Humboldt Cannabis Reform Initiative

Amended Analysis and Recommendations

Prepared for the Humboldt County

Board of Supervisors

By
Humboldt County
Planning and Building Department

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ATTACHMENTS

I. EXECUTIVE SUMMARY

This analysis has been amended in response to the April 20, 2023, letter from Shute, Mihaly & Weinberger LLP on behalf of the Humboldt Cannabis Reform Initiative (HCRI) sponsors (Letter). These amendments seek to address comments expressed in the letter and provide increased understanding of the potential impacts of the HCRI. The original report dated March 7, 2023, is shown in plain black text. The amendment seeks to address all the comments made in response to the original analysis. This amendment does not address the comments made relative to the Political Reform Act Limitations as discussion of that does not lead to increased understanding of the HCRI. Modifications to the text are shown in redline/strikeout and comments made in response to the letter are shown in a blue box.

The April 20, 2023 letter (p.1) asserts that the County's analysis "*contains a number of factual errors, mischaracterizes and misinterpretations regarding the intent and effect of the Humboldt Cannabis Reform Initiative*." The analysis and this response do not question the intent of the HCRI or its authors, but rather struggle with what is written in the initiative. The Letter clarifies the approach of the HCRI. The perspective of the Letter points to a difference in understanding of how cannabis projects are evaluated. The Letter views permitting of cannabis as only related to the act of cultivation, but there are many other activities that may be related to a cannabis cultivation site. The County evaluates cannabis applications based upon the whole of all cannabis related activities on the site. Some of these activities require different permits. This difference in perspective can result in very different conclusions about the effect of the HCRI. The dialogue among proponents, opponents, and County staff will be helpful to the public.

The original report was prepared in response to direction from the Board of Supervisors on October 25, 2022, to provide an analysis of the Humboldt Cannabis Reform Initiative (HCRI). This report describes the proposed changes in cannabis regulations, discusses how this would affect existing farmers, evaluates overlapping issues with points being discussed in the existing regulations, and provides recommendations.

The HCRI purports to "…protect the County's residents and natural resources from harm caused by large-scale cannabis cultivation…"[1] It does this by developing a regulatory system that renders most existing permitted farms non-conforming. This will place Humboldt County farmers at an increased disadvantage in the statewide cannabis market precluding permit modifications needed to keep pace with an evolving statewide cannabis industry and possibly preclude installment of new improvements for environmental sustainability.

The existing Humboldt County cannabis regulations are intended to encourage a well-regulated cannabis industry in Humboldt County, but the HCRI could have the opposite effect by making compliance so difficult that the legal market is rendered not viable in Humboldt County. It has been a difficult transition from the illegal to legal industry. Making compliance even more difficult to participate in the legal market may encourage some to return to the illicit cannabis industry. Most of

[1] HCRI Section 1(A) page 1.

the environmental damage associated with the cannabis industry is associated with unpermitted activities.

The HCRI identifies eleven findings as the basis for making the changes proposed by the initiative. Some of the assertions in the findings are misleading or false. The most profound of these findings is that Humboldt County's regulations allow large scale cannabis cultivation sites. The term "large scale" needs to be defined. The largest farms in Humboldt County range between 7 and 8 acres. There are four farms this size. For comparison, in Lake County there are farms in excess of 60 acres and in Santa Barbara and San Bernadino Counties there are farms in excess of 100 acres. In a statewide market context, Humboldt County does not have large scale farms.

Humboldt County has adopted two ordinances to regulate commercial cannabis production. While the County has learned a great deal in this process, there continue to be new concerns raised during public hearings. Some of these concerns overlap with concerns raised in the HCRI. There are opportunities to more wholistically and precisely address these issues than as presented in the HCRI.

The Humboldt County Regulatory system has two components. First is permitting legal farms and second is enforcing against farms that operate without appropriate permits and licenses. The HCRI does not acknowledge that most of the approved cannabis permits are for pre-existing cultivation sites (sites that existed prior to legalization) and that for every new site that has been approved, five (5) have been removed through the Code Enforcement process.

The HCRI would modify the General Plan with the stipulation that the cannabis provisions could only be changed by a vote of the people. Other than things that are expressly allowed to be changed by the Board in the initiative, any changes to the initiative would require a vote of the people, this would cement these regulations in place until the public wanted to change them. It is likely that the public does not understand what this initiative would do and signed the petition thinking that "large scale" cannabis farms should not be in Humboldt County without recognizing that most of the so-called "large-scale farms" that would be outlawed if the HCRI passed are the very farms that have existed in Humboldt County for decades.

It is important to attempt to address the significant challenges that the initiative would pose. It is recommended an Ad Hoc Committee be formed to meet with the initiative sponsors to determine if there are alternative actions available that would better harmonize existing county cannabis regulations with those concerns raised in the initiative.

II. EXISTING REGULATORY ENVIRONMENT

Humboldt County has been known for the cannabis produced in the County for nearly 50 years. When Proposition 64 was passed to legalize medical marijuana and subsequently recreational cannabis, Humboldt County adopted a land use ordinance to provide local regulatory control. It is estimated there were as many as 15,000 grow sites in the County on approximately 5,000 parcels. The state actions to implement Proposition 64 resulted in many counties opening their doors to cannabis cultivation with the lure of generating tax revenue. The state initially promised existing cultivators that a one-acre cap would be maintained to protect existing cultivators in a fledgling legal industry.

The state quickly removed the one-acre cap and other counties opened the doors to cultivation sites that ranged from 10 acres to over 100 acres in area. Many of these cultivation sites are part of vertically integrated corporations who have product control from seed or clone all the way to market. Small cultivators have found it increasingly difficult to sell their product for what it costs to produce. This is partly due to oversupply at the state level and control over who has shelf space at the retail level.

The County has been implementing two sets of cannabis regulations. There are still applications submitted under the County's first ordinance (Commercial Medical Marijuana Land Use Ordinance, CMMLUO) and the second ordinance (Commercial Cannabis Land Use Ordinance, CCLUO). This has not been without controversy. The unanticipated consequence of the CMMLUO requiring new cultivation to be located on prime farmland was that most prime farmland is located in and around populated areas. This created controversy with neighboring landowners at times. New provisions to address this issue were incorporated into the CCLUO, but there have been other areas of controversy that have come up during the processing of applications. The Planning Commission has struggled with some issues raised by public comment and balancing these with the needs of the local cannabis industry. These will be addressed in more detail below.

A. Permitting Success

The existing regulations have been successful in moving existing unpermitted and unregulated cannabis cultivation into a regulated and legal status. To date, the County has processed over 1,200 cannabis cultivation permits to approval, although the number of active permits as of January 2023 was 1,027 due to withdrawal and cancellations by permit holders. The total permitted cultivation area in the County is 332 acres. As shown in Table 1 below, out of 1,027 total active cultivation permits, 739 of those are pre-existing cultivation sites. A total of 210 permits have been approved for new cultivation. Over 70% of the active permits are for existing cultivation sites.

Table 1: Active Cultivation Permits by Cultivation area and New and Existing[2]

Cultivation Area	Permits Active	Existing	Existing and New	New
0 - 10,000	611	430	46	135
10,001 - 20,000	208	180	7	21
20,001 - 43,560	189	123	22	44
Over 1 Acre	19	6	3	10
Total	1027	739	78	210

[2] Data for Table 1 as of January 15, 2023.

B. Post Approval Monitoring

Currently, the County has issued 1,027 cannabis cultivation permits and 118 other cannabis activity permits such as for manufacturing, dispensaries, nurseries etc. County Code requires an annual inspection for each permit.

In the 2022 season, the Planning and Building Department conducted a total of 919 on-site inspections and 418 remote inspections of permitted sites (noting that some sites received both an on-site and a remote inspection). As part of this work, the approved site plans are being digitized into the GIS system to establish what was approved and then to be able to remotely monitor for change. Less than 10% of permitted cannabis operations had one or more non-compliant items, and 90% were found to be compliant. The 2023 inspections plan begins with early on-site inspections of all sites previously found to be non-compliant, followed by onsite inspections for remaining sites. The established baseline will enable the inspection to alternate years of on-site and remote inspections to provide both efficient and effective post approval monitoring compliance for permit holders.

C. Code Enforcement

Starting in 2018, the Planning and Building Department has pursued a program of identifying and abating illegal cannabis cultivation. This has resulted in the abatement of over 1,100 illicit cannabis cultivation sites. Over the last two years there have been no new unpermitted outdoor cannabis cultivation sites developing and previously cultivated sites are not being re-used. Much of the illicit cannabis cultivation is now being done indoors and the Sherriff's office has been focusing on identifying these and serving inspection warrants on these properties.

D. Areas of Controversy

1. **Concern with number of permits being issued**.
   Members of the public have expressed concern over the number of cannabis permits being issued. Frequently, Planning Commission meetings have had up to two dozen cannabis applications on the agenda which has led to what some members of the public have referred to as "cannabis fatigue." When the County first adopted its cannabis ordinance in mid-2016, there was a deadline for all existing and proposed operations to apply by December 31, 2016. Over 2,300 applications were submitted by the deadline. Due to the impending deadline, nearly all the applications were incomplete. Additionally, due to the emerging legal cannabis industry and the on-going development of the state regulatory framework, many items necessary for completing applications remained in-flux. By December 31, 2017, Humboldt County had issued only 106 cannabis permits. As the state regulatory framework began to develop and the County ramped up its permitting program, the rate of permits being issued began to increase. By December 31, 2018, a total of 299 permits had been issued. 535 permits were issued by the end of 2019; 770 permits were issued by the end of 2020; 1,138 permits by the end of 2021; and a total of 1,329 permits (including permit modifications) had been issued by December 31, 2022. By far, most of the permits being issued were submitted prior to the end of 2016 and have been in process for many years. The result of the long-term permit process has been a more visible effort which has caused alarm among some members of the public and a concern that these applications are not being given a proper review. However, as noted, most of these

permit applications have been in the review process since 2016 and all applications have had a thorough and robust review.

2. **Concentration of permits**
   Some neighborhoods, particularly in some Southern Humboldt communities, have expressed concern over the concentration of permits in certain areas. Places like Honeydew that contain prime farmland have attracted Retirement, Remediation and Relocation permits. This has resulted in many greenhouses and has changed the appearance of the community. Honeydew, Shively, and Holmes Flat are prime locations for agriculture and have attracted many cannabis permits. These are historic agricultural areas. People who have moved to these locations have expressed concern with the number of greenhouses being constructed. Many of the other areas include permits are for existing operations that have resulted in minimal changes to the landscape and, combined with the County's robust enforcement program, the density of cultivation sites in most areas of the County has decreased.

3. **Concern with larger grows being approved**
   The public has expressed concern over some of the larger cultivation sites that have been approved by the Planning Commission and Board of Supervisors on appeal. Two of the more controversial cannabis grows in the past 5 years have been the Rolling Meadow application for 5.73 acres of new cultivation on a large ranch of over 7,000 acres in size, and the Arcata Land Company's proposal in the Arcata Bottoms for 22 acres of new cultivation, and which was ultimately approved at 5.7 acres in size. Both applications underwent a substantial environmental impact analysis and public review process including meetings in front of the Planning Commission and the Board of Supervisors. For context, 5.7 acres in many other California counties would be considered a small to medium sized operation. Some of the largest cultivation operations in California exceed 100 acres in size.

4. **Road evaluations**
   Concern has been raised over the practice of "self-certification" of roads that lead to cannabis cultivation sites. Early in the application process the County developed a form that allowed applicants to "self-certify" the functional capacity of roads accessing the site. This process was very quickly amended to require substantial supporting information such as road photographs and more substantial requirements for road evaluations to be prepared by licensed engineers. Most road evaluations accompanying projects presented to the Planning Commission and Zoning Administrator are currently utilizing road evaluations prepared by licensed engineers. The Commercial Cannabis Land Use Ordinance requires information be submitted supporting the finding that a road meets the Category 4 (or same practical effect) standard or, where the project takes access off a private road not meeting the Category 4 standard, an engineer must determine whether the road can accommodate the traffic (except for farms under 3,000 sf in size).

5. **Use of groundwater for irrigation**
   The primary source of irrigation for the Humboldt County cannabis farms prior to legalization was from surface water diversions. The original regulatory schemes from both the County and the state discouraged diversions which led to the development of groundwater wells for cannabis operations. As more and more of the County's legacy farms switched from

diversionary sources to groundwater wells during an extended drought period, the use of groundwater for cannabis irrigation became controversial. Since 2021, the Planning Department has been requiring a geologic study for all proposed irrigation wells to determine what, if any, impacts to surface waters and adjacent water users might be from the use of the well for irrigation. Available scientific information also indicates that the concern over groundwater use for cannabis may be misunderstood. A research study published by the USGS (Flint, 2013) indicates that approximately 34% of precipitation in Northern California percolates into groundwater recharge and that the mean annual precipitation is 57.7 inches per year, meaning that 19.8 inches, or 1.65 acre-feet (also expressed as 530,000 gallons of water) of recharge per acre of ground area per year is available in a typical year. During a drought year, where as little as 1/3 of the average rainfall is recorded, at least 175,000 gallons of water is recharged into the groundwater *per acre* of ground area. The County's cannabis ordinances require a minimum parcel size of ten acres for any cultivation area of more than 10,000 square feet in size, meaning that the irrigation needs of cannabis cultivation are nominal in relationship to the typical groundwater recharge occurring over properties that might seek to cultivate cannabis.

The letter (p.11) states the paragraph above argues "*the Initiative's groundwater protection measures are unnecessary because average per-acre groundwater recharge in Humboldt County is high, even during drought years."* This portion of the report is Section II which describes the existing regulatory framework and more specifically areas of controversy in the existing regulatory environment. This paragraph acknowledges that the use of groundwater is controversial in the County and provides technical information on groundwater recharge. The Flint research study provides a different perspective on that held by some. It is important to observe, this paragraph is not part of the initiative analysis which is in Section III.

6. **Use of generators and switching to renewable sources**
   Generators were used as the power source for most of Humboldt County's legacy black market farms. The lack of available PG&E infrastructure in many areas of the County led to the need for on-site power generation to fulfill the needs of existing farms. The public has consistently raised concern over the use of generators, both due to noise and potential fuel spills as well as for contribution to greenhouse gases. The Commercial Cannabis Land Use Ordinance prohibits generator use except in emergencies for both new cultivation and existing cultivation occurring in TPZ and U zoned (with a timberland land use designation) lands, and, due in large part to public concern, the County Planning Commission and Zoning Administrator have consistently been requiring all cannabis operations to transition to renewable energy sources within a defined period of time as a condition of permit approval.

7. **Cultivation transition space**
   As the industry has become more refined, cultivators practicing mixed light and/or light deprivation often grow more than one crop a year and need to have space for their plants before they are put into the cultivation space. The plants become too big for the nursery but the greenhouses are still occupied with the previous run so they cannot yet be moved into the

cultivation space. This does not increase the flower producing cultivation space but allows more flexibility to plant within a tighter time frame.

III. INITIATIVE IMPACTS AND IMPLICATIONS

The HCRI has several important sections to review when considering the impact to the County and cannabis industry, including purpose and findings, regulatory modifications to the General Plan, amendments to the local coastal plans and amendments to the coastal and inland Commercial Cannabis Land Use Ordinance.

A. Purpose and Findings

The initiative starts from the premise: "*The purpose of the Humboldt Cannabis Reform Initiative (Initiative) is to protect the County's residents and natural environment from harm causes by large-scale cannabis cultivation.*" The need for the initiative is then supported by 11 findings. Some of the findings are statements of fact and do not require comment. Several of the findings do require further consideration.

Finding 3:

The HCRI states: *Humboldt County's cannabis ordinances allow large-scale operations that threaten to displace small-scale cultivators*. Based upon the language of the initiative, anything over 10,000 square feet is a large-scale operation. The initiative does not explain how approval of large-scale cultivation comes at the expense of the small-scale cultivation that has made Humboldt County famous.

Identified Issues:

Finding 3 for the initiative seems to ignore:

i. All cultivators in Humboldt County, regardless of size, are competing in a state-wide market which is producing more cannabis than the market can currently absorb. This is not a Humboldt County exclusive issue.

ii. In relation to other jurisdictions in California, Humboldt County does not have "large scale" grows.

iii. The percentage of pre-existing cultivators over 10,000 square feet is above 70 percent (309 of 416 active permits – see Table 1), so any impact of this ordinance on cultivators over 10,000 square feet would adversely affect those farmers who have had farms that lawfully and at the behest of the County transitioned out of the illicit cultivation industry.

iv. The finding infers large new cultivators are dominating the permits being obtained in Humboldt County and this is not true.

Finding 4:

The HCRI makes the statement: *The transition from small-scale to large-scale cannabis cultivation is adversely affecting the community and the natural environment.* The finding is supported by the statement: "*Concerns voiced by residents include: dust, noise, odor, glare, unsightly structures*

damaging scenic views, reductions in stream flows and water well production, adverse effects on wildlife, dangerous road conditions, and road deterioration."

Identified Issues:
Finding 4 infers that every cannabis operation is filled with adverse impacts that are not being addressed. This is simply not true. It is important to consider that most permits issued for cultivation are for pre-existing cultivation. This means those farmers must now comply with the County and State regulations including permits from the Waterboard and CDFW.

i. Dust is most often associated with use of unpaved roadways. The adoption of the CCLUO imposed a requirement on new permit holders and existing permit holders to enter a Road Maintenance Association to maintain the road.

ii. Noise is most often associated with generators; both the CCLUO and CMMLUO have restrictions to protect neighboring property owners and wildlife from the impact of generator noise. Residences on the same and neighboring property are not subject to regulations limiting noise from generator use.

iii. The CCLUO adopted retroactive standards to address odor impacts in Community Plan Areas. The cannabis regulations encourage cultivation on agricultural land. Farming and ranching are often associated with odors.

iv. Glare is probably a reference to violations of the County ordinances requiring compliance with dark sky standards. This is an issue the County has been working on addressing through both its code enforcement unit and permit compliance review staff.

v. The reference to unsightly structures is probably a reference to greenhouses and water tanks. Both types of structures are common to agricultural land. In permitting facilities, scenic vistas and designated scenic areas are addressed as part of the analysis. Private views on agriculturally zoned land are not protected.

vi. The reference to reduction in stream flows and water well production ignores several important considerations. Any observed reduction in stream flows over the last couple of years has likely been related to the drought California has been enduring. It is also important to understand that the CCLUO does not allow direct diversion from a surface water. The CMMLUO only allows diversion from surface water for pre-existing cultivators and those who have a water right to do so. In situations where diversion is allowed, forbearance is required. Every well that has been allowed for cannabis irrigation has been reviewed to ensure it is not pulling from the underflow of a stream, creek, or river. Unfortunately, there are examples of farmers who choose not to follow the regulations and illegally pump water, but these are the minority, and these already impermissible actions are enforceable through code enforcement and/or permit suspension/revocation actions.

vii. The impacts to wildlife are far more prevalent in unpermitted and unregulated grow sites. By the time a farm is permitted it will have been evaluated to determine if there is a likelihood of sensitive wildlife existing on the site. When there are, conditions are imposed to protect the wildlife. Permitted farms are not allowed to use illegal rodenticides and other chemicals that adversely affect wildlife and water quality.

viii. Every cannabis permit is evaluated to determine whether the road has the capacity to support the cultivation operation in addition to other traffic on the road.

ix. Road deterioration is addressed in the CCLUO through the requirement for formation of a Road Maintenance Association.

Finding 5:

Continued growth in the number of commercial cannabis cultivation permits and the amount of acreage under cultivation threatens the community and the environment. The finding says in order to accomplish this, the initiative reduces the caps on permits and acreage under cultivation previously adopted by the Board of Supervisors. This focuses on the numerical cap imposed by Resolution 18-43 adopted with the CCLUO to limit the total number of permits and allowed acreage in the County and number of permits and acreage in each watershed. The concern is that the caps are much higher than they should be. The argument supporting this finding is that the initiative strikes a better balance between allowing commercial cannabis cultivation and protecting the community and the environment. The HCRI significantly limits the issuance of any additional cannabis permits beyond those already deemed complete as of March 4, 2022.

Identified Issues:

i. The HCRI approach picks a point in time to measure the cap on the number of permits that can be approved. In planning watersheds listed in Section 2 of the Board of Supervisors Resolution No. 18-43, and in the Coastal Planning Areas, the initiative would impose a cap of 1.05 times the total number of existing approved, unexpired permits for Open Air Cultivation and Indoor cultivation within that watershed as of March 4, 2022. This would be 978 permits including RRR donor and receiving sites. Similarly, the initiative would impose an acreage limit of 1.05 the total permitted acreage of cultivation area approved by the County under Open Air Cultivation and Indoor Cultivation as of March 4, 2022. If the caps are exceeded, any new applications are to be placed in a queue and shall not be further considered or processed until the limits for permits or acreage fall below the limit.

ii. The measure would also limit any other new approvals for permits received after March 4, 2022, to a cultivation area of 10,00 square feet and limits approvals to Outdoor Cultivation, Mixed-light-Tier 1 cultivation, or nursery.

iii. The caps posed in the initiative may be exceeded just by processing applications that were received prior to March 4, 2022. Applications received and completed prior to March 4, 2022, may still be processed; however, this creates significant uncertainty for applications received after March 4, 2022. Further, the total number of permits issued under these caps could be non-conforming based on the further changes to the regulatory scheme the initiative sets forth.

iv. Additional applications have come in since March 4, 2022. These applications may exceed the acreage and/or permit caps that would be established by the initiative and may also seek a cultivation area of over 10,000 square feet and/or not of the types of cultivation allowed by the initiative, and therefore not eligible for a permit under the initiative. This could result in permit applications submitted under current rules not being able to be approved.

v. The caps and limits can only ever be revisited by initiative (voter approval).

vi. This approach does not consider the variability of the market and how market selection will determine which farms remain in the long term and which farms do not survive.

vii. It may be appropriate to make a modification to the watershed caps, but this can be done in a manner that does not immediately make issued permits non-conforming.

See Table 2 on the following page for data on the status of permits and acreage caps for the planning watersheds.

Table 2: Status of Watershed permit and acreage caps[3]

Watershed	Allowed permits	Allowed Acres	Permits & Applications	Acres approved/ pending
Cape Mendocino	650	223	233 permits, 74 pending	81.7 permitted, 34.8 pending
Eureka Plain	89	31	14 permits, 18 pending	9.5 permitted 31.8 pending[4]
Lower Eel	336	116	77 permits 31 pending	36 permitted 24.4 pending
Lower Klamath	161	56	14 permits 29 pending	5 permitted 15.6 pending
Lower Trinity	169	58	59 permits 44 pending	25.8 permitted, 22.5 pending
Mad River	334	115	72 permits 42 pending	26.5 permitted, 24.9 pending
Middle Main Eel	360	125	100 permits 73 pending	40.4 permitted, 35 pending
Redwood Creek	141	49	11 permits 42 pending	3.2 permitted, 14 pending
South Fork Eel	730	251	300 permits 109 pending	92.6 permitted, 51.2 pending
South Fork Trinity	86	29	24 permits 13 pending	10.9 permitted, 16.1 pending
Trinidad	19	6	5 permits 4 pending	0.75 permitted, 0.67 pending
Van Duzen	425	146	118 permits 85 pending	39.7 permitted, 38.6 pending

[3] Data for Table 2 as of January 15, 2023.

[4] While the total of all approved and pending acreage within the Eureka Plain watershed would exceed the Cap, once the Cap is exceeded, all other pending applications will be required to be withdrawn or denied.

Finding 6:
New commercial cannabis cultivation should be limited to smaller outdoor and lower-wattage mixed-light grows and nurseries. The concern expressed in this finding is that the use of artificial light in cannabis cultivation is extremely energy-intensive and therefore using less artificial light will reduce demand on resources and the environmental impacts associated with electricity production.

Identified Issues:

i. This finding ignores the regulatory framework behind the County's Commercial Cannabis permitting program. The CCLUO requires all new commercial cannabis operations to utilize renewable energy sources, and as a matter of practice the County Planning Commission and Zoning Administrator have been conditioning existing cultivation permits to transition to renewable energy sources within a specified timeframe, usually no more than four (4) years.

ii. Limiting all cultivation, including nurseries, to no more than 6 watts per square foot even when the environmental and resource impacts are well addressed would unnecessarily restrict the ability of Humboldt County farmers to produce a competitive product.

Finding 7:
Residents should be notified of cannabis permit applications and be given the power to engage meaningfully in the permit approval process. The premise behind this finding is that residents who may be affected by commercial cannabis cultivation operations are neither notified nor given a meaningful opportunity to participate in the County's review process and that the County waives hearings for cannabis projects.

Identified Issues:

i. This finding does not comprehend the County's current efforts to ensure public involvement, even when not required by law or regulation.

ii. There are three permit types in the Humboldt County Code that relate to cannabis. Zoning Clearance Certificates for smaller cultivation types on larger parcels, Special Permits, and Conditional Use Permits. Zoning Clearance Certificates are ministerial level permits and do not include public notice.

iii. Under the County Code, hearings for Special Permits may be waived if, after public notice, no member of the public requests a public hearing. As a matter of practice and to ensure full transparency, the Planning Department has held public hearings for all Special Permits and Conditional Use Permits. The section of County Code allowing for public hearings to be waived has not been utilized for cannabis applications.

Finding 8:
Operators are not verifiably complying with applicable regulations and permit conditions. The concern is that the County is not conducting in-person on-site inspections before permit renewals, and, therefore, there can be no assurances that regulatory standards are met before permit issuance and renewal.

Identified Issues:

i. The assertions behind this finding are uninformed. There are 1,027 approved cannabis cultivation permits and 118 other permitted cannabis activities such as manufacturing,

dispensaries, nurseries, etc. and County Code currently requires an annual inspection for each permit to be renewed. Last year alone, the Planning and Building Department conducted a total of 919 on-site inspections and 418 remote inspections of permitted sites (noting that some sites received both an on-site inspection and a remote inspection). As part of this work the approved site plans are being digitized into the GIS system to establish what was approved and then to be able to remotely monitor for change.

ii. Less than 10% of permitted cannabis operations had one or more non-compliant items, and 90% of all inspected sites were found to be compliant.

iii. In addition to County inspections, permitted sites receive inspections from the Department of Cannabis Control, the Regional Water Quality Control Board, and the California Department of Fish and Wildlife. Cannabis operations in Humboldt County are among the most thoroughly inspected operations in the state.

Finding 9:
Coordination between the County and state wildlife and water quality agencies has been lacking.

Comments:

i. There is no evidence for this finding.

ii. The County's cannabis application process involves a very robust coordination process. After applications are accepted, project materials are forwarded to multiple county, state, and federal agencies with requests for comments and feedback. The County frequently interacts with, corresponds with, and engages in on-site and off-site meetings with the California Department of Fish and Wildlife, Regional Water Quality Control Board, California State Parks, and the California Department of Forestry and Fire Protection, among others.

iii. Every staff report prepared by the Planning Department for a commercial cannabis project includes a discussion of the various agencies who were contacted, concerns raised and how those concerns are addressed. State wildlife and water quality agencies are invited to and often do participate in public hearings on cannabis applications. This often involves County Staff contacting regulatory agencies to determine if they have comments.

Finding 10:
Large-scale cannabis cultivation contributes to strains of water resources. The concern expressed is that Humboldt County is suffering from moderate to extreme drought, and that the County's ordinances allow diversions and groundwater use without concern for fish, wildlife and other water users.

Identified Issues:

i. The assumption behind this finding is false.

ii. The impact of irrigation from cannabis on fish, wildlife, stream health and other users was considered and analyzed in the Environmental Impact Report prepared for the Commercial Cannabis Land Use Ordinance and measures were implemented to protect these resources.

iii. Diversions for new cultivation under the CCLUO were prohibited entirely except when associated with dry-farming techniques, and pre-existing cultivation operations are required to forbear from water diversions during the forbearance period set by state wildlife agencies.

Further, all diversions are heavily regulated by both the State Water Board and the California Fish and Wildlife who set restrictions based specifically on stream-health and wildlife concerns. For groundwater wells, the County has a practice of requiring a hydrologic analysis of the proposed well to determine its potential to impact adjacent watercourses and other water users prior to approving any discretionary cannabis application. The concern about groundwater impacts from cannabis cultivation appears to be misunderstood.

Finding 11:

Overreliance on generators causes noise pollution and threatens fuel spills. The concern raised in this finding is that generators from cannabis sites are causing noise pollution and fuel spills.

Comments:

i. The County's cannabis ordinances require noise from generators to be below specified thresholds which are intended to ensure no impacts to adjacent residents and wildlife.

ii. A standard condition of all cannabis permits is for noise containment structures to be developed for all generators and for secondary containment to be in place for all generators and other sources of fuel storage. Additionally, as referenced elsewhere in this report, the current ordinance requires renewable energy for all new cultivation operations and standard Planning Department and Planning Commission practice requires the phasing out of generators for existing operations as a condition of permit approval.

iii. Complaints made to the County Planning Department are investigated and resolved, and in most instances appear to stem from unregulated activities such as residential development or non-permitted cultivation operations.

iv. The reference to fuel spills ignores current regulations which require containment of fuel and inspections by the Department of Environmental Health.

B. General Plan Amendment

The initiative places much of the emphasis on amending the General Plan and requiring subsequent modifications to the cannabis provisions of the Zoning Ordinance for both the Coastal and Inland ordinances. The core elements of the policy changes are as follows:

Definition – "Expanded"[5]

While the HCRI acknowledges the exercise of vested rights obtained as of the effective date of the initiative the definition of expanded is a huge concern. The definition reads as follows:

> *"Expanded," when used to describe commercial cannabis cultivation sites, uses, operations or activities or an application or permit therefor, shall mean an increase in the size, intensity, or resource usage of commercial cannabis cultivation activities on a parcel or premises where such activities have previously been permitted, regardless of whether authorization for expanded uses is sought by way of an application for a new permit or zoning clearance or an application for a modification to an existing*

[5] HCRI Section 2(A)(1) pages 7-8.

*permit or zoning clearance. Examples of "expanded" uses include, but are not limited to, an increase in cultivation area, water usage, energy usage, **or the number or size of any structures used in connection with cultivation**.*" (Emphasis added.)

The letter (p. 2) states: "*The Initiative is not intended to prevent existing cultivators from improving the environmental footprint of their operations, such as by installing water storage or solar panels. The Analysis adopts an extreme interpretation that contradicts the Initiative's environmentally protective purposes and intent*." The analysis does question the intent of the HCRI but responds to the wording. This comment demonstrates a difference in understanding between the whole of a project (perspective of the County) versus focusing only on the cultivation activity. The analysis was also informed by a FAQ from the HCRI sponsors website (Exhibit A1) and comments from the HCRI sponsors and a letter to the Redheaded Blackbelt dated May 8, 2022 (Exhibit A2) which stated: "*Adding new water tanks might be interpreted as an expansion and might require modification of an existing permit.*" While these exhibits do not state that adding water tanks absolutely is an expansion, it leaves that decision open to later interpretation without qualification or indication of what factors should be considered. The purpose of the analysis was to provide insight into issues that could arise from approval of the HCRI. This is validated by the HCRI sponsors' own clarifications.

The letter expresses a different understanding of a "non-conforming" use than the County's. A non-conforming use is an activity that could not be permitted under the current set of regulations. Non-conforming provisions are included in Zoning Ordinances to allow existing uses and structures remain, but to not expand or have other modifications that would extend the useful life of the use or structure until the use or structure is brought into conformance with the current regulations applying to the property. The analysis is not concerned that a non-conforming use can continue, but rather that persons holding non-conforming permits cannot modify their permits to expand the activities on-site such as adding a nursery or processing, or distribution or expanding to a Micro-business. The letter states this could be done, but at the same time states (P.5): *The clear intent of these provisions is to allow existing farms to continue operating, but not to expand the amount of cultivation, energy usage, or water usage.*" Adding any of the activities identified would require additional resource usage. The letter states that this limitation on expansion does not apply to other activities but only to cultivation, but this is not clear from the four corners of the HCRI.

Identified Issues:

i. This definition means any existing permit holder that changes their operation such as adding solar panels or adding additional water storage may be "Expanded" under the HCRI, thus triggering its policies and standards. For example, if an existing permit holder is entitled to cultivate 20,000 square feet but wants to add solar panels after the effective date of the HCRI, they would have to reduce their cultivation to 10,000 square feet and comply with all the other regulations in the initiative to add the solar panels. Another example would be of an existing permit holder currently approved for 10,000 square feet of mixed light using more than 6 watts wanting to add water tanks would need to reduce the wattage to add water tanks.

ii. The term Structure is defined in the Zoning Ordinance as:

> *Anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including swimming pools and signs, but excluding decks and platforms 30 inches or less in height, signs 3 feet or less in height, driveways, patios, or parking spaces where the area is unobstructed from the ground up, fences six feet or less in height, and for zoning setback purposes, retaining walls six feet or less in height.*

Structure clearly refers to water tanks placed on the ground or solar panels attached to the ground or something located on the ground. Greenhouses are structures.

iii. Due to the regulations relative to roads, structures, and light, a significant number of the existing permitted farms would become non-conforming and not be allowed to improve their facilities or make changes to adapt to the evolving industry.

iv. Existing permit holders will not be able to make changes and continue to cultivate under their existing permit. This could result in a decision to cease cultivating.

Total number of permits capped at 1.05 times Number in effect on March 4, 2022.[6]

Under the current program, the total number of permits is regulated by Resolution 18-43 which sets limits on the number of permits as well as acres and is apportioned among 12 planning watersheds. Based on current approvals, the cap proposed by the HCRI has been met or exceeded. The HCRI does allow the continued processing and approval of pending applications that were received and deemed complete as of March 4, 2022. The HCRI would require the total number of permits to drop below the cap before any new applications for permits could be processed.

Comments:

i. This proposed change is related to Finding #5. The total number of cultivation sites and acreage in Humboldt County has declined overall since legalization and the implementation of the local cannabis program. Prior to the local cannabis program, it was estimated there were approximately 15,000 illegal cannabis cultivation sites on between 5,000 and 6,000 parcels. The Code Enforcement efforts have abated over 1,000 parcels with illegal cultivation. As noted above the County has issued permits for less than 300 new cultivation sites, so there is a net reduction is cannabis cultivation in the County.

ii. Resolution 18-43 also prohibits new cultivation in watersheds identified as impacted. These watersheds were identified by the California Department of Fish and Wildlife. Existing County policy already protects the most sensitive watersheds.

iii. The impact of this proposed change includes negative effects on the continued implementation of the RRR program. Many landowners have completed the retirement site portion of the program but have not yet identified a receiving site, which is a separate new permit. These individuals would be locked out of permitting these sites. Thus, even though they have cleaned up the retirement site and recorded a restrictive covenant on that property, they would not be in a position to permit the receiving site until such a time as the number of permits drops below that allowed in the initiative.

[6] HCRI CC-P1 page 10.

Cultivation area for permits deemed complete after March 4, 2022, capped at 10,000 square feet.[7]

This proposed change appears based on Findings #2, #3, and #4.

Identified Issues:

i. Absent any analysis or data, the threshold of 10,000 square feet is arbitrary.

The letter (p.4) states "*The 10,000 square foot limitation in the Initiative is not '"arbitrary,'" as the Analysis claims (Analysis at 16) but drawn directly from state regulations. Ten thousand square feet is the threshold between '"small;" and '"medium'" cultivation licenses under state regulations. (Cal. Code Regs., tit. 4, § 16201(c), (d).) This threshold is consistent with the Initiative's express goal of promoting small-scale cultivation.*" This seems to be worded differently than the purpose statement in the HCRI itself which states: "*The purpose of this Humboldt Cannabis Reform Initiative ("Initiative") is (sic) protect the County's residents and natural environment from harm caused by large scale cannabis cultivation*." The purpose statement of the HCRI does not include an "*express goal of promoting small-scale cultivation*." There are findings in the HCRI stating Humboldt's high -quality cannabis was shaped by small scale cultivators, that large scale operations threaten to displace small scale cultivators and that new commercial cannabis cultivation should be limited to smaller outdoor and lower wattage mixed light grows and nurseries. These are not the measure's expressed goals and are subjective states, rather than objective statements of fact that County staff can validate or invalidate.

ii. As presented above, over 59 percent of all permits are 10,000 square feet or less but 41 percent are larger and would become non-conforming permits.

Mixed Light and Indoor Cultivation prohibited.[8] The definition of mixed light cultivation would be broken into two tiers, Tier 1 allowing light deprivation and less than 6 watts per square foot, and Tier 2 being more than 6 watts per square foot. Both Tier 2 mixed light and indoor cultivation would be prohibited. Currently, the County defines outdoor as relying solely on sunlight, Mixed Light as using supplemental light and indoor as using primarily artificial light. These changes to the definition of cultivation appear to be based on Finding #6. The HCRI provides no citation or data to support this finding.

Identified Issues:

i. This change would make many existing mixed light and all indoor cultivation permits non-conforming. Cultivators would not be able to add facilities that would make the operation more efficient or more environmentally friendly.

[7] HCRI CC-P2(a) page 11.

[8] HCRI CC-P2(b) page 11 and Section 2(A)(1) page 8.

The letter (p.6) states *"…the Analysis regarding the Initiative's effect on existing mixed light and indoor cultivation are incorrect. The Analysis claims the Initiative would '"make all existing mixed light and indoor cultivation permits non-conforming.'" (Analysis at 16.) This assertion, however, is based on how the County currently defines mixed-light and indoor cultivation. (Id.)*" The letter is correct this is a matter of changing the definition of Mixed Light. The HCRI would not allow indoor cultivation, so all indoor cultivation would become non-conforming upon passage of the HCRI. The County defines Mixed Light based upon use of supplemental light. The state defines Mixed Light based upon wattage, breaking Mixed Light into two tiers. Tier 1 involves lighting of less than 6 watts and includes use of light deprivation. Mixed Light with more than 6 watts per square foot is considered Tier 2. The HCRI would not allow Tier 2 Mixed Light, so those permitted cultivators who are using more than 6 watts per square foot would become non-conforming. Farmers who currently have a permit for Mixed Light and practice Tier 1 Mixed Light would remain conforming. Under the County definition, light deprivation does not involve supplemental light and is thus by definition outdoor cultivation. Farmers who currently are permitted for outdoor cultivation and practice light deprivation would become non-conforming because they would no longer be defined as outdoor but would be Mixed Light. The appropriate changes haves been made to the text above.

ii. Current practice requires use of renewable energy for mixed light or indoor operations. If this is to stop the use of generators, project conditions have been requiring that for some time.

iii. This requirement also ignores that current market conditions favor mixed light flower. Mixed Light and indoor cultivation do not necessarily have increased environmental impacts if the power source is renewable and the other inputs are controlled.

Permit Term and Renewal and Conditions.[9] The HCRI would set a limit on the term of a permit for 1 year, requiring renewal each year. The initiative is not clear on what the renewal process would entail. This provision would allow the County to inspect the property without notice and would require the County to consider all complaints. Currently, permits are extended provided the permittee allows an annual inspection and remains in compliance. As discussed above the County has inspected all the permitted farms operating in 2022. Only 10% of all permitted and active farms have outstanding violations. The Department is actively working with these permit holders to resolve these violations and prior to June these will either be resolved, or the permits will be scheduled for revocation.

The letter (pp. 6-7) states: "*The only changes the Initiative makes to permit renewal are to require on-site, in-person inspections (rather than '"remote'" inspections, '"desk reviews,'" or self-certification of compliance by permittees), correction of violations, and investigation of legitimate complaints. (Policy CC-P4.)*" With respect to annual inspections, the County has never used desk reviews and self-certifications. Last year, remote inspections were used on a minority of the sites, but those were the first sites to be visited in- person this year. This year,

[9] HCRI CC-P4 page 12.

the Planning and Building Department will conduct in- person inspections on all permitted sites. Given the size of the County, on-site reviews can require a lot of staff time, a finite resource.

The letter (p.7) states, "*Any suggestion in the Analysis that the Initiative imposes a new one-year expiration date or '"renewal'" requirement (Analysis at 17) is false. The one-year expiration date and annual renewal requirements are already in existing law. The Ordinance currently provides that permits '"shall terminate'" or '"expire'" one year after the date of issuance. (County Code §§ 313-55.4.5.6, 314-55.4.5.6.) Policy CC-P3 would simply add these existing requirements to the General Plan.*" This statement does not reflect the process under the CMMLUO or the CCLUO. Both the CMMLUO and CCLUO contain the following requirement:

> *"Any commercial cannabis activity zoning clearance certificate, special permit, or use permit issued pursuant to this section shall expire after one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual compliance inspection has been conducted and the permitted site has been found to comply with all conditions of approval, applicable eligibility and siting criteria, and performance standards."*

It is true the cannabis ordinance states that any cannabis permit expires after one year, but it does not say "unless renewed." The existing ordinance simply requires an inspection showing that the site complies with the Zoning Ordinance and permit conditions. The proposed renewal requirement would be new. In land use permitting vernacular, a renewal is a process where there is an application, a review, and a discretionary decision. The language in CC-P2 of the HCRI includes a reference to an "application," which signals this is the process envisioned in the HCRI.

The concern with a renewal process is that it includes discretion to not approve renewal. The HCRI is written to require the renewal action consider concerns of the neighbors. Action on a renewal for a discretionary project (under the HCRI, all cultivation over 3,000 square feet is discretionary) would also be subject to appeal. This will add time and cost to the renewal and may result in the renewal being denied for a project otherwise in conformance with a permit and County ordinances. To illustrate, there are a couple of sites County staff regularly receives complaints on. Staff has visited those sites four (4) or more times per year and has not found violations; yet complaints and concerns continue. In one instance the complaint was about smell from a site that had completely enclosed greenhouses. These sites with a renewal process that include public participation would result in a longer process and a contested annual decision to renew a permit. The current process involves a technical review of whether the site complies or not and does not provide context to introduce more subjective concerns. Added discretion without clear regulations introduces uncertainty for growers. The explanation of the letter and the language of the HCRI do not explain what is meant by "renewal" and this creates uncertainty, as discussed below.

<u>Identified Issues:</u>

i. Placing a term limit on the permit creates unreasonable uncertainty for the business enterprise by placing the permit in jeopardy each year.

ii. The existing zoning ordinance does not have a renewal provision and the HCRI does not explain what process is followed. It is clear within the initiative that an application for renewal is anticipated (CC-P2 "shall not apply to an application for renewal …"). Under current circumstances this would involve the County processing over 1,000 renewal applications per year

iii. Alternative interpretations of the appropriate process for a renewal are available making it impossible to know what the HCRI intends. Given that the permit would expire each year, an argument could be made that the renewal should be issued by the Hearing Officer who would be approving the permit as if new. The renewal is then subject to whatever process is required by the HCRI. Discretionary permits (anything over 3,000 square feet) would be subject to changing political and social influences each year. This does not provide a stable regulatory environment. An administrative process could be envisioned, but this is unusual with the requirement that the permit automatically expires.

iv. This process will significantly add to the regulatory cost and demand for County staff time. At some point, regulatory compliance can become so expensive that the activity cannot support the permit requirements.

v. It is not explained how an expiration and renewal process achieves a better result than the existing annual inspection. It will take more time and cost the permit holder more.

Multiple Permits.[10] The HCRI states: "*No approval of a permit for commercial cannabis cultivation shall result in either of the following: (a) any one person holding more than one active permit approved after the Effective Date of the Humboldt Cannabis Reform Initiative at the same time, or (b) more than one active permit approved after the Effective Date of the Humboldt Cannabis Reform Initiative on the same legal parcel at the same time.*"

Under the CMMLUO, a person can have up to four permits. Under the CCLUO a person may not have permits to cultivate more than 8 acres, but there is no limitation on the number of permits a person can have. The flexibility provided by the CCLUO in the number of permits was designed to allow farmers to have different types of permits to diversify their source of income. This includes Community Propagation Centers, processing, distribution, manufacturing, and farm tours to name a few. Both the CMMLUO and CCLUO allow multiple permits on a parcel. Also, there are many sites with an original cultivation site and that have added one permit to receive additional permits through the Retirement, Remediation, and Relocation (RRR) program.

<u>Identified Issues:</u>

i. This provision is unclear and can be interpreted in different ways. The reference to "permit for commercial cannabis cultivation" could include a renewal of a cannabis cultivation permit as that is a type of permit which means that during a renewal existing permit holders would only be allowed to renew one permit.

ii. The second and third reference to active permit could include nursery, propagation, drying, and trimming. It is not clear if this is intended to be limited to cultivation permits or would extend to other types of permits as well. If other types of permits beyond cultivation are intended, then

[10] HCRI CC-P5 page 12.

other activities that were written into the CCLUO to support farms and provide diversified sources of income could no longer be approved.

iii. Sites that were approved for 10,000 square feet of cannabis cultivation and become receiving sites for RRR would become non-conforming and could not modify their operations.

iv. The CCLUO specifically allowed larger cultivation sites to become permitted for other uses, because these operations are on a paved road with a centerline stripe. This would no longer be allowed. Larger cultivation sites would become non-conforming and could not modify facilities.

The letter (p.8) states that "*…the initiative does not necessarily prohibit cultivators from obtaining dispensary, bed-and-breakfast, or tourism permits and that the Initiative applies only to commercial cannabis cultivation, not other types of permits such as dispensary, bed-and-breakfast, or tourism permits. The definition for commercial cannabis cultivation includes nurseries and processing. Nurseries and processing facilities that are not ancillary require separate land use permits. However, as pointed out in the County's analysis, the HCRI specifically references the prohibition of "any one person holding more than one active permit.*". The reference is specifically to an "active permit," not commercial cannabis permit. There is no definition in the HCRI of an "active permit."

The letter goes on to state that the initiative does not prevent the County from approving multiple uses with a single permit. This proposal suggests unintended consequences to the HCRI's multiple-permit policy. The letter suggests the HCRI's impact is limited to commercial cannabis cultivation, but also offers a remedy for the unintended consequences that would affect support facilities by suggesting the Board of Supervisors could adopt changes to the ordinance allowing multiple uses under a single permit to the extent such changes are not inconsistent with the policies and purposes of the HCRI. This potentially changes the permit tier and processing requirements for support facilities, such as nurseries and processing, by forcing those uses into a single permit. Once the multiple land uses are linked by a single permit, any future modification, withdrawal, cancelation, or revocation for one use would affect all uses under that permit. The concern expressed above relative to non-conforming uses would preclude additional activities from being considered as part of one permit, because addition of uses would be an expansion of the use and thus is not allowed under non-conforming use provisions.

v. This will affect many of the approved permits and make them non-conforming unable to even add additional water storage and depending upon interpretation would not allow conversion to farm sales, farm tours or other activities.

Coordination and Collaboration with Other Agencies.[11] This is based on Finding #9 which states "Coordination between the County and state wildlife and water quality agencies has been lacking." This finding is not factual. The County coordinates with state agencies through the referrals process. This coordination is required by Humboldt County Code 312-6.1.3. The referrals process frequently results in additional studies or conditions of approval as recommended by SWRCB, CDFW, CalFire,

[11] HCRI CC-P6 page 12.

or CalTrans. The Planning and Building Department routinely provides project scheduling data to CDFW to provide additional opportunity for input and comment. The County is also in regular contact with Department of Cannabis Control regarding state license and local permit verification and compliance.

Identified Issues:

i. This is a false narrative and is damaging to the public trust relative to the actual energy the County puts into coordinating review in a public process.

The letter (p.12) states "*In the judgment of the Initiative's sponsors and supporters, merely sending copies of documents to overburdened state agencies with a 10-day deadline for responses—after which the County need do nothing further to ensure agencies' concerns are addressed—falls well short of coordination.*'" This comment is inconsistent with the County's analysis and practice. The analysis starts with the understanding that coordination with state agencies is required, and in practice, County staff does not merely attempt to meet minimum ordinance requirements but attempts to fulfill the objective of the requirement by soliciting information to be considered as to an application. To be more specific, when no comments are received from a state agency, County staff emails and/or calls to invite comments. If new information of concern to an agency is received, staff sends that information to the agency with time for comment before acting on an application. More recently, as the County is projecting scheduling of Projects on agendas weeks and months in advance, those projections are also provided to CDFW.

This comment also overlooks concerns consistently expressed by the Planning Commission and Board of Supervisors, who often focus on comments (or lack of comments) by state agencies, particularly CDFW.

Public Notice.[12] The initiative states: "*The County shall provide public notice of proposed commercial cannabis cultivation applications in a variety of forms so as to ensure that all persons who may be affected by proposed cultivation operations are reasonably likely to receive actual notice."*

Identified Issues:

i. The County does provide at least two types of notice for all discretionary projects. Notices are placed in the Times Standard of upcoming public hearings and notices are sent to property owners within the state law minimum and County ordinance requirement of 300 feet of the project parcel boundary. In actuality notice is often provided to property owners within 500 feet in order to make sure adequate notice is provided. If a project is likely to attract public attention, the department extends the area to which the mailing is sent.

ii. Noticing is not provided for ministerial projects, because there is no discretion exercised in acting on those permits.

[12] HCRI CC-P7 page 12.

iii. This infers notices are not provided for all discretionary projects and that is not true. This is a misleading premise for this policy in the initiative.

Discretionary Review.[13] Cultivation above 3,000 square feet could no longer be approved with a ministerial permit (Zoning Clearance Certificate). Currently on parcels with a minimum area of 5 acres, 5,000 square feet of cultivation can be approved with a Zoning Clearance Certificate, and on parcels with a minimum area of 10 acres up to 10,000 square feet of cultivation can be approved with a Zoning Clearance Certificate. Of the 1027 active permits only 61 of these are 3,000 square feet or less and 349 of the permits have been approved through a Zoning Clearance Certificate. The initiative would require a discretionary permit for between 3,001 square feet and 10,000 square feet. This would also apply to a request for expansion of the cultivation activity.

Identified Issues:

i. This would require a public hearing for even very small boutique family operated farms.

ii. Cultivation sites between 3,001 and 10,000 square feet would require a discretionary permit to add drying facilities, processing facilities, and to add water storage improvements that currently are allowed with either a substantial conformance determination or modification to the Zoning Clearance Certificate.

iii. The increase in hearing requirements would create a large burden on County staff, the Planning Commission, and potentially the Board of Supervisors.

The letter states: "*The Analysis admits that discretionary review and public notice "will not really matter for new permits, because few are expected." (Analysis at 24.) The Analysis also claims these provisions will affect existing cultivators by forcing permit renewals to go through discretionary review (id.); however, this conclusion flows from the County's misunderstanding of the Initiative's permit renewal provisions.*" The letter is correct in that the concern is related to the impact of processing renewals. Renewals are addressed above.

No Waiver of Public Hearings.[14] The HCRI states: "*Notwithstanding any contrary provision of the Humboldt County Code or Zoning Regulations, public hearings on commercial cannabis cultivation permit applications shall not be waived*." The HCRI does not provide background on the basis for this policy. As a practice, the County does not waive public hearing requirements for cannabis projects as discussed above under Finding 7.

Identified Issues:

i. This policy gives a false impression that the County waives public hearing requirements.

[13] HCRI CC-P8 page 12.
[14] HCRI CC-P9 page 13.

The letter (p.10) states that public hearings should not be waived, and that the County's analysis incorrectly states that the HCRI gives a false impression that the County waives public hearings for cannabis projects because existing County Code authorizes the County to waive public hearings. While the existing code does allow for waivers of public hearings, the County's analysis accurately states that, as a practice, the County does not waive public hearings for discretionary cannabis projects. The letter and the HCRI do not acknowledge where public hearings are waived, HCC 312-9.2 requires public notice of pending action on an application. If any member of the public requests a hearing, one is held. The County believes the public and all stakeholders understand that discretionary cannabis projects go to a public hearing.

ii. As noted above, the County goes beyond the minimum public hearing requirements.

Instream Flows and Wells.[15] The HCRI would prohibit the County from approving new or expanded commercial cannabis cultivation if wells used for cultivation will reduce instream flows or adversely affect either (a) any watercourse or spring, or (b) any existing well used by a person other than the applicant. The County already has very clear requirements for use of wells and the analysis to determine if they are connected to surface water, or whether they affect other wells, or springs. These studies include but are not limited to examination of well logs, the surrounding geology, screening intervals, depth to water and static water pressure, yield, and analysis of potential impacts for any nearby wells or surface water features. Further, groundwater well permits must comply with the Governor's Executive Order N-7-22 requiring that groundwater well permits may only be issued if the agency determines the extraction of groundwater from the well is (1) not likely to interfere with production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure. This proposed change appears to also be based on Finding #10. As noted above, analysis of wells is already occurring as part of the review of cannabis permit applications.

Identified Issues:

i. It is unclear what this requirement is intended to accomplish. Given that the County already requires analysis of wells to ensure they are not a diversionary water source, the question must be asked if this is looking for something different.

The Letter states: "*The Analysis professes confusion as to the purpose of Policy CC-P10, which requires the County to confirm that wells proposed for use in cultivation will not reduce instream flows, adversely affect watercourses or springs, or adversely affect another party's well. (Analysis at 20.)*" The analysis questions why this provision is necessary when both ordinances already address diversionary water sources. A diversionary water source is water taken from surface water, or from the underflow of surface water. The concern with the language chosen is that it is not specific. Some people believe that any use of ground water will result in a reduction in the water available to surface waters. The County has required analysis from a hydrogeologist

[15] HCRI CC-P10 page 13.

to document that the water is not from a diversionary source, spring or impacting an existing well. Members of the public have disagreed with these studies. It is important that regulations be unambiguous. Regulations that can be interpreted differently pose regulatory challenges and risk public confusion and controversy.

Diversionary Water Sources and Forbearance Periods.[16] This policy increases forbearance period for diversions to March 1 to November 15 from the current default forbearance period which is May 15 to October 31. The current county ordinance recognizes the state may require a greater or lesser period based upon water availability. Under current State Water Resources Control Board Cannabis Policy, the forbearance period for diversions is April 1 to October 31. The current system recognizes that rainfall and drought cycles can have a profound influence on the amount of surface water and allows the period of allowed diversion to be extended or reduced based on those circumstances. This proposed change appears based on Finding #10. The HCRI does not provide any analysis or data to explain why the forbearance period should be uniformly increased locally and diverge from standards acceptable to CDFW or the Water Board. The HCRI cites two studies one of which was not conducted for our region.

Identified Issues:

ii. The existing regulation acknowledges the State may modify the forbearance period, the HCRI provision would set a period regardless of water availability and may be inconsistent with the state requirements.

iii. The extended forbearance period would give less time to withdraw water, regardless of availability, and require a higher rate of withdrawal.

iv. The increased forbearance period would extend the time in which water has to be stored and thus require more storage. This would place additional costs to operators for a requirement that has no justification. This may also require permit modifications which could trigger the initiative limitations on cultivation size and type.

Generators.[17] The HCRI includes a policy and a standard that would limit generator use to emergencies only and limit the number of generators to just one that may not exceed 50 horsepower. The HCRI makes this requirement retroactive and phases it in depending on the application and cultivation type. Permits issued for new cultivation would need to convert by June 30, 2024, and pre-existing cultivation would need to convert by September 30, 2025. The CMMLUO allows generators as a primary source of power. The CCLUO requires use of renewable power except in limited circumstances for pre-existing cultivation sites not in Timberland. In those situations, the maximum amount of power which may come from generators is 20%. Both the CMMLUO and CCLUO have performance standards for noise and require proper fuel storage. For some time, discretionary permits have included conditions requiring the phasing out of generators except for emergency use. This proposed change appears based on Finding #11. This finding provides no basis for suggesting that the local permitting program is increasing the risk of fuel spills, this is particularly true since the permitted

[16] HCRI CC-P11 page 13.
[17] HCRI CC-P12 page 13.

farms using generators and storing fuel over 55 gallons require containment, and an emergency response plan. These sites are inspected. It should also be noted that many residences operating off grid use generators and are not subject to the same regulations and inspections afforded cannabis permit holders.

Identified Issues:

i. This requirement does not address the current uncertainty associated with PG&E not being able to provide power.

ii. While many cultivation permits have been approved with a similar requirement to convert to renewable energy, some have not. For those who have not been permitted as such, this may require significant modifications to existing approved sites two months after the initiative becomes effective. This could be a devastating financial impact to some farmers at a time of market uncertainty. Further, a modification could trigger other requirements of the initiative rendering the permit financially untenable.

Roads.[18] The HCRI would require new or expanded cannabis cultivation sites to be located on a category 4 road (or same practical effect), this must be confirmed by a licensed engineer. The CMMLUO did not include any road standards. As a matter of practice, the County required that an assessment be made of the road for functional capacity. If the road was the equivalent of a Category 4 road no additional review is required. If it is less than a category 4 road, an engineer must assess whether the road has the functional capacity to serve all existing traffic and the cultivation site. These provisions were formalized in the CCLUO. The primary difference in the CCLUO is when the road is less than a Category 4 road, a Special Permit is required which provides for discretion and a public process. This proposed change appears to be based on Finding #8. The HCRI provides no data or analysis to support this finding.

The letter (p.8) states "*The Analysis claims the Initiative would require new and expanded cultivation sites to be located on a Category 4 road. (Analysis at 21.) But this is not a new or different requirement. The Ordinance already requires that '"[u]nless otherwise specified, roads providing access to [cultivation] parcel(s) or premises must meet or exceed the Category 4 road standard (or same practical effect).'" (County Code §§ 313-55.4.12.1.8.2, 314-55.4.12.1.8.2.).*" As explained in the analysis above, cannabis cultivation sites can be on roads of less than a Category 4 subject to approval of a Special Permit. HCRI would revise the General Plan to include the following policy:

CC-P13 ***Roads****. Where any parcel on which a permit for new or expanded commercial cannabis cultivation activities is proposed is served by a private road without a centerline stripe, a licensed engineer's report shall be required to support a conclusion that the road meets or exceeds the Category 4 standard (or same practical effect).*

[18] HCRI CC-P13 page 13.

The General Plan is the highest land use policy document for California jurisdictions. Zoning ordinances must be amended to be consistent with the General Plan, thus the existing cannabis ordinance would need to be amended to conform to this policy. The letter and HCRI are silent on how this requirement would affect the discretion the existing code allows County land use regulators. Per the HCRI, an engineer would have to determine that a road meets the Category 4 Road standard (or same practical effect.). This removes the discretion provided in the ordinance to consider circumstances around very-low-traffic roads by used by some small cultivators.

The letter goes on to state "*The current Ordinance allows applicants themselves to make a determination as to whether their roads meet Category 4 standards.*" This is not true. The determination is made by County Staff. The CCLUO allows staff to consider self-certified evaluations but does not require staff to accept them. County Staff evaluate the efficacy of all evidence provided with a permit application. The CCLUO clearly states "*The County reserves the right to independently verify general compliance with this standard*." (HCC 314-55.4.12.1.8.2.2).

Identified Issues:

i. Inconsistency between the HCRI proposed General Plan Policy CC-P13 and the HCRI proposed amendment to the Zoning Ordinance.[19] The HCRI General Plan Policy says all roads must be a category 4 road (or same practical effect) while the HCRI text of the zoning ordinance has been modified only to require review by a licensed engineer. Since the Zoning Ordinance would need to be modified to be consistent with the General Plan, it is understood that the provision to allow roads of less than a category 4 standard would need to be removed.

The letter (p.9) states there is no inconsistency between HCRI policy CC-P13 and the Initiative's amendments to the Ordinance on pp. 26, 28 of the HCRI. The County thanks the initiative sponsors for clarifying that the HCRI would maintain the County's authority to make functional capacity determinations based on "same practical effect."

ii. This is a significant change that would dramatically affect existing cultivators who could otherwise modify their site, except they are not located on a Category 4 road.

iii. Many applications that could still be pending at the time of initiative approval could then not be approved because they are not on a Category 4 road.

iv. This provides no flexibility to consider context and volume of traffic on a road. The CCLUO was written to require discretion where a higher standard could not always be obtained. This provision would remove discretion and replace it with a rigid standard.

[19] HCRI Section 5(C) page 28.

v. This would increase costs for farmers to complete the analysis by paying for an engineer, and in the cost of upgrading the road to Category 4 which will probably not be feasible for 10,000 square feet of cultivation.

vi. This is a direct contradiction of the small farmer provision of the CCLUO which waived the road requirements when the cultivation area was 3,000 square feet or less and the farmers lived on the property. Even these small farmers would then become nonconforming due to the road.

Inadequate Water Storage.[20] The initiative would give the County the authority to determine there is inadequate water storage on the site, and, in those situations, require that additional water storage be installed, or the Cultivation area reduced. While not specifically written in these words, the existing ordinances provide for the County to take such an action. Under existing regulations, if the applicant uses water from a source other than that identified in their permit, this is a violation of the permit. The County has required many permits where there is concern for water usage to meter their water use and report that on an annual basis. The existing cannabis program also already authorizes the County to direct farmers to reduce cultivation size if inadequate water is present.

Identified Issues:

i. There is no definition of what constitutes an inadequate water supply. This is a vague requirement which will be hard to implement.
ii. The County's current regulations provide the authority to review for adequate water supply and enforce if the permit is being violated.
iii. There is not a clear statement of what this is attempting to accomplish.

Inadequate Public Notice.[21] The provisions of the initiative would require enhanced notification beyond what the County currently requires and beyond state law to include:

- Mail notices to property owners and occupants within a mile of the property
- Publish the notice in the paper at least twice
- Place public notices at a minimum of three locations in the vicinity of the property

The Letter states: "*The Analysis states that everyone who needs to be notified of proposed projects is already being notified and that the County even goes beyond minimum legal requirements in "controversial" cases. (Analysis at 19, 23.) The Initiative's sponsors, however, have heard from numerous community members who strongly feel that the County's current approach is inadequate. In a large, rural county like Humboldt, notice to property owners 300 or 500 feet from the cultivation parcel boundary may reach only those owners immediately adjacent to the parcel. Commercial cannabis operations, however, can and do affect residents beyond immediately adjacent parcels, including residents sharing a road or water source with a cultivation site or who live downstream. Moreover, given the area's rugged topography, cultivation operations may be visible or audible across far greater distances. Initiative Standard CC-S4 adopts reasonable requirements intended to provide public notice to everyone who may be affected by a cultivation project, not just immediately*

[20] HCRI CC-S2 page 14.
[21] HCRI CC-S4 page 14.

adjacent property owners." The letter states that one of the intents of the HCRI is to "*protect Humboldt County' historic small-scale, high quality cannabis industry against threats from larger scale operations*", yet it imposes increased noticing requirements on these small cultivators that double the cost of public noticing. Farms of over 3,000 square feet would have to bear this noticing cost. The increased noticing is being applied to farms which also are subject to a prohibition of generator usage, lighting used to grow, use of roads less than category 4, and limitations on cultivation size. There are very few complaints for cultivations sites that are outdoor, use light deprivation, and are less than 10,000 square feet in area. Permit processing requirements should be proportional to the level of potential impact. Current noticing requirements also include noticing properties along private roads providing access to the site, and the CCLUO requires in Community Plan Areas that property owners within 1,000 feet be provided notice of the application when it is accepted as complete.

The County in accordance with the requirements of the California Government Code section 65091 and the Humboldt County Code sends notices to property owners and occupants within 300 feet of the project site. This is expanded in situations where the project is expected to be controversial. A notice is currently placed in the newspaper 10 days prior to a hearing. The cost of the notice in the paper averages approximately $600.00. The County does not post notices around sites. Sending a staff person out to post a site would add to the cost of a permit. The County would need to recover the cost of the time to drive to the site, post the notice and drive back, in addition to the costs of the materials to post the notice.

Identified Issues:

i. This would add approximately $1,000.00 to the cost of noticing a public hearing to even modify a permit.
ii. There have not been instances where the public has not been noticed of a discretionary action and therefore adding this time and expense to new and expanded permits is not warranted.

C. Local Coastal Plan Amendments

Each of the Local Coastal Plans would need to be updated to incorporate all the policies and standards from the language amending the General Plan.

D. Zoning Ordinance Amendments

The Inland and Coastal Versions of the Zoning Ordinance would need to be amended to be consistent with the policies of the General Plan.

IV. CONCLUSION

As discussed in the comments and issues identified above the HCRI will have dire consequences to the cannabis industry in Humboldt County. Submittal of applications for new cultivation under the current market conditions has effectively ceased. This is not expected to change in the near future and

so the impact on new applications is not a primary concern. The HCRI has been written to effectively discourage existing permit holders from modifying their permits in any way. This includes adding infrastructure intended for environmental protections or modification of activities or site configuration to adapt to the evolving industry. These restrictions affect the smallest of farms permitted in Humboldt County to the largest cultivation sites.

The provisions that will most restrict existing cultivators are as follows:

1. **Definition of Expanded** will result in the HCRI provisions being applied to existing permit holders anytime "*the number or size of any structures used in connection with cultivation*" changes. This will preclude modifications to the site even for environmental protection.

2. **Capping cultivation area at 10,000 square feet** will result in all existing permits over that cultivation area becoming legal non-conforming, which means the site cannot be modified. Labeling anything over 10,000 square feet as a large-scale cannabis cultivation when other parts of the state are being approved for cultivation sizes over 100 acres is arbitrary.

3. **Prohibition of Mixed Light and Indoor Cultivation** will make many existing permits legal non-conforming under the HCRI which means the site cannot be modified. This conflicts with industry trends where mixed light and indoor cultivation are in the highest market demand.

4. **Permit Term and Renewal limitations** would greatly increase the regulatory cost of a permit, would add uncertainty to a renewal, and would not be an improvement over the existing inspection process. There is significant uncertainty about what the initiative envisions as part of a renewal application.

5. **The Limitation on Multiple Permits** is unclear and can be interpreted in different ways. Interpreted in the most conservative perspective would not allow different types of permits on a parcel in contrast to the intent of the CCLUO which wanted to provide ancillary and supportive cannabis related uses on a cultivation site to improve income potential and allow local farmers to compete by managing their own production chain from seed to store.

6. **Discretionary Review** will not really matter for new permits, because few are expected and if the HCRI becomes effective no new permits will be applied for. This really becomes a concern if it is the intent for renewals to go through the process required of a new permit. This would be expected if an application were to expire without a renewal application being submitted.

7. **Public Notice** will not really matter for new permits, because few are expected, and, if the HCRI becomes effective, it is likely few to no new permits will be applied for where newly imposed caps have already been met. This really becomes a concern if it is the intent for renewals to go through the process required of a new permit. The expanded noticing requirements will add at least $1,000.00 to processing a discretionary renewal.

8. **Road** policies and standards are inconsistent between the HCRI General Plan Policy and HCRI changes to the Zoning Ordinance. The Zoning Ordinance would need to be modified to be consistent with the more stringent General Plan policy. This would make many approved farms nonconforming because they are not on Category 4 roads.

The HCRI has been presented to preclude new large scale grows, but it will actually prevent existing permit holders, regardless of size, from being able to modify their permits to adapt to the evolving cannabis market and make strides towards greater environmental sustainability. A significant number of applications have been received over the last two years to modify existing permits to allow them to become more efficient in the statewide cannabis market. The County just allocated over $12 million for infrastructure improvements to existing approved sites. This infrastructure could not be implemented under the HCRI.

The HCRI will have the effect of restricting the cannabis industry in Humboldt County. The struggles in the cannabis industry over the last couple of years has had a profound effect on the overall Humboldt County economy. These impacts are most clearly seen in the empty retail spaces in southern Humboldt and Eureka and the growing number of properties that are for sale. People are attempting to sell their property and minimize their losses. If the HCRI passes, it can be expected this trend will worsen.

This initiative will do damage to the legal cannabis industry and the County as a whole. This is likely to place farmers struggling to survive in a place where they can no longer compete in the legal market and must either sell or abandon their farms or return to the illicit market. It is the illicit cannabis industry that has been predominantly responsible for environmental damage.

The process of writing regulations is complex, and often can lead to unintended consequences. An examination of the HCRI could lead to the conclusion that it is well intended but the author was unaware of the unintended consequences of the language as presented. This is particularly troublesome because the public will be informed by the well-intentioned ideals without being aware of the negative consequences.

Some action should be taken to either work with the sponsors of the HCRI to chart an alternative course that would allow withdrawal of the initiative in favor of other more proactive steps. Absent the ability to accomplish that another course to educate the public should be taken so that the electorate understands the significant impacts of the Humboldt Cannabis Reform Initiative.

V. RECOMMENDATIONS

A. Form an Ad Hoc Committee to meet with the initiative sponsors. Some areas which could be offered to address concerns expressed by the HCRI include:

1. Modify resolution 18-43 and reduce the permit caps and acres in the planning watersheds to the applications which are currently submitted and deemed complete. The Board can revisit this resolution without having to modify the CCLUO. Through public input, the Board could identify a methodology for establishing new caps or identifying additional impacted watersheds that are unsuitable for new cultivation.

2. Codify current practice of phasing out generators reserving exclusively for emergency purposes. Discretionary projects receive standard conditions of approval phasing out generators as a primary source of power requiring migration to renewable power. This practice could be codified.

3. Require forbearance for groundwater wells. There has been public discussion among the Board and significant public comment at permit hearings about the concerns and technical challenges of analyzing and approving groundwater wells as a cannabis irrigation source. The Board could consider whether requiring forbearance and water storage in association with wells can address those public concerns.

4. Revisit the language regarding self-certification of roads in 55.4.12.1.8.2.

5. Enhance language surrounding inspections and compliance. The Board could consider updates to the language regarding annual inspections that increases public confidence and transparency as well as maintaining due process for permit holders.

6. Continue to refine the hydrologic studies needed for wells. As discussed earlier in this report, current implementation of the cannabis program requires hydrologic studies for wells. The County is currently initiating a study regarding wells with the goal of streamlining that part of the cannabis permitting process.

Alternatives:

A. Seek to inform the public of the initiative's many impacts if adopted. This public education should include that the initiative would not protect the environment from large scale grows but would prevent Humboldt County cultivators from becoming more environmentally sustainable and competing in the legal market.

B. Work through the Ad Hoc and a citizens advisory committee to develop a competing initiative for the March 2024 ballet.

EXHIBIT 1

Excerpt from HCRI Website FAQ

Would the Initiative interfere with a Cal F&W requirement to add new water tanks or trigger a certification that Category 4 road standards have been met?

Answer:

Adding new water tanks might be interpreted as an expansion and might require modification of an existing permit. Where an existing farm had previously self-certified that all roads met the Category 4 standard, a new expansion might require an engineer to verify that claim, which would be appropriate. Poorly designed and maintained roads are a huge environmental and water quality problem. People without adequate expertise should not be making self-interested judgments about whether their roads meet technical standards.

If the roads do not meet the Category 4 standard, the County's existing ordinances already provide an alternative process for getting permits approved. The Initiative would not affect this alternative process at all. Furthermore, under the existing alternative process, an engineer's report considers whether the proposed changes would increase traffic volumes and whether the existing roads can handle the increase. Adding water tanks or replacing generators with solar panels might actually reduce traffic volumes by eliminating the need to haul water and fuel. In other words, there's no basis for believing that the Initiative precludes growers from adding water storage capacity.

EXHIBIT 2

May 8, 2022 Letter to Redheaded Blackbelt

https://kymkemp.com/2022/05/08/response-humboldt-county-cannabis-reform-initiative/

Allison Shore's April 30, 2022, letter to the editor about the Humboldt Cannabis Reform Initiative repeats several misconceptions and misunderstandings that have been circulating in the community. As the sponsors of the Initiative, we're hoping we can help clear things up.

Changes to the County's definition of "Outdoor" cultivation would increase taxes on growers who pull tarps for light deprivation: The Initiative's definitions of Outdoor, Mixed-Light, and Indoor cultivation are consistent with California state regulations. Nothing in the Initiative was intended to change how current operations are taxed. The Initiative doesn't even mention taxation. If the Initiative passes, it would not prevent the Board of Supervisors from either maintaining its current approach to taxes or changing its approach in the future. And, the County has recently shown an inclination to treat growers quite favorably with respect to taxes.

Requires onsite visits from county staff before renewing permits: This is correct. The Initiative mandates at least one annual on-site, in-person inspection as a condition for permit renewal, to ensure compliance with all requirements. This provision was included because the County's current ordinances have a huge loophole that essentially allows growers to inspect themselves. It's hard to imagine restaurants or building contractors, for example, being allowed to inspect themselves and self-certify whether they're complying with health and safety requirements in the County code. The Initiative's inspection requirement was motivated by considerable public concern about non-compliance by growers, and about the County's failure to respond to, and to take action on, public complaints about non-compliance.

The County can pay for these inspections if it wants to. Other businesses and permit applicants routinely pay fees that cover the costs of inspection, whether for a septic system, a remodel, new home construction, or the like. Of course, the fee would have to be fair, appropriate, and no higher than necessary to cover the County's costs. Growers often object that fees and taxes are already too high, but this has more to do with the low wholesale price of cannabis than with the fair cost of following the law, as all regulated businesses have to do. We don't think it's fair for growers to ask the community as a whole to subsidize a difficult cannabis market by sacrificing enforcement of health, safety, and welfare requirements.

Requires any complaints from neighbors to be dealt with before permit renewals can be granted.

This is correct, and we think it's appropriate. The current County cannabis ordinance fails to ensure that rural residents who may be affected by a cannabis operation are adequately notified about permit applications. Also, there is no formal process for public input with respect to non-compliance issues or other concerns related to public safety, health, and welfare. The Initiative simply ensures that the people have a right to be heard. Growers complain that the process could be abused, but County inspectors will be able to figure out whether permittees are in compliance or not. Agencies deal with this all the time, and they can sort out meritorious and non-meritorious complaints. Speculation that someone might call in a bogus complaint is no excuse for depriving the whole community of its voice.

Requires new permits and Category 4 roads to each new farm or any farm undertaking an "expansion":

Even without the Initiative, the County's ordinances already require roads providing access to cannabis cultivation parcels or premises to meet Category 4 road standards (or the same "practical effect"). However, the current ordinances allow the applicant—who may not have any expertise in road design or construction—to provide "self-certification" that the roads meet the Category 4 standard. The Initiative would require a licensed engineer to make the certification instead.

The new certification requirement would apply to applications for new or expanded commercial cannabis cultivation permits or applications for expanded commercial cannabis cultivation activities. Not all changes to an existing operation would be "expansions", though. The Initiative defines an expansion as an increase in the size, intensity, or resource usage of cannabis cultivation operations (including increases in cultivation area, water or energy use, or the size and number of structures). This is important to avoid creating a loophole where growers could continually expand their operations regardless of the Initiative. Changes that reduce water or energy use, or that simply replace structures without enlarging them, however, likely would not be interpreted as expansions.

It's true that adding new water tanks might be interpreted as an expansion and might require modification of an existing permit. Where an existing farm had previously self-certified that all roads met the Category 4 standard, a new expansion might require an engineer to verify that claim. We think that is appropriate. Poorly designed and maintained roads are a huge environmental and water quality problem. People without adequate expertise shouldn't be making self-interested judgments about whether their roads meet technical standards.

And if the roads don't meet the Category 4 standard, the County's existing ordinances already provide an alternative process for getting permits approved. The Initiative would not affect this alternative process at all. Furthermore, under the existing alternative process, an engineer's report considers whether the proposed changes would increase traffic volumes and whether the existing roads can handle the increase. Adding water tanks or replacing generators with solar panels might actually reduce traffic volumes by eliminating the need to haul water and fuel. In other words, there's no basis for believing that the Initiative precludes growers from adding water storage capacity.

Limits new and expanded permits to outdoor/mixed light less than 10,000 sq ft of cultivation or nursery, excluding the possibility for other types of permits, such as for ecotourism, distribution, etc.

This is false. The Initiative is intended to address only commercial cannabis cultivation permits, not "ecotourism" or distribution permits. The Initiative simply limits total cultivation area—defined as the area actually containing growing cannabis plants—to 10,000 square feet for new and expanded commercial cannabis cultivation. The Initiative doesn't limit the square footage of structures that aren't used for cultivation. The Initiative does cap the total number of cultivation permits in the County and prevents issuance of new cultivation permits to applicants who already hold existing, active cultivation permits. But the Initiative is not intended to affect or restrict any type of permit other than commercial cannabis cultivation permits.

Mark Thurmond, Elizabeth Watson