sold like big pens or edibles or anything like that. It starts with the cannabis plant.

So that starts with the nursery. And if nurseries can't get licensed, how can we ever get rid of the illegal market? I mean, it seems like this agency is just asking the illegal market to flourish more and more. And that's my comment.

Nina Lemke

Thank you. If you'd like to make a comment, please raise your hand by clicking on the hand icon next to your name if you've logged on to the meeting, or by pressing star three if you've called into the meeting. All commenters will have 3 minutes to speak with a 30 second warning. Alternatively, if you'd like to provide written comment, you can do so by submitting

it to public comment at cannabis.ca.gov. We take a public comment through June 24, 2024. Thank you.

Nina Lemke

If you would like to make a comment, please do raise your hand by clicking the hand icon next to your name if you logged into the meeting or by pressing star three if you've called into the meeting. All commenters will have 3 minutes to speak with a 30 second warning. Thank you.

Nina Lemke

If you'd like to make a comment, please raise your hand by clicking the hand icon next to your name if you've logged on to the meeting by pressing star three. If you've called into the meeting. All commenters will have 3 minutes to speak with a 30 second warning, and if you'd like to provide written comment, please do so by submitting that to public comment at cannabis.ca.gov. This comment period will be open until July 24, 2024.

Nina Lemke

All right, we have 5 more minutes in this public comment period. If you would like to make a comment, please raise your hand by clicking on the hand icon next to your name if you've logged on to the meeting, or by pressing star three if you've called into the meeting. Commenters will have 3 minutes to speak with a 30 second warning. And if you'd like to provide written comment, please do so at public comment at cannabis.ca.gov.

Nina Lemke

Thank you for attending this public comment meeting on the Department's draft Environmental Impact Report for the Licensing of Commercial Cannabis Cultivation in Mendocino County project. Please remember that the Department is still accepting written public comments through June 24th, 2024. Have a great day. Thank you.