

ATTACHMENT 1

Resolution Certifying the Environmental Impact Report

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Meeting on April 10, 2018

RESOLUTION NO. _____

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE AMENDMENTS TO THE ZONING REGULATIONS, KNOWN AS THE COMMERCIAL CANNABIS LAND USE ORDINANCE (CCLUO) HAS BEEN PREPARED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING THE ASSOCIATED MITIGATION AND IMPLEMENTATION MEASURES, THE MITIGATION MONITORING AND REPORTING PLAN, ADOPTING FINDINGS OF FACT, AND A STATEMENT OF OVERRIDING CONSIDERATIONS
CASE NUMBER OR-17-02**

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was issued on April 6, 2017 soliciting public input regarding the EIR for the CCLUO (State Clearinghouse No. 2017042022). The NOP was circulated from April 6, 2017 through May 9, 2017 (a 34-day review period). A public scoping meeting was held on May 12, 2017 to obtain public comments on the potential environmental impacts to be analyzed in the EIR; and

WHEREAS, a Notice of Availability was published in accordance with Public Resources Code section 21092 and CEQA Guidelines section 15087 on September 1, 2017 and was sent by mail to organizations and individuals who requested such notice. The Notice of Availability provided for a public comment period commencing on September 1, 2017 and ending on October 16, 2017 (46 days); and

WHEREAS, the Draft EIR describes the environmental impacts of the proposed project, identifying impacts that are less than significant and significant, identifies feasible mitigation measures to reduce potentially significant impacts to a level of less than significant and concludes the project will have three significant and unavoidable impacts; and

WHEREAS, the County received comments from the public and local and state agencies on the Draft EIR; and

WHEREAS, in accordance with CEQA, all comments received on the Draft EIR during the public comment period were responded to and comments and responses are included in a Final Environmental Impact Report (Final EIR) completed on January 8, 2018; and

WHEREAS, on January 11 and January 18, 2017, the Humboldt County Planning Commission held a duly noticed public hearing to consider the adequacy on the Final EIR; and

WHEREAS, the Final EIR was reviewed and considered by the Planning Commission, consistent with the requirements of the California Environmental Quality Act (CEQA) prior to the Commission making its recommendations; and

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WHEREAS, on January 18, 2018, the Planning Commission voted to recommend that the Humboldt County Board of Supervisors certify the Final EIR for the CCLUO and approve the Ordinances; and

WHEREAS, copies of the Final EIR were provided to public agencies that commented on the Draft EIR on February 8, 2018 more than 10 days prior to the Board of Supervisors initial consideration of the FEIR on March 19, 2018; and

WHEREAS, the Humboldt County Board of Supervisors held a duly noticed public hearing to review and consider and receive testimony on the Ordinances and the Final EIR on March 19, 2018; and

WHEREAS, the Board of Supervisors received public input prior to the close of the public hearing; and

WHEREAS, the Board of Supervisors, has fully considered the FEIR and all public comment on the document and certifies that the FEIR has been prepared in compliance with the California Environmental Quality Act based on the findings more specifically enumerated in Exhibit A to this resolution; and

WHEREAS, the FEIR reflects the County's independent judgment and analysis; and

WHEREAS, the Board of Supervisors' deliberations on March 19, 2018 were conducted as part of public meetings held in accordance with the Ralph M. Brown Act;

BE IT RESOLVED that the Humboldt County Board of Supervisors hereby:

- a) Adopts the Findings of Fact and Statement of Overriding Considerations attached hereto as Exhibit A,
- b) Certifies the Final Environmental Impact Report for the CCLUO (consisting of the Draft EIR, Final EIR, and all appendices), and
- c) Adopts the Mitigation Monitoring and Reporting Plan; and

BE IT FURTHER RESOLVED that the individual parts of this resolution are severable, such that if one or more parts are determined to be invalid, all the other parts will remain in full force and effect.

BE IT FURTHER RESOLVED that the Director of Planning is directed to promptly file a Notice of Determination as provided in CEQA Guidelines Section 15094.

Adopted on motion by Supervisor _____, seconded by Supervisor _____ and the following vote:

AYES: Supervisors:

NOES: Supervisors:

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ABSENT: Supervisors:

STATE OF CALIFORNIA

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) SS.

County of Humboldt

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I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES

Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: _____
Ryan Sharp, Deputy Clerk

Date:

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EXHIBIT A

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

In Support of the
Final Environmental Impact Report
For the
Commercial Cannabis Land Use Ordinance (CCLUO)

(SCH 2017042022)

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1. FINDING: **PROJECT DESCRIPTION** – The project proposes to establish land use regulations for the commercial cultivation, processing, manufacturing, distribution, testing, and sale of cannabis within the County in accordance with the California Medicinal and Adult Use Cannabis Regulation and Safety Act, Business & Professions Code Section 26000, *et seq.* The EIR was prepared to evaluate the impacts associated with implementing this ordinance which allows new cannabis cultivation, processing, manufacturing, distribution and sales within Humboldt County. The EIR assumed that 1,012 new cultivation and 108 new commercial cannabis non-cultivation sites may occur from implementation of the ordinance. This is in addition to the approximately 1,800 applications currently in progress under the County’s existing Commercial Medical Marijuana Land Use Ordinance (CMMLUO). New cultivation is distinct from existing illegal cultivation which has been ongoing for decades within Humboldt County. Existing cultivation is considered to be part of the baseline within the context of this EIR and is not subject to analysis under CEQA.

- EVIDENCE:**
- a) Draft EIR and Final EIR prepared for the Commercial Cannabis Land Use Ordinances (CCLUO) (SCH# 2017042022).
 - b) Master Response 1 Consideration of Illegal Cannabis Operations in the FEIR addresses the difference between baseline conditions (those conditions that exist at the time of the initiation of the environmental analysis) and the impacts of the project which are being evaluated by the EIR. CEQA Guidelines section 15125(a) states *“an EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published...This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”*
 - c) See Findings and Evidence 8 BASELINE CONDITION

2. FINDING: **CEQA (EIR)** - The County of Humboldt completed an Environmental Impact Report (EIR) in compliance with CEQA, the Board of Supervisors reviewed and considered the information in the Final EIR, and the Final EIR reflects the County of Humboldt’s independent judgment and analysis.

- EVIDENCE:**
- a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.
 - b) The Humboldt County Planning Department determined a fair argument could be made that implementation of the proposed ordinance could result in significant environmental impacts, therefore an environmental impact report was prepared.
 - c) **SUMMARY OF IMPACTS**
Issues that were analyzed in the Draft EIR include
 - Aesthetics and Visual Resources

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- Hazards and Hazardous Materials
 - Agricultural and Forestry Resources
 - Hydrology and Water Quality
 - Geology and Soils
 - Land Use and Planning
 - Public Services
 - Cultural Resources
 - Tribal Cultural Resources
 - Air Quality
 - Energy Use and Conservation
 - Greenhouse Gas Emissions & Climate Change
 - Biological Resources
 - Utilities and Service Systems.
- d) Project changes which avoid or lessen significant effects on the environment have been incorporated into the project (see findings below). A Mitigation Monitoring and Reporting Plan has been prepared in accordance with CEQA and is designed to ensure compliance during project implementation and is hereby incorporated herein by reference.
- e) The Draft Environmental Impact Report (“DEIR”) for the CCLUO was prepared in accordance with CEQA and circulated for public review from September 1, 2017 through October 16, 2017 (SCH#: 2017042022).
- f) The County prepared a FEIR in response to the comments made on the public review Draft EIR. The FEIR was released to the public on January 8, 2018 and responds to all significant comments raised by persons and organizations related to the analysis of environmental impacts. The FEIR consists of the DEIR, the comments on the DEIR, the response to comments, and modifications made to the DEIR as a result of comments.
- g) No new information was added to the FEIR that required recirculation of the DEIR.
- h) Humboldt County Planning and Building Department, located at 3015 H Street, Eureka CA 95501, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to certify the FEIR is based.
- i) The Final EIR has been presented to the Board of Supervisors in advance of the public meeting on March 19, 2018.
- j) The Board of Supervisors reviewed and considered the information contained in the Final EIR before adopting the CCLUO.
- k) The Final EIR reflects the County of Humboldt's independent judgment and analysis.

3. FINDING:

AB 52 CONSULTATION REQUIREMENTS WITH NATIVE AMERICAN

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TRIBES – The requirements of Public Resources Code section 21080.3 relative to consultation with Native American Tribes has been satisfied.

- EVIDENCE:**
- a) As reflected in the FEIR, The County offered to consult on Tribal Cultural Resources potentially affected by develop which could be allowed under the proposed ordinances as part of AB 52-Consultation with all known tribes within Humboldt County. On June 23, 2017 a letter offering consultation was sent to the following tribes:
 - Bear River Ban of the Rohnerville Rancheria
 - Big Lagoon Rancheria
 - Blue Lake Rancheria
 - Hoopa Valley Tribe
 - Karuk Tribe
 - Round Valley Indian Tribes of the Round Valley reservation
 - Intertribal Sinkyone Wilderness Council
 - Cher-Ae-Heights Indian Community of the Trinidad Rancheria
 - Tsnungwe Council
 - Wiyot Tribe
 - Yurok Tribe
 - b) The Blue Lake Rancheria, Karuk and Wiyot consulted with the County on the proposed ordinance’s potential impact on Tribal Cultural Resources under AB 52. As a result of those discussions, the following provisions have been incorporated into the ordinance:
 - 1) Tribal consultation provisions and notification of permit application for commercial cannabis operation sites within 1,000 feet of the boundary of tribal reservations, Rancherias, or tribal ancestral area.
 - 2) 600 foot setback for all commercial cannabis sites from TCRs.
 - 3) 1,000 foot setback for all commercial cannabis activities from tribal ceremonial sites.
 - c) The Yurok Tribe did not reply timely to the offer for AB-52 consultation, but County staff has undertaken a dialogue with Yurok Tribe staff to address the Tribe’s concern with being able to meaningfully participate in the project review process. These discussions are ongoing.

4. FINDING:

EIR-ENVIRONMENTAL IMPACTS THAT ARE LESS THAN SIGNIFICANT – The EIR identified impacts that are less than significant and do not require any additional mitigation. The Board of Supervisors finds that the characterizations in the EIR adequately describe the setting and that all impacts have been either correctly identified as mitigated by design due to ordinance requirements or the impact to that particular resource is less than significant

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related to the project and the cumulative condition.

- EVIDENCE:**
- a) Under CEQA, no mitigation measures are required for impacts that are less than significant. (Public Resources Code Section 21002; State CEQA Guidelines, Section 15126.4, subd. (a)(3), 15091.)
 - b) The EIR identifies the following impact areas as having a less than significant impact on the environment:
 - i. **Aesthetics** (scenic resources, visual character, and lighting/glare) This potential impact is mitigated by the requirements of the ordinance limiting the area of the property that can be used for cannabis cultivation, and the ordinance limitation on light pollution.
 - ii. **Agriculture and Forest Resources** (conversion of or conflict farmland and conversion of forest land). The proposed ordinance does not allow new cultivation in TPZ property or the conversion of timberland. The ordinance limits the area of designated prime farm land that can support cannabis cultivation to 20% of the prime farm land and does not require cultivation to be located on prime farm agricultural soils.
 - iii. **Air Quality** (construction emissions) Short-term, construction-generated emissions would not exceed NCUAQMD recommended daily emission threshold for PM10 because construction of a single cultivation operation or non-cultivation operation would not contribute substantially to an existing or projected air quality violation, expose sensitive receptors to substantial pollutant concentrations, and/or conflict with air quality planning efforts in Humboldt County and the NCUAQMD.
 - iv. **Greenhouse Gases/Climate Change** (generation of greenhouse emissions and impacts of climate change) Existing cultivation sites applying for licenses under the proposed ordinance, would be required to achieve at least 80 percent of their energy demand from renewable sources; this would be a substantial reduction from current operations. The energy-related GHG emissions associated with existing sites would be reduced through the renewable requirement of the proposed ordinance, and would offset the emissions generated by new cultivation operations. Climate change is expected to result in a variety of effects that would influence conditions in Humboldt County, with increased wildfire being the largest risk. However, the proposed ordinance includes various features that would reduce this wildfire risk.
 - v. **Cultural Resources** (human remains and tribal cultural resources) Ordinance requirements for compliance with California Health and Safety Code Sections 7050.5 and 7052 and California Public Resources Code Section 5097 would make this impact less than significant.
 - vi. **Geology and Soils** (seismic hazards, geologic and soil stability, and septic system impacts). All new development that would be related to the proposed ordinance would comply with state and local regulatory requirements related to seismic or geologic hazards such that the exposure of people or structures to risk of loss, injury or death resulting from rupture of a known earthquake fault,

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strong seismic shaking, or exposure to expansive or unstable soils would be avoided or reduced. The potential for substantial soil erosion or loss of topsoil from implementation of the ordinance would be reduced through implementation of performance standards related to water quality protection. Because the siting and design of wastewater disposal systems is governed by existing requirements, there would be a less-than-significant impact related to suitability of soils for septic tanks or alternative wastewater disposal systems.

- vii. **Hazards** (use and handling of hazardous materials, airport hazards, impaired emergency response or evacuation plans, and risk from wildfires). Compliance with existing, applicable rules and regulations specifically designed to protect the public health would be sufficient to preclude significant hazardous materials impacts.

Existing regulations effectively reduce the potential for individual projects to create a hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials. Cultivation sites are not anticipated to use large quantities of hazardous materials. Materials used in processing and extraction would be used in accordance with applicable regulations to limit the potential for accident or upset conditions. Setbacks from school sites are required in the proposed ordinance.

Applications for new cannabis-related development near public airports would be required to comply with the applicable ALUCP. Future commercial cannabis facilities that would be allowed under the proposed ordinance would not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. The risk from wildfire hazard would not be substantially worse than that for other types of land uses in the same areas, and would be reduced compared to existing cannabis cultivation occurring under baseline conditions. Existing laws would be anticipated to reduce potential impacts.

- viii. **Hydrology and Water Quality** (construction water quality impacts All cultivation activities are required by ordinance to be setback and located outside of Stream Management Areas. Grading Permits require sediment control using Best Management Practices. In addition, construction related to commercial cannabis operations would be subject to compliance with North Coast Regional Water Quality Control Board. Based upon these requirements, the impact hydrology and water quality would be less than significant for construction related impacts.
- ix. **Land Use and Planning** (division of an established community, conflicts with land use plans and regulations). The proposed ordinance contains permitting requirements that would manage conditions that create public nuisances by enacting restrictions on the location, type, and size of cannabis cultivation sites and commercial activities in Humboldt County, as well as other permitting requirements such as setbacks, security, and other protective measures.

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Because the project would include the above permitting requirements, land use conflicts that could result in the division of established communities would not occur.

The proposed ordinance would amend the Humboldt County Code that implements the General Plan land use policy direction, and would be consistent with General Plan land use provisions. Further, the proposed ordinance contains permitting requirements that provides a mechanism for the County to ensure compliance with relevant plans and policies adopted for the purpose of avoiding or mitigating an environmental effect

- x. **Noise** (stationary and traffic noise impacts). The ordinance establishes performance standards for minimizing noise impacts. These standards set a threshold of not more than a three decibel increase over the ambient, prohibits generators in the Timberland Production Zones, and sets noise standards within the habitat of marbled Murrelet and Northern Spotted Owl. Future applicants will be required to submit information demonstrating compliance with these standards. The use of mechanized equipment would be temporary and periodic in nature and adjacent land uses would not be exposed to noise levels that exceed noise standards in the Humboldt County General Plan land use/noise compatibility standards. Additionally, the setback requirements in the proposed ordinance would prevent sensitive uses from being exposed to excessive noise levels during each harvest. increased traffic volumes would not result in a noticeable increase in traffic noise (i.e., 3 dB or greater).
- xi. **Public Services** (fire protection and law enforcement services). 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.. Commercial cannabis production and operation under the proposed ordinance would not require increased law enforcement services resulting in the need for new or altered facilities.
- i. **Transportation and Circulation** (construction traffic and emergency access). The increase in trips associated with construction at commercial cannabis operations would be minimal, dispersed throughout the larger roadway network serving the County, and staggered over an extended period of time. This increase would be greatest during the fall harvest, but would not result in the LOS degrading below LOS C along any of the State highway segments analyzed. Commercial cannabis operations in the County that may occur under the proposed ordinance would be required to be in compliance of Chapter 10 – Fire Safe Regulations of the Humboldt County Code and performance standards for access to roadway system that maintain a safe function capacity for the roads.
- xiii. **Energy** (inefficient and unnecessary use of energy and demand for services services/facilities). The energy needs for construction of commercial cannabis cultivation sites and non-cultivation sites would be temporary and would not

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require additional capacity or increase peak or base period demands for electricity or other forms of energy. Further, the proposed ordinance would require all new cultivation and non-cultivation sites to derive its energy from up to 100 percent renewable energy sources. Existing outdoor or mixed-light cultivation operations that are not on the grid would be required to obtain at least 80 percent of their energy demand from renewable sources.

Adequate infrastructure and capacity for energy services and facilities exist within portions of the County for future commercial cannabis activities resulting from the ordinance. The proposed ordinance requires all sites conducting cultivation or supportive activities to be supplied from on-grid power from either 100 percent renewable sources, on-grid power with purchase of carbon offset from an accredited source, or on-site zero net energy provided by a renewable source. Existing outdoor and mixed-light cannabis cultivation operations not on the grid that apply for a permit under the proposed ordinance would be required to obtain at least 80 percent of their energy demand from renewable sources. These requirements within the ordinance would reduce new energy demand beyond the existing capacity of energy services or facilities in the County.

- xiv. The Board of Supervisors agrees with the characterization in the Draft and Final EIRs with respect to all impacts identified as “no impact,” “less than significant,” “not cumulatively considerable,” or “less than cumulatively considerable” and finds that those impacts have been described accurately and are less than significant as so described in the EIR.

5. FINDING:

EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT – The EIR identified potentially significant impacts to biological resources from land conversion, new development and surface water diversion allowed under the CCLUO (fisheries, wildlife and plant species and habitat, riparian habitat, old growth habitat and other sensitive natural communities, Waters of the United States, resident or migratory wildlife corridors or native wildlife nursery sites), cultural resources (disturbance or destruction to historic or archaeological resources from land conversion and new development) hazards and hazardous materials (exposure to existing on-site hazardous materials), hydrology/water quality (sedimentation and erosion, groundwater supply, drainage and water diversion), noise (construction noise), transportation (traffic operations), and utilities and service systems (wastewater treatment, solid waste) which could result from the project as originally submitted. Changes or alteration have been required or incorporated into the project with respect to each of these categories which avoid or substantially lessen the potentially significant environmental effect identified in the EIR.

- EVIDENCE:** a) **Fisheries.** Potentially significant impacts on fisheries are reduced to less than significant levels by ordinance requirements for water storage and forbearance that

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limit the extraction of surface water for cultivation to wet periods of the year consistent with statutory requirements in sections 313-55.4.12.7.2 and 314-55.4.12.7.2 (Forbearance Period and Storage Requirements) as well as compliance with the State Water Resources Control Board Cannabis Cultivation Policy and associated regulatory programs. Impacts on fisheries may be further reduced by limits on cannabis by section 55.4.5.10 which allows the County to require a reduction in cultivation area and associated water use when needed to protect water flows and fisheries. This will provide minimum flow requirements to protect fisheries thus reducing this impact to a less than significant level.

- b) **Biological Resources.** Potentially significant impacts on biological resources including waters of the United States, wildlife and plant species and habitat, riparian habitat, old growth habitat, and other sensitive natural communities, and resident or migratory wildlife corridors or native wildlife nursery sites are reduced to less than significant levels by ordinance requirements which require preparation and submittal of the following technical studies as part of the application for a certificate or permit (Sections 313-55.4.12.1.10 and 314-55.4.12.1.10 - Performance Standard – Biological Resource Protections):

- Biological reconnaissance surveys - Mitigation Measure (MM) #3.4-1a
- Special-status amphibian surveys and relocation/buffers - MM #3.4-1b
- Western pond turtle surveys and relocation/buffers- MM #3.4-1c
- Nesting raptor surveys and relocation/buffers- MM #3.4-1d
- Northern spotted owl surveys- MM #3.4-1e
- Special-status nesting bird surveys/buffers- MM #3.4-1f
- Marbled murrelet habitat suitability surveys/buffers- MM #3.4-1g
- Generator Noise Reduction- MM #3.4-1h
- American badger surveys and buffers- MM #3.4-1i
- Fisher and Humboldt marten surveys and den site preservation/buffers- MM #3.4-1j
- Bat Survey and Buffers- MM #3.4-1k
- Vole Survey and relocation/buffers- MM #3.4-1l
- Special-status plants surveys- MM #3.4-3a
- Invasive plant species removal and management- MM #3.4-3b
- Protection of sensitive natural communities, riparian habitat, wetland vegetation- MM #3.4-4
- Protection of Waters of the United States. - MM #3.4-5
- Retention of Fisher and Humboldt marten habitat features- MM #3.4-6b

Submittal of these technical studies will allow preparation of subsequent environmental documents consistent with CEQA. The Hearing Officer for those subsequent actions will need to consider the environmental documentation prior to taking action on an application. The CEQA obligation to mitigate impacts will be fulfilled during the specific project review, approval and implementation which

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will mitigate this potential impact to a less than significant level.

- c) **Historic Resources.** Potentially significant impacts on cultural resources that involve disturbance or destruction to historic resources from land conversion and new development will be mitigated to a less than significant level through ordinance requirements requiring technical analysis of potentially historic buildings to determine if they are eligible for listing on a state or national registry. Eligible buildings will require further analysis to determine how to avoid or mitigate impacts to these buildings (Sections 313-55.4.12.1.14 and 314-55.4.12.1.14 (Performance Standard – Protection of Historical Resources - MM #3.5-1).
- d) **Cultural Resources.** Potentially significant impacts on cultural resources that involve disturbance or destruction to archaeological resources from land conversion and new development will be mitigated to a less than significant level through ordinance requirements to conduct a survey of the site and for submittal of associated technical reports documenting, assessing and avoiding impacts on archaeological resources in Sections 313-55.4.11 and 314-55.4.11 (Application Submittal Requirements), 313-55.4.5.1.5 and 313-55.4.5.1.5 (Areas of Traditional Tribal Cultural Affiliation). Technical studies are reviewed by the applicable tribal historic preservation officer and recommendations are made to mitigate impacts. Also, Sections 313-55.4.5.1.5 and 314-55.4.5.1.5 (Inadvertent Discovery of Archaeological and Paleontological Resources - MM #3.5-2) requires all projects include as conditions of approval measures to protect archaeological resources discovered inadvertently.
- e) **Paleontological Resources.** Potentially significant impacts on paleontological resources from disturbance or destruction to undiscovered paleontological resources associated with land conversion and new development have been mitigated to a less than significant level through ordinance requirements for all projects to include as conditions of approval measures to protect paleontological resources discovered inadvertently in Sections 313-55.4.5.1.5 and 314-55.4.5.1.5 (Inadvertent Discovery of Archaeological and Paleontological Resources - MM #3.6-5).
- f) **Hazards/Hazardous Materials.** Potential significant impacts involving use of hazards/hazardous materials, specifically hazards to humans from exposure to existing on-site hazardous materials, have been mitigated to a less than significant level through ordinance requirements requiring submittal of technical studies documenting and assessing the potential for these materials to exist and identifying methods of mitigating exposure to humans (Sections 313-55.4.12.1.11 and 314-55.4.12.1.11 (Hazardous Material Site Assessments and Contingency Plans - MM #3.7-2a and b).
- g) **Water Quality.** Potentially significant impacts on water quality from cannabis cultivation operations, are mitigated to a less than significant level through ordinance requirements requiring applicants demonstrate compliance with section 55.4.12.1.8.c requiring roads to be maintained to protect water quality, section 314-61.1 (Streamside Management Area Ordinance) establishing setbacks from

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streams and regulating activity within those setbacks through a discretionary permit process and compliance with the State Water Resources Control Board Cannabis Cultivation Policy and associated regulatory programs or any subsequent water quality standards in Sections 313-55.4.12.2 and 314-55.4.12.2 (Performance Standards for Commercial Cannabis Cultivation Activities - MM #3.8-2).

- h) **Hydrology (Groundwater).** Potential significant impacts on hydrology specifically impacts to groundwater supplies from cannabis cultivation operations, are mitigated to a less than significant level through ordinance requirements that require permittees to annually provide the County with groundwater monitoring data for on-site wells that documents well production and changes in groundwater levels during each month of the year. Should this monitoring data identify potential drawdown impacts to adjacent well(s) and indicate a connection to operation of the on-site wells, the cultivation operators, in conjunction with the County, are required to develop adaptive management measures to allow for recovery of groundwater levels in Sections 313-55.4.12.9 and 314-55.4.12.9 (Performance Standards for Wells on Small Parcels - MM #3.8-3).
- i) **Hydrology (Drainage).** Potential significant impacts on hydrology specifically impacts to surface drainage including on-site and offsite flooding from cannabis operations, have been mitigated to a less than significant level through ordinance requirements that require all applications include a plan detailing how stormwater will be addressed for the property, including the location, capacity, and operation of all existing and proposed drainage facilities and features to insure discharge from the property remains at pre-project levels (Sections 313-55.4.12.1.12 and 314-55.4.12.1.12 (Stormwater Management - MM #3.8-4).
- j) **Hydrology (Surface Water).** Potential significant impacts on hydrology, resulting from diversion of surface water from cannabis cultivation operations, have been mitigated to a less than significant level through ordinance requirements that require cannabis cultivation operations to obtain a discretionary permit for all diversions and implementation of the requirement to forbear from diversions of Surface Water for Irrigation during periods of low or reduced stream flows, in accordance with requirements of the State Water Resources Control Board in Sections 313-55.4.12.7 and 314-55.4.12.7 (Performance Standards for Cannabis Irrigation - MM #3.8-5).
- k) **Noise.** Potential significant impacts from short-term construction-related noise associated with heavy equipment used during development of new or modified cannabis operations, is mitigated to a less than significant level through ordinance requirements that all construction activity and use of heavy equipment take place between 7:00 A.M. and 6:00 P.M., Monday through Friday, and between 9:00 A.M. and 6:00 P.M. on Saturday and Sunday in Sections 313-55.4.12.2 and 314-55.4.12.2 (Performance Standards for Commercial Cannabis Cultivation Activities - MM #3.10-1).
- l) **Public Utilities (Public Wastewater Systems).** Potential significant impacts to public wastewater systems that may not have adequate capacity and may not have

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the ability to treat effluent with certain components, have been mitigated to a less than significant level through ordinance requirements for submittal of Materials Management Plans which requires the applicant to identify the constituent of their discharge and allows the utility provider to determine whether they can accommodate the discharge (Sections 313-55.4.11 and 314-55.4.11 (Application Requirements for Clearances or Permits - MM #3.13-1a).

- m) **Public Utilities (Landfills).** Potential significant impacts on landfills that may not have adequate capacity is mitigated to a less than significant level through ordinance requirements for submittal of Waste Management Plans in Sections 313-55.4.12.1.13 and 314-55.4.12.1.13 (Management of Waste and Hazardous Materials - MM #3.13-1b) allowing the landfill operator to determine if they have the capacity to serve the cannabis activity.

6. FINDING:

EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT – The project would result in three significant and unavoidable impacts (Long Term Operational Emissions of Criteria Pollutants and Precursors, Exposure of People to Objectionable Odors, and Provision of Sufficient Water Supplies and Infrastructure Needs) that cannot be mitigated to a less than significant level. Mitigation Measures have been incorporated into the EIR which mitigate these impacts to the extent feasible, but not to a point where they can be considered less than significant impacts. Mitigating these impacts to a less than significant level is not feasible.

EVIDENCE:

- a) **Odor:** The EIR finds that new cultivation allowed by the proposed ordinance could lead to generation of localized odors in such quantities as to be a detriment, nuisance, or annoyance to a substantial number of people. This impact is reduced through ordinance requirements that:
1. Prohibit burning of excess plant material associated with the cultivation and processing of commercial cannabis in Sections 313-55.4.12.1.9 and 314-55.4.12.1.9 (Performance Standards for All Commercial Cannabis Activities - MM #3.3-4).
 2. Ordinance requirements that limit development in the vicinity of residential areas through implementation of increased permitting requirements, increased setback requirements and air filtration requirements for cannabis cultivation in Sections 313-55.4.6.4.4 and 314-55.4.6.4.4 (Special Area Setbacks for Odor Mitigation).

While odor impacts are mitigated to the maximum extent feasible, the EIR concludes the mitigation measures identified in the EIR are not sufficient to reduce the odor emissions impacts of the ordinance to less than significant levels, and no additional feasible mitigation has been identified that would reduce these impacts to a less than significant level. Therefore, the impact is considered to be a significant an unavoidable impact.

- b) **Emission of Criteria Pollutants:** The DEIR finds the new ordinance will allow commercial cannabis activities in the County on unpaved roads resulting in

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emission of particulate matter (PM10) which would exceed maximum daily thresholds for PM10. Any additional emission of PM10 is a significant impact because the North Coast Air Basin already exceeds maximum thresholds. The following mitigation measures for the reduction of PM10 emissions associated with travel on unpaved roads were considered in the DEIR and determined infeasible:

Routine Watering of Roadways: The routine watering of the unpaved roads (two times a day) can reduce particulate matter emissions by as much as 55 percent based on modeling data provided in CalEEMod. Most of the roadway system in the County is private and unpaved. Water truck usage is determined infeasible as it would require routine water twice a day during the harvest on unpaved roadways that range one mile to over 15 miles in length. A single 4,000-gallon water truck used twice a day for 4 weeks would generate a water demand of 224,000 gallons. This water additional demand is considered excessive as it would be the equivalent of irrigating approximately 12,800 square feet of cannabis (based on water demand factors used in the DEIR on page 3.8-34) or over 2 years of water demand of a single-family residential unit (assuming a water demand of 100 gallons per day per resident for three residents). The cost of a 4,000-gallon water truck ranges from \$53,500 (used) to \$113,563 (new) and may exceed the operating budgets of some commercial cannabis cultivation operations (PavementGroup.com 2018) (Commercial Truck Trader 2018).

Use of Dust Suppressants: Dust suppressants work by binding the particles together that form a protective layer that resists wind movement. As noted above, several of the current applications for new commercial cannabis operation sites are located on unpaved roads that range from one mile to over 15 miles in length. The cost of applying dust suppressant is approximately \$2,202 per mile per year (www.dustoutus.com/dust-control-costs/ accessed 3/12/18) and may exceed the operating budgets of some commercial cannabis cultivation operations. In addition, dust suppressants can result in water quality impacts due to leaching into streams and rivers the chemicals used for dust suppression. Thus, the use of dust suppressants is considered infeasible.

Paving of Roadways: Paving of roadways utilized by commercial cannabis cultivation sites would substantially reduce PM10 emissions from roadway dust. The extent of roadways that would be required to be paved (1 to over 15 miles per site) would be substantial and would likely be cost prohibitive to construct and maintain. Using cost units for the Library Street improvement (two-lane roadway) in the City of Sacramento it is estimated that paving of existing roadways could cost approximately \$1,212 a linear foot for a two-lane roadway (City of Sacramento 2008). Thus, paving one mile of roadway could cost \$6,399,360 and may exceed the operating budgets of some commercial cannabis cultivation operations. Thus, the paving of roadways is considered infeasible.

Thus, no feasible mitigation has been identified that would reduce these impacts

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to a less than significant level. Therefore, the impact is considered to be a significant an unavoidable impact.

- c) **Public Water System Impacts:** The DEIR found that the proposed ordinance will lead to commercial cannabis cultivation that would result in increased water demand from public water systems that could exceed supply and related infrastructure particularly to Community Service Districts who are already at their service capacity. This impact is reduced somewhat through ordinance requirements that require applicants to identify how much water they will use and how much water they have available including documentation of their water source in 313-55.4.11 and 314-55.4.11 (Application Requirements for Clearances or Permits). However, this mitigation is not sufficient to reduce the impacts of the ordinance on public water systems to less than significant levels, and no additional feasible mitigation has been identified that would reduce these impacts to a less than significant level. Therefore, the impact is considered to be a significant an unavoidable impact.

7. FINDING:

EIR-CEQA ALTERNATIVES TO THE PROPOSED PROJECT - The EIR considered several alternatives to the proposed project in compliance with CEQA Guidelines section 15126.6. The EIR considered a range of alternatives which could feasibly attain most of the basic project objectives and would avoid or substantially lessen any of the significant effects of the ordinance. The Board has considered the project alternatives included in the EIR, has evaluated their comparative merits and finds that they are infeasible due to specific economic, social, technological, and/or legal factors and/or other considerations, more particularly discussed below.

- EVIDENCE:** a) Alternative 1: No Project, No Additional Permits Issued. This alternative would consist of not adopting the proposed ordinance. The County would continue to implement the requirements of the CMMLUO and would not consider any new permit applications beyond what was submitted on or before December 31, 2016 pursuant to Section 55.4.17 (Sunset of Applications).

Overall this alternative would have similar or reduced impacts associated with the proposed project for most resource areas; however

This alternative would not achieve the project objectives of supporting the local cannabis industry through encouraging participating in the County's permitting program. This would serve to perpetuate the illegal cannabis cultivation practices that cause environmental degradation. A regulated legal industry will have less harmful environmental effects than an illegal, non-regulated industry. This is evidenced by the comment letters received from the Friends of the Eel River, California Department of Fish and Wildlife and others who cite the impacts of existing cultivation on fisheries and endangered species. The illegal diversion of surface water, water pollution the use of illegal pesticides and rodenticides are all associated with illegal cannabis cultivation practices. These impacts are all

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considered as part of the existing baseline condition. In order to address the large unregulated portion of the cannabis industry there must be an avenue for regulatory compliance. This alternative would not create any potential for existing cultivators currently outside the permit system to enter into the regulated industry which would serve to continue to encourage the illegal cannabis industry as a preferred path of business operation. This alternative would thus make enforcement more difficult because there is no incentive financially to achieve compliance. This could result in sites being abandoned without being cleaned and restored. Thus, the Board of Supervisors rejects this alternative as infeasible.

- b) Alternative 2: No Project, New Permits Issued. In this alternative, the County would continue to implement the requirements of the CMMLUO, but would amend the ordinance to allow for the submittal of new permit applications. This alternative would cause greater impacts on aesthetics than the proposed project because the existing ordinance does not control light from greenhouses as effectively as the new ordinance.

Alternative 2 would also result in greater Greenhouse Gas Emissions impacts because the proposed ordinance requires the use of renewable energy on existing and new mixed-light cultivation and non-cultivation operations that would reduce GHG emissions. This renewable energy requirement is not required under the existing ordinance.

Hydrology and water quality impact under Alternative 2 would be greater than what would occur under the proposed ordinance because the existing ordinance contains no performance standards to protect local groundwater resources and wells from the development of new wells associated with commercial cannabis cultivation operations.

The noise provisions for generators in the existing ordinance are not as protective of existing ambient noise conditions as the proposed ordinance. Thus, relative to the proposed ordinance, noise impacts would be of greater magnitude under Alternative 2.

This alternative does not provide the same level of review for roadway capacity resulting in emergency access impacts being greater than those that would occur for the proposed ordinance.

This alternative would not implement the proposed ordinance's renewable energy efficiency requirements that apply to existing and new mixed-light cultivation, indoor cultivation, and other non-cultivation activities providing energy efficiency. Thus, this alternative's energy impacts would be of greater magnitude than the proposed ordinance.

In the other impact areas Alternative 2 would have similar impacts as the proposed ordinance. This alternative would achieve some of the project objectives, but it

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would not maximize support of the local cannabis industry because there are cannabis related uses allowed by the proposed ordinance amendments (the project) and allowed by the state that are not included in the CMMLUO. Permitting these new types of uses would be more cumbersome for applicants under the CMMLUO. Thus, the Board of Supervisors rejects this alternative as infeasible.

- c) Alternative 3: Prohibition of New Outdoor and Mixed-Light Cultivation Operations in City Spheres of Influence and Community Plan Areas. This alternative modifies the proposed ordinance, to prohibit new outdoor and mixed-light commercial cannabis cultivation operations within the spheres of influence of the incorporated cities and the community plan area boundaries. Alternative 3 would create greater operational air quality impacts than the proposed ordinance because new outdoor and mixed-light cultivation operations would be located in the more remote rural and agricultural areas of the County, which would increase vehicle miles traveled on paved and unpaved private roads. This has a corollary impact resulting in greater vehicular energy increasing energy use impacts under Alternative 3.

Alternative 3's hydrology/water quality impacts would be less than what would occur under the proposed ordinance because of the prohibition of new outdoor and mixed-light cannabis cultivation within the cities' spheres of influence and County community plan areas where conflicts with multiple domestic wells may occur.

This alternative's utility service impacts would be less than under the proposed ordinance because it would prohibit new outdoor and mixed-use cannabis cultivation within the cities' spheres of influence and County community plan areas where public wastewater and water services are provided.

In all the other impact areas; this alternative would have similar impacts as the proposed project.

The Board of Supervisors rejects this alternative because it categorically rejects applications in areas where it could be determined that cultivation is appropriate. This approach does not take into account the size of the Sphere of Influence, the size of the properties involved and other natural and manmade features that could mitigate impacts from cannabis activities. The proposed ordinance addresses the objectives of this alternative by increasing the amount of discretion within City Spheres of Influence and around Community Plan areas to protect the more developed areas from the impacts associated with cannabis activities, while not precluding locations that could be feasible.

- d) Alternative 4: Prohibition of New Outdoor and Mixed-Light Cultivation Operations. This alternative not allow applications for new cultivation and would thus only apply new indoor commercial cannabis cultivation. Compared to the proposed ordinance, there would be a smaller number of commercial cannabis

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activities that could occur throughout the County and, consequently, less potential for adverse effects on scenic resources and visual character and less potential to generate road dust and thus relative to the proposed ordinance, PM10 air quality impacts would be of lesser magnitude. The reduction in sites would result in less traffic with fewer GHG emissions,

Alternative 4 would also have a potential for reduced odor impacts because all applications for cannabis cultivation would be either indoor with odor control or part of the existing and would not constitute a new impact. With no new cultivation activities, there would be no new land disturbance and thus the potential impacts to biological resources, cultural resources, geology and soils, hazards and hazardous materials, groundwater resources, construction and operational noise impacts, public service impacts, traffic impacts, operational water quality, drainage, and surface water impact, energy use would be substantially reduced.

This alternative's impacts on light and glare, land use planning and energy infrastructure impacts would all be similar to the proposed project.

The performance standards applied to sites for new cultivation are more stringent than for existing cultivation sites, and thus the locations of new cultivation sites have the potential to result in less environmental damage than existing sites. The approach of this ordinance is to move cannabis cultivation to locations that are more environmentally appropriate. The Board of Supervisors has determined that the economic viability of the cannabis industry needs a combination of new cultivation sites balanced with existing cultivation sites.

The Board of Supervisors rejects this alternative because it allows only indoor applications and existing applications while precluding applications for new cultivation. While not allowing new cultivation sites has the benefit of restricting the expansion of the cultivation footprint on the environment, it creates an artificial limit on property which can support cannabis cultivation. In this scenario, properties which have been cultivated illegally are not eligible for permitting; only indoor cultivation would be eligible for permitting. Part of the objectives of the ordinance is to encourage illegal cultivators to become legal. To prohibit their ability to become part of the permitted industry will relegate them to operating in an illegal manner which will complicate the code enforcement task, thus this alternative is not feasible.

- e) Alternative 5: Reduction of New Commercial Cannabis Operations. This alternative would prohibit all new commercial cannabis outdoor and mixed-light cultivation that did not exist on or before December 31, 2015 except under the Retirement, Remediation, and Relocation (RRR) program, and would not allow any new permits for pre-existing cultivation in areas zoned Timber Production Zone (TPZ). New commercial cannabis indoor cultivation and non-cultivation operations would only be allowed within community plan boundaries. Permitting

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existing previously unpermitted sites would have a beneficial environmental effect over the baseline condition because these sites would be required to comply with the performance standards contained in the ordinance and other state laws. Restricting new indoor cultivation and cannabis support facilities to developed areas will reduce vehicle miles traveled, remove traffic from outlying unpaved roads and allow development to occur in areas with developed infrastructure. Impacts to aesthetics, air quality and greenhouse gases, biological resources, cultural resources, geology and soils, hydrology and water quality, noise, public services, traffic, utilities, and energy would be reduced, when compared to the project.

Each of the alternatives were designed to either avoid or minimize the potentially significant impacts associated with the proposed project. Alternative 5 is considered the Environmentally Superior Alternative because it meets most of the project objectives and results in incrementally less environmental impacts than the proposed project. The impacts associated with odors, PM10 emissions and public water supply would remain significant and unavoidable under Alternative 5.

The Board of Supervisors rejects the Environmentally Superior Alternative because it allows only existing cultivation sites while precluding applications for new cultivation. Precluding new cultivation sites has the benefit of restricting the expansion of the cultivation footprint on the environment, but it creates an artificial limit on property which can support cannabis cultivation. In this scenario, properties which have been cultivated illegally are eligible for permitting while sites that may be more appropriate for cultivation and do not have a history of illegal activity are precluded from entering into the permit process. Part of the objectives of the ordinance is to encourage illegal cultivators to become legal. To prohibit their ability to become part of the permitted industry will relegate them to operating in an illegal manner which will complicate the code enforcement task, thus this alternative is not feasible..

The performance standards applied to sites for new cultivation are more stringent than for existing cultivation sites, and thus the locations of new cultivation sites have the potential to result in less environmental damage than existing sites. The approach of this ordinance is to move cannabis cultivation to locations that are more environmentally appropriate. The Board of Supervisors has determined that the economic viability of the cannabis industry needs a combination of new cultivation sites balanced with existing cultivation sites.

8. FINDING:

BASELINE CONDITION The EIR has appropriately identified the Baseline Condition which is distinct from Cumulative impacts. State CEQA Guidelines Section 15125(a) provides the following guidance for establishing the baseline in an EIR: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, 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.

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This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives". The EIR established the environmental baseline for the proposed ordinance amendments consistent with this guidance.

- EVIDENCE:**
- a) The notice of preparation (NOP) was released on April 7, 2017. While not required under CEQA, the NOP identified baseline conditions for cannabis cultivation in the County based on estimates of the current extent of cannabis cultivation. It was estimated that there were between 10,000 to 15,000 sites in the County, as of January 1, 2016.
 - b) DEIR Chapter 3, "Environmental Setting, Impacts, Mitigation Measures," further defined the baseline conditions identified in the NOP. The DEIR identified in the County that the County received 2,936 applications for permitting of cannabis operations under the CMMLUO and that approximately 68 percent of these applicants claim to have historically cultivated cannabis and are seeking a permit for continued cannabis operations (see DEIR page 3-2). These permit applications make up 8 to 13 percent of the total estimated cultivation operations in the County (10,000 to 15,000 sites).
 - c) The DEIR made the following acknowledgment that not all the current cannabis operations in the County currently have elected to participate in the proposed ordinance:
"Cultivation operations that do not comply with the proposed ordinance would be considered illegal upon its adoption. Enforcement activities would be taken by the County in coordination with other agencies that could result in bringing some cultivation operations into compliance with County and state standards and the closure and remediation of others. However, it is acknowledged that illegal cannabis operations would continue to occur in the County after adoption and implementation of the ordinance. While this Draft EIR acknowledges the adverse environmental effects of continued illegal cannabis operations as part of the environmental baseline condition, the Draft EIR does not propose mitigation measures to address illegal operations as they are not part of the project." (See DEIR page 3-2.)
 - d) The environmental conditions of existing unpermitted cannabis cultivation operations are specifically discussed in the following areas of the EIR:
 - Visual character: DEIR pages 3.1-10 through 3.1-14
 - Biological resources: DEIR page 3.4-59
 - Hazardous materials and contamination: DEIR page 3.7-10
 - Water quality and diversion of surface water flows: DEIR page 3.8-33
 - Fire protection and law enforcement services: DEIR pages 3.11-9 and 3.11-10
 - Historic and cumulative impacts on biological resources, hazards, and water quality: DEIR page 4-2

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- Master Response 1: FEIR pages 2-4 through 2-8
- e) These existing environmental conditions of unpermitted cannabis cultivation operations were disclosed as part of the baseline condition in the EIR in compliance with CEQA. CEQA does not intend preparation of environmental review or mitigation for these conditions. State CEQA Guidelines Section 15125(a) identifies that the baseline physical conditions are the basis by which a lead agency determines whether an impact of the project is significant. Published case law has identified that baseline conditions include unpermitted and/or harmful activities that have occurred prior to the project. In *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214 (183 Cal.Rptr.3d 736), the Fourth Appellate District upheld the baseline conditions and ruled that the baseline condition must reflect the physical conditions at the time the environmental analysis begins even if the current conditions include unauthorized and even environmentally harmful conditions that never received environmental review. Other published court decisions that support this interpretation of CEQA include *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 [91 Cal.Rptr. 2d 322] and *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 [119 Cal.Rptr.2d 402].

9. FINDING:

EIR EVALUATION OF CUMULATIVE CONDITIONS IN RELATION TO ILLEGAL CANNABIS CULTIVATION. Section 15130(a) of the State CEQA Guidelines requires a discussion of the cumulative impacts of a project when the project's incremental effect is cumulatively considerable. The EIR has adequately addressed the potential cumulative impacts associated with implementation of the Commercial Cannabis Land Use Ordinance. Cumulative impacts are the individual projects which would be allowed under the CCLUO, and other new projects which can be foreseen. Existing cannabis cultivation is not a part of the cumulative impact analysis. Prior illegal activity is not a project for purposes of cumulative impact analysis under CEQA, but is a baseline condition against which the impacts of the project under consideration are assessed.

EVIDENCE:

- a) For Findings and Evidence related to Baseline see Finding and Evidence 8 above.
- b) Cumulatively considerable, as defined in CEQA Guidelines Section 15065(a)(3), means that the "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." The State CEQA Guidelines Section 15355 defines a cumulative impact as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. CEQA requires that EIRs consider feasible mitigation measures to offset the project's contribution to each identified significant cumulative impact.
- c) DEIR pages 4-1 through 4-3 describe the base conditions upon which the proposed

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ordinance's cumulative impact analysis was based. DEIR Subsection 4.2.2, "Existing Cannabis Cultivation Operations in Humboldt County," specifically describes the historic and on-going extent of cannabis cultivation operations in the County and the associated environmental damage that has occurred; this was factored in the cumulative base conditions. Comments on the DEIR regarding this issue were addressed in Master Response 1 of the FEIR (FEIR pages 2-4 through 2-8)

10 FINDING

Review of FEIR. The FEIR was provided to all agencies providing comments on the DEIR on January 8, 2018, which is more than 10 days prior to the start of the Board of Supervisor's consideration on March 19, 2018. A letter was received from California Department of Fish and Wildlife on March 1, 2018 commenting on the FEIR. The letter resulted in revisions being made to the proposed cultivation cap and also to requiring mitigation of Northern Spotted Owl associated with existing cultivation site. No new information was presented which would indicate the FEIR should not be certified.

EVIDENCE

- a) **Comment 1 - Limit on Number of Cultivation Permits:** CDFW requests the County define criteria and develop a cap on the number of cultivation sites within the County

Response to Comment 1: The ordinance adopted by the Board includes language that requires establishment of a cap on the number of cultivation sites in the County Those limits are identified in Attachment 4 Section 313-55.4.6.8 - Cap on Permits and Attachment 5 Section 314-55.4.6.8 - Cap on Permits. In the Coastal Zone, at the request of the Coastal Commission Staff, the cap is stated in the ordinance, and in the Inland area, the cap is adopted by resolution. The resolution for the inland area is adopted by separate resolution. , The number of allowed cultivation permits was distributed across watersheds on a percentage basis. The percentage was determined by taking the area available for cultivation within each watershed and determining the percentage of that watershed in relation to all the available land in Humboldt County. That percentage of total available cultivation permits were then assigned to that watershed. The total number of permits allowed includes those approved under the existing ordinance adopted in 2016 and all subsequent applications.

- b) **Comment 2 - Significant and Cumulative Impacts to Watershed Resources:** CDFW requests the County prepare an analysis of existing water use, potential for sediment and other pollutant discharge, and percent of habitat fragmentation within a given watershed. CDFW requests that this analysis provide detail on the amount of cannabis cultivation that would be permitted in each watershed and the extent of such impacts (including water availability). Lastly, CDFW requests that the County not issue permits for new or expanded cannabis cultivation if CDFW or the State Water Board make an "Impacted Watershed" finding

• **Response to Comment 2:**

The Final EIR Master Response 5 (Final EIR pages 2-13 to 2-26) and Response to Comment S1-8 (CDFW comment Letter) (Final EIR pages 2-53 and 2-54) identify

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that a watershed analysis to establish cannabis cultivation caps for each watershed would be difficult for the County to conduct as it would require details on existing water users in each watershed and the extent that riparian water rights may be exercised. The County lacks the technical experience and financial resources to collect this extent of data and determine what is the appropriate aquatic carrying capacity.

Regional and state agencies that would have the appropriate technical information and expertise to conduct a watershed analysis include State Water Board, North Coast Regional Water Quality Control Board, and CDFW. The County is willing to participate in joint watershed evaluation studies with these agencies. The DEIR does provide a watershed level impact analysis associated with implementation of the proposed ordinance that includes details on current water quality and surface water flow conditions (see DEIR pages 3.8-14 through 3.8-47). Water quality impacts would be mitigated through compliance with the State Water Board Policy as well as implementation of Mitigation Measure 3.8-2.

The DEIR analysis identifies anticipated commercial cannabis water demands for cultivation and acknowledges that cannabis irrigation could result in a significant decrease in watershed flows during low flow conditions (see DEIR pages 3.8-44 and 3.8-45). Implementation of Mitigation Measure 3.8-5 in compliance with State Water Board Policy would require that all cannabis cultivation surface water and groundwater diversions comply with the numeric flows and aquatic base flows that have been established by watershed under the Policy in consultation with CDFW. As described in Master Response 5, the State Water Board Policy establishes requirements for cannabis cultivation activities (including commercial cannabis cultivation in the County) to protect water quality, water diversion standards and restrictions, and instream flows. The State Water Board Policy's numeric flows and aquatic base flows and associated diversion requirements function as an aquatic carrying capacity suggested by the comment.

The proposed ordinance would prohibit new commercial cannabis cultivation in the forested areas of the watersheds and limit it to areas generally in the lower portions of the watersheds where the USGS gauges used in the implementation of the State Water Board Policy exist. The State Water Board Policy's flow standards and diversion requirements were developed to protect fish spawning, migration, and rearing for endangered anadromous salmonids, and flows to needed to maintain natural flow variability within each watershed. Thus, the need to prepare a watershed analysis to determine the aquatic carrying capacity is not necessary to adequately address the water resources impacts of the proposed ordinance at a watershed level of detail.

Habitat and wildlife impacts from proposed ordinance would be mitigated through implementation of the mitigation measures identified in DEIR Section 3.3, "Biological Resources," as well as compliance with the requirements in Attachment A of the State Water Board Policy that include requirements to protect

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riparian and aquatic habitats.

The proposed ordinance would be implemented consistent with and in concert with state cannabis permitting requirements. The County would not issue permits in watersheds where CDFA would prohibit such permit issuance as set forth in proposed California Code of Regulations, Title 13, Section 8216.

- c) **Comments 3 and 4 - Watershed Identified as Impacted or Stronghold:** CDFW identifies watersheds in the County that have documented flow impairment that may meet the definition of a “Impacted Watershed” under proposed California Code of Regulations, Title 13, Section 8216 as well as important watersheds critical to the recovery of state and federally-listed aquatic species (under state and federal endangered species acts) and Stronghold watersheds which are important to preserve the existing resource and contribute to Coho Salmon Recovery. CDFW requests that the County consider limiting cannabis cultivation permitting in these watersheds.

Response to Comments 3 and 4: The Board considered these recommendations and modified the allocation of cultivation permits to prohibit new cultivation permits in the watersheds that CDFW identified as being impacted. This resulted in the elimination of these cultivation permits from the overall permit allocation.

- d) **Comment 5 - 7- Impacts to Northern Spotted Owl:** “Existing cannabis cultivation operations within 0.7 mile of a known northern spotted owl activity center in Humboldt County, should be subject to retirement, remediation, and relocation (RRR) under the County's Ordinance, unless adequate surveys and a disturbance and habitat modification assessment are provided and conclude, with concurrence from the Department, the project is avoiding significant impacts and complying with CESA. The comment is made where there is absence of a survey, presence of Northern Spotted Owl should be assumed and that the biological reconnaissance surveys should extend out beyond the development area.

Response to Comment 5 - 7:

The Final EIR Exhibit 3.4-9 and associated discussion describes the activity centers as “known” occurrences and does not state that these are the only potential occurrences of the species. Pre-existing cannabis cultivation is part of the existing baseline conditions but potential modification of pre-existing cannabis operations to comply with the proposed ordinance could trigger new impacts to this species. As suggested by CDFW, the following changes are made to Mitigation Measure 3.4-1e:

Mitigation Measure 3.4-1e: Northern spotted owl preconstruction habitat suitability surveys and determination of presence or absence.

The following shall be included as performance standards in the proposed ordinance for the protection of northern spotted owl from permitted cannabis activities ~~new development related to cannabis activities~~.

- To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or suitable habitat for northern spotted owl,

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removal of old growth habitat shall be prohibited, as outlined in Mitigation Measure 3.4-3, Sensitive natural communities, riparian habitat, old growth habitat, and wetland vegetation.

- If the area of proposed new development activities is within suitable habitat for northern spotted owl (e.g., coniferous forest), and is within 1.3 miles (average species home range) of a known occurrence of northern spotted owl, as determined by a qualified biologist, the following measures shall be followed.
 - Prior to removal of any trees, or ground-disturbing activities adjacent or within suitable nesting, roosting, or foraging habitat (e.g. forest clearings) for spotted owl, a qualified biologist, familiar with the life history of the northern spotted owl, shall conduct preconstruction surveys for nests within a 1.3-mile buffer around the site as described in Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls (USFWS 2012). Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine presence or absence of northern spotted owl.
 - If northern spotted owls are determined to be absent 1.3 miles from the site, then further mitigation is not required.
 - If northern spotted owls are determined to be present within 1.3 miles of the site, 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 1.3 miles of the site, proposed cultivation activities will not be permitted consistent with the General Requirement and Prohibition 4 of the Attachment A of the State Water Board Policy.
 - For pre-existing cultivation sites that submitted for permitting prior to December 31, 2019 within 0.7 miles of a known northern spotted owl activity center, a qualified biologist, familiar with the life history of the northern spotted owl, shall conduct a disturbance and habitat modification assessment to determine the presence of the species and whether the cultivation site can operate or have its operation modified to avoid take of the species. If it is determined that take of the species could occur, the cultivation site will be required to participate in the Retirement, Remediation, and Relocation provisions of the proposed ordinance to relocate the cannabis cultivation to outside of the northern spotted owl activity area. Pre-existing cultivation sites that submit for permitting after December 31, 2019 will be subject the new development provisions of this mitigation measure.
- e) **Comment 8- Noise:**The noise restrictions in Mitigation measure 3.4-1h (Generator noise reduction) should be modified to include all project activities.

Response to Comment 8: The ordinance performance standard for noise at cultivation sites (section 55.4.12.6) was originally designed to apply exclusively to generator noise. However, during the Planning Commission consideration of the

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ordinance the Commission applied the standard to all cultivation related noise sources (greenhouse fans, motorized trimmers, etc.). The ordinance adopted by the Board of Supervisors prohibits noise increases of more than 3 decibels above ambient as measured from the property line associated with all cannabis activities. The relevant mitigation measure was changed as follows:

Mitigation Measure 3.4-1h: ~~Generator~~ Noise reduction.

The ordinance requires generators and other cannabis operations not to increase existing ambient noise levels at the property line of the site beyond 3 dB. In addition, the noise standards shall include the following standards to protect wildlife (USFWS 2006).

- Project-generated sound must not exceed ambient nesting conditions by 20-25 decibels.
- Project-generated sound, when added to existing ambient conditions, must not exceed 90 decibels.
- Time of day adjustment: Marbled murrelet and northern spotted owl are most active during dawn and dusk. Within approximately 2 hours of sunrise and sunset, ambient sound levels are lower than during the middle of the day (by approximately 5-10 decibels). This will be accounted for when determining impacts of project-generated sound.

f) •

g) **Comment 9 - Forest Areas and Timberlands:** New cultivation should be prohibited in the FR zoning district, as well as in all forest habitat, regardless of zoning.

Response to Comment 9: The proposed ordinance prohibits commercial cannabis cultivation operations from timberland conversion (Section 55.4.6.4.2). In addition section 55.4.6.4.2 specifies that cultivation sites may only be located within a Non-Forested area that was in existence prior to January 1, 2016. A non-forested area is an area not growing any trees, whether due to natural conditions or through a legal conversion of timberland conducted prior to January 1, 2016. This limitation applies regardless of the zoning of the parcel. The FR or Forest Recreation zone is not a timberland zone as it was a zoning district applied to parcels created through “recreational subdivisions” in the late 1960’s to early 1970’s. In most cases these subdivisions were created without local approval under an exemption in the Subdivision Map Act available to parcels 40 acres or larger. Rezoning these parcels to FR following subdivision enabled the County to prevent further re-subdivision by subsequent purchasers. The majority of these parcels were not considered for rezoning to Timberland Production Zone during the countywide effort in the late 1970’s due to the relatively small size of the parcels, poorer soils type, and prior timber harvesting. These properties are currently host to high numbers and concentrations of cultivation sites (19% of all applications).

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- h) **Comment 10: Penalties:** The Ordinance should include specific penalties or remedies for non-compliance such as environmental remediation, and provide adequate staffing to conduct enforcement efforts and compliance review.
Response to Comment 10: Penalties and enforcement for violations of any land use regulation, including those specific to commercial cannabis activities in the CCLUO, are governed by Title III, Division 5, Chapter 1 of the Humboldt County Code, Sections 351-1 et seq. (Nuisance Abatement) and 352-1, et seq. (Administrative Civil Penalties). Specific penalties or remedies for non-compliance are tailored to the circumstances of each case, within general guidelines. Staffing levels for code enforcement are determined by the Board of Supervisors consistent with available budgetary resources and priorities, not through ordinance provisions. The CCLUO Section 55.4.5.6 requires a minimum of annual inspection for compliance review for all commercial cannabis activity permit types. The Performance Standards, CCLUO Sections 55.4.12.1.5 – 55.4.12.1.6, requires that permittees consent to annual on-site inspections, and pay fees to defray the cost of such inspections.
- i) **Comment 11. Pre-Existing Sites** Site conditions, as they existed on December 31, 2015, should be considered when determining the level of review required for "Pre-Existing" sites.
Response to Comment 11: "Pre-Existing Cultivation Site" is defined as the largest extent of the area under concurrent cultivation at a single point in time during a ten-year period between January 1, 2006 and December 31, 2015. To be permitted, the area must be Non-Forested at the time of the application (See response to Recommendation No. 9, above. Thus, if a previously cleared area for cannabis cultivation now has trees growing on it, it cannot be permitted. The area of pre-existing cultivation must be established by dated satellite or other aerial imagery or other evidence satisfactory to the Planning and Building Department. Compliance with the proposed ordinance performance standards and mitigation measures would be based on conditions that exist at the time of application. Any subsequent environmental review would also be based on conditions that exist at the time of commencement of environmental review.
- j) **Comment 12. Trespass Grow Sites.** Trespass cultivation sites should be considered a new cultivation site and permitted through the new process. Prior to issuing a permit, these sites should be remediated, including removal and appropriate disposal of waste and toxic materials.
Response to Comment 12: The proposed ordinance does not define "trespass cultivation sites". Historically the term has been used to refer to cultivation in remote locations on public land or without the knowledge or consent of the landowner. Owner consent is a requirement for all permits (see Humboldt County Code section 312-5.1). However, in your letter you appear to attempt to define "trespass cultivation sites" as "often located under the native tree canopy" and "typically not easily accessible". Both new and Pre-Existing sites are prohibited from timberland conversion (Section 55.4.6.5) and must meet all performance standards set forth in the ordinance (Section 55.4.6.5.5). This includes evaluation and remediation of hazardous materials should the site have evidence of hazardous materials like a commercial or industrial use (Section 55.4.12.1.11).

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- k) **Comment 13. Thresholds of Significance.** The DEIR and FEIR do not adequately address thresholds of significance to biological resources. If impacts will not be completely avoided, thresholds of significance should be specifically defined in the FEIR so the potential significance of the impact may be determined. **Response to Comment 13:** The rationale for determining if an impact is significant is identified under each DEIR impact discussion and is supported by substantial evidence. Biological resource thresholds of significance are difficult to uniformly quantify or specifically define as individual application site circumstances, habitat conditions, species presence, and cannabis site design details are necessary components to be factored for determining the significance of an impact. This is especially true for diverse land and habitat conditions that exist in Humboldt County (DEIR pages 3.4-19 through 3.4-55). CDFW provides no guidance or recommended biological resource thresholds of significance in this correspondence or prior correspondence to County on this project.

The DEIR does use a similar approach to significance determination analysis as the “spotted owl” example provided by CDFW. For example, the DEIR identifies the following biological resources threshold of significance on DEIR page 3.4-80: “have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS;”

DEIR’s significance determination analysis for special-status amphibians on DEIR page 3.4-61 states the following:

“Foothill yellow-legged frog, northern red-legged frog, Pacific tailed frog, red-bellied newt, and southern torrent salamander are all CDFW species of special concern. Foothill yellow-legged frog, northern red-legged frog, Pacific tailed frog, and southern torrent salamander occur throughout the County, within suitable aquatic habitat (CNDDDB 2017). Red-bellied newt occurs only in the southern portion of Humboldt County, within the Mattole River system (CNDDDB 2017). Several performance standards related to water storage are included in the proposed ordinance, such as adequate storage pond setbacks from streams and wetlands, and escape pathways for wildlife. New cannabis-related development under the proposed ordinance could result in the loss of / injury to special-status amphibians, if the species occur at the site, through disturbance to suitable habitat during ground disturbance activities, such as construction of storage ponds and installation cultivation sites. This would be a potentially significant impact.”

- l) **Comment 14. Qualified Biologist.** The County should explicitly state whether the same qualifications [as defined by the State Water Board Policy] will be required for biologists implementing mitigation measures under the County's Ordinance. The Ordinance should also provide a mechanism allowing the County to disqualify qualified biologists if necessary.

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Response to Comment 14: Qualifications of biologists or other professionals preparing studies or reports required by the CCLUO or other land use regulation are determined administratively by the Director of the Department of Planning and Building, based on a Statement of Qualifications that must be submitted. Section 55.4.12.1.10 of the proposed ordinance incorporates the biological resource mitigation measures into the requirements of the ordinance. The Final Mitigation Monitoring and Reporting Program includes this definition in association with these mitigation measures.

- m) **Comment 15. Autonomous Code Enforcement Unit.** The Department believes that in order to justly enforce the Ordinance in an effective manner, the County should create an autonomous Code Enforcement Unit. This independent County department would operate with sole discretion over enforcement actions. In addition, the County should define and codify an unambiguous process and procedures for violations of the proposed Ordinance.

Response to Comment 15: The organization and responsibilities of County departments are determined in the discretion and under the control of the Board of Supervisors. Only elected County officials such as the Sheriff and District Attorney exercise independent discretion over enforcement activities, or can be said to be in any sense autonomous, although they are subject to the budgetary authority of the Board of Supervisors. The Code Enforcement Unit has previously been assigned to either the Department of Planning and Building or the Office of the County Counsel, and most recently reassigned to the Department of Planning and Building in July of 2017, where it was determined to be best positioned to be most effective in addressing the challenge of responding to the new cannabis regulatory environment.

- n) **Comment 16. Coordinated Inspections.** The Ordinance should specify that the County inspector will notify other regulatory agencies of site non-compliance, so that agency may determine whether immediate action is necessary, or if the proposed County timeline for resolution of the violation is appropriate.

Response to Comment 16: The County expects that it will continue with its practice of regular consultation, cooperation and sharing of information and other resources with all relevant departments and agencies in both the consideration of permit applications and with compliance and enforcement activities. CCLUO Section 55.4.5.9 explicitly requires the County to notify the relevant state licensing authority whenever a County certificate or permit is revoked or terminated. Coordination with CDFW, Law Enforcement, and local RWQCB staff is ongoing and expected to continue to improve as more resources are brought to bear, including statewide and local shared databases and similar tools for interagency coordination.

- o) **Comment 17. Water Use Restrictions.** The County should provide detailed criteria describing how it will determine when the environmental conditions exist to restrict water use.

Response to Comment 17: In CCLUO Section 55.4.5.10, the County reserves the right to reduce the extent of any commercial cannabis activity due to environmental conditions, including sustained drought or low flows in a particular watershed. This provision was established in County ordinance prior to any state

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law or regulation providing for such similar restrictions, and could operate independent of any determination by a state agency to impose such limitations under Business and Professions Code section 26069 (c)(1) or other authority. The County has not yet established specific criteria, but should it determine it is necessary and appropriate to exercise its reserved authority that it will have to base the action on substantial evidence in the administrative record to be developed at that time, with public notice and the opportunity for comment by all interest parties, including any state agency.

- p) **Comment 18. Generator Restrictions in Forestland.** The Department recommends that generators and mixed-light cultivation be prohibited in all forested habitats, regardless of zoning district.

Response to Comment 18: Land zoned TPZ (which includes some areas that are now publicly owned) represent approximately 1,915,000 acres of the total 2,292,640 acres (over 83%) of the land area of Humboldt County. While there may be additional forested habitats not zoned TPZ, the prohibition of generator use and mixed light cultivation in TPZ protects the great extent of contiguous habitat in the County. The prohibition of new cultivation on land with established tree cover (see Response to Recommendation No. 9, above) regardless of zoning further protects forested habitat.

- q) **Comment 19. Site Restoration.** The County should provide detail regarding its potential remedies in the event that a permitted site is abandoned without restoration.

Response to Comment 19: CCLUO Section 55.4.6.6 requires that upon termination or abandonment of a permitted commercial cannabis cultivation site, the operator or property owner shall restore the site as more specifically described in that section. Failure to restore the site will be subject to penalties and enforcement (See response to Recommendation No. 10, above.)

- r) **Comment 20. Project Level CEQA.** It is not clear from the Ordinance, the DEIR, or the FEIR what criteria the County will use to determine which projects will require CEQA review, and/or which projects will be subject to avoidance and mitigation measures as outlined in the DEIR and FEIR. The County should explicitly state its criteria for site-specific environmental review of cannabis cultivation projects.

Response to Comment 20: Commercial cannabis activity permit applications that are eligible for issuance of a Zoning Clearance Certificate are ministerial approvals, not subject to further CEQA review. However, all commercial cannabis activities are subject to eligibility criteria and performance standards that incorporate the avoidance and mitigation measures outlined in the DEIR and FEIR. Commercial cannabis activity permit applications that require approval of Special Permits or Use Permits are discretionary approvals subject to further site-specific environmental review under CEQA pursuant to the consideration of subsequent activities under State CEQA Guidelines Section 15168(c). On an individual project basis, review may result in the imposition of conditions of approval beyond the eligibility criteria and performance standards in order to address any potentially significant environmental effects of the project. After review of the application details in comparison to the EIR's impact analysis,

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adopted mitigation measures, and performance standards set forth in proposed ordinance, state licensing program (California Code of Regulations), and State Water Board Policy, the County may determine that the environmental impacts of an individual application are adequately addressed in the EIR and no further environmental review is required or that additional environmental review is required. Thus, the previous analysis, mitigation measures, and regulations are the criteria the County will use to determine whether the specific details of the individual application would cause a significant environmental impact that was not examined in the EIR or would substantially increase the severity of a previously identified significant impact pursuant to State CEQA Guidelines Section 15162 and 15168(c).

- s) **Comment 21. Stream Crossings.** The County should require an assessment of all stream crossings on unsurfaced roads that access project sites. The assessment should evaluate stream crossings following the protocol prescribed in Cafferata et al. (2017). Stream crossings determined to be failing, substantially undersized, or delivering sediment to streams should be prioritized for remediation. Results from this analysis should be submitted to the California Department of Fish and Wildlife and the State Water Resources Control Board for review and concurrence during the CEQA referral process, and prior to individual project approval. Remediation and/or mitigation measures to avoid or minimize impacts related to the use of roads not currently meeting these standards should be proposed as part of the project referral.

Response to Comment 21 See response to Concern No. 3, above. Stream crossings generally fall within DFW jurisdiction under Fish and Game Code Section 1602. CCLUO Section 55.4.12.2.3 requires that all commercial cannabis activity permit holders comply with applicable streambed alteration permits obtained from the DFW.

For both existing and proposed cultivation sites, access roads must comply with the road system performance standards. In many cases, improvements to existing roadways will be necessary to achieve compliance with these standards (see section 55.4.12.1.8). Sub-section (c) includes the following standards from the Five Counties Salmonid Conservation Roads Maintenance Manual that specifically address water resources and biological resources:

Impacts from point source and non-point source pollution are prevented or minimized, including discharges of sediment or other pollutants that constitute a threat to water quality. Road segments shall be designed and maintained in ways which minimize the potential for discharge of sediment through measures to reduce velocity of runoff, capture and detain stormwater from road systems to enable settling of transported sediments, and minimize direct delivery to nearby watercourses, to the greatest extent feasible.

Design and construction of culverts, stream crossings, and related drainage features shall remove barriers to passage and use by adult and juvenile fish, amphibians, reptiles, and aquatic invertebrates.

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CDFW does not provide any information on why these standards in the Five Counties Salmonid Conservation Roads Maintenance Manual in combination with EIR mitigation measures and the State Water Board Policy provisions are not adequate to address water quality and biological resources.

- t) **Comment 22. LSA Agreement.** The County should remove the conflicting provision in the Ordinance that states an applicant shall not enter into an LSA Agreement with the Department until the County permit is completed.

Response to Comment 22: CCLUO Section 55.4.12.2.3 requires that where applicants have yet to secure an agreement pursuant to Fish and Game Code section 1602, that the applicant shall not complete entering into such an agreement until the County's permit process has finished. The purpose of this requirement is to prevent applicants from undertaking site development work until it can be determined that the County permit will in fact be issued, and what other requirements may be involved. During processing of cannabis permit applications pursuant to our current local cannabis land use regulations, the Department has witnessed numerous examples of premature permitting of stream crossings, water diversions, and other jurisdictional concerns. In each case, permitting would have greatly benefitted from earlier consideration of broader project concerns (eligibility, zoning and land use considerations, as well as access road characteristics, legal parcel status, water source and water storage concerns, and similar challenges and deficiencies).

CEQA requires evaluation of a project include "the whole of an action , which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" which may include, "An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." For purposes of issuance of a permit for commercial cannabis cultivation, the County is the lead agency . In entering into 1602 agreements for stream crossings or other stream diversions associated with a cannabis cultivation operation, DFW acts as a responsible agency. DFW should wait and coordinate with the County to establish the overall parameters and configuration of a cannabis cultivation operation before entering into 1602 agreements that are subordinate to the design of the project as a whole. This approach is more beneficial to protection of the environment, and avoids unnecessary expense and delays resulting from incomplete consideration of a project.

- u) **Comment 23. Light Pollution.** The performance standard for light pollution control should apply to all zoning districts, and concurs with the standard in subsection (a) which prohibits any light from escaping from mixed light cultivation and nursery structures between sunset and sunrise.

Response to Comment 23: CCLUO Section 55.4.12.4 performance standard for light pollution control applies in all zoning districts. FEIR Response S1-36 that this standard would not apply to commercial or industrial zones is erroneous.

- v) **Comment 24. Mixed Light Setbacks.** All mixed-light cultivation should be located a minimum of 200 feet from Class I and Class II streams.

Response to Comment 24: CCLUO Section 55.4.6.4.4 (i) which incorporates the

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setback and permitting requirement of the Humboldt County Streamside Management Area provisions in Humboldt County Code Section 314-61.1, together with the performance standard for light pollution control in CCLUO Section 55.4.12.4, provide adequate protection for Class I and Class II streams.

11 FINDING

ADVERSE ENVIRONMENTAL EFFECTS MINIMIZED. Changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effects identified in the EIR.

- EVIDENCE**
- a) See Findings 5 and 6 which identify the impacts which are have either a less than significant impact due to the project design (ordinance requirements) or have mitigation identified in the EIR which has resulted in changes to the ordinance language to implement the mitigation or will result in procedural changes to apply the mitigation.
 - b) Three significant and unavoidable impacts have been identified related to odor, impacts to Community Service Districts, and air quality impacts related to PM10 impacts (See Finding 6).
 - c) The California Department of Fish and Wildlife submitted comments on the FEIR caused the County to make changes to mitigation measures that are more effective at mitigating impacts to Northern Spotted Owl and Noise impacts than what was previously presented (See Finding 10). In addition the County has imposed a cap on the number of cultivation permits which can be issued which has taken into consideration the watersheds of concern identified by CDFW.

12 FINDING

REGULATORY APPROACH. The County's approach to bringing an unregulated illegal industry into an environmentally protective and regulated condition involves two actions. First is setting and maintaining standards implemented through a land use permitting system. Second is to curtail illegal cannabis cultivation activity through code enforcement action. The County is committed to both actions.

- EVIDENCE**
- a) The County was among the first jurisdictions in the State of California to adopt comprehensive regulations addressing the cultivation, processing, distribution and manufacturing of Medical Marijuana. The ordinance was first adopted in February of 2016 and modified in October 2016.(Ordinance 2559)
 - b) The County modified the County Code to make enforcement actions more efficient and to allow imposition of larger fines on illegal cannabis grows. See Ordinance 2576 adopted June 27, 2017. Code enforcement provisions are contained in a separate section of the code from the permitting of cannabis activities.
 - c) The Board of Supervisors has allocated 6 additional staff to code enforcement, and additional resources to make enforcement of illegal cannabis cultivation more effective. Code enforcement is currently allocated 8.5 full time positions. In addition the Code enforcement function was relocated into the Planning and

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- Building Department to make for greater efficiency.
- d) The Board of Supervisors has given direction to pursue enforcement of illegal cultivation sites on a proactive basis. This has resulted in the identification and citing of over 100 illegal grow sites since July 2017.
 - e) The County has prepared a comprehensive update to the original ordinance and prepared an EIR describing the environmental effects of implementing said ordinance. The updated ordinance will be more effective at protecting the environment .

13 FINDING

STATEMENT OF OVERRIDING CONSIDERATIONS - In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits of the project against its unavoidable significant environmental impacts in determining whether to approve the project, and has determined that the benefits of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable. The Board makes the following Statement of Overriding Considerations:

EVIDENCE

The CCLUO EIR found the following significant and unavoidable impacts, as discussed in the Findings, above: (1) the project will lead to generation of odorous emissions in such quantities to cause detriment, nuisance, or annoyance to a substantial number of people; (2) commercial cannabis operations (cultivation and non-cultivation) that would result in peak emissions of particulate matter (PM10) during the harvest season which would exceed maximum daily thresholds for PM10 because the North Coast Air Basin already exceeds the maximum thresholds; and (3) the project will lead to commercial cannabis cultivation operations and non-cultivation operations that would result in increased water demand from public water systems that could exceed supply and infrastructure.

In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits of the project against its unavoidable significant environmental impacts in determining whether to approve the project, and has determined that the benefits of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable. The Board has balanced the economic, legal, social, technological, or other benefits of the project against these effects and makes this Statement of Overriding Considerations, which warrants approval of the project (as modified by incorporation of EIR mitigation measures) notwithstanding that all identified adverse environmental effects are not fully avoided or substantially lessened (CEQA Guidelines Section 15093(a).] The Board finds that the benefits of the “proposed project outweigh the unavoidable adverse environmental effects,” and therefore, “the adverse environmental effects may be considered ‘acceptable’” [CEQA Guidelines Section 15093(a)].

Each of the reasons for approval cited below is a separate and independent basis

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that justifies approval of the CCLUO. Thus, even if a court were to set aside any particular reason or reasons, the Board finds that it would stand by its determination that each reason, or any combination of reasons, is a sufficient basis for approving the project (as modified by incorporation of EIR mitigation measures) notwithstanding the significant and unavoidable impacts that may occur. The substantial evidence supporting the various benefits can be found in the Findings set forth in this document and in this Statement of Overriding Considerations, the EIR, and in the Record of Proceedings, including, but not limited to, public comment received at the public hearings held and referenced in the Board letter for the hearing of March 19, 2018.

Pursuant to Public Resources Code Section 21081(b) and CEQA Guidelines Sections 15043, 15092, and 15093, any unavoidable adverse environmental effects of the project (as modified by incorporation of EIR mitigation measures) are acceptable due to the following environmental benefits and overriding considerations which outweigh the significant effects on the environment:

a) Economic Benefits:

- i) A significant portion of Humboldt County's economy has been related to illegal cannabis cultivation. With State legalization of cannabis, the County desires to create a regulated cannabis industry which will continue be a significant factor of the local economy. The cannabis industry is a source of local jobs, purchases supplies from local businesses, supports local restaurants and, as regulated, has the potential to increase the tourist industry within Humboldt County. The cannabis industry has direct and indirect economic benefits to the local economy which are central to maintaining the countywide economy.
- ii) The County's General Plan recognizes the importance of the cannabis industry to the local economy. Page 9-7 of the 2017 Humboldt County General Plan states, "The production and sale of medicinal and illicit cannabis contribute significantly to Humboldt County's economy. The impact is difficult to measure but its effects are unmistakable. For example, the size of the retail and restaurant sector is out of proportion to official income levels. While the production and sale of medicinal cannabis is legal and local jurisdictions are collecting data that can be used to measure the size of this industry, the size of the illegal industry cannot be measured directly. Many assume it is the largest single industry in Humboldt County... If statewide efforts to legalize cannabis are successful, the County may enjoy a legal and economically viable industry based on the expertise, quality and market reputation that Humboldt County gained in the production of illicit cannabis. While there are practical and legal limitations on the County's ability to support illicit cultivation, support for legal cultivation should be a part of the County's overall economic policy." Humboldt County. 2017 Humboldt County General Plan. Eureka, CA.
- iii) In an article in the Times-Standard Newspaper on December 4, 2011, writer Thadeus Greenson discussed a study regarding the economic impact of cannabis in the Humboldt County economy: "In her paper for

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the Pacific Coast Banking School graduate program at the University of Washington, in which she relied on some very conservative estimates, Jennifer Budwig concludes that at least \$415 million in marijuana money circulates through Humboldt County annually -- a number roughly equal to 26 percent of the county's entire \$1.6 billion economy." Greenson, Thadeus. "Humboldt's \$400 million question; banking thesis quantifies impact of pot on local economy." Times Standard, Dec. 4, 2011. <http://www.times-standard.com/article/zz/20111204/NEWS/111209445>. Accessed March 12, 2018.

- iv) State licenses for cannabis businesses require a local permit. Permitting cannabis businesses through the CCLUO will help ensure the profitability and sustainability of the local economy from the cannabis industry by enabling local cannabis businesses to participate in the state's regulated cannabis marketplace and will allow the County to retain local land use control. The project provides for a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local and statewide demands.
- v) The CCLUO provides opportunities for local testing labs that protect the public by ensuring that local cannabis supplies meet product safety standards established by the State of California.
- b) Public Health and Safety Benefits (legal and social benefits):
 - i) The Board finds that a primary objective of the project is to "establish local land use regulations that ensure the health and safety of residents, employees, County visitors, neighboring property owners, and end users of cannabis." CCLUO sections 313-55.4.2 and 314-55.4.2. The project allows for orderly development and oversight of commercial cannabis activities by applying standards that require appropriate siting, setbacks, security, resource consumption limitations, and nuisance avoidance measures, thereby protecting public health, safety, and welfare.
 - ii) The Board finds that by allowing local cannabis businesses to participate in the state regulatory scheme through the CCLUO, the residents of Humboldt County will benefit from the benefits listed in the Findings and Declarations and Purpose and Intent sections of Proposition 64: Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). Cal. Proposition 64 (2016). The benefits include, but are not limited to:
 - (1) AUMA will incapacitate the cannabis black market, and move cannabis purchases into a legal structure with strict safeguards against children accessing it.
 - (2) AUMA prohibits the sale of non-medical nonmedical cannabis to those under 21 years old, and bars cannabis businesses from being located within 600 feet of schools and other areas where children

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- congregate. It also establishes mandatory and strict packaging and labeling requirements for cannabis and cannabis products.
- (3) Cannabis and cannabis products cannot be advertised or marketed towards children. AUMA requires nonmedical cannabis sold by licensed businesses to be packaged in child-resistant containers and be labeled so that consumers are fully informed about potency and the effects of ingesting nonmedical cannabis.
 - (4) By bringing cannabis into a regulated and legitimate market, AUMA creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety.
 - (5) AUMA calls for implementation of a statewide track and trace management procedures to track nonmedical marijuana from cultivation to sale, and requires nonmedical cannabis to be comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it can be sold by licensed businesses.
 - (6) AUMA requires licensed nonmedical cannabis businesses to follow strict environmental and product safety standards as a condition of maintaining their license.
 - (7) Sections 313-55.4.12.1 and 313-55.4.12.1 of the project requires all commercial cannabis activities maintain compliance with all applicable state laws, so all of the public health benefits cited in Proposition 64 also apply to the project.
- iii) The 2017 Humboldt County General Plan includes policy UL-P19, which states, "Cultivation of medical cannabis shall be regulated by ordinance to provide for the health, safety, and welfare of the community, but shall not interfere with a patient's right to medical cannabis." Also, General Plan Implementation Measure UL-IM12 requires the County, "Develop an ordinance for medical cannabis cultivation and dispensing that protects health, safety and welfare and ensures the cultivation and dispensing sites are compatible with neighboring uses." Humboldt County. 2017 Humboldt County General Plan. Eureka, CA.
 - iv) The creation of a statewide regulatory program and a corresponding local program at the County level will provide increased certainty in an area that has been unclear for enforcement purposes since the passage of California Proposition 215 in 1996. See e.g. Office of the Attorney General. Press Release: "Atty. General Brown Issues Medical Marijuana Guidelines for Law Enforcement and Patients." August 25, 2008. <https://oag.ca.gov/news/press-releases/atty-general-brown-issues-medical-marijuana-guidelines-law-enforcement-and/>. Accessed

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March 12, 2018. Law enforcement agencies assert that the cover of 215 allowed for a marked increase in illegal cannabis cultivation and sales. (Id.)

- v) The legalization scheme allows for both medical and nonmedical cannabis business to obtain state licenses and local permits which will streamline identification of operations that are not participating in the legal marketplace, thereby making them a target for enforcement.
- c) Environmental Benefits (legal and social benefits):
 - i) Sections 313-55.4.2 and 314-55.4.2 of the CCLUO state the intent of the CCLUO is to protect the environment from harm resulting from cannabis activities, including but not limited to streams, fish, and wildlife.
 - ii) The project will improve baseline environmental conditions in the County by removing existing cannabis cultivation operations from environmentally sensitive locations and relocating them to areas less environmentally sensitive. (CCLUO sections 313-44.5.6.5.6 and 314-44.5.6.5.6.)
 - iii) Implementation of a local regulatory program will allow the County to participate in and benefit from the State's regulatory program which includes provision of revenue from state taxes to be used for cleanup, remediation, and restoration of environmental damage in watersheds affected by cannabis cultivation and related activities.
 - iv) By participating in the regulatory system, cannabis permit sites benefit from the involvement of other regulatory agencies such as the California Department of Fish and Wildlife, the Water Resources Control Board, CalFIRE, as well as local Native American Tribes. This allows coordination among resource agencies and for the County to benefit from coordinated permitting and cleanup efforts on the whole.