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November 17, 2021

VIA EMAIL ONLY (PLEASE CONFIRM RECEIPT

County of Humboldt
Humboldt County Planning Commission
Hon. Alan Bongio, Chair
Planningclerk@co.humboldt.ca.us

Humboldt County Planning Department
Attn: John Ford, Planning Director
Cliff Johnson, Supervising Planner
Email: jford@co.humboldt.ca.us;
cjohnson@co.humboldt.ca.us

Re: **Comments Concerning Cannabis Permitting Discussion**
(Commercial Cannabis Permitting Program Under the CMMLUO and CCLUO; Planning Commission Agenda Item E.1.)

Dear Chairman Bongio, Honorable Members of the Humboldt County Planning Commission, Director Ford, and Mr. Johnson:

We are again writing on behalf of Citizens for a Sustainable Humboldt ("CSH") and the Northcoast Environmental Center ("NEC"), respectfully submitting the following comments to contribute to the Cannabis Permitting Discussion. The following comments address assertions made in the staff report for the above-referenced agenda item (the "Staff Report"). In response to CSH and NEC's narrowly focused and substantiated comments concerning requirements and recommended approaches for the scientific investigation of potential groundwater hydrologic connectivity, the Staff Report presents an abbreviated defense of prior investigations of groundwater, established caps on permits by watershed, and assurances that the County of Humboldt ("County") will finally retain a hydrogeologist to make recommendations on a subject of long-standing community concern. The issue of impacts associated with cannabis groundwater demand is made all the more dire in the context of an ongoing severe drought and worsening hydrologic conditions due to climate change.

The staff report also raises a number of tangential issues related to commercial cannabis projects, including the adequacy of access roads, cumulative impacts to habitat and wildlife connectivity, and electricity supply and infrastructure. This is unsurprising, since the public, other agencies, and the County itself have all previously acknowledged the potential for significant impacts in each of these areas. While these other issues are also problematic, in this era of increasingly severe droughts and longer and more dangerous fire seasons, CSH and NEC's November 3rd letter was narrowly focused in order to highlight and spur responsible action on an important issue: the unstudied and unmitigated direct, indirect, and cumulative impacts to

surface waters and biological resources caused by cannabis-related groundwater use. The tangential issues raised in the Staff Report divert from this issue. However, to correct the record, we are compelled to address a number of inaccurate statements in the Staff Report concerning these other issues.

I. The Staff Report Fails to Address, in a Substantiated and Detailed Manner, the Comments Concerning the Potential for Interconnected Groundwater Used for Permitted Cannabis Cultivation to Impact Surface Water Features and Associated Biological Resources.

On November 3, 2021, CSH and NEC submitted comments concerning the potential direct, indirect, and cumulative impacts of groundwater pumping for commercial cannabis projects – the comments supplemented attached technical comments of Mr. Barry Hecht, a certified hydrogeologist with Balance Hydrologics.[1] As we stated in the letter submitted on November 3rd, "Mr. Hecht's analysis of the deficiencies of the Rinehart Engineering memo [prepared for the approved Platinum King project] and his recommendations for improved analysis are intended to provide useful information for project applicants, County planners, and decisionmakers."

The comments submitted on November 3rd addressed only a single issue of pressing concern: "the heavy reliance on groundwater by the rapidly growing commercial cannabis industry within the [County] and the potential for acute direct and widespread cumulative impacts such reliance may cause to the extent project wells are hydrologically connected to surface waters." In response, the Staff Report prepared for the Commission's consideration provides very little information and analysis concerning the issues at hand – i.e., the methodology available to (1) scientifically and transparently determine hydrologic connectivity between groundwater supply wells and surface water features and (2) properly analyze related impacts caused by pumping. Instead, the Staff Report raises a number of tangential issues, such as the adequacy of access roads, cumulative impacts to wildlife habitat connectivity, and electricity supply for cannabis projects.

At the meeting on November 4, 2021, Director Ford promised the Planning Commission that staff would prepare a "formal response" to the letter we submitted on November 3rd. Instead, Staff has prepared and presented a Staff Report that does not squarely address issues raised in CSH and NEC's letter and in Mr. Hecht's letter.

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[1] *See* CSH and NEC's letter, dated November 3, 2021; *see also* Exh. A to CSH and NEC's November 3rd letter – Hecht, Review of Hydrogeologic Connection Investigation Memorandum Prepared for Platinum King Commercial Cannabis Project (Humboldt County, PLN-2018-15196), incorporated herein by reference.

A. CSH and NEC Intend Comments to be Helpful, so that Analysis of Impacts is More Transparent, Scientifically Based, and Supported by Evidence.

As explained in the letter sent on November 3rd, CSH and NEC intended their supported comments to provide helpful information to the County to improve the investigation of potential groundwater hydrologic connectivity. Rather than constructively considering the supported recommendations offered by Mr. Hecht, a qualified expert, staff have instead simply defended the sufficiency of prior analyses of groundwater connectivity with unsupported generalizations and have promised stricter scrutiny down the road.[2] The Staff Report utterly fails to respond to the very specific comments and recommendations made in Mr. Hecht's letter.

In his letter, Mr. Hecht recommended eight approaches for investigating and reporting on hydrologic connectivity of a project's groundwater wells that can be used in combination, depending on the setting.[3] As we previously commented, "[u]tilizing these approaches as the conditions require will result in more sound and transparent analyses at the project level and can help inform a watershed level assessment."

Rather than thoughtfully considering the recommended approaches, the Staff Report reflexively defends the prior analyses concerning wells and ignores the recommendations. However, upon closure scrutiny and review of the available evidence, there is limited factual support for the adequacy of groundwater hydrologic investigations. As Mr. Hecht stated, if there is additional factual support for the applicant's consultant's conclusions concerning potentional hydrologic connectivity, or to staff conclusions on this important issue, then such support should be presented to the public and decisionmakers in staff reports. Instead, many staff reports include only conclusory statements concerning hydrologic connectivity.[4]

B. The Staff Report Glosses Over the Groundwater Issues Raised in the November 3rd Letter.

The Staff Report claims that the CMMLUO and the CCLUO "focus on the distinction between a diversionary source of irrigation and a non-diversionary source of irrigation." This explanation concerning diversionary sources ignores consideration of CEQA's requirement to analyze the environmental impacts of groundwater use. A well that may not be "diverting" from a surface water source may nonetheless be reducing the flow of surface waters by

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[2] *See* Staff Report, p. 4, discussion under "Water Resources." CSH and NEC request a public process, with the opportunity for community input, when the County establishes "a more solid programmatic approach to the analysis of wells," as assured in the Staff Report.

[3] *See* Exh. A to CSH and NEC November 3rd letter, pp. 9-10.

[4] *See, e.g.*, staff reports listed in Attachment A: Summary of Randomly Selected Projects Dependent Upon Wells For Which Little or No Analysis of Potential Hydrologic Connectivity Was Provided Prior to Approval.

intercepting groundwater.[5] Such interception of seeping groundwater has the potential to cause environmental impacts, both individually and (especially) cumulatively.

A cursory review of staff reports for various approved cannabis projects shows that many projects do not provide any support for the conclusion that groundwater wells are not hydrologically connected to surface waters. Attachment A to this letter provides a snapshot of only a random few of the many commercial cannabis projects dependent upon groundwater wells, where the County required little or no up-front analysis of hydrologic connectivity prior to approval.

In light of the information provided in the Hecht letter and the recommended approaches for in-depth analysis, and comparing these approaches with the analyses accompanying the staff reports for many already approved commercial cannabis projects, CSH and NEC recommend that the County substantially increase the level of investigation and explanation with respect to the potential for groundwater wells for proposed commercial cannabis projects to be hydrologically connected to surface waters and, when there is a potential connection, to analyze the potential for those projects to cause associated environmental impacts both individually and cumulatively.

The Staff Report points to its prior programmatic analysis as establishing an accurate environmental baseline by which to measure the impacts of the many commercial cannabis projects that now predictably come before the Zoning Administrator and Planning Commission every meeting. However, the underlying programmatic analysis was far from "robust and thorough." The IS/MND prepared for the CMMLUO includes a perfunctory analysis of potentially significant impacts to hydrology and water quality. This analysis considered scenarios that "could" result in increased groundwater pumping, but it did not consider the widespread reliance on groundwater that dominates cannabis permits issued over (at least) the past year.[6] The CMMLUO IS/MND assumed:

> This potential impact is mitigated by requirements in the Order to implement water conservation measures, irrigation at agronomic rates, and sizing of operations in consideration of other water use by operations in the same watershed. The Order requires all Tier 2 and Tier 3 dischargers to document monthly water use and to develop an approach to ensure that water use is not impacting water quality. Tier 1 dischargers must meet cultivation size restrictions and implement conservation practices. Such provisions of the Order mitigate

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[5] *See generally* USGS Circular 1376, Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow, available at: https://pubs.usgs.gov/circ/1376/pdf/circ1376_barlow_report_508.pdf, accessed 11/16/2021.

[6] *See* Exh. 1 – CMMLUO IS/MND, p. 23, with highlighting added for ease of reference.

> the potential to substantially deplete groundwater supplies to a level that is less than significant.[7]

In light of the unrestricted permits issued under the CMMLUO for cannabis projects dependent upon groundwater, which require neither a pumping forbearance period nor an annual absolute cap on groundwater pumping, the above statement does nothing to ensure cumulative impacts to groundwater (and potentially hydrologically connected surface waters) are less-than-significant.

The Final EIR for the CCLUO did not consider the issue of hydrologic connectivity between cannabis project wells and surface waters beyond the potential for project wells to adversely impact the wells of neighboring property owners.[8] This narrow focus omits from consideration the potentially significant impacts to biological resources and habitat that may be caused by pumping hydrologically connected groundwater. Groundwater from higher elevations that is discharged to surface waters through springs, seeps, wetlands, tributary springs, and rivers is a common hydrologic feature in the County.[9] Intercepting this groundwater in wells located well above the floodplain, while technically not a "diversion," may nonetheless reduce surface water flows, especially during the critical summer months.[10]

The Staff Report does not address the highly plausible scenario raised in comments by CSH and NEC: "[w]hen a transparent and scientifically sound analysis of the groundwater supply reveals uncertainty of the planned groundwater supply in the long-term, the required analysis under CEQA must identify secondary/alternative sources of water, identify any permits that would be required for such sources, and analyze the environmental effects that would stem from utilizing those sources."[11] Staff simply do not explain how project-level impact analysis should address the uncertainty inherent in relying on unproven groundwater supplies in areas outside of known and regulated groundwater basins.

The Staff Report refers to the watershed cannabis cultivation cap distribution as if it is somehow proof that the cannabis permitting program is not having a cumulative impact on watersheds. However, what is not explained is that the County has never conducted a

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[7] *See ibid.*

[8] *See* Exh. 2 – CCLUO FEIR Excerpt re Water Supply Impacts (Master Response 5), revised analysis, p. 2-21 [discussion concerning cumulative impacts to groundwater addressed through Mitigation Measure 3.8-3].

[9] *See* USGS (prepared in cooperation with the California Department of Water Resources), Water-Supply Paper 1470, Geology and Ground-Water Features of the Eureka Area Humboldt County, California (1959), p. 14, available at: https://pubs.usgs.gov/wsp/1470/report.pdf, accessed 11/15/21.

[10] *See* UC Paper, Dillis, et al., Cannabis farms in California rely on wells outside of regulated GW basins, 2021, available at: https://iopscience.iop.org/article/10.1088/2515-7620/ac1124, accessed 11/15/21.

[11] *See* CSH and NEC comment letter, dated Nov. 3, 2021, p. 5, citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard Area Citizens*).

watershed-level analysis of the capacity for cannabis cultivation for the purpose of establishing its caps.[12]

The Staff Report also does not address comments concerning the statutory obligation under CEQA and under the Public Trust Doctrine for the County to "independently" review and analyze the adequacy of the environmental impact assessment performed for land use development projects. Rather than accept the unsupported representations of applicants concerning groundwater demand, well productivity, sustained yield, and hydrologic connectivity (among other things), the County must independently review and analyze the water supply for all proposed projects and ensure direct, indirect, and cumulative impacts from groundwater use are disclosed and either avoided or mitigated.

II. The Staff Report Raises Tangential Issues Concerning the County's Commercial Cannabis Program.

A. The Staff Report Touts the Environmental Review Process for Commercial Cannabis, Ignoring the Glaring Shortcomings.

The section of the Staff Report entitled "Review Process" baldly asserts the County's "review process is a [sic] very robust and thorough." The Staff Report does not acknowledge, however, that the County agreed to stop taking applications under the CMMLUO after being successfully sued over the IS/MND prepared for that regulatory program.[13] Would the County have prepared an EIR for the CCLUO if it had not been successfully challenged over the 57-page conclusory IS/MND prepared for the CMMLUO?

On an important procedural issue, this portion of the Staff Report does not explain why, on a routine basis, County planning staff schedule the approval hearings for various projects requiring an IS/MND for immediately after the CEQA comment period, frequently releasing the staff reports for projects before receiving and considering public and agency comments. If County planning staff make such an effort to coordinate and have such a "robust and thorough" process, why compromise public and agency involvement in the CEQA process by scheduling approval hearings immediately after the close of public comment periods and before the submitted comments can be considered by staff and included in the agenda packet to Planning Commissioners? At a minimum, staff reports for commercial cannabis projects up for consideration should not be released until after the close of any applicable public comment period on the environmental review document and all timely submitted comments should be presented to decisionmakers along with the respective staff report (public comments should

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[12] *See* Staff Report, p. 9, portion of Resolution 18-43.

[13] *See* Exh. 3 – Stipulation and Order of Settlement w-o Attachment C: Revisions to CMMLUO [litigation concerning the CMMLUO IS/MND resulted in a sunset date for applications processed under that ordinance and more robust analysis for the CCLUO].

not be added after the release of staff reports in often numerous, random, and sometimes incomplete "supplementals").

B. The CMMLUO IS/MND, the CCLUO EIR, and Subsequent Project-Level Review Routinely Rely Upon Inaccurate, Unsubstantiated, and Likely Inflated Environmental Baseline for Environmental Review

The determination of existing (or baseline) conditions is an important aspect of an EIR because, without an adequate baseline description, an accurate analysis of a project's impacts and the development of proper mitigation measures may be impossible.[14]

As the Staff Report states, the County's cannabis permitting program leans heavily on the factually unsupported idea that Ordinances 1 and 2 will result in a net benefit to the environment over baseline conditions. The section entitled "Environmental Review" points to the programmatic CEQA analysis conducted for the CCLUO and CMMLUO when asserting that individual projects are evaluated for consistency with the program level environmental review. This section, however, does not acknowledge that the IS/MND prepared for the CMMLUO and the EIR prepared for the CCLUO do not address many of the problematic issues concerning access roads, water supply, and cumulative impacts to biological resources. Furthermore, these program-level analyses did not establish with any degree of precision an environmental "baseline" against which it is possible to accurately measure the impacts of the commercial cannabis permitting program as implemented under Ordinance 1.0 and 2.0.

The entire CMMLUO IS/MND is a scant 57 pages long (excluding references).[15] This perfunctory analysis did not investigate, much less describe the existing environmental baseline with respect to commercial cannabis cultivation.[16] It simply assumed that a large quantity of existing unpermitted cannabis operations would seamlessly transition to legal operations without expansion and therefore without increasing environmental impacts.

The CCLUO EIR also did not establish an accurate environmental baseline with respect to existing unpermitted cannabis cultivation activities. Instead, it assumed a high level of existing

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[14] *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120-124 (*Save Our Peninsula Com.*).

[15] Because this perfunctory analysis is so short, we include it in its entirety as Exhibit 1 to this letter.

[16] *See* Exh. 1 – CMMLUO IS/MND, p. 6 [describing, with no factual support or referenced studies, a "landscape [that] is part of the baseline condition which will be brought into compliance with the future provisions of the MMLUO (Phase IV) which will encourage the careful siting and management of commercial medical cannabis cultivation sites using best management practices for erosion control and protection of water quality, found within existing [and new] permitting paradigms"]; *see also ibid.* at pp. 7 [discussing, but not quantifying, baseline cannabis cultivation], 10-12 [same], 18 [same], 26 [same], 29 [same], 31-34 [same]. The CMMLUO IS/MND does not rely upon any substantial evidence supporting unquantified baseline assumptions.

unpermitted cannabis cultivation.[17] This EIR reported that "[a]necdotal information received from observations by local regulatory and enforcement agencies suggests a pattern of rampant growth in the industry during the past decade, with some estimates of as many as 10,000 to 15,000 cultivation operations currently in existence."[18]

The CCLUO EIR includes two project objectives of the CCLUO:

- improve baseline environmental conditions in the County by removing existing cannabis cultivation operations from environmentally sensitive locations and relocating them to areas with public services; and

- relocating existing non-permitted cannabis related activities into more centralized locations with better infrastructure (e.g. nurseries, community propagation centers, processing centers).[19]

The CCLUO EIR assumed that transforming the cannabis industry from illegal to legal would result in improved environmental conditions. It did not consider the possibility that existing cannabis operations would expand when attempting to seek a permit. Applicants for commercial cannabis project have multiple incentives to exaggerate the square footage of so-called "existing" cultivation. For example, a cost/benefit analysis may indicate that the permit process, environmental review, compliance and other cost imposing burdens require a larger cultivation footprint in order to earn sufficient revenue for the venture to be worthwhile. In most cases, the size of "existing" cannabis operations does not appear to be substantiated. Rather than rely solely on the uncorroborated representations of applicants concerning pre-existing cultivation, the County must independently verify the area of cultivation.

In addition, even where there has been existing cultivation, many applicants seek to expand both the square footage of their cultivation space as well as the number of growing cycles per year. Where once an outdoor grow had only one cycle per year, a new mixed light grow could cultivate three, four, or possibly more cycles per year. Both types of expansion implicate increased water demands and other types of environmental impacts. It is incumbent upon the County to assess the direct, indirect, and cumulative impacts of all types of cultivation expansion. It can only do so accurately if it independently verifies existing cultivation areas at the project level and assesses impacts associated with any increase in size or the number of annual cultivation cycles.

The assumed baseline conditions must also take into consideration the cessation of illegal cannabis operations that has occurred as a result of the County's abatement program

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[17] *See* CCLUO Draft EIR, pp. 2-28, 3-2.

[18] *See id.* at p. 2-28.

[19] *See* CCLUO Draft EIR, p. 2-14.

and as a consequence of the high costs associated with transitioning to a permitted operation. An accurate environmental baseline must consider the current regulatory context, market environment, and industry trends, not the setting that existed in 2012 through 2015.

C. The Cannabis Permitting Program Suffers from Chronic Insufficient Evaluation of Access Roads.

The Staff Report points to provisions of the CMMLUO to assert that there "are no specific road requirements" and that the County has "a wide degree of discretion in considering the impact of a project on the safety of the existing road network and the adequacy of the road to serve the project." These assertions are both misleading and inaccurate.

The CMMLUO IS/MND simply assumed compliance with applicable access road standards.[20] It did not analyze at any level the potential for projects seeking permits to have a difficult time complying with the regulatory requirements (including SRA Fire Safe Regulations) because of their remote location and substandard single-lane access roads.

> In cases where subject to discretionary permitting, project approval may require improvements to existing public and private road systems to enable better compliance with access requirements and standards included under state and local regulations for State Responsibility Areas. Forms of common project-level mitigation may include road widening, turnouts, surfacing, grade correction. As baselines activities come into compliance with the MMLUO, existing and potential impacts are likely to attenuate under the mitigation and other compliance measures. Therefore, the impacts are less than significant with mitigation incorporated.[21]

Repeatedly in the analysis, the County relied upon this assumption to determine that the CMMLUO, as a program, would not cause significant environmental impacts. For example, with respect to potential impacts to public services, the CMMLUO IS/MND states:

> Under the draft ordinance, larger cultivation operations will be subject to discretionary permits where neighboring land owners will be given an opportunity to comment and be notified of pending permit decisions. This will provide opportunity for dialogue and mitigation through careful siting and operational restrictions to address potential impacts on public services. It is anticipated that through mitigation, the impacts on public services including fire

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[20] *See* Exh. 1 - CMMLUO IS/MND, p. 26, with highlighting added for ease of reference.

[21] *See id.* at p. 31.

> protection, police protection, schools, parks, and other public facilities, will be reduced to a less than significant impact.[22]

The assumptions made in the above statement and elsewhere in the CMMLUO IS/MND have proven inaccurate. Many approved projects do not meet the assumed "careful siting and operational restrictions" that have "address[ed] potential impacts on public services." Instead, a number of large cultivation and processing facilities have been approved in remote wildland areas with access roads that do not even currently meet a Category 2 standard. However, when it comes to project-level analysis of access road sufficiency, staff use their presumed wide discretion to allow a sub-Category 2 road to pass for a Category 4 road or its functional equivalent.

Similarly, when certifying the EIR for the CCLUO, the Board of Supervisors approved a finding that relies on the assumption that all commercial cannabis projects approved under "Ordinance 2.0" would meet the "Category 4 or equivalent" access road performance standard to support its conclusion that impacts to public services, including wildfire response, would be less than significant.[23] The Final EIR for the CCLUO made the following assumptions concerning compliance with Category 4 access road standards:

> [W]here access to a site is provided by roads not meeting the Category 4 standard, the commercial cannabis operation would be subject to a Special Permit and preparation of a report prepared by a licensed engineer evaluating whether the design, condition, and performance of all necessary road segments are currently capable of supporting increases in traffic volume created by the site, in addition to the existing traffic using the road(s). The report would detail all substandard conditions and prescribe measures that would be taken to achieve compliance with the relevant road standards and objectives, or the same practical effect.[24]

Further, in response to public comments, the County asserted in its Final EIR for the CCLUO that "[t]he DEIR identifies that existing and future commercial cannabis operations would be required to meet the County's Category 4 road standards and the emergency access standards set forth in Chapter 10 – Fire Safe Regulations of the County Code."[25] The analysis of

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[22] *See id.* at p. 29.

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

[24] *See* Final EIR for CCLUO, Revisions to the DEIR, p. 3-21 – 3-22; *see also id.* at p. 2-23 [response to comment 01-10]. Excerpts from this 556-page document are not attached – the County has access to its own document.

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

commercial cannabis project impacts to public services relied upon adherence to this performance standard.

The plain language of both SRA Fire Safe Regulations, § 1273.01, and the County's Fire Safe Ordinance, § 3112-3 clearly call for Category 4 roads or their functional equivalent. When applicants "self certify" their access roads as the functional equivalent of a Category 4 road, as the County allows, they do not explain how a single-lane road can satisfy the requirement for simultaneous evacuation egress and first-responder ingress.

The County's SRA Fire Safe Regulations may allow for a minimum Category 3 standard in mountainous areas (but not Category 2), if deemed at least equally protective as the state fire safe standard. In our review, many of the cannabis projects approved by the County rely on access roads that do not even meet the minimum 16-foot wide Category 3 standard. The SRA Fire Safe Regulations includes specific provisions for processing exceptions to the mandatory access roads standards.[26] However, in our review of staff reports, we are unaware of any commercial cannabis projects that have been processed under the exceptions to the Fire Safe Regulations.[27]

Given the 16-foot minimum standard, necessary road improvements would likely be more numerous and would potentially cause greater impacts than disclosed in both programmatic and project-level analyses.[28] It is essential for the purposes of providing an accurate and complete impact analysis required under CEQA that all Project-related roadway and associated drainage improvements be specifically described and considered.

In contravention of the assumptions relied upon in connection with approving the CMMLUO and CCLUO concerning compliance with access road performance standards, County staff have allowed projects to proceed with access roads that satisfy Category 2 access road standard (at most, given the steep grades, unpaved roads, blind corners, and infrequent turnouts in remote mountainous areas).

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[26] *See* HCC, §§ 3111-8 – 3111-10.

[27] CSH and NEC hereby request copies of any and all (1) requests for exceptions submitted to the Planning Director, pursuant to HCC § 3111-9(a); (2) requests from the Planning Director to CalFire to review the exception request and responses to the referral from CalFire along with any documentation outlining the effects of the requested exception on wildland fire protection, pursuant to HCC § 3111-9(b); and (3) notices concerning the exception request issued by the Planning Director to the applicant and to CalFire, pursuant to HCC § 3111-9(c). CSH and NEC also request notice of any and all exception requests for commercial cannabis projects processed under the provisions of HCC § 3111-9. We have also submitted this request through the County's Legistar website.

[28] The CMMLUO IS/MND did not even consider or disclose the condition of rural county roads that may be utilized for commercial cannabis purposes.

D. The CMMLUO IS/MND, the CCLUO EIR, and Subsequent Project-Level Review Never Analyzed the Cumulative Impacts of the "Prime Agricultural Soils Loophole."

The CMMLUO IS/MND is silent with respect to the environmental impacts associated with concentrating commercial cannabis projects on previously unidentified prime agricultural soils located in prairie habitats surrounded by forests. When the CMMLUO was adopted, the stated intent was to discourage cannabis cultivation in remote mountainous areas and encourage cultivation in more appropriate flat agricultural land.[29] Indeed, when adopting Resolution 16-14 approving the CMMLUO, the Board specifically found that, under the ordinance:

> New operations are focused towards areas explicitly zoned for agricultural uses that are host to level terrain and prime soils. Since these sites are typically either equipped for or already host to agricultural uses, this helps ensure that runoff from site development and irrigation is controlled and contained, while the lack of steep slopes prevent the possibility of soil erosion and sediment runoff. A documented current water right or non-diversionary source of irrigation water is also required. The amount of prime agricultural soils on the parcel that may be used for cultivation are limited to 20% of those on the parcel to discourage the complete conversion of all prime ag lands to cannabis cultivation, thus helping to preserve and maintain land for existing conventional agricultural activities. Additionally, all grows must comply with the performance standards and conditions contained in the ordinance.[30]

Many of the projects that have been approved by the County under the CMMLUO are inconsistent with the assumptions made in the above finding. These projects are located on mountainous terrain in the few interspersed relatively flat grasslands that can potentially be classified as "prime agricultural soil."

This understanding of the unintended consequence of the "Prime Agricultural Soil Loophole," as some commenters have referred to it, has persisted. For example, last fall, when the Board of Supervisors heard the appeal of the decision to approve the Adesa project, staff reported the following frank discussion among the Planning Commissioners:

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[29] *See* Humboldt County Bd. of Supervisors, Resolution 16-14, General Plan Consistency Analysis and Findings, p. 2; *see also id.*, Substituted Mitigation Measure Analysis and Findings, p. 8 [finding that a substituted mitigation measure prohibiting new cultivation operations in TPZ zoned parcels "does not allow new cannabis cultivation in forest lands...."].

[30] *See id.*, Substituted Mitigation Measure Analysis and Findings, p. 4.

> During the three Planning Commission meetings there was considerable debate among the commissioners over whether the provisions of the CMMLUO for parcels over 320 acres in size was intended to allow for new cultivation in remote rural portions of the county such as Maple Creek. Specifically, most commissioners agreed that requirement for new cultivation to be located on prime soils was intended to keep new cultivation limited to the more fertile bottomland areas. Commissioners appeared to agree that the identification of prime soils by soils scientists in various rural portions of the county was an unintended byproduct of the CMMLUO as written ....[31]

The discussion concerning "habitat protection" does not address this important issue.

E. The Staff Report Ignores Unanalyzed Cumulative Impacts.

As the Staff Report acknowledges, 846 applications have already been approved under the CMMLUO and an additional 723 remain pending. Still more permits will be issued for cannabis projects under the CCLUO. In May 2018, in conjunction with approving the CCLUO, the County adopted Resolution 18-43, which resolution set caps on the number of permits that could be issued within each watershed within the County. This Resolution set a cap of 3,500 permits, allowing for 1,205 acres of cultivation.[32] However, this cap is arbitrary because it is not connected with an analysis of cumulative project impacts by watershed.[33] The idea of a cap by watershed was an afterthought in the EIR process for the CCLUO, it was only introduced at the FEIR stage, in response to comments and without any underlying watershed-level impact analysis by which to establish specific caps.[34]

The cumulative impacts of intensive commercial cannabis development activities under both the CMMLUO and the CCLUO permitting regimes are far greater than recognized in their respective environmental review documents. Until an adequate programmatic analysis of cumulative impacts by watershed is prepared, the analysis of cumulative impacts for each project should consider its potential contribution towards cumulative impacts within the surrounding watershed.[35]

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[31] *See* Appeal package for Adesa project, for 10/27/20 BOS meeting, p. 3.

[32] *See* Staff Report, p. 3; *see also* County Resolution 18-43, adopted May 8, 2018, available at: https://humboldtgov.org/2124/Medical-Marijuana-Land-Use-Ordinance.

[33] *See* CCLUO FEIR, p. 2-24 [admitting that a watershed-level analysis of project carrying capacity had not been performed prior to establishing caps by watershed].

[34] *See id.* at p. 2-25.

[35] *See* CEQA Guidelines, § 15355, subd. (b) ["The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually

III. Conclusion: the Cannabis Permitting Program, as Currently Implemented, Requires Reform to Further Identify, Avoid, and Reduce Environmental Impacts.

Again, CSH and NEC appreciate the opportunity to provide what we intend to be constructive and informative comments to County staff, the Planning Commission, and others. We sincerely hope County staff will consider the approaches recommended by Mr. Hecht when formulating requirements for determining hydrologic connectivity and reporting on this determination in a transparent manner in future staff reports for proposed projects.

Please contact us with any questions or concerns you may have concerning these comments.

Very Truly Yours,

Jason Holder

cc: (Via e-mail only)
Client contacts
County Counsel

Attachments and Exhibits:

Attachment A: Summary of Randomly Selected Projects Dependent Upon Wells For Which Little or No Analysis of Potential Hydrologic Connectivity Was Provided Prior to Approval

Exhibits:

Exhibit 1: CMMLUO IS/MND, with highlighting added for ease of reference;

Exhibit 2: CCLUO EIR Excerpt, Master Response 5; and

Exhibit 3: Stipulation and Order of Settlement w-o Attachment C: Revisions to CMMLUO.

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minor but collectively significant projects taking place over a period of time."]; *see Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024-1025 (*L.A. USD*).

Attachment A: Summary of Randomly Selected Projects Dependent Upon Wells For Which Little or No Analysis of Potential Hydrologic Connectivity Was Provided Prior to Approval

Project	Water Supply Analysis	Notes
ZCC-16-288 (Appl. #11905)	238,450 gal. annual water demand; new well proposed	No analysis of hydrologic connectivity. Exh. B to Zoning Clearance Cert. states "If the well drillers completion log (to be submitted by the applicant) shows the replacement well to be hydrologically connected to surface water the applicant will develop additional on-site storage for the required forbearance period in accordance with the CMMLUO and the [LSAA] to be secured from [CDFW]."
CUP16-433 (Appl. #11885)	126,850 gal. annual water demand; permitted well	Staff report states, without any factual support, that No analysis of hydrologic connectivity.
PLN-11827-SP	49,000 – 69,868 gal. annual water demand; permitted well	Zoning Administrator finding: "Observations based on a 4-hour draw-down test made in August 2015 suggest the well is not hydrologically connected." No substantiation or evidence provided to support this finding.
SP 16-266 (Appl. #11608)	129,000 gallons annual water demand; permitted well	Zoning Administrator finding: "The 160-foot deep well with an estimated yield of 40 gallons-per-minute based on a 4-hour draw down test made in August 2019 suggests the well is not hydrologically connected." No substantiation or evidence provided to support this finding.
PLN-11601-SP	210,000 gal. annual water demand; permitted well	Attachment 1, Recommended Conditions of Approval #5 states "If it is determined to be hydrologically connected to surface waters, the applicant must redevelop the well to a standard that assures that there is no hydrologic connection to surface waters. The applicant shall submit a copy of the appropriate water right for storage and a revised site plan showing the location of the additional water tanks or a report from a licensed geologist indicating the well is not hydrologically connected to

Project	Water Supply Analysis	Notes
		surface waters to satisfy this condition." No analysis of hydrologic connectivity.
PLN-11827-SP	69,868 gal. annual water demand; permitted well	Zoning Administrator finding: "Observations based on a 4-hour draw-down test made in August 2015 suggest the well is not hydrologically connected. The nearest Streamside Management Area is located 480 feet south of the cultivation area." No substantiation or evidence provided to support this finding.
PLN-11082-CUP	351,000 gal. annual water demand; permitted well	General Plan Consistency Table: "The water source onsite is from a rainwater catchment pond and permitted ground water well that has been determined not to be hydrologically connected by planning staff (due to location, depth, elevation, and distance from waterways)." ." No substantiation or evidence provided to support this finding.
SP16-293 (Appl. #11736)	120,000 gal. annual water demand; permitted well	Recommended Condition of Approval: "If the well is determined to be hydrologically connected to surface water the applicant must comply with any forbearance requirements in the LSAA." No analysis of hydrologic connectivity.
ZCC16-135 (Appl. #11428)	52,445 gal. annual water demand; pre-1972 unpermitted well	10,000 square feet of new mixed light cannabis cultivation. No analysis of hydrologic connectivity.
PLN-11421-CUP	96,500 gal. annual water demand;	"The well does not seem to be hydrologically connected to surface water." (Staff Report, General Plan consistency table, p. 22.) No substantiation or evidence provided to support this finding.
PLN-11278-CUP	161,700 gal. annual water demand; permitted well	No analysis of hydrologic connectivity.