SUPPLEMENTAL INFORMATION
No. 1

For Board of Supervisors Agenda of:

December 11, 2015

☐	Administrative Agenda Item	}	
☐	Continued Hearing Item	}	No. 1
☒	New Hearing Item	}	
☐	Old Business Item	}	
☐	New Business Item	}	

Re: Project: Medical Marijuana Land Use Ordinance Phase IV
Case No.: OR-15-003

This Supplemental contains a letter written by Commissioner Noah Levy to the Humboldt County Board of Supervisors

From: Noah Levy [mailto:noah@landwaterconsulting.com]
Sent: Friday, December 04, 2015 5:44 PM
To: Munsee, Catherine
Subject: Re: Letter to the Board

Thank you, Catherine. Attached please find a copy of that letter, with very minor revisions I added afterwards.

Since it appears that no video of last night's meeting was or is available, I'm adding a very brief "cover note" to the Supervisors below, which basically restates the reasons I explained last night for drafting this letter and delivering it to my fellow commissioners. Perhaps, if you see fit, you can print this email exchange and include it along with my letter as part of the official record.

On Dec 4, 2015, at 9:55 AM, Munsee, Catherine <CMunsee@co.humboldt.ca.us> wrote:

Good Morning, Noah:

Will you please send me a copy of the letter you handed out to your colleagues last night so I may include it as part of the official record?

Hope all is well,
Catherine

Catherine Munsee
Business Manager
Planning and Building Department
County of Humboldt
(707) 268-3707

December 3, 2015

Estelle Fennell, Chairperson
Humboldt County Board of Supervisors

Honorable Supervisors,

I write this letter to explain why I am unable to vote to recommend that you approve the Medical Marijuana Land Use Ordinance as it has been amended during the course of our Commission's extensive hearings on the subject over the past month.

I believe my fellow commissioners and I have worked in good faith to learn about and take account of many complexities that needed to be incorporated in order to rectify some significant problems or omissions in the original draft ordinance produced in early October. I also believe the original draft has been improved in many important respects, due both to that deliberation by our Commission and to the knowledgeable testimony we heard from many members of the public and other agencies during this time. I sincerely thank the Planning staff and County Counsel's office, as well as my fellow commissioners, for the time and energy they have put into their deliberations on this important subject.

Unfortunately, it is my considered opinion that—whatever the shortcomings of the original draft ordinance—the cumulative effects of the decisions made by this Commission over the past month have resulted in a revised ordinance that fails to meet several key public policy goals that are incumbent upon the County. In particular, I believe the revised ordinance now fails the crucial legal test that CEQA requires—namely, that the environmental impacts of development that is ministerially permitted by this ordinance will be mitigated to "less than significant" levels.

The October draft ordinance contained a crucial provision that its Mitigated Negative Declaration depended upon: It prohibited new cultivation operations from being permitted on lands zoned TPZ, FR, or TC, and only would permit "existing" operations to continue there if rigorous mitigations were met and any existing violations of law were cured. This, I believe, was a sensible way to attempt to bring existing operations into compliance in these most environmentally sensitive and remote resource lands, in order to mitigate the environmental impacts already occurring there, while disincentivizing the continued conversion of these parcels to cannabis cultivation in future.

The removal of this provision wholesale from the revised draft, however, poses a problem that the MND is currently not equipped to address, and which I fear will make it difficult for this type of environmental document to survive a legal challenge.

Moreover, the original ordinance imposed an upper size limit of 2000 square feet of cultivation area for any operation to be permitted without discretionary review (i.e., using a zoning clearance). While I believe this limit may have been too stringent (as a practical matter) to bring a significant portion of existing cultivation operations into compliance, I fear our Commission—in attempting to correct this—may have effectively thrown the baby out with the bathwater. We have dramatically increased the scale of operations that can be permitted through a zoning clearance—up to 10,000 square feet for thousands of parcels (well beyond the average size of most existing operations, based on the best data available), and up to 20,000 square feet on the largest parcels—while at the same time dramatically increasing the number of parcels on which such operations may occur.

The data I have seen in the past suggests that there are thousands of TPZ parcels in Humboldt County that would, if these rules were to go into effect, now be allowed to develop new cannabis cultivation up to 20,000 square feet as a matter of right, where none had existed to date. The MND we received in October certainly never contemplated this. And even if such development takes many years to play out, such a change would instantly undercut the economic logic of owning large tracts of forestland to be managed for timber. I fear this could mean the end of timber production as any part of Humboldt's future.

At the same time, the revised draft fails to impose any other mechanism by which the cumulative effects of these decisions might otherwise be limited. Specifically:

- It imposes no limit on the number of total permits that will be issued using a zoning clearance.
- It imposes no limit on the number of "new" cultivation sites that may be permitted, nor on the number of very large operations that may be permitted, nor on the number of permits that will result in the conversion of TPZ lands.
- Nor does it impose a limit in time during which such permits may be issued, before requiring further environmental analysis of the impacts of this very permissive zoning clearance scheme.

In addition, I regret that the revised ordinance fails to include several other conditions that might have helped to mitigate the cumulative negative watershed impacts of this ordinance. Specifically:

- It does not prohibit imported water from being used for cultivation operations.
- It does not limit the types of pesticides or other biocides that may be used for cultivation.
- It places no limits, or even disincentives, on the use of diesel or gas generators for indoor or mixed-light operations.
- Finally, this ordinance fails to propose an adequate mechanism for enforcement of its terms, relying apparently only on the incentive of legality—when in fact, the greater incentive for many operators to remain in the black market will remain strong for years to come.

For these reasons, I cannot recommend that your Board approve this version of this ordinance. But because of the extreme and far-reaching consequences that passage of this law will have for the future of Humboldt County, I urge you to correct these shortcomings in the MMLUO prior to your approving it.

Respectfully,

Noah Levy
District 3 Planning Commissioner