

## **ATTACHMENT 12**

Responses to March 1, 2018 Letter from CDFW on the FEIR and ordinances.



State of California - Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Region 1 - Northern  
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EDMUND G. BROWN, Jr., Governor  
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March 1, 2018

Steven Lazar  
Humboldt County Planning and Building Department  
3015 H Street  
Eureka, CA 95501

**Subject: Amendments to Humboldt County Code Regulating Commercial Cannabis Activities, Humboldt County**

Dear Mr. Lazar:

The California Department of Fish and Wildlife (Department) has reviewed the Final Environmental Impact Report (FEIR) for Amendments to Humboldt County (County) Code Regulating Commercial Cannabis Activities, and the Commercial Cannabis Land Use Ordinance (Ordinance)<sup>1</sup>. The Department provided comments on the Draft Environmental Impact Report (DEIR) in October 2017, Notice of Preparation of the DEIR in May 2017, and previously provided comments on the Medical Marijuana Land Use Ordinance – Phase IV in October 2015. This letter addresses several of the Department's topics and comments that were not adopted or adequately addressed in the FEIR.

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

The Department strongly supports the County's efforts to regulate cannabis cultivation and to address the numerous and substantial environmental impacts. The Department believes that greater regulatory oversight and enforcement by local Lead Agencies can help minimize the environmental impacts of cannabis cultivation.

The Department appreciates and concurs with several revisions in the FEIR, including the addition of Mitigation measure 3.4-1a requiring pre-approval biological reconnaissance surveys; improvements to protections for special status plants in

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<sup>1</sup> Ordinance Amending Provisions of Title III of the Humboldt County Code Relating to the Commercial Cultivation, Processing, Manufacturing, Distribution, Testing and Sale of Cannabis for Medicinal or Adult Use; obtained as "CCLUO inland\_1.11.2018\_1.1" from <https://humboldt.gov.org/2308/Cannabis-EIR> on January 22, 2018.

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Mitigation measure 3.4-3a; the additional detail relating to invasive plant species management in Mitigation measure 3.4-3b; and adding oak woodlands to the sensitive natural communities to be avoided under Mitigation measure 3.4-4.

The Department's primary remaining concerns regarding the FEIR and proposed Ordinance include:

1. The Ordinance and FEIR do not propose limits on the number or density of cultivation sites in the County or more importantly, in a given watershed, and the FEIR does not analyze the potential for significant and cumulative impacts from cannabis cultivation.
2. The FEIR does not provide adequate avoidance, minimization, or mitigation measures to address potential impacts to State-listed threatened northern spotted owl (*Strix occidentalis caurina*), including to known activity centers.
3. The Ordinance and FEIR proposed criteria for roads do not address the environmental impacts associated with existing unpermitted and poorly constructed roads.
4. The FEIR does not adequately address noise and light impacts to wildlife species.
5. The FEIR does not clearly define 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 FEIR.
6. The Ordinance and FEIR should provide additional requirements to ensure adequate restoration of abandoned or remediated cultivation sites, and that associated cultivation area is not transferred to watersheds already significantly impaired by an overabundance of existing cannabis cultivation.

The Department's May 2017 and October 2017 letters provided extensive comments and recommendations relating to environmental impacts from cannabis cultivation on biological and water resources and the importance of adequate enforcement. As we have stated previously, the issuance of permits will not ensure compliance without consistent monitoring, enforcement, and substantial penalties for violations. The Department is willing to work with the County to ensure that adequate funding and personnel are available, and meaningful enforcement is implemented concurrently for permitted cultivation operations, as well as those not in compliance with County code or State law.



#### Limit on Number of Cultivation Permits

The DEIR provided an estimate of the number of new cultivation applications that may be received, and the FEIR states (page 2-25) that the County is "*considering modifications to the ...ordinance that would establish a cap...*" However, the County has not proposed a limit on the number of cannabis cultivation projects it would permit, either in the DEIR or in FEIR. In Response S1-8, the FEIR provides further detail on the basis of the County's assumptions regarding the number of expected new applications, including the number of new applications the County has received, estimates from the California Department of Food and Agriculture (CDFA) regarding estimated demand, and past cannabis production in the State. Given the level of confidence expressed by the County in its estimate of the total number of applications that would be requested, and its assertion that the projection is well-supported by evidence, the Department seeks clarification as to why the County would not define a cap on the number of cultivation sites based on this evidence. Response S1-8 further expresses reluctance to consider the maximum potential for cannabis operations in the County. The Department supports a cap on the number of cannabis cultivation permits County-wide, and recommends the County develop criteria to establish the allowable number of sites. **(Recommendation 1)**

#### Significant and Cumulative Impacts to Watershed Resources

The Department's previous letters have provided extensive detail on the specific environmental impacts of cannabis cultivation in our May 2017 and October 2017 letters. The Department expressed its concerns about cumulative impacts to watershed resources from permitted and unpermitted cannabis cultivation, in addition to increased rural residential development. We recommended the County prepare an analysis describing (a) existing water use, (b) potential for sediment and other pollutant discharge, and (c) percentage of habitat fragmentation within a given HUC 12 or smaller watershed. We recommended this analysis provide detail on the amount of cannabis cultivation the County proposes to permit within each watershed, and what impacts the allowed cultivation would have on each of these elements. We also recommended the County conduct a water availability analysis based on the potential number of cultivation sites that could be allowed in each watershed, and define a cap based on the determined watershed carrying capacity.

The documented environmental impacts of cannabis cultivation on water resources include reduction of instream flow, delivery of sediment, nutrients, petroleum products, and pesticides to streams (Carah et al. 2015), road building and related stream crossing construction, development within riparian buffers, pond construction, hydrologic modification including rerouting of streams and interception of groundwater through poorly constructed road systems, and introduction of nonnative species.

Cannabis cultivation has contributed substantial cumulative impacts to aquatic species listed or candidate under CESA including Coho Salmon (*Oncorhynchus kisutch*) and



foothill yellow-legged frog (*Rana boylei*), and the habitats they rely upon. Coho Salmon populations are present in numerous watersheds where cannabis cultivation occurs. Impacts from cannabis cultivation as detailed above have the potential to cause “take” of and impacts to these listed species. Cumulative impacts from surface water diversion are of particular concern, as well as unscreened or improperly screened diversion intakes.

As the County acknowledges in the DEIR and FEIR, dozens of waterbodies in the County are listed as impaired by the North Coast Regional Water Quality Control Board (NCRWQCB) (303 (d) list). The Department concurs with many protective measures the County has proposed, including a requirement for compliance with NCRWQCB Order No. 2015-0023 or recently-adopted State Water Resources Control Board (SWRCB) regulations (Ordinance Section 55.4.12.2.1); restriction of water use under specific circumstances (Ordinance Section 55.4.5.10); and prohibiting the use of trucked water except in emergencies (Ordinance Section 55.4.12.2.5).

The FEIR states (page 2-24) it would be difficult for the County to conduct the watershed analysis recommended by the Department. The FEIR acknowledges the County lacks the technical experience to collect necessary data and determine the appropriate carrying capacity for each watershed, and states the County is willing to participate in joint watershed evaluation studies with the Department, NCRWQCB, and SWRCB. The Department appreciates the County’s willingness to collaborate.

The California Department of Food and Agriculture (CDFA) may stop licensing cannabis cultivation in a watershed where significant adverse impacts are occurring and the Department or SWRCB have made a finding of significant impacts to the environment (“Impacted Watershed”; see Cal. Code Regs, title 13, § 8216). Currently the Department is developing criteria and methodology to provide substantial evidence to CDFA pursuant to this section. The Department requests the County also not issue permits for new or expanded cultivation sites if the Department or SWRCB make an Impacted Watershed finding, and provide that substantial evidence to the County.

**(Recommendation 2)**

Based on the Department’s best available information regarding current conditions and biological resources in the County’s watersheds, we provide the following recommendations as a starting point. Many subwatersheds are already heavily impacted by cannabis cultivation in the County. For example, the County has received approximately 88 cannabis cultivation applications for the Redwood Creek watershed, a tributary to the South Fork Eel River. In 2012, this watershed had nearly 200 parcels with active cannabis cultivation (Bauer et al. 2015), and it is likely there are substantially more, given the continued increase in cultivation sites across the County between 2012 and 2017. Furthermore, the County has 106 applications on file for the Salmon Creek watershed, another South Fork Eel River tributary. This watershed has experienced a significant increase in cannabis cultivation in the past five years, with less than 50 percent of parcels with active cultivation participating in the County permit process.

For a number of years, Department personnel have documented significant late summer dewatering events in both Redwood Creek and Salmon Creek, due to a combination of drought and water use for cannabis irrigation. A host of other County watersheds are experiencing similar flow impairment issues and corresponding significant impacts to listed salmon and steelhead populations. To avoid further environmental impacts and loss of subwatershed populations of salmon and steelhead in watersheds the Department believes may be already impacted and may meet the criteria for an "Impacted Watershed" pursuant to Title 13, Cal. Code of Regulations, Section 8216, the Department recommends the County consider limiting cultivation permits in the subwatersheds listed in Table 1 below until the County, in cooperation with the Department and other responsible State agencies, determine what level of cannabis cultivation can be safely conducted. (**Recommendation 3**)

**Table 1.** Subwatersheds that may be Impacted Watersheds, with identified resources of concern, where the County should consider limiting cannabis cultivation until further watershed analysis can be completed.

Watershed and Subwatershed Name	Resources of Concern
<u>Mattole River Watershed</u> Dry Creek Eubank Creek Middle Creek Mattole Canyon Creek	Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> ), Coho Salmon ( <i>O. kisutch</i> ), Steelhead Trout ( <i>O. mykiss</i> ), Pacific Lamprey ( <i>Entosphenus tridentatus</i> ), Pacific Giant Salamander ( <i>Dicamptodon tenebrosus</i> ), Southern Torrent Salamander ( <i>Rhyacotriton variegatus</i> ), Northern Red-legged Frog ( <i>Rana aurora</i> ), Tailed Frog ( <i>Ascaphus truei</i> ), Western Pond Turtle ( <i>Actinemys marmorata marmorata</i> ), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.
<u>Redwood Creek Watershed (tributary to Pacific Ocean)</u> All tributaries east of Redwood Creek, upstream of Hwy 299 bridge  Windy Creek	Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> ), Steelhead Trout ( <i>O. mykiss</i> ), Pacific Lamprey ( <i>Entosphenus tridentatus</i> ), Pacific Giant Salamander ( <i>Dicamptodon tenebrosus</i> ), Southern Torrent Salamander ( <i>Rhyacotriton variegatus</i> ), Northern Red-legged Frog ( <i>Rana aurora</i> ), Tailed Frog ( <i>Ascaphus truei</i> ), Western Pond Turtle ( <i>Actinemys marmorata marmorata</i> ), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.



<p><u>South Fork Eel River Watershed</u> Redwood Creek and tributaries: China Creek Dinner Creek Miller Creek Seely Creek  Salmon Creek</p>	<p>Chinook Salmon (<i>Oncorhynchus tshawytscha</i>), Coho Salmon (<i>O. kisutch</i>), Steelhead Trout (<i>O. mykiss</i>), Pacific Lamprey (<i>Entosphenus tridentatus</i>), Western Brook Lamprey (<i>Lampetra Richardson</i>), Foothill Yellow-legged Frog (<i>Rana boylei</i>), Pacific Giant Salamander (<i>Dicamptodon tenebrosus</i>), Southern Torrent Salamander (<i>Rhyacotriton variegatus</i>), Northern Red-legged Frog (<i>Rana aurora</i>), Tailed Frog (<i>Ascaphus truei</i>), Western Pond Turtle (<i>Actinemys marmorata marmorata</i>), Inland Threespine Stickleback (<i>Gasterosteus aculeatus microcephalus</i>), Boreal Toad (<i>Anaxyrus boreas boreas</i>), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.</p>
<p><u>Van Duzen River Watershed</u> Butte Creek Little Larabee Creek</p>	<p>Steelhead Trout (<i>O. mykiss</i>), Pacific Lamprey (<i>Entosphenus tridentatus</i>), Humboldt Sucker (<i>Catostomus occidentalis humboldtianus</i>), Coastrange Sculpin (<i>Cottus aleuticus</i>), Prickly sculpin (<i>Cottus asper</i> ssp. 1), (Brook Lamprey (<i>Lampetra Richardson</i>), Foothill Yellow-legged Frog (<i>Rana boylei</i>), Pacific Giant Salamander (<i>Dicamptodon tenebrosus</i>), Southern Torrent Salamander (<i>Rhyacotriton variegatus</i>), Northern Red-legged Frog (<i>Rana aurora</i>), Tailed Frog (<i>Ascaphus truei</i>), Western Pond Turtle (<i>Actinemys marmorata marmorata</i>), Inland Threespine Stickleback (<i>Gasterosteus aculeatus microcephalus</i>), Northwestern Salamander (<i>Ambystoma gracile</i>), Boreal Toad (<i>Anaxyrus boreas boreas</i>), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.</p>

Some subwatersheds in the County deemed critical to the recovery of a number of CESA- and federal ESA-listed aquatic species are identified as “key populations to maintain or improve” in the Recovery Strategy for California Coho Salmon (CDFG 2004), are not yet severely impacted by cannabis cultivation. This is based on extensive review and interpretation of aerial imagery, field observation, and the

professional opinion of Department staff. The Department recommends the County consider limiting cultivation permits until the County, in cooperation with the Department and other responsible State agencies, determines what level of cannabis cultivation can be safely undertaken in these “Stronghold” subwatersheds listed in Table 2 below, in order to preserve the existing resource and contribute to Coho Salmon recovery.  
**(Recommendation 4)**

**Table 2.** “Stronghold” subwatersheds with identified resources of concern, where cannabis cultivation permits should be limited.

Watershed and Subwatershed Name	Resources of Concern
<u>Mattole River Watershed</u> Baker Creek Thompson Creek	Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> ), Coho Salmon ( <i>O. kisutch</i> ), Steelhead Trout ( <i>O. mykiss</i> ), Pacific Lamprey ( <i>Entosphenus tridentatus</i> ), Foothill Yellow-legged Frog ( <i>Rana boylei</i> ), Pacific Giant Salamander ( <i>Dicamptodon tenebrosus</i> ), Southern Torrent Salamander ( <i>Rhyacotriton variegatus</i> ), Northern Red-legged Frog ( <i>Rana aurora</i> ), Tailed Frog ( <i>Ascaphus truei</i> ), Western Pond Turtle ( <i>Actinemys marmorata marmorata</i> ), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.
<u>South Fork Eel River Watershed</u> Sprowl Creek	Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> ), Coho Salmon ( <i>O. kisutch</i> ), Steelhead Trout ( <i>O. mykiss</i> ), Pacific Lamprey ( <i>Entosphenus tridentatus</i> ), Foothill Yellow-legged Frog ( <i>Rana boylei</i> ), Pacific Giant Salamander ( <i>Dicamptodon tenebrosus</i> ), Southern Torrent Salamander ( <i>Rhyacotriton variegatus</i> ), Northern Red-legged Frog ( <i>Rana aurora</i> ), Tailed Frog ( <i>Ascaphus truei</i> ), Western Pond Turtle ( <i>Actinemys marmorata marmorata</i> ), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.



### Northern Spotted Owl

The northern spotted owl (*Strix occidentalis caurina*) is listed as threatened under both the federal ESA and CESA. In its documentation for State listing of this species, the California Fish and Game Commission (CFGF) determined the continued existence of northern spotted owl in the State of California is in serious danger or threatened by present or threatened modification or destruction of its habitat, and human-related activities, among other threats (CFGF 2017). Marijuana cultivation is specifically identified as a threat, with density of cultivation sites in proximity to owl activity centers, and the amount and extent of impacts to owl habitat influencing the level of impact (CFGF 2017). Chronic disturbance common at cannabis cultivation sites include noise, light pollution, and human presence. Owls and night-foraging animals are especially susceptible to noise pollution according to U.S. Fish and Wildlife Service (USFWS) (2006); northern spotted owl is vulnerable to nighttime generator noise impacts.

Two recently published studies (Gabriel et al 2018, Franklin et al 2018) documented anticoagulant rodenticide exposure in northern spotted owls in California counties including Humboldt. Gabriel (2018) hypothesized that the change in land use toward marijuana cultivation may have led to an increased use of anticoagulant rodenticides in forested areas in the northwestern portion of the State. Franklin (2018) documented a freshly dead northern spotted owl that had been exposed to anticoagulant rodenticides, in proximity to several cannabis cultivation sites on private lands. Other studies (e.g. Brakes et al 2005) have found that anticoagulant rodenticide exposure, even if not immediately lethal, leads to decreased fitness or increased mortality from injuries that would not otherwise be lethal.

Response S1-11 in the FEIR references federally designated critical habitat for northern spotted owl, and Department occurrence data. This response states: "*As shown in Exhibit 3.4-9, the majority of owl occurrences are within areas where new cultivation is prohibited, including public land and land not zoned for cultivation.*" Other portions of the response acknowledge that Department data represent *known* occurrences. Occurrence data from the Department is provided through the California Natural Diversity Database (CNDDDB). CNDDDB is a positive detection database<sup>2</sup>, meaning that data are only included for areas where surveys have been conducted, and when survey data has been provided to the Department. CNDDDB does not contain information for areas (or species) where surveys have not been conducted, or data not submitted. It is not accurate to determine that a species or its habitat is absent based on a lack of data in CNDDDB. Suitable northern spotted owl habitat and activity centers are likely to occur in areas where they have not yet been documented. Further, undocumented occurrences are not limited to locations identified as within, or in close proximity to, designated critical habitat.

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<sup>2</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43527&inline>



Mitigation measure 3.4-1e in the FEIR attempts to address potential impacts to northern spotted owl. The Department agrees with the prohibition on removal of "*old growth habitat*," the requirement for USFWS protocol-level surveys prior to the removal of vegetation or ground disturbing activity "*adjacent or within suitable nesting, roosting, or foraging habitat*," and that no new cultivation sites will be allowed within 1.3 miles of a known northern spotted owl occurrence. However, according to the FEIR, this mitigation measure applies only to "*proposed new development*," and fails to address the impacts of Pre-Existing cultivation sites, including direct impacts from activities within close proximity to nests (visual line-of-sight), and habitat loss due to previous unpermitted timber conversion.

In our October 2017 letter, the Department provided the results of a spatial analysis completed by the Department. At that time, our analysis showed that 53 cannabis cultivation sites had activities within 40 meters of a documented northern spotted owl activity center; 525 cannabis sites occurred within 0.7 mile, and 1184 occurred within 1.3 miles. Based on data available at that time, nearly 38 percent of known northern spotted owl activity centers in the County may be affected by cannabis operations that have applied for County permits. The same analysis found that 46 percent of all cannabis permit applications are within 1.3 miles of a northern spotted owl activity center.

The FEIR states that compliance with the State Water Board Policy (specifically Prohibition 4) would reduce impacts to northern spotted owl to a less-than-significant level. Prohibition 4 (SWRCB 2017) requires cultivators to meet "*all requirements under the California ESA and the federal ESA*." Under the federal ESA, "take" of a listed species includes to "*harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct*." In its Final Rule, Department of Commerce (2009) "*provides clear notification to the public that habitat modification or degradation may harm listed species and, therefore, constitutes a take under the ESA*." Merely requiring surveys for future new development will not avoid take of northern spotted owl under the federal ESA.

Although the potential impacts of cannabis cultivation on northern spotted owl may differ from timber harvest (i.e. direct impacts from cultivation are ongoing), avoidance measures and disturbance buffers developed for timber harvest operations may be used to avoid take in other similar circumstances. USFWS (2011) provides guidelines to avoid incidental take of northern spotted owl that may result from timber operations in its coastal district. In that document, the home range of a northern spotted owl is defined as a 0.7 mile radius centered on an activity center (area of concentrated activity for a pair or individual owl). The Department recommends that to avoid significant impacts to northern spotted owl, Pre-Existing cannabis cultivation operations within 0.7 mile of a known northern spotted owl activity center located in the 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, that the project is avoiding significant impacts and complying with CESA. **(Recommendation 5)**

For any cultivation site with the potential to impact northern spotted owl based upon suitable habitat on or near the project parcel, or proximity to a known activity center, presence should be assumed until surveys have been completed, and avoidance measures should be implemented in consultation with the Department and USFWS. **(Recommendation 6)**

#### Biological Reconnaissance Surveys

The Department agrees with the addition of Mitigation measure 3.4-1a which requires biological reconnaissance surveys before the approval of a project. As it is currently written, this measure requires assessment of the habitat suitability *"of the proposed development area"* for special status wildlife species. The Department recommends that biological reconnaissance surveys should include the actual development area as well as an assessment of the surrounding area for suitable habitat for species such as northern spotted owl. **(Recommendation 7)**

#### Noise

As the Department has detailed previously, noise, particularly chronic noise pollution, creates negative impacts on wildlife. This is true regardless of the source.

Response S1-19 acknowledges *"motorized trimmers"* can generate a noise level of 55 decibels at a 30-foot distance, states that noise levels from this equipment would be similar to the noise level generated by residential landscape equipment, and assumes this would be *"similar to the typical ambient noise level in rural and agricultural areas."* Response S1-19 concludes this noise source would not result in new adverse impacts to wildlife – implying that all cultivation sites are located within rural and agricultural areas. The response further states that *"noise impacts on biological resources... is focused on generator noise impacts...that require no increase in existing ambient noise levels at the property line..."*

The Department recommends the noise restrictions in Mitigation measure 3.4-1h (*"Generator noise reduction"*) should be modified to include all project activities. **(Recommendation 8)**

#### Forested Areas and Timberlands

The Department concurs with the prohibition on new cannabis cultivation sites on lands zoned as Timberland Production Zone (TPZ), and agrees with the addition of oak woodlands to the sensitive natural communities to be avoided under Mitigation measure 3.4-4. The Department continues to recommend prohibiting new cannabis cultivation on lands zoned as Forestry Recreation (FR). In addition to TPZ and FR, other zoning

districts may also contain forest habitat. The Department recommends that new cultivation should be prohibited in the FR zoning district, as well as in all forest habitat, regardless of zoning. **(Recommendation 9)**

#### Incomplete County Responses to Department Comments

The responses in the FEIR to several comments found in the Department's October 2017 letter contain the phrase *"the County is considering this requested change as part of revisions to the proposed ordinance."* These include Response S1-22 (Pre-Existing sites), S1-23 (trespass cultivation sites), S1-27 (noise and light impacts to forested habitats), S1-28 (provisional permitting), S1-29 (RRR plans), S1-30 (abandoned cultivation sites), S1-33 (performance standard for road systems), and S1-36 (performance standard for light pollution). Response S1-20 (new cultivation in forest habitats) includes the note that the Department's recommendation *"will be forwarded to the planning Commission and Board of Supervisors as part of project consideration."* The Department seeks additional clarification as to when the County would incorporate these recommendations, since it is currently considering adopting the FEIR.

For many of these responses, it is not clear whether all or part of the Department's recommendations are under consideration, and if so, what portion. These responses do not explain why the recommendations were not accepted and incorporated into the Project, and therefore, do not provide enough information for the Department to determine whether the related environmental impacts of concern would be addressed effectively, or allow the Department to provide comments on specific proposed changes.

CEQA Section 15088(c) requires the Lead Agency to describe the disposition of significant environmental issues raised: *"In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."*

To avoid or minimize the potential for environmental impacts, the County should clearly address the Department's recommendations for these sections as detailed in our October 2017 letter.

#### Enforcement

As evidenced by comment letters on the DEIR and FEIR, one persistent concern from State agencies as well as members of the public is the County's ability to enforce its Ordinance, as well as conduct enforcement relating to unpermitted cultivation. FEIR Master Response 6 provides additional information regarding the potential fines that could be imposed on cultivators who are out of compliance, and information about increases in code enforcement staffing levels.



The FEIR estimates that, at current staffing levels, the County could issue 500 citations per year. If this is an accurate estimate, it seems unlikely the County would also have adequate personnel available to complete the abatement process (described in Master Response 6) with each property owner through successful completion of required Compliance Agreements. Based upon estimates of the number of active and projected cultivation sites in the County, and the number of site inspections Department staff can conduct in any given year under our own permitting authority, we are concerned that the County may not have the personnel to adequately administer its proposed Ordinance.

The Department is concerned that many Pre-Existing cultivation sites are being approved to expand the project size based on unsupported and/or questionable claims of Pre-Existing cultivation, which results in additional impacts to resources. Unpermitted expansion has frequently included timber conversion without a harvest document from the California Department of Forestry and Fire Protection, and potentially unmitigated environmental impacts to forest species such as northern spotted owl. The Ordinance should include specific penalties or remedies for unpermitted cultivation sites and non-compliance such as environmental remediation, and provide adequate staffing to conduct enforcement efforts and compliance review. **(Recommendation 10)**

The Ordinance (Section 55.4.5) defines Pre-Existing cultivation sites as *"a physical location where... Cannabis Cultivation activities occurred at any time between January 1, 2006 and December 31, 2015."* Over a ten-year period, it is possible the site may have begun to recover, for example through recruitment of native vegetation. Site conditions, as they existed on December 31, 2015, should be considered when determining the level of review required for Pre-Existing sites. **(Recommendation 11)**

The Department believes previous trespass cultivation sites should not qualify as a Pre-Existing site for the purposes of permitting, and should instead be remediated. Trespass cultivation sites usually do not occur in existing graded clearings, are often located under the native tree canopy, and are typically not easily accessible. For these reasons, proposing to permit an existing "trespass grow" site would likely lead to additional tree removal and grading and other site development, including road construction. Finally, trespass cultivation sites often contain toxic materials such as discarded pesticides and fertilizers, and accumulated garbage from the previous illegal land use. Instead of being permitted for continued cultivation, trespass sites should be reviewed as a new proposed site after remediated, including removal and appropriate disposal of waste and toxic materials. **(Recommendation 12)**

#### Thresholds of Significance

The Department noted that thresholds of significance in the DEIR were general and undefined, making it unclear how the County determined whether impacts would be significant. CEQA Section 15064.7 defines a *"threshold of significance"* as *"an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be*



*significant by the agency and compliance with which means the effect normally will be determined to be less than significant."*

FEIR Response S1-38 states that *"Biological resource thresholds of significance are not quantified and require technical evaluation by a biologist using published data and habitat mapping to determine significance..."* and recommends no changes to thresholds of significance in the document.

The DEIR and FEIR do not adequately address thresholds of significance to biological resources. For example, DEIR Section 3.4.3 states the *"project would result in a significant impact on biological resources if it would: have a substantial adverse effect, either directly or indirectly 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 USFSW; have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS..."* The DEIR and FEIR should quantify or otherwise disclose the County's definition of a "substantial adverse effect" to special status species or sensitive natural communities. As a start, the County should refer to CEQA Guidelines section 15065(a)(1), and further specify how this applies to each resource. For example, for northern spotted owl, a substantial reduction in habitat or restriction of the species' range would occur if an activity center was disturbed by cannabis cultivation operations such that an owl's essential behavioral patterns (such as foraging, reproduction or dispersal) would be affected, and/or if impacts to nesting/roosting or foraging habitat would exceed current State and/or federal standards (for example USFWS 2011).

Without thresholds of significance that are quantified or otherwise defined, it is not clear how the County is able to determine the potential significance of an impact. Thresholds of significance for biological resources such as special status species or sensitive natural communities should be specifically defined, and disclosed in the FEIR to allow for adequate review by agencies and the public. **(Recommendation 13)**

#### Qualified Biologist

The County should provide detail regarding the required criteria of a qualified biologist. The County proposes to rely on qualified biologists as the primary mechanism to avoid environmental impacts and comply with mitigation measures.

FEIR Response S1-39 quotes the definition of qualified biologist from the State Water Board Policy and states, *"This definition will be used in the state permitting process of all commercial cannabis operations in the County..."* This response does not clearly state whether the County will require the same qualifications for biologists implementing mitigation measures pursuant to the Ordinance, work which in many cases would be outside of State Water Board jurisdiction. The County should explicitly state whether



the same qualifications will be required for biologists implementing mitigation measures under the County's Ordinance. **(Recommendation 14)**

Comments Specific to the Commercial Cannabis Land Use Ordinance

The Department provides the following comments specific to the Ordinance.

55.4.5.3 - Penalties and Enforcement

This section states, in part: *"Whenever permit applicants seeking permits for new commercial activities initiate operations ahead of permit issuance or Pre-Existing Cultivation Site operators seeking permits expand cultivation operations ahead of permit issuance the Director shall have discretion to... Issue stop work orders and financial penalties... and require restoration... or ... Disqualify the pending applications... and initiate enforcement proceedings..."*

FEIR Master Response 6 provides information on separate ordinances developed to address code enforcement issues and slightly increase code enforcement staffing. However, we recommend the Ordinance include specific, defined penalties and/or remedies for permit non-compliance. As currently written, the Ordinance gives sole discretion to a single individual, the Planning Director. The Ordinance should describe the criteria and process to be used in making that decision. The Department recommends the process include an autonomous Code Enforcement Unit. In addition, the County should define and codify an unambiguous process and procedures for violations of the proposed Ordinance. **(Recommendation 15)**

55.4.5.7 – Annual Inspection

FEIR Response S1-25 states the proposed Ordinance (Section 55.4.5.9) requires notification to *"State licensing agencies"* when a permit has been revoked or terminated. However, the Ordinance as written does not specify whether the County will notify applicable agencies if a non-compliance condition is related to regulations outside the jurisdiction of the County or another cannabis-licensing agency.

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. **(Recommendation 16)**

55.4.5.10 – Restriction of Water Use Under Special Circumstance

The Department supports the County's intention to restrict water use for commercial cannabis cultivation *"in the event that environmental conditions, such as sustained drought or low flows in the watershed where the Commercial Cannabis Activity is located, will not support water withdrawals without substantially adversely affecting*

*existing fish and wildlife resources.*" The County should provide detailed criteria describing how it will determine when the environmental conditions exist to restrict water use. **(Recommendation 17)**

#### 55.4.6.5.6 – Energy Source for Ancillary Propagation Facility or Mixed-Light Cultivation

This section states the use of generators and mixed-light cultivation is prohibited "*in TPZ zones and U zones (with a Land Use Designation of Timberland).*" Our May 2017 and October 2017 letters described the potentially significant environmental impacts to forest species due to noise and light pollution. The Department recommends that generators and mixed-light cultivation be prohibited in all forested habitats, regardless of zoning district. **(Recommendation 18)**

#### 55.4.6.5.7 – Provisional Permitting

This section outlines the potential for provisional permitting of a cultivation site pursuant to a written, approved "*compliance agreement, signed by the applicant and the relevant enforcement agency or agencies.*" The County should identify the minimum qualifications for individuals who would "*identify, document, and itemize all current violations related to commercial cannabis activities*" and prepare the compliance agreement. If the County intends to use the State Water Board's definition of "qualified biologist" as its standard, this should be stated explicitly. (refer to **Recommendation 14**)

#### 55.4.6.5.9 – Retirement, Remediation, and Relocation of Pre-Existing Cultivation Sites

Subsection (e) requires the operator of a Retirement, Remediation and Relocation (RRR) site to prepare a plan for the "*full environmental remediation of the RRR Site, including removal of all cultivation related materials, equipment and improvements, regrading to pre-existing contours, reseeding with native vegetation, reforestation, habitat restoration, and monitoring, as determined to be appropriate by the Planning Department.*" Due to the specialized nature of environmental restoration and remediation work, the Department recommends that Retirement, Remediation, and Relocation plans should be prepared by a qualified professional, and referred to appropriate resource agencies for review and concurrence. If the County intends to use the State Water Board's definition of "qualified biologist" as its standard, this should be stated explicitly. (refer to **Recommendation 14**)

#### 55.4.6.6 – Site Restoration Upon Termination or Abandonment of Commercial Cannabis Cultivation Sites

The Department is concerned that abandoned cultivation sites will remain on the landscape without restoration or remediation, whereas RRR sites would require the operator to post a bond. No financial assurance requirement appears in this section. The County should provide detail regarding its potential remedies in the event a permitted site is abandoned without restoration. **(Recommendation 19)**



#### 55.4.11 – Application Requirements for Clearances or Permits

The Department recommended the County should define and disclose the criteria it would use to determine whether a cultivation project requires site-specific CEQA review. In this section, the Ordinance states the *“County may request additional information prior to application intake, or during application processing, where deemed necessary to perform environmental review pursuant to the California Environmental Quality Act (CEQA).”*

FEIR Response S1-32 states: *“individual applications that require approval of a Special Permit or Use Permit under the proposed ordinance would be subject to further site-specific environmental review,”* but does not provide the County’s criteria for determining if either of these permits are required. The Response continues *“the criteria that would require the preparation of a site-specific environmental review document is whether 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.”*

It is not clear from this response, the Ordinance, DEIR, or FEIR, how the County defines a *“significant environmental impact,”* to biological resources, 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. **(Recommendation 20)**

#### 55.4.12.1.8 – Performance Standard – Road Systems

FEIR Response S1-33 provides a summary of components of the road system performance standard in the Ordinance. The response also references Mitigation measure 3.8-4, which appears to apply to the immediate cultivation site and does not explicitly include off-parcel access roads. This response does not address the Department’s recommendations that: (1) unsurfaced access roads should require an assessment of all stream crossings in addition to the Category 4 analysis, (2) the analysis should include remediation and/or mitigation measures, and (3) the analysis should be submitted to agencies with jurisdiction.

The Category 4 road standard is described in Humboldt County Code Section 3112-3 as *“two ten (10) foot traffic lanes, not including shoulders, capable of providing for two-way traffic flow to support emergency vehicle and civilian egress.”* This standard does not address the numerous environmental and biological impacts of inappropriately sited, poorly constructed, or poorly maintained roads.

The Department recommends that access to project sites on unsurfaced roads require an assessment of all stream crossings. The assessment should evaluate stream crossings following the protocol prescribed in Cafferata et al. (2017). This document is

more specific and protective of aquatic resources than the *"Five Counties Salmonid Conservation Roads Maintenance Manual"* referenced and adopted by the County for general best management practices related to road maintenance. 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. **(Recommendation 21)**

#### 55.4.12.2 – Performance Standards for Commercial Cannabis Cultivation Activities

The Department appreciates the County's attempt to clarify sections under this heading, and agrees with the requirement that a permit applicant must comply with the terms of any LSA Agreement. However, Section 55.4.12.2.3, as amended, still appears to require an applicant for a County permit to delay obtaining an LSA Agreement until the County permit has been issued. This requirement conflicts with FGC section 1602. The Department recommends the County remove the conflicting provision (the second paragraph of this section). **(Recommendation 22)**

#### 55.4.12.4 – Performance Standard for Light Pollution Control

Subsection (b) requires that security lighting *"shall be shielded and angled in such a way as to prevent light from spilling outside of the boundaries of the Parcel(s) or Premises or directly focusing on any surrounding areas."* FEIR Response S1-36 states this standard would not apply to commercial and industrial zones. The Department recommends 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. **(Recommendation 23)**

Subsection (c) describes the process for addressing *"any light pollution complaint."* The penalty for *"failure to correct the violation and provide documentation... shall be grounds for permit cancellation or administrative penalties..."* Enforcement of this mitigation measure is the only means of avoiding potentially significant impacts. To ensure Light Pollution Performance Standard is met, the Department recommends all mixed-light cultivation be located a minimum of 200 feet from Class I and Class II streams. **(Recommendation 24)**

#### 55.4.12.6 – Performance Standard for Noise from Generator Use at Pre-Existing Sites

This section states that noise from cultivation and related activities shall not result in an increase of more than three decibels of continuous noise above existing ambient noise



levels at “*any property line of the site.*” Noise may affect wildlife on the cultivation parcel even if noise is minimized at the property line.

Subsection (a): the Department concurs with the prohibition on generator use “*in TPZ zones and U zones (with a General Plan Land Use Designation of ‘Timberland’)*” and recommends that generators be prohibited in all forested areas, regardless of zoning district. Noise pollution disrupts wildlife populations and degrades habitat for a number of species.

Subsection (b) describes noise restrictions for sites “*located within one (1) mile of mapped habitat for Marbled Murrelet or Spotted Owls.*” Simply avoiding noise impacts to mapped habitat for listed species will not avoid “take.” (refer to **Recommendations 8 and 18.**)

### **Recommendations**

The proposed/amended regulations described in the Commercial Cannabis Land Use Ordinance (Ordinance), in conjunction with the Department’s recommendations summarized below, and a strong County enforcement effort will help Humboldt County conserve sensitive fish and wildlife habitat and reduce associated environmental impacts to a less than significant level.

1. The County should define criteria and develop a cap on the number of cultivation sites within the County.
2. The County should not issue permits for new or expanded cultivation sites if the Department or SWRCB make an Impacted Watershed finding pursuant to Title 13, Cal. Code of Regulations, Section 8216, and provide that substantial evidence to the County.
3. The County should consider limiting cultivation permits in watersheds the Department believes may meet the criteria of an Impacted Watershed pursuant to California Code of Regulations, Title 13, Section 8216 (listed in Table 1) until the County, in cooperation with the Department and other responsible State agencies, determine what level of cannabis cultivation can be safely undertaken.
4. The County should limit cannabis cultivation in the “Stronghold” subwatersheds listed in Table 2 in order to preserve the existing resource and contribute to Coho Salmon recovery.
5. 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.

6. For any cultivation site with the potential to impact northern spotted owl based upon suitable habitat on or near the project parcel, or proximity to a known activity center, presence should be assumed until surveys have been completed, and avoidance measures should be implemented in consultation with the Department and USFWS.
7. Biological reconnaissance surveys should include the actual development area as well as an assessment of the surrounding area, for suitable habitat for species such as northern spotted owl.
8. The noise restrictions in Mitigation measure 3.4-1h (Generator noise reduction) should be modified to include all project activities.
9. New cultivation should be prohibited in the FR zoning district, as well as in all forest habitat, regardless of zoning.
10. 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.
11. Site conditions, as they existed on December 31, 2015, should be considered when determining the level of review required for "Pre-Existing" sites.
12. 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.
13. 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.
14. The County should explicitly state whether the same qualifications 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.
15. 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.

16. 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.
17. The County should provide detailed criteria describing how it will determine when the environmental conditions exist to restrict water use.
18. The Department recommends that generators and mixed-light cultivation be prohibited in all forested habitats, regardless of zoning district.
19. The County should provide detail regarding its potential remedies in the event that a permitted site is abandoned without restoration.
20. 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.
21. 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.
22. 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.
23. 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.

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Humboldt County Planning and Building Department  
March 1, 2018  
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24. All mixed-light cultivation should be located a minimum of 200 feet from Class I and Class II streams.

We appreciate the opportunity to comment on the FEIR/Ordinance and look forward to working with Humboldt County to effectively regulate commercial cannabis cultivation while addressing its documented environmental impacts. If you have any questions please contact Senior Environmental Scientist (Specialist) Angela Liebenberg at (707) 964-4830 or by e-mail at [Angela.Liebenberg@wildlife.ca.gov](mailto:Angela.Liebenberg@wildlife.ca.gov), or Senior Environmental Scientist (Supervisor) Scott Bauer at (707) 441-2011 or by e-mail at [Scott.Bauer@wildlife.ca.gov](mailto:Scott.Bauer@wildlife.ca.gov).

Sincerely,



**Neil Manji**  
Regional Manager

ec: Page 22

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Humboldt County Planning and Building Department  
March 1, 2018  
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CA.



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**CURRENT PLANNING DIVISION**

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March 14, 2018

Neil Manji, Regional Manager  
California Department of Fish and Wildlife  
Region 1 – Northern  
601 Locust Street  
Redding, CA 96001

Re: DFW Comment Letter dated March 1, 2018 regarding Amendments to Humboldt County Code Regulating Commercial Cannabis Activities and FEIR

Dear Mr. Manji

Thank you for your letter dated March 1, 2018, received by email attachment on March 5, 2018. We appreciate the cooperation we have received from your Department and its staff in commenting on the DEIR, FEIR and drafts of the Commercial Cannabis Land Use Ordinance (CCLUO) as it has evolved over the past year.

The most recent and complete iteration of the CCLUO for both the inland and coastal portions of Humboldt County Land Use Code is being published with the staff report for the Board of Supervisors special meeting set for March 19, 2018 for a public hearing to consider certification of the DEIR, adoption of appropriate findings, and adoption of the draft ordinances. The full staff report will be available to the public on Friday, March 16.

Responses to the concerns and recommendations expressed in your March 1 letter can be found in the pages that follow. Some responses reference, summarize and explain the most recent draft provisions of the CCLUO ordinances and related documents not available until now. We hope this letter satisfies the concerns expressed in your letter, or at least clarifies the County's position where differences may exist.

Citing section 15088(c) of the CEQA Guidelines, CDFW asserts that the Final EIR responses to the agency's comments do not completely respond to the proposed recommendations for Response to Comment S1-22 (Pre-Existing sites), S1-23 (trespass cultivation sites), S1-27 (noise and light impacts to forested habitats), S1-28 (provisional permitting), S1-29 (RRR plans), S1-30 (performance standard for road systems), and S1-36 (performance standards for light pollution).

The Final EIR provides a complete and adequate response to the comments associated with these issues, responses S1-22, S1-23, S1-27, S1-28, S1-29, S1-30, and S1-36 regarding the analysis provided in the Draft EIR or any issue related to physical impacts on the environment that are subject to CEQA. Final EIRs are not required to respond to comments that suggest changes to the proposed ordinance itself but are not related the physical impacts to the environment or mitigation measures addressed in the DEIR. These responses provided the most recent status of the development of the proposed ordinance. The Board of Supervisors will determine the final form of the proposed ordinance.



Thank you again to you and your staff for your contributions to the improvement and refinement of Humboldt County commercial cannabis ordinances. We look forward to continued cooperation between our agencies during ongoing implementation and administration of Humboldt County's local cannabis regulatory program and other efforts to protect the environment in Humboldt County.

Sincerely,

Steven Lazar  
Senior Planner  
Humboldt County Planning & Building Department  
Long Range Planning

attachment: CCLUO Draft Permit Cap Alternatives

ec1: Rex Bohn, Estelle Fennell, Mike Wilson, Virginia Bass, Ryan Sundberg  
**Humboldt County Board of Supervisors**

ec2: John Ford, Bob Russell, Michael Richardson, Steve Werner  
**Humboldt County Planning and Building Department**

ec2: Kurt McCray – **California Department of Forestry and Fire Protection**  
ec3: Stormer Feiler, Diana Henrioulle, Joshua Curtis, Adona White  
**North Coast Regional Water Quality Control Board**

ec4: Curt Babcock, Scott Bauer, Angela Liebenberg, David Manthorne, Ryan Bourque, Kayln Bocast, Steve White, Gordon Leppig, Laurie Harnsberger, Donna L. Cobb, Adam McKannay, Corrine Gray, Cheri Sanville, Timothy Smith, John Herrera, Christine Keil, Gregory O'Connell – **California Department of Fish & Wildlife**

Concerns (listed on page 2 in letter):

- 1. The Ordinance and FEIR do not propose limits on the number or density of cultivation sites in the County or more importantly, in a given watershed, and the FEIR does not analyze the potential for significant and cumulative impacts from cannabis cultivation.**

RESPONSE:

**Re: Limits on the number and density of Cultivation Sites**

The Planning Commission recommended that the Board of Supervisors consider limiting the total number of cultivation permits as well as the total acreage of cultivation that may be granted. Staff has developed three alternatives providing for establishment of countywide watershed-based caps, implemented through adoption of a specific separate accompanying resolution at the time of adoption of the comprehensive cannabis ordinance amendments.

Permits and acreage under these caps are to be distributed among the 12 Humboldt County Planning Watersheds identified in the General Plan, based on the share of potentially eligible parcels found within each of these geographic areas. Within the Coastal Zone, additional limits are established within each of the six Local Coastal Planning areas, where permits and acreage are allocated proportionally to the number of potentially eligible parcels they contain.

Two of the cap alternatives would establish immediate prohibitions on the permitting of new cultivation sites and the expansion of existing sites within eleven (11) select subwatersheds, identified by their respective USGS (HUC-12) Hydrologic Unit Code designations. The eleven subwatersheds selected contain all seventeen (17) creeks and tributaries identified in your letter. The cap distribution tables and key policy language of these alternatives are provided as an attachment (pp. 14 – 19) for your reference. Staff is recommending that the Board adopt Alternative 3, establishing a cap of 3,000 permits and 750 acres countywide.

In addition to the numeric caps the Planning Commission recommended draft of the CCLUO includes a temporal cap, or deadline, of December 31, 2019 for filing applications for permitting of cultivation operations in existence on or before December 31, 2015. One hundred percent of pre-existing cultivation area may be permitted if application is made prior to December 31, 2018. Fifty percent may be permitted for applications filed during calendar year 2019. No new applications for Pre-Existing Cultivation Sites will be accepted after 2019.

**Re: Analysis of potential for significant and cumulative watershed impacts**

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 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 expertise and financial resources to collect this extent of data and determine the appropriate 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 gages 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 riparian and aquatic habitats.

**2. The FEIR does not provide adequate avoidance, minimization, or mitigation measures to address potential impacts to State-listed threatened northern spotted owl (*Strix occidentalis caurina*), including to known activity centers.**

RESPONSE: See responses to Recommendation Nos. 5, 6, 7, 8, and 13, below.

**3. The Ordinance and FEIR proposed criteria for roads do not address the environmental impacts associated with existing unpermitted and poorly constructed roads.**

RESPONSE: CCLUO Section 55.4.12.1.8 (c) – Private Road Systems – Protections for Water Quality and Biological Resources, requires that private roads and driveways be designed, maintained, or retrofitted in accordance with a Humboldt County Board of Supervisors adopted manual developed to protect water quality and stream habitat that addresses standards for stream crossings. The County appreciates being informed that a more recent manual addressing the same purpose has been published by the Department of Forestry and Fire Protection (*Designing Watercourse Crossings for Passage of 100-Year Flood Flows, Wood, and Sediment*, Cafferata, et al. 2017). It may be appropriate for the Resource Conservation Districts of the five counties and the Board of Supervisors to update the manual previously adopted in 2010 with the standards set forth in the more recent publication, but the County is not prepared to do so at this time without further study and consultation with the other agencies involved with development and approval of the 2010 manual.

**4. The FEIR does not adequately address noise and light impacts to wildlife species.**

RESPONSE: See responses to Recommendations Nos. 8, 18, 23 and 24, below.

- 5. The FEIR does not clearly define 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 FEIR.**

RESPONSE: See response to Recommendation No. 20, below.

- 6. The Ordinance and FEIR should provide additional requirements to ensure adequate restoration of abandoned or remediated cultivation sites, and that associated cultivation area is not transferred to watersheds already significantly impaired by an overabundance of existing cannabis cultivation.**

RESPONSE: See responses to Recommendation No. 19 and Concern No. 1 and Recommendations Nos. 1, 2, and 3.

Recommendations (pp. 18 – 21 of letter):

- 1. The County should define criteria and develop a cap on the number of cultivation sites within the County.**

RESPONSE: See response to Concern No. 1, above.

- 2. The County should not issue permits for new or expanded cultivation sites if the Department or SWRCB make an Impacted Watershed finding pursuant to Title 13\* [sic.], Cal. Code of Regulations, Section 8216, and provide that substantial evidence to the County.**

RESPONSE: The Performance Standards for All Commercial Cannabis Activities in CCLUO section 55.4.12.1 require that all permittees comply with all applicable state laws and maintain a valid license issued by the appropriate state licensing authority. If DFW or SWRCB, based on substantial evidence, finds that cannabis cultivation is causing significant adverse impacts in a watershed or "other geographic area" pursuant to Business and Professions Code section 26069 (c)(1), and 3 C.C.R. § 8216, the county would cease further permitting of cultivation sites within these watersheds.

- 3. The County should consider limiting cultivation permits in watersheds the Department believes may meet the criteria of an Impacted Watershed pursuant to California Code of Regulations, Title 13, Section 8216 (listed in Table 1) until the County, in cooperation with the Department and other responsible State agencies, determine what level of cannabis cultivation can be safely undertaken.**

RESPONSE: Staff is recommending that the Board of Supervisors consider prohibiting new or expanded cultivation in impacted subwatershed areas identified by DFW in Table 1 of its March 1, 2018 letter. See attachment to this letter and response to Concern No. 1, above.

- 4. The County should limit cannabis cultivation in the "Stronghold" subwatersheds listed in Table 2 in order to preserve the existing resource and contribute to Coho Salmon recovery.**

RESPONSE: Staff is recommending that the Board of Supervisors consider prohibiting new or expanded cultivation in stronghold subwatershed areas identified by DFW in Table 2 of its March 1, 2018 letter. See attachment to this letter and response to Concern No. 1, above.

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\* The Department of Food & Agriculture commercial cannabis cultivation regulations are codified in Title 3 of the California Code of Regulations, not Title 13.



**5. 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.**

RESPONSE: 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, 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.

**6. For any cultivation site with the potential to impact northern spotted owl based upon suitable habitat on or near the project parcel, or proximity to a known activity center, presence should be assumed until surveys have been completed, and avoidance measures should be implemented in consultation with the Department and USFWS.**

RESPONSE: The ordinance includes a Performance Standard for Biological Resource Protections (section 55.4.12.1.10) describing a variety of Mitigation Measures (surveys) which may be required to be conducted by proposals for outdoor or mixed light cultivation activities, including Northern Spotted Owls. This performance standard is designed to work in concert with the Biological Mitigation Measures found within section 3.4 of the EIR. For treatment of Pre-Existing Cultivation Sites, see response to Recommendation No. 5, above.

**7. Biological reconnaissance surveys should include the actual development area as well as an assessment of the surrounding area, for suitable habitat for species such as northern spotted owl.**

RESPONSE: It is unclear what DFW means by “actual development area” or what the parameters or size of the surrounding area to be assessed should be. These issues can be addressed in the checklists and guidance documents for applications issued administratively by the County pursuant to CCLUO Section 55.4.11. Mitigation Measures 3.4-1b through 3.4-1f, 3.4-1k, and 3.4-1l include requirements for surveys to consider areas outside of the cannabis site and/or required buffer distances from identified wildlife species of concern.

**8. The noise restrictions in Mitigation measure 3.4-1h (Generator noise reduction) should be modified to include all project activities.**

RESPONSE: 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 workshops on the ordinance held by the Planning Commission, the Commission received comments requesting that the noise standards should be applied to all cultivation-related noise sources (greenhouse fans, motorized trimmers, etc.) and directed staff to perform these changes. The proposed ordinance now prohibits noise from all cannabis activities from increasing existing ambient noise levels above 3 decibels at the property line. It is important to note that noise levels attenuate (reduce) over distance. The following changes have been made to Mitigation Measure 3.4-1h to reflect these ordinance amendments:

**Mitigation Measure 3.4-1h: Generator ~~n~~ 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.

**9. New cultivation should be prohibited in the FR zoning district, as well as in all forest habitat, regardless of zoning.**

RESPONSE: CCLUO 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. This means an area that was not growing any trees, whether due to natural conditions or through a conversion of Timberland, conducted prior to January 1, 2016. This limitation applies regardless of the zoning of the parcel



(including AE, AG, or FR).

The Forestry Recreation or "FR" zoning district was applied to parcels created through "recreational subdivisions" which were occurring in the late 60's and early 70's. Prior to 1972, in most cases these subdivisions were created without local approval under an exemption in the Subdivision Map Act available to divisions into parcel sizes of 40 acres or larger. These subdivisions commonly occurred following completion of a substantial timber harvest by a recent owner or seller. Rezoning of these properties to 'FR' following subdivision enabled the County to prevent further re-subdivision by subsequent purchasers. The majority of these parcels were deliberately not considered for rezoning to TPZ during the countywide effort in the late 70's, as they were relatively small in size, contained poorer quality soils (Site 3 and Site 4) and were not host to significant stands of timber due to prior harvesting and vegetation type. These properties quickly became popular with purchasers seeking rural property, and are currently host to high numbers and concentrations of cultivation sites (nearly 19% of all existing sites). Permitting provides a significant opportunity for addressing impacts from this environmental baseline.

**10. 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: 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.

**11. Site conditions, as they existed on December 31, 2015, should be considered when determining the level of review required for "Pre-Existing" sites.**

RESPONSE: "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.

**12. 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: 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).

**13. 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: 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."

**14. 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.**

RESPONSE: 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.



**15. 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: 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.

**16. 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: 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.

**17. The County should provide detailed criteria describing how it will determine when the environmental conditions exist to restrict water use.**

RESPONSE: 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 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.

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

RESPONSE: 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.

**19. The County should provide detail regarding its potential remedies in the event that a permitted site is abandoned without restoration.**

RESPONSE: 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.)

**20. 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: Commercial cannabis activity permit applications that are eligible for issuance of a Zoning Clearance Certificate are ministerial<sup>1</sup> 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, 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).

**21. 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: 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

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<sup>1</sup> Guidelines section 15268



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.*

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.

**22. 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: 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<sup>2</sup>, 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."<sup>3</sup> For purposes of issuance of a permit for commercial cannabis cultivation, the County is the lead agency<sup>4</sup>. 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.

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<sup>2</sup> *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284.

<sup>3</sup> Definition of "Project": Guidelines sec 15378 (a)(3)

<sup>4</sup> Guidelines sec 15051 (b)

**23. 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: 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.

**24. All mixed-light cultivation should be located a minimum of 200 feet from Class I and Class II streams.**

RESPONSE: CCLUO Section 55.4.6.4.4 (i) which incorporates the 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.



# ATTACHMENT - CCLUO Permit Cap Alternatives

## Alternative 1

Cap Approach Presented to Planning Commission at November 14th meeting

Cap of 5,000 permits / 1,250 acres countywide

Cap Distribution											
		CMMLUO Ordinance ("Version 1.0")				CCLUO Ordinance ("Version 2.0")				Total	
		Permits		Acres		Permits		Acres		Permits	Acres
Watershed		<e>	<n>	<e>	<n>	<e>	<n>	<e>	<n>		
1	Cape Mendocino	334	82	84	21	344	215	85	54	974	244
2	Eureka Plain	27	28	7	7	47	29	12	7	131	33
3	Lower Eel	120	94	30	24	175	109	43	27	498	125
4	Lower Klamath	106	9	27	2	68	43	17	11	225	56
5	Lower Trinity	118	21	30	5	44	28	11	7	211	53
6	Mad River	139	91	35	23	151	95	37	24	476	119
7	Middle Main Eel	209	19	52	5	194	122	48	30	544	136
8	Redwood Creek	71	5	18	1	96	60	24	15	231	58
9	South Fork Eel	512	54	128	14	241	151	60	38	958	240
10	South Fork Trinity	52	10	13	3	34	21	8	5	118	29
11	Trinidad	7	3	2	1	7	4	2	1	21	5
12	Van Duzen	218	72	55	18	198	124	49	31	612	153
<b>TOTALS</b>		<b>1,913</b>	<b>488</b>	<b>481</b>	<b>124</b>	<b>1,599</b>	<b>1,000</b>	<b>395</b>	<b>250</b>	<b>5,000</b>	<b>1,250</b>

Following the establishment of a countywide cap on the total number of permits and acreage of cultivation that may be approved, beginning in April of 2019, the Board of Supervisors agrees to conduct an annual review of the limits and prescribed distribution of permitting and acreage allowances found in the above table. Review shall occur at a noticed public hearing held during a meeting of the Board of Supervisors, during which the Board shall receive and consider a report providing an update on local permitting efforts. The report shall provide information detailing the number and status of all applications received, permits approved, compliance agreements that have been executed, and code enforcement actions undertaken by the Department. Law enforcement and other relevant officials from local and state agencies shall be contacted and invited to provide and present input and information to be considered by the Board during annual review. After holding a public hearing and considering all information and testimony received, the Board may choose to establish new caps on acreage and permits as well as change their distribution within watersheds.

Alternative 2  
No permits for new or expanded cultivation within impacted and refuge subwatersheds  
Cap of 4,792 permits / 1,198 acres countywide

Cap Distribution											
		CMMLUO Ordinance ("Version 1.0")				CCLUO Ordinance ("Version 2.0")				Total	
		Permits		Acres		Permits		Acres		Permits	Acres
Watershed		<e>	<n>	<e>	<n>	<e>	<n>	<e>	<n>		
1	Cape Mendocino	334	82	84	21	344	154	85	39	914	229
2	Eureka Plain	27	28	7	7	47	29	12	7	131	33
3	Lower Eel	120	94	30	24	175	109	43	27	498	124
4	Lower Klamath	106	9	27	2	68	42	17	10	225	56
5	Lower Trinity	118	21	30	5	44	28	11	7	211	53
6	Mad River	139	91	35	23	151	95	37	24	476	119
7	Middle Main Eel	209	19	52	5	194	122	48	31	544	136
8	Redwood Creek	71	5	18	1	96	19	23	5	191	47
9	South Fork Eel	512	54	128	14	241	93	60	23	900	225
10	South Fork Trinity	52	10	13	3	34	22	8	5	118	29
11	Trinidad	7	3	2	1	7	4	2	1	21	6
12	Van Duzen	218	72	55	18	198	75	49	19	563	141
<b>TOTALS</b>		<b>1,913</b>	<b>488</b>	<b>481</b>	<b>124</b>	<b>1,599</b>	<b>792</b>	<b>395</b>	<b>198</b>	<b>4,792</b>	<b>1,198</b>

Alternative 3  
No permits for new or expanded cultivation within impacted and refuge subwatersheds  
Reduced Permits  
Cap of 3,000 permits / 750 acres countywide

Cap Distribution											
		CMMLUO Ordinance ("Version 1.0")				CCLUO Ordinance ("Version 2.0")				Total	
		Permits		Acres		Permits		Acres		Permits	Acres
Watershed		<e>	<n>	<e>	<n>	<e>	<n>	<e>	<n>		
1	Cape Mendocino	334	82	84	21	79	49	19	12	544	136
2	Eureka Plain	27	28	7	7	11	7	3	2	73	19
3	Lower Eel	120	94	30	24	40	25	10	6	279	70
4	Lower Klamath	106	9	27	2	15	10	4	2	140	35
5	Lower Trinity	118	21	30	5	10	6	2	2	155	39
6	Mad River	139	91	35	23	35	22	9	5	287	72
7	Middle Main Eel	209	19	52	5	45	28	11	7	301	75
8	Redwood Creek	71	5	18	1	22	14	5	3	112	27
9	South Fork Eel	512	54	128	14	56	35	14	8	657	164
10	South Fork Trinity	52	10	13	3	8	5	2	1	75	19
11	Trinidad	7	3	2	1	2	1	0	0	13	3
12	Van Duzen	218	72	55	18	46	28	11	7	364	91
<b>TOTALS</b>		<b>1,913</b>	<b>488</b>	<b>481</b>	<b>124</b>	<b>369</b>	<b>230</b>	<b>90</b>	<b>55</b>	<b>3,000</b>	<b>750</b>

Following the establishment of a countywide cap on the total number of permits and acreage of cultivation that may be approved, beginning in April of 2019, the Board of Supervisors agrees to conduct an annual review of the limits and prescribed distribution of permitting and acreage allowances found in the above table. Review shall occur at a noticed public hearing held during a meeting of the Board of Supervisors, during which the Board shall receive and consider a report providing an update on local permitting efforts. The report shall provide information detailing the number and status of all applications received, permits approved, compliance agreements that have been executed, and code enforcement actions undertaken by the Department. Law enforcement and other relevant officials from local and state agencies shall be contacted and invited to provide and present input and information to be considered by the Board during annual review. After holding a public hearing and considering all information and testimony received, the Board may choose to establish new caps on acreage and permits as well as change their distribution within watersheds.

Certain subwatersheds are considered impacted by low streamflows due to high concentrations of current cannabis cultivation activities. Additionally, certain other subwatersheds are considered refuges critical to the recovery strategy for key populations of California Coho Salmon, as well as a number of other aquatic species currently listed pursuant to the federal Endangered Species Act. These subwatersheds occur in the Central and Southern Humboldt areas. They are identified by their USGS HUC-12 (Hydrological Unit Code) names and grouped by planning watershed in the following table (Table 1) and maps (Figures 1 and 2).

Permits for new open air cultivation activities or expansion of lawful pre-existing sites shall be temporarily prohibited within these subwatersheds, until all known pre-existing cultivation sites (established or in operation prior to January 1, 2016) have either been suspended, permitted, or remediated pursuant to the Retirement, Remediation, and Relocation provisions of the Commercial Cannabis Land Use Ordinance, found in section 314-55.4 of Division 1, Title III of Humboldt County Code.

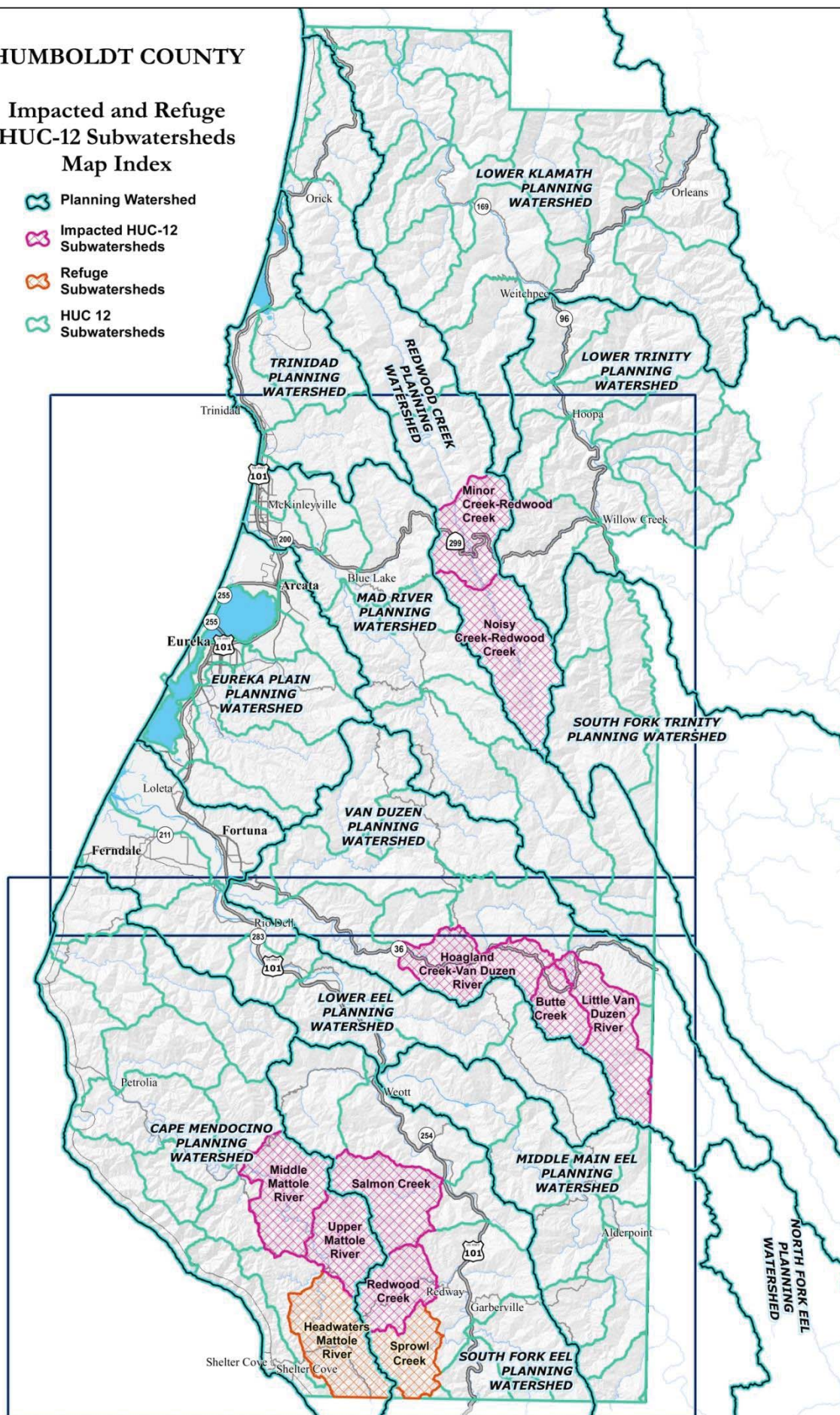
Table 1. Impacted & Refuge HUC-12 Subwatersheds by Planning Watershed
<b>PLANNING WATERSHED #1 CAPE MENDOCINO</b>
<i>* Headwaters Mattole River</i>
Middle Mattole River
Upper Mattole River
<b>PLANNING WATERSHED #8 REDWOOD CREEK</b>
Noisy Creek-Redwood Creek
Minor Creek-Redwood Creek
<b>PLANNING WATERSHED #9 SOUTH FORK EEL RIVER</b>
Redwood Creek
Salmon Creek
<i>* Sprowel Creek</i>
<b>PLANNING WATERSHED #12 VAN DUZEN RIVER</b>
Hoagland Creek-Van Duzen River
Butte Creek
Little Van Duzen River
<i>* Refuge watersheds</i>



# HUMBOLDT COUNTY

## Impacted and Refuge HUC-12 Subwatersheds Map Index

-  Planning Watershed
-  Impacted HUC-12 Subwatersheds
-  Refuge Subwatersheds
-  HUC 12 Subwatersheds





2017 Humboldt County  
Impacted and Refuge  
HUC-12 Subwatersheds

## Planning Watersheds

- Planning Watershed  
Impacted HUC-12 Subwatersheds  
HUC 12 Subwatersheds  
Public Lands





# Southern Humboldt

2017 Humboldt County  
Impacted and Refuge  
HUC-12 Subwatersheds

## Legend

### Planning Watersheds

- Planning Watershed
- Refuge Subwatersheds
- Impacted HUC-12 Subwatersheds
- HUC 12 Subwatersheds
- Public Lands

This map is intended for planning purposes only and should not be used for precise measurement or legal boundary delineation. Original map size is 17"x11".  
Map produced by Humboldt County Planning & Building Department, Mar. 2018  
ArcMap 10.5 Document: H:\Map\Canal\HUC-12\Sheet2018\_Southern\_Impacted\_HUC12.mxd

