

Item No. 4
March 10, 2016



TRINITY COUNTY PLANNING DEPARTMENT

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STAFF REPORT

March 02, 2016

From: Carson Anderson, Senior Planner
To: Planning Commission
Re: Planning Commission Consensus Points and Preliminary Recommendations to Board of Supervisors Concerning the Land Use Regulation of Commercial Cannabis Activities

Planning Commission discussions during January and February have helped clarify the land use/zoning regulatory framework proposed for recommendation to the Board of Supervisors (BOS) and have shown the Commission's desire to see how the potential use permitting process might align with those land use/zoning components to minimize the impacts of commercial Medical Marijuana (MM) cultivation and related activities. The differing opinions and consensus arrived at during the discussion of setback and minimum parcel size topics, in particular, highlighted a concern for avoiding cannabis-related impacts in close-in community settings where smaller parcel sizes are common.

To review, the eight topic areas the Commission flagged as the focus for its deliberations during December and January are as follows:

- 1) Indoor vs. Outdoor Grow
- 2) Appropriate Grow Limits and Boundary Definition (e.g., plant count vs. canopy size)
- 3) Parcel Size and Linkage with Commercial Grow Area Size
- 4) Scope of Commercial Activities Allowed (e.g., cultivation, processing, manufacturing and distribution (as permissible in the Medical Marijuana Regulation and Safety Act, or the MMRSA, and Humboldt County ordinance)
- 5) Zone District/General Plan Designation Areas in Which Commercial MM is Permissible
- 6) Appropriate Setback Requirements for MM Uses
- 7) Appropriate Fencing/Enclosure Standards
- 8) Requiring a permitted residence on all properties where MM is being cultivated

A synopsis of the preliminary consensus points can be found on the next two pages.

The next step in formalizing recommendations to the BOS would be to review the consensus points to ensure overall policy consistency, consistency with existing County and State policy, as well as to highlight those areas the Commission thinks require more detailed consideration by the BOS. A formal vote on the consensus point-related recommendations is scheduled to occur at the Commission's March 28th meeting. This will accommodate legal counsel's review of Humboldt County commercial cannabis ordinance-related developments and written input on same. The Commission should also give some preliminary consideration to the question of the environmental impacts, per CEQA, associated with future commercial MM use activities under the land use regulation framework being recommended. Humboldt County and the Regional Water Quality Control Board (RWQCB) have viewed the abatement of existing environmentally

destructive cannabis grows as a rough “baseline” for evaluating the impacts of adding newly permitted environmentally compliant cannabis grows. The challenge is to adequately account for a growth of cannabis activity in new contexts (e.g., the effect on federal- and state-listed endangered species when proposed in more remote locations adjoining habitat on federal or state land; cumulative effects of existing uses that are transitioning into compliance, combined with newly permitted uses). Staff views this basic approach as reasonable, and as something the County should consider and refine as the interim commercial MM ordinance is being finalized. To hold the environmental impacts associated with the proposed ordinance to a less than significant level effective abatement of the most egregious non-compliant cannabis operations must be combined with a use permitting/inspection regimen that:

a) ensures that permitted commercial MM activities are conducted using best possible land, water and pesticide management practices, and;

a) requires applicants first obtain authorization through the RWQCB “Notice of Intent and Monitoring Self-certification” program—which requires compliance with a robust list of requirements, and;

b) centering the County’s permitting process within the Office of the Agricultural Commissioner, where organic production as part of an artisanal branding promotion program will be incentivized (thereby promoting positive environmental practices).

These approaches, particularly close coordination with RWQCB, which will have soon have significant inspection/enforcement capabilities, will serve to minimize and mitigate potential impacts. Please refer to the RWQCB Notice of Intent Fact Sheet and its list of “Standard Conditions” (Item #2, second page) (Exhibit A). The Office of the Agricultural Commissioner will also piggyback off the RWQCB cannabis Waiver of Discharge enrollment program. Please refer to the “Registration, Licensing and Certification” requirements and “Standard Conditions of Approval” sections of the Agricultural Commissioner’s Draft Trinity County Cannabis Cultivation and Compliance Program (Exhibit B).

It should be noted that there has been a legal challenge to Humboldt County’s use of an Initial Study/Mitigated Negative Declaration as the CEQA vehicle for the Humboldt County commercial MM ordinance. That challenge is premised, in part, on the potential for significant impacts to endangered species, as well as a perceived failure to reasonably account for commercial MM in more zone districts and locations than had not been proposed as part of an earlier draft ordinance or accounted for in the accompanying CEQA analysis (Exhibit C). Legal counsel and staff are monitoring the litigation in Humboldt, and Trinity County’s approach to CEQA and finalizing the commercial MM ordinance, will be guided by lessons learned there.

A synopsis of the Planning Commission’s consensus points follows.

1. *Indoor vs. Outdoor Grows*

There was a consensus that the full range of indoor, mixed-grow and outdoors grows that can be licensed under the MMRSA, and in the Humboldt County MM ordinance, should be allowable (Exhibit D). It was the general idea that indoor grows be required based on certain impact threshold criteria such as small parcel size, location within close-in neighborhood settings, sensitive receptor proximity, and where an identified potential for environmental and/or nuisance impacts exists. Whereas, outdoor grows would be more limited using setback requirements to keep the impacts away from others.

Further, there was a consensus on restricting the use of generators to avoid nighttime/early-morning hour noise impacts aligned with current County noise limits (viz., reference was made by staff to current ordinances governing RV installations [Ordinance 315-801 Section (C)6], and to the County’s current MM Ordinance 315-797 Section (f)(8), and further requires review and approval of the fuel storage structures supplying the generators).

1a. Is there a consensus for retaining the above recommendations as previously proposed?

2. Commercial Grow Size Limits

There was consensus for defining grow cultivation area size, based on language contained in the MMRSA, which references a maximum cultivation area permissible of 44,000 square feet (slightly over one-acre). There was additional consensus that the cultivation area be defined utilizing the "Cultivation Area" definition contained in the Humboldt County draft MM ordinance rather than by using a plant count or canopy methodology.

Staff Comment

In an effort to help define the term "Cultivation Area" staff offers the following refinement of the wording, based chiefly on the language in the Humboldt commercial MM ordinance and discussion at the January 14, 2016 Planning Commission meeting.

"Cultivation Area" means the sum of the area of cannabis cultivation as measured around the perimeter of the discrete area of cannabis cultivation on a single premises, defined as a single area that can be readily measured, in terms of square footage, for code enforcement purposes, and as further defined herein. Area of cannabis cultivation is the physical space where cannabis is grown and includes, but is not limited to, garden beds or plots, adjoining walkways, the exterior dimensions of greenhouses or structures erected to enclose cultivation areas, as well as the area covered by pots and bags containing cannabis plants on the premises. The cultivation area shall include the maximum anticipated extent of all vegetative growth of cannabis plants to be grown on the premises.

2a. Does the Planning Commission accept the above-proposed refinement to the definition of "Cultivation Area?"

3. Parcel Size and Linkage with Commercial Grow Area Size

There was consensus that there should be a minimum parcel size for new commercial outdoor grows with cultivation areas measured at more than 200 sq. ft. (based on draft Humboldt County permitting tier criteria). There was further consensus that the minimum parcel size for new commercial grows be set at two (2) acres (refer back to consensus item 1 re: Indoor Grows). It should be noted that later direction concerning setbacks would make this very limiting, and likely require any grow on a lot that is smaller than 10 acres to be considered for indoor growing.

There was further consensus for limiting large commercial grows greater than 10,001 sq. ft. to larger parcels of at least 10 acres or more.

3a. Is there a consensus for retaining the above recommendation as previously proposed?

4. Scope of Commercial Activities Allowed (e.g., cultivation, processing, manufacturing and distribution (as permissible in the MMRSA and Humboldt County ordinance)

There was consensus that the full array of commercial activities permissible in the MMRSA and Humboldt County Ordinance be allowed. On an interim basis, all activities would occur on the property where cultivation is proposed to occur until a more detailed land use framework is developed as part of the County's final commercial MM ordinance.

4a. Is there a consensus for retaining the above recommendation as previously proposed?

5. Permissible Zone/General Plan Designation Districts for Commercial MM

There was a consensus that all new outdoor commercial MM grows be restricted to the A (Agriculture) zone with consideration given as well as to Unclassified (UNC) zone districts with an Agricultural (A) General Plan designation. Commercial grows in the Rural Residential (RR) zone will be considered as well, although the Commission made clear that potential impacts to neighboring residential uses would need to be carefully considered in granting use permits. It was suggested that the County structure an appropriate permitting process based on the MMRSA and Humboldt County tier systems (Exhibit D).

Grows in the Agricultural Forest (AF) zone was discussed but was not actually included in the consensus. There was further consensus that commercial MM grows should not be permissible in the TPZ and Agricultural Preserve (AP) zones, even on parcel sizes of 40 acres or greater.

Staff Comment

Staff outlined the potential use of overlay zoning to provide a further level of planning control for the zone district contexts in which MM activities could occur—with particular reference to Rural Residential (RR), and possibly also Unclassified (UNC) zone district locations without Agricultural General Plan designations. The zoning overlay would contain density-based screening criteria to avoid impacts that could result from an overconcentration commercial MM activities in a community and impose development standards (e.g., requiring grading permits, a legally-sanctioned water source, stormwater management plans, appropriate fuel and pesticide use and storage best management measures, spill light avoidance measures, odor mitigation, access to a permitted power source, a process for addressing complaints and revocation of use permits)

5a. Is there a consensus for retaining the above recommendation as previously proposed?

6. Appropriate Setback Requirements for MM Uses

There was consensus for requiring large setbacks from property lines: 500 foot setbacks were considered standard, and if proposed by the applicant, the use could be approved through the Director's Use Permit process. There was further consensus for requiring Conditional Use Permits for uses with proposed setbacks of less than 500 down to 100 feet. Though not explicitly stated, the implication was that setbacks less than 100 feet would not be acceptable.

Further consensus was reached concerning appropriate setbacks from certain types of existing sensitive uses. This includes requiring a minimum separation of 1,000 feet from schools, recreation centers, public libraries and childcare facilities (measured in a straight line from the cultivation area), and requiring a 600-foot setback from churches, drug treatment/rehabilitation centers, Native American cultural sites, and public parks. There was additional consensus for requiring a 100-foot setback from public road rights-of-way. The Commission deferred setting setbacks from school bus stops until staff can bring back information about how bus stop locations are established and how permanent these locations are.

Consensus could not be reached for limiting commercial grow areas to a maximum percent of the total parcel area, or for taking an alternative approach which would establish a range of setbacks from property lines based on the size of the parcel and the size of the grow cultivation areas. The Commission agreed to take the matter up at a later date as part of its deliberations when the County develops a final form of the commercial MM ordinance.

Staff Comment

For purposes of determining appropriate setbacks from commercial MM activities, staff was asked to research how school bus stop locations are determined and assess how permanent the locations are once chosen. Information provided by the Southern Trinity Joint Unified School District and Mountain Valley Unified District indicated that bus stop sites are submitted by the school districts to California Highway Patrol (CHP) for approval, and that changing those locations involves a process. Also, legally speaking, bus drivers are not authorized to pick up students from locations that have not been pre-approved.

This information suggests that bus stops do change occasionally, although not frequently. Among its options, the Planning Commission has the option of excluding public school bus stop locations from the sensitive receptor setback requirement (due to the potential for impermanence), or it could recommend a setback of 1,000 feet, as that would be commensurate with the sensitive receptor setbacks from schools, childcare facilities, etc.

- 6a. Is there a consensus for retaining the above recommendation as previously proposed?
6b. Is there a further consensus either for adding a setback between commercial MM activities and public school bus stop locations of 1,000 feet or for excluding school bus stops from the checklist of sensitive receptors?

7. *Appropriate Fencing/Enclosure Standards for Commercial Grows*

Balanced with the need to preserve the open space values of certain communities, there was consensus that the fencing of outdoor cultivation activities should generally be required, but that the type of fencing should be at the discretion of the cannabis cultivator.

Staff Comment

Staff was asked to provide a list of the range of fencing materials that would be effective in meeting the screening requirement, and these would be considered by the Planning Commission at a later date as the County develops a final form of the commercial MM ordinance. Some of the possible fencing options will be discussed at the March 10th meeting.

- 7a. Is there a consensus for retaining the above recommendation as previously approved?

8. *Requiring a Permitted Residence on all MM Cultivation Properties*

There was consensus for requiring that there be a permitted dwelling either on or contiguous to the property where commercial MM grow activity is occurring.

- 8a. Is there a consensus for retaining the above recommendation as previously approved?

Consistency with County and State Law (including Nuisance Language in Current MM Ordinance)

The purpose and intent clauses in the County's current MM ordinance (Ordinance 315-797), adopted in 2012, treat unregulated, unpermitted commercial cannabis cultivation as a significant nuisance, and highlight the "deleterious impacts" of widespread cultivation, including: "degradation of the natural environment, diversion of—and discharges into—natural watercourses, adverse effects on endangered species, improper grading activities and resulting soil erosion and stormwater runoff impacts, improper disposal of human waste, and the issues of grow site abandonment, etc. (Exhibit E) The Commission's ultimate findings should address how such nuisance factors are avoided through land use regulations, reliance on the use permit screening process (e.g., RWQCB, Agricultural Commissioner), the application/enforcement of current County codes, and the CEQA review process.

A good interface with Ordinance 315-797 is important to distinguish personal MM cultivation activities from commercial MM activities. An incomplete list follows of other County codes sections that should work in concert with the proposed commercial MM ordinance:

- Zoning Code 315 Section 30H - Prohibits camping using an RV except as specifically permitted
- Ord. 1335 (County Code 8.40) – prohibits overnight camping on specified public lands
- Ord.315-801 Section (C)(6) – Restricts use of generators (current MM Ordinance 315-797 Section (f)(8) also requires review and approval of the fuel storage structures supplying the generators)
- Zoning Code 315 Section 30.4 – Provides restrictions on accessory uses and the construction of accessory buildings
- Zoning Code 315 Section 30J – Current noise impact standards
- Building Code 15.04.140 – Prohibits construction of nearly all structures and/or the installation of electrical and plumbing systems without first obtaining a building permit
- Building Code 15.04.150 – Prohibits the discharge of sewage without there being a permitted sewage disposal system
- County Code 8.08.110 – Prohibits the illegal dumping of solid or hazardous waste
- County Code 8.60.060 through 8.60.080 – Prohibits the detectable discharge of polluting substances into the water of the state located in or flowing through the County
- County Code 8.24 – Herbicide use policy prohibits the aerial application and ground application of herbicides on one acre or more of land –or land within 250 feet of a stream bed—without first having obtained a permit from the County Environmental Health Department and Office of the Agricultural Commissioner
- Use of Phenoxy herbicides is prohibited without first obtaining a permit from the County Environmental Health Department and Agricultural Commissioner (Ordinances 368, 368-1, 370 lay out a basic policy, with subsequent clarification amendments)
- The proposed Fire Safe Ordinance

EXHIBIT A

FACT SHEET

North Coast Regional Water Quality Control Board Cannabis Cultivation Waste Discharge Regulatory Program

On August 13, 2015, the North Coast Regional Water Board adopted a regulatory order to address waste discharges from cannabis and other similar operations: Order No. R1-2015-0023 *General Waiver of Waste Discharge Requirements and General Water Quality Certification and Monitoring and Reporting Program for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Order). The Order establishes water resource protection requirements, provides a mechanism for water quality compliance, and enables the Regional Water Board to better focus its enforcement resources on environmentally damaging operations.

The Regional Water Board's program and Order are designed to meet the requirements of the Basin Plan, the California Water Code, the State Nonpoint Source Policy, and the federal Clean Water Act. The Water Boards are the state agencies with primary responsibility for the coordination and control of water quality. Nonpoint source (NPS) pollution, also known as polluted runoff, is the leading cause of water quality impairments in the North Coast. The majority of the streams in the North Coast are impacted by excess sediment and elevated temperatures. The problems are often associated with poorly planned forest clearing, earth-moving activities, and other land use management practices, resulting in polluted stormwater runoff to streams. Dry-season surface water diversions intensify these water quality impacts. The exponential growth of cannabis cultivation throughout the North Coast Region has resulted in significant waste discharges and a loss of instream flows to the cumulative detriment of beneficial uses of water. Operations with 2000 square feet or more of cannabis cultivation on private lands in the North Coast region are required to enroll in the Order by February 15, 2016. The Order includes enforceable requirements which cultivators need to become familiar with and to comply with to ensure their operations do not impact water resources.

Enrollment in the program and compliance with the Order does not preclude the need for permits that may be required by other governmental agencies or supersede any requirements, ordinances, or regulations of any other regulatory agency, including necessary certification and permitting for the application of pesticides and herbicides and proper handling and disposal of solid and domestic wastes.

This Order does not in any way authorize, endorse, sanction, permit or approve the cultivation, possession, use, sale or other activities associated with cannabis. Marijuana is currently a Schedule 1 controlled substance under federal law. Individuals engaging in cannabis cultivation and other activities risk prosecution under federal, state, or local law.

The Cannabis Cultivation Waste Discharge Regulatory Program website offers information, useful resources, and updates: http://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/

Please subscribe to the email listserv to stay informed on the latest North Coast Cannabis Cultivation Waste Discharge Regulatory Program developments:
http://www.waterboards.ca.gov/resources/email_subscriptions/reg1_subscribe.shtml

Order R1-2015-0023 Overview

1. A tiered enrollment structure relative to the potential threat to water quality.
 - a. Tier 1 is a low-threat tier based on compliance with standard conditions and site characteristics (less than 5000 ft² of cultivation, no cultivation on slopes greater than 35%, and no surface water diversion from May 15 – October 31). The annual fee is \$1000.
 - b. Tier 2 is a management tier, which requires the development and implementation of a site-specific water resource protection plan. Tier 2 operations are those that do not meet the standard conditions or otherwise do not qualify for Tier 1. The annual fee is \$2500.
 - c. Tier 2* is a tier for sites with less than 10,000 ft² of cultivation, where enrollees have fully implemented a water resource protection plan, otherwise meet the Tier 1 site characteristics, and are determined by RWB staff or an approved third party to pose a low threat to water quality. The annual fee is \$1000.
 - d. Tier 3 is a cleanup tier, which requires the development and implementation of a cleanup and restoration plan. Tier 3 Dischargers who are cultivating cannabis concurrent with or following site cleanup activities must adhere to all standard conditions and develop and implement a water resource protection plan for cannabis cultivation activities. Tier 3 is not eligible for enrollment via a third party program. The annual fee is \$10,000.
2. Standard conditions to protect water quality in conjunction with a Best Management Practice (BMP) Appendix provide a framework for cultivators to assess their sites for appropriate tiers and determine what management measures are necessary to protect water quality. All BMPs in Appendix B are considered enforceable conditions under the Order as applicable to a given site. The Order includes standard conditions regarding:
 - a. Site maintenance, erosion control and drainage features
 - b. Stream crossing maintenance and improvement
 - c. Stream and wetland buffers
 - d. Spoils management
 - e. Water storage and use
 - f. Irrigation runoff
 - g. Fertilizers and soil amendments
 - h. Pesticides
 - i. Petroleum products and other chemicals
 - j. Cultivation-related wastes
 - k. Refuse and human waste, and
 - l. Remediation, cleanup, and restoration activities
3. Enrollment in Order No. R1-2015-0023 is accomplished by submitting a Notice of Intent (NOI) form, the Monitoring and Reporting Program (MRP) form, and the annual fee.
4. Enrollees in all tiers must monitor their sites periodically and prepare annual monitoring reports that include verification of conformance with the applicable standard conditions, and effectiveness of BMPs, and water resource protection plan. Annual reporting is required by March 31, via the MRP form. The form serves to document site monitoring and to verify continued enrollment in the program. Results of the monitoring will be evaluated on a HUC-12 or similar watershed scale.
5. The Order provides a framework for non-governmental third party programs to assist cultivators with enrollment, compliance activities, and monitoring and reporting. Third party programs, which meet certain criteria, can increase administrative efficiency and program participation and effectiveness. Upon approval, third party programs will be listed on the cannabis regulatory program website.

EXHIBIT B

Trinity County Cannabis Cultivation Compliance Program; Registration, Licensing and Certification

Purpose and Intent

The purpose of this Section is to establish a Trinity County Cannabis Cultivation Compliance Program (TCCCP) for the commercial cultivation of cannabis for medical use within the County of Trinity in order to limit and control such cultivation in coordination with the State of California in the implementation of the Medical Marijuana Regulation and Safety Act (MMRSA)(SB 643, AB 266, and AB 243 as adopted September 11, 2015). It is intended to address the County of Trinity's prerogative to license, permit, and control commercial cultivation of cannabis for medical use as set forth in the MMRSA, including, but not limited to the provisions of Business and Professions Code Sections 19315, 19316, 19320, 19322, 19332, and 19360 and Health and Safety Code Section 11362.777, in conjunction with state licensing requirements, in order to protect the public health, safety, and welfare of the residents of the County of Trinity, and to reduce or eliminate any adverse environmental effects of existing commercial cannabis cultivation operations in the County of Trinity, and to prevent adverse environmental effects of any new commercial cannabis cultivation operations which may be permitted in the future in accordance with this Section and state law. This Section is not intended to supersede the provisions of Sections 315-797 of this Code concerning cultivation of medical marijuana for personal use by patients or caregivers.

The commercial cultivation of cannabis for medical use within the jurisdiction of the County of Trinity shall be controlled by the provisions of this Section, regardless of whether the cultivation existed or occurred prior to the adoption of this Section.

All commercial cultivation of cannabis for medical use, as defined herein, regardless of whether the use was previously approved by any agency or Department of the County of Trinity, the Trinity County Planning Commission, or the Trinity County Board of Supervisors, shall come into full compliance with these regulations within one (1) year of the adoption of the ordinance establishing this Section.

Nothing in this Section is intended, nor shall it be construed, to exempt the commercial cultivation of cannabis for medical use, from compliance with all other applicable Trinity County zoning, and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Section is intended, nor shall it be construed, to exempt the commercial cultivation of cannabis for medical use, as defined herein, from any and all applicable local and state construction, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Section is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting commercial cultivation of cannabis for medical use.

Severability

If any provision of this Section, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Section that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Section are severable.

Release of Liability and Hold Harmless

As a condition of approval for any license or certification issued by the TCCCP for the commercial cultivation of cannabis for medical use, as defined herein, the owner or permittee shall indemnify and hold harmless the County of Trinity and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis for medical use.

Regulations.

The Agricultural Commissioner shall promulgate such rules and regulations as may be necessary or appropriate to implement and administer the Trinity County Cannabis Cultivation Compliance Program, to ensure that marijuana cultivation in Trinity County is done so in a manner consistent with other agricultural commodities maintains the highest quality standards for the industry, is grown using best management practices, is safe for human consumption, and ensure that all marijuana cultivation in the unincorporated areas of the County is conducted in accordance with the provisions and consistent with the intent and purposes of the County Ordinance establishing the TCCCP.”

Definitions.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Marijuana Regulation and Safety Act (MMRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

“Cultivation site” means the location or a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

“Licensee” means a person issued a state license under the MMRSA to engage in commercial cannabis activity.

“Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

Registration, Licensing and Certification: Requirements for the Trinity County Cannabis Cultivation Compliance Program

The Agricultural Commissioner shall register persons who apply to the Department of Agriculture to engage in the lawful cultivation of cannabis and who (either personally or represented by an approved third party agent) demonstrate to the satisfaction of the Agricultural Commissioner all of the following:

- a) The name and business and residential address and phone number(s) of the applicant.
- b) If the applicant is not the record title owner of parcel, written consent of the owner for the application with original signature and notary acknowledgement.
- c) Site plan showing the entire parcel, the location and area for cultivation on the parcel, with dimensions of the area for cultivation and setbacks from property lines. If the area for cultivation is within ¼ mile (1,320 ft.) of a school, school bus stop, church or other place of religious worship, public park, or Traditional Native American Cultural site, the site plan shall include dimensions showing that the distance from the location of such features to the nearest point of the cultivation area is at least 600 feet.
- d) Photographs of any current cultivation activities existing on the parcel as of September 1, 2015, including: a. ground level views of the cultivation activities from at least three different vantage points, and b. the most recent available aerial views from Google Earth, Bing Maps, Terraserver, or other comparable service.
- e) A cultivation and operations plan that meets or exceeds minimum legal standards for water storage, conservation and use, drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of cultivation activities (outdoor, indoor, mixed light), the approximate date(s) cannabis cultivation activities have been conducted on the parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season (see attachment A).

In addition to the standard compliance requirements of the cultivation and operations plan applicable to all cannabis cultivators, the Commissioner’s Office shall develop standards for a separate Trinity County “organic equivalent” cannabis certification. Cannabis labeled with this “organic equivalent” certification shall be produced following production standards used in the production of crops labeled as organic according to United States Department of Agriculture National Organic Program. “Organic equivalent” standards shall be incorporated into the cultivation and operations plan.

f) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.

g) Description of legal water source, irrigation plan, and projected water usage.

h) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board demonstrating enrollment in Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.

i) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.

j) Consent for onsite inspection of the parcel by County officials at prearranged date and time in consultation with the applicant prior to issuance of any license, and once annually thereafter.

k) For indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes.

l) Acknowledge that the County reserves the right to reduce the size of the area allowed for cultivation under any license issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed will not support diversions for irrigation.

m) The Commissioner's Office shall establish a program for the identification of permitted medical marijuana plants at the cultivation site during the cultivation period. A unique identifier shall be issued for each medical marijuana plant. Unique identifiers will only be issued to those persons appropriately licensed by this section.

Certifications

The Agricultural Commissioner's Office shall issue a certification of "Certified Trinity County Grown" to those registered cannabis cultivators who demonstrate compliance with all of the requirements set forth in this section. Certification shall be valid for 1 year, and shall be renewed annually thereafter following annual inspection of the registered cultivation site by the Commissioner. Trinity County's cannabis certification represents the County's appellation of origin for medical marijuana grown in Trinity County. It is unlawful and a violation of this Section and State law for medical cannabis not produced in Trinity County to be labeled, marketed or packaged as originating from Trinity County unless the cannabis product was grown in Trinity County.

Standard Conditions of Approval for all TCCCP Operations

- a) Compliance with all laws, except if upon inspection for the initial application, violations of any building or other health, safety, or other state or county statute, ordinance, or regulation are discovered, compliance with a written approved remediation plan signed by the applicant and the relevant enforcement agency or agencies, to abate or cure violations at the earliest feasible date, but in no event no more than one (1) year of date of issuance of the clearance or permit.
- b) Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MMRSA, and regulations promulgated thereunder.
- c) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including the statement diversion of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101, or other applicable permit, license, or registration.
- d) The area of cannabis cultivation shall be located as shown on the application site plan, set back at least 30 feet from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, Public Park, or Traditional Native American Cultural Site. The minimum property line setback required may be waived in the event that adjacent property owners consent to the establishment of cultivation areas immediately adjacent to that on the adjoining property.
- e) Maintain enrollment in Tier 1, 2 or 3, certification with the North Coast Regional Water Quality Control Board Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Trinity or other responsible agency.
- f) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015-0023, is required by that Order, compliance with the standard conditions of approval for enrollment set forth in that Order.
- g) Comply with the terms of any applicable Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- h) Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate County officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
- i) Any uses of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the County Agricultural Commissioner's Office. At the present time, there are no pesticides or herbicides registered specifically for use directly on cannabis and the use of pesticides on cannabis plants has not been reviewed for safety, human health effects, or environmental impacts. Under California law, the only pesticide

products not illegal to use on cannabis are those that contain an active ingredient that is exempt from residue tolerance requirements and either registered and labeled for a broad enough use to include use on cannabis or exempt from registration requirements as a minimum risk pesticide under the Federal Insecticide Fungicide Rodenticide Act section 25(b) and California Code of Regulations, title 3, section 6147. All product labelling and any products on the site shall be placed, used, and stored in a manner that ensures that they will not enter or be released into surface or ground waters. For the purpose of compliance with conditions of the TCCCP.

j) Pay all applicable application and annual inspection fees.

k) Where surface water diversion provides any part of the water supply for irrigation of cannabis cultivation, consent to forebear from any such diversion during the period from March 1 to October 30 of each year. Establish on-site water storage for retention of wet season flows or imported water deliveries sufficient to provide adequate irrigation water for the size of the area to be cultivated.

l) Comply with any special conditions applicable to that permit or parcel which may be imposed as a condition of any special or conditional use permit.

Any Commercial Cannabis Cultivation License 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.

Inspections

If the inspector or other County official or approved agent determines that the site does not comply with the conditions of approval, the inspector shall serve notice to the license holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a re-inspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request re-inspection or to cure any items of non-compliance shall terminate the zoning clearance certificate, special permit, or use permit, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed.

The County shall notify any state license authority, as defined by the MMRSA, whenever the County zoning clearance certificate, special permit or use permit has been revoked or terminated.

Appeal of Inspection Determination

Within ten (10) days after delivery of the statement of non-compliance, the determination by the inspector that the site is or is not in compliance may be appealed by any interested party to the Zoning Administrator, acting as the Hearing Officer. The appeal shall be made, in writing, on a form provided by the County. The fee for filing the appeal is \$100.00.

a) The appeal shall be heard by the Hearing Officer within ten (10) business days following the filing of the appeal. The Hearing Officer shall render a written ruling on the appeal within three (3) business days following the hearing.

b) The decision of the Hearing Officer may be appealed to the Board of Supervisors in accordance with Section (?) of the Trinity County Code. If a timely appeal to the Board of Supervisors is not filed, the ruling by the Hearing Officer shall be final.

Third Party Agents

The TCCCP recognizes a role for Third-party entities to play in assisting cannabis cultivators with compliance provisions of TCCCP requirements. Any third party program must receive approval by the Agricultural Commissioner's Office in order to serve individual licensees and be recognized by the TCCCP as credible and ensuring compliance with requirements under this section. The Agricultural Commissioner has the authority to deny approval of any applications to operate as a third-party agent based on lack of experience/qualifications, incomplete applications, insufficient detail/scope of proposed work, or at their discretion. To ensure that a third party program is qualified to assist with implementation of this section, third parties must submit a proposal to the Agricultural Commissioner's Office. Third party proposals shall include the following as applicable:

1. Program Purpose: Statement of the functions which the third party proposes to fulfill, including procedures to implement the proposed functions/roles.
2. Technical experience and qualifications of the third party program necessary for implementation of technical functions/roles.
3. Demonstration of organizational capacity and funding mechanisms to administer the program.
5. Framework for annual compliance reporting to TCCCP, as approved by the Agricultural Commissioner's Office.
6. Sample liability waiver that demonstrates that the responsibility falls to the landowner/operator of the site to meet the stated terms and conditions of the TCCCP.
7. Framework for confirmation of compliance with standard conditions and developed plans and addressing non-compliance by individual third party enrollees.
8. If a third party proposal is approved, the Agricultural Commissioner will send an approval letter. All approved third party programs will be listed on the Trinity County website. The approval is conditional and subject to a probationary period.

Fees

Per California Government Code Section 54985(a), the Agricultural Commissioner's Office will implement a fee for services provided by the TCCCP to be adopted by the Trinity County Board of Supervisors.

Penalties and Enforcement

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Section. Any violation of this Section, including, but not limited to failure to obtain and maintain in good standing any required clearance certificate or permit specified in this Section, shall be, and the same hereby is declared to be, a public nuisance and unlawful and shall be subject to injunction, abatement or any other administrative, civil, or criminal remedy available to the County under the applicable state and county laws, including those set forth in Trinity County Code and the MMRSA legislation.

General Provisions

This section applies to all commercial cultivation of cannabis for medical use facilities and activities, as defined in this Section.

All commercial cultivation of cannabis for medical use shall operate in compliance with this Section, as well as all applicable state and local laws.

Commercial cultivation of cannabis for medical use shall be allowed in specifically enumerated zones in which general agriculture is a principally permitted use, or conditional use, only with a zoning clearance, special permit, or conditional use permit.

The commercial cultivation of cannabis for medical use shall at all times be operated in such a way as to ensure the health and safety of employees, independent contractors, visitors to the area, neighboring property owners, and end users of medical marijuana; to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the medical marijuana; and to safeguard against the diversion of medical marijuana for non-medical purposes.

Effective Date

This initiative ordinance shall take effect immediately upon certification of its adoption by the Trinity County Board of Supervisors.

EXHIBIT C

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Board of Supervisors OKs pot cultivation ordinance

Written by Will Houston, Times Standard

1/27/16

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A capacity Humboldt County Board of Supervisors chambers erupted with long applause and cheering immediately after the board unanimously approved the county's first-ever regulations on medical marijuana commercial cultivation at its Tuesday meeting.

The vote was the culmination of efforts by multiple organizations and county agencies since October 2014 to create a large-scale cultivation ordinance.

Local grower Patrick Murphy said that the board's decision to craft regulations rather than implement an outright ban will reverberate throughout the state.

"I'm really proud to be a part of this," Murphy said. "I love living in Humboldt County and I love growing cannabis. This is a historic day and I'm really happy."

The ordinance sets permitting and land use regulations for both existing and new commercial cultivation, processing, and manufacturing practices. The ordinance allows up to 10,000 square feet of new outdoor cultivation, up to 1 acre of existing outdoor cultivation, up to about one-half acre of outdoor mixed-light grows and up to 10,000 square feet of indoor grows depending on the parcel zone.

The ordinance also creates a program to incentivize growers to relocate their grows from what the county deems to be unsuitable cultivation sites to more appropriate sites, such as agricultural zones, in exchange for leaner permitting requirements.

The board's Tuesday vote also approved the ordinance's mitigated negative declaration, which states that the ordinance would not have any significant environmental impacts.

As a result, county staff recommended the board rein in allowances for new cultivation areas except for agriculturally zoned parcels. However, the county Planning and Building Department is set to begin performing a full environmental impact report for the next planned cultivation ordinance, which could greatly expand the county's medical marijuana industry.

"For now this is a first step," 2nd District Supervisor Estelle Fennell said. "The fact that we can't change the language doesn't mean we're precluded from doing that in the future."

HBK Tweets



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However, some members of the public, like Humboldt Mendocino Marijuana Advocacy Project spokesman Robert Sutherland, were not convinced the board had mitigated the environmental impacts with the ordinance and felt that the board rushed the process.

Sutherland said his organization's attorney sent a letter to the board warning that the ordinance could violate the federal Endangered Species Act by not accounting for encroachment of cultivation sites in threatened northern spotted owl habitat, especially with the recently added allowance for some existing cultivation sites to expand.

"The county doesn't have a good attitude on protecting the environment," Sutherland said after the hearing.

Others like Wonderland Nursery Business Manager Luke Bruner said the ordinance is "good enough," and is a starting point for the county to address other issues like taxation.

"Now we need to get people to sign up for this program," Bruner said on the courthouse steps. "Now the farmers have to do their part."

The full ordinance can be viewed online at the county website at cahumboldtcounty.civicplus.com/DocumentCenter/View/53330.

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December 31, 2015

Chairperson Mark Lovelace
Humboldt County Board of Supervisors
Humboldt County Courthouse
825 5th Street
Eureka, CA 95501

Re: Comments on the County's proposed Medical Marijuana Land Use Ordinance –
Phase IV – Commercial Cultivation of Cannabis for Medical Use, Case No. OR-15-003

Dear Chairperson Lovelace and Members of the Board,

These comments are submitted on behalf of the Environmental Protection Information Center (EPIC), Northcoast Environmental Center (NEC), Humboldt Baykeeper, and Safe Alternatives for our Forest Environment (SAFE). We thank the Board, staff, and the Planning Commission for their efforts to develop a land use ordinance regulating commercial medical marijuana cultivation, and we appreciate the opportunity to participate in the public process that we hope will reduce environmental impacts of a largely unregulated industry that has grown exponentially in recent years.

We support several of the Planning Commission's recommendations adopted on Dec. 3. However, the current draft ordinance taken as a whole will not reduce impacts on the environment as stated in the associated Mitigated Negative Declaration (MND). We believe the Planning Commission's deletion of Sections 55.4.8 a) and b) would significantly undermine the MND, and we strongly support including these provisions in the final version of the ordinance. Enclosed are our specific recommendations for changes to the ordinance language, which includes several improvements the Planning Commission made to the Oct. 1, 2015 draft.

The County's draft ordinance brought before the Planning Commission on October 10, 2015 "applies regulations to an existing unregulated land use to help prevent and reduce environmental impacts that are known to result from unpermitted baseline cultivation operations" (MND at 1). However, the County Planning Commission's recommendations fail to meet this stated goal by including new operations under the same regulatory framework as existing operations. This addition vastly expands the number and extent of potential cultivation operations far above baseline, which is thought to be on the order of 3,000 - 5,000 according to best available information provided by the Humboldt County Sheriff and California Department of Fish and Wildlife.

According to the Humboldt County Land Information System, there are 12,254 parcels over 30 acres in size in one of the zoning categories in which commercial medical marijuana cultivation would be allowed under the Planning Commission recommendations (RA, AE, AG, TPZ, TC, FR, U). Under these recommendations, each of these parcels would be allowed to develop new cultivation operations up to 10,000 square feet without any discretionary review—enabling a potentially massive expansion of marijuana operations. This potential growth would have potential significant unmitigated impacts on the environment that are not analyzed in the MND.

Significant impacts to forest and agricultural resources, water quality, biological resources, and air quality have not been adequately analyzed and mitigated in the MND. Without a reduction in the extent of operations that would be allowed under the ordinance, the Planning Commission recommendations are likely to result in substantial impacts on the environment.

I. Forest Resources

The MND was premised on two important assumptions. First, no new permits would be issued for TPZ-zoned lands. Second, impacts from existing operations on forest resources would be vetted through a discretionary permits to ensure that no significant environmental impacts would occur.

Under the October 10, 2015 draft ordinance, Section 55.4.8.2 (b) stated that “No use permits shall be issued for new cannabis cultivation in the FR, TC or TPZ zones.” Under the Planning Commission recommendations, new operations would result in unmitigated impacts to Forest Resources, including conversion of timberland, impacts to wildlife habitat, and impacts to water quality that have described in our previous comments as well as those submitted by the California Department of Fish and Wildlife, Friends of the Eel River, Humboldt Redwood Company, and others. In addition, impacts to adjacent timberland owners and managers have been described in comments submitted by Baldwin, Blomstrom, Wilkinson, and Associates. Thousands of parcels exclusively within the Timber Production Zone (TPZ) would be eligible for new cultivation operations as follows:

Parcel Type	# of Parcels	Area of Cultivation Allowed with Zoning Clearance Certificate
Parcels zoned exclusively TPZ:	4,941	
<5 acres	371	
5-10 acres	157	3,000
10-30 acres	515	5,000
30-320 acres	3,029	10,000
320+ acres	869	20,000

In addition, 2,958 parcels zoned partially TPZ (and partially AG, U, etc.) would be allowed to develop new cultivation operations up to 10,000 square feet without any discretionary review.

The Planning Commission's recommendations also allows for the commercial cultivation of cannabis without discretionary review for both existing and new operations up to 10,000 sq. ft. By removing discretionary review, the County cannot ensure that individual or cumulative impacts from numerous substantially sized operations will not significantly impact the environment.

II. Agricultural Resources

The Planning Commission's recommendation to allow 10,000-20,000 sq. ft. indoor cultivation warehouses without discretionary review on lands zoned AE (Agriculture Exclusive) would significantly impact agricultural resources. Indoor cultivation should not be allowed on such a large scale on lands zoned AE. Commercial indoor cultivation should be limited to lands zoned for industrial and commercial uses (MB, MG, ML, MH, C-2, C-3, CH, or CG).

III. Biological Resources and Water Quality

As described in our previous comments, as well as comments from Friends of the Eel River, California Department of Fish and Wildlife, National Marine Fisheries Service, and others, allowances under the Planning Commission's recommended ordinance would result in unanalyzed and unmitigated impacts associated with new cultivation operations. Particularly of concern are impacts to water quality and protected salmonids related to sedimentation from new road construction, wet weather road use, and cumulative impacts of surface water diversions and groundwater pumping that already may exceed carrying capacity in many watersheds.

IV. Air Quality

Potential increases in greenhouse gas emissions from indoor cultivation and the potential conversion of timberland under the Planning Commission's recommendations are not analyzed in the MND, which states that "The primary goal of the ordinance is to provide clear standards and permitting pathways to help bring baseline cultivation activities into compliance with local, regional, and state-wide regulatory schemes" (MND at 10). Limiting indoor cultivation to industrial and commercial zones, as well as limiting the ordinance to existing cultivation on timberlands would minimize impacts to air quality, as well as agricultural and forest resources.

* * *

While we believe that the County's original draft was able to fit under an MND, we felt that the draft ordinance could have been improved to increase voluntary compliance. The Planning Commission's recommendations, however, strayed too far from the circulated

MND and risks tying up this necessary and important ordinance in litigation. We urge the Board to return to the framework presented in the County's original draft ordinance with some additional modifications to encourage compliance and further reduce environmental impacts, as recommended in the attached document.

We believe that the County should move swiftly and with deliberate effort to craft regulations to guide cannabis cultivators for the 2016 season. With that in mind, we believe that the Planning Commission's recommendations are not appropriate under the circulated MND. The Planning Commission's recommendations would result in a large expansion of cultivation sizes, addition of zones in which commercial cultivation would be allowable, and expansion of allowances for indoor cultivation without mitigation measures adequate to ensure that no significant environmental impact would occur. To move forward in a timely manner while bringing the cannabis community into the light and improving environmental conditions, we urge the Board to cautiously stay within the bounds of the circulated MND.

Respectfully,

_____/s/_____
Natalynne DeLapp
Executive Director, Environmental Protection Information Center

_____/s/_____
Larry Glass,
President, NEC & Executive Director, SAFE

_____/s/_____
Jennifer Kalt
Director, Humboldt Baykeeper

Enclosed: Recommended Changes to MMLOU, 12-31-15

EXHIBIT D

Table of Humboldt County Commercial Cannabis Cultivation Permit Types – Inland Zone

Inland of the Coastal Zone, with the clearance or permit type specified below, Outdoor and Mixed-Light cultivation is permitted on all 'Agricultural Land' or in zones in which 'General Agriculture' is a principal permitted use (RA, FP, DF, AG, AE, and U) subject to performance standards. Special limits apply to FR, TPZ or U timberland zones. Outdoor and Mixed Light cultivation may also be permitted in the C-2, C-3, MB, ML, and MG zones with a Use Permit.

	Parcel Size	Permit Tier	Cultivated Area Size Limit	
OUTDOOR	RA less than 5 acres	Not Permitted	0 sq ft	
	Existing on AE parcels less than 1 acre in size	III – Use Permit	up to 2,500 sq ft	
	Existing on AE and AG over one acre, FP, DF, FR, TPZ, U and RA parcels 5 acres and above per 55.4.8.2.2	I - Zoning Clearance Certificate		up to 5,000 sq ft
		II - Special Permit		5,000 - 10,000 sq ft
		III - Use Permit		>10,000 – 43,560 sq ft
	New on AE, AG, FP, DF, and U parcels between 1 and 5 acres in size	III - Use Permit		up to 5,000 sq ft
	New on AE, AG, FP, DF, U, and RA parcels 5 acres to 320 acres per 55.4.8.2.1	I - Zoning Clearance Certificate		up to 10,000 sq ft
	New on AE, AG, FP, DF, U, and RA parcels 320 acres and above	III – Use Permit for more than one permit per parcel		See 55.4.8.2.1.1
MIXED - LIGHT	RA less than 5 acres	Not Permitted	0 sq ft	
	Existing on AE and AG up to 1 acre	III – Use Permit	up to 2,500 sq ft	
	Existing on AE and AG over one acre, FP, DF, FR, TPZ, U, and RA parcels 5 acres and above per 55.4.8.2.2	I - Zoning Clearance Certificate		up to 5,000 sq ft
		II - Special Permit		5,000 - 10,000 sq ft
		III - Use Permit		>10,000 – 22,000 sq ft
New on AE, AG, FP, DF, and U parcels between 1 and 5 acres in size	III - Use Permit		up to 5,000 sq ft	

New on AE, AG, FP, DF, and RA parcels 5 acres to 320 acres per 55.4.8.2.2	I - Zoning Clearance Certificate	up to 10,000 sq ft
New on AE parcels 320 acres and above	III – Use Permit for more than one permit per parcel	See 55.4.8.2.1.1

Indoor Cultivation Permitted in RA, AG, AE, C-2, C-3, MB, ML, U (industrially developed), and MH Zones with zoning clearance or permit type specified below.			
INDOOR	RA parcels of 5 acres or more or AG or AE parcels within footprint of existing non-residential structure	II – Special Permit	up to 5,000 sq ft
	C-2, C-3, MB, ML, U (industrially developed) and MH	I – Zoning Clearance Certificate	up to 5,000 sq ft
		III – Use Permit	5,000 – 10,000 sq ft

Applications for any clearance or permit listed in the above chart shall be processed in accordance with the procedures set forth in Title III, Chapter 2, beginning with Section 312-1 of the Humboldt County Code.

55.4.9.1 Processing of cannabis that is cultivated pursuant to a Zoning Clearance Certificate may occur at the cultivation site if the Processing Performance Standards and Employee Safety Practices enumerated in section 55.4.11(o) through (s) below are met. Processing for cultivation requiring a Special Permit or Use Permit will be considered in the Use Permit application. All processing that will not occur at the cultivation site is subject to a Use Permit application. Processing may occur in all of those zones where indoor and outdoor cultivation may occur.

55.4.9.2 Multiple applicants may obtain a Zoning Clearance Certificate for outdoor cultivation, mixed-light cultivation, or both, on one legal parcel so long as the cumulative cultivation area does not exceed the total cultivation area size limits set forth in section 55.4.9.

55.4.9.3 A combination of the permit types that may be allowed in the same zone (e.g. outdoor and, mixed light cultivation, or indoor cultivation and processing) that are for a total area equal to or less than the cultivated area size limit for the size of the underlying parcel for those permit types, may be processed with a single Zoning Clearance Certificate application. Permitting for a combination of permit types that is larger than the area that may be processed with a Zoning Clearance Certificate, may be processed with a single Special Permit or Use Permit application, as applicable.

EXHIBIT E

ORDINANCE NO. 315-797 REPEALING AND RE-ENACTING SECTION 42 TO ORDINANCE 315, THE TRINITY COUNTY ZONING CODE

The Board of Supervisors of the County of Trinity, State of California, ordains as follows:

SECTION I. The Board of Supervisors of the County of Trinity repeals Section 42 of Ordinance 315 (County Zoning Ordinance), and re-enacts such Section, to state as follows:

(a) Purpose and Intent

- (1) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.
- (2) In 2004, the Legislature enacted the Medical Marijuana Program Act, "MMPA," Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to specified State criminal statutes.
- (3) In recent years, Trinity County has seen a proliferation of large marijuana cultivation operations that falsely claim to be conducted in accordance with Proposition 215 and the MMPA. These operations grow marijuana not just for individuals living on the property where the marijuana is grown, but for numerous others—sometimes hundreds of persons—many of whom do not live in Trinity County, and whose status as qualified patients or primary caregivers is questionable.
- (4) The proliferation of marijuana cultivation operations within the County—particularly as pertains to operations intended to serve persons who are not Trinity County residents—poses serious threats to the health, safety, and well-being of the County and its residents. The deleterious impacts of such widespread cultivation include, but are not limited to: degradation of the natural environment associated with large marijuana grows, including diversion of, and discharges into, streams, creeks, and other natural watercourses; taking of endangered species, such as the Coho Salmon and Northern Spotted Owl; on-site grading without regarding to topography or erosion control, causing sedimentation of water bodies; erection of unpermitted and illegal buildings and structures; disposal of human waste without connection to sewage or septic systems; disposal of garbage and

rubbish directly onto the property of grow sites; and the abandonment of grow sites without remediation of the aforementioned impacts.

- (5) The impact of such cultivation operations has been particularly acute in residential areas of the County. Property owners in these areas, many of whom have moved to the community very recently, have planted several marijuana plants—sometimes as many as hundreds—on their properties. These plants are often directly visible to surrounding properties and visible from public streets. Plants also are sometimes cultivated openly and visibly near public schools, day care facilities, parks, and other areas where children are present. Throughout the growing and processing seasons, and especially during and immediately following harvesting, noise, lighting, unpermitted structures, and vehicle traffic associated with the grow operations continue into late hours of night and early morning. As the marijuana plants bud, they also can produce a very distinct and annoying odor (sometimes described as “skunky”) that can often be smelled many hundreds of feet away from the property where they are grown and throughout the community.
 - (6) In light of the considerable and extensive public comments provided to the Planning Commission and Board of Supervisors, received during numerous meetings held over a period of three years, the Board of Supervisors concludes that the deleterious impacts of marijuana cultivation, as described above, are fully confirmed and supported by the great weight of evidence. The Board further concludes these impacts create significant public nuisances and that the failure to enact regulations to control such operations would be detrimental to the public health, safety, and welfare and would result in further and significant degradation of the environment.
- (b) As used within, the following terms are defined as follows:
- (1) “Primary caregiver,” as described in *People v. Mentch* (2008) 45 Cal.4th 274, is a person who (1) consistently provided caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.
 - (2) “Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5 (Proposition 215).
 - (3) “Marijuana” shall refer to any plant of the genus *Cannabis*.
- (c) The cultivation, harvesting, processing, drying, or assembling of marijuana are expressly declared to be unauthorized land uses in any zoning district of the County. This declaration is considered to be declarative of existing law, as the County Zoning Code has never expressly or impliedly authorized any such activities in any zoning district, whether as permitted or conditional uses,

or under any provision of the code authorizing specific uses (including but not limited to Section 30.2, pertaining to home occupations and cottage industries).

- (d) Notwithstanding subsection (c), neither the County nor any of its officials, employees, or staff members shall take any action to enforce any provision of Ordinance 315 against any person who satisfies all the requirements of this Section. Persons who satisfy all such requirements shall be considered immune from enforcement of Ordinance 315 against them so long as their compliance with this Section continues.
- (e) Cultivation, harvesting, processing, drying, and assembling of marijuana shall meet the requirements of this Section only if such activities are undertaken for the personal use of qualified patients. Sale of marijuana in any form, by any means, and for any consideration (e.g., cash, in-kind transfer, exchange of services, barter) is not authorized under this Section.
- (f) Activities shall be considered to be conducted for personal use in accordance with subsection (e) only if they are conducted to provide for the medical needs of qualified patients living on the parcel, and/or up to no more than one qualified patient living off the parcel, and if the activities meet all the following standards:
 - (1) The activities are conducted exclusively on a legal parcel of property on which a single-family residence is located.
 - (2) Only qualified patients or qualified caregivers conduct the activities.
 - (3) If any person conducting the activities is not the lawful owner of the parcel, such person shall maintain a notarized letter from the legal owner(s) consenting to the cultivation, harvesting, processing, drying, or assembling of marijuana on the parcel.
 - (4) Each building or outdoor area in which marijuana is cultivated, harvested, processed, dried, or assembled shall be set back from the property boundaries at the farthest feasible location from neighboring residences, but at a minimum in accordance with the applicable zoning regulations, including setback limitations, for the district in which the property is located.
 - (5) Marijuana being cultivated, harvested, processed, dried, or assembled must be secured from public access, and must not be readily visible from off the parcel. All marijuana cultivated outdoors shall be located behind a fully enclosed opaque fence of at least six feet in height. The fence may not be constructed or covered with plastic or cloth, except that shade cloth may be used on the inside of the fence. Vegetative fences shall not constitute an adequate fence under paragraph. The fence must be

adequately secured to prevent unauthorized entry. All processed marijuana must be secured to deter theft.

- (6) Marijuana may not be cultivated, harvested, processed, dried, or assembled outdoors within 1,000 feet of any school, recreation center, youth center, church, library, child-care facilities, substance abuse center or other public gathering area, nor shall such activities be undertaken within 500 feet of any school bus stop.
 - (7) The cultivation, harvesting, processing, drying, or assembling of marijuana shall comply with the all applicable building, zoning, and environmental regulations set forth in Ordinance 315 and all other provisions of the County Code and state law.
 - (8) The power source for the activities shall comply with all appropriate building and fire code standards and permitting criteria. Should a generator be used, the fuel-storage facility shall be reviewed and approved by the appropriate agency. If public utilities are available the site must connect to those utilities. Noise impacts from generator use shall be limited to the hours of 8:00 am to 8:00 pm.
 - (9) The use of butane to enhance or for additive purpose in processing marijuana is prohibited.
- (g) The marijuana grown on any parcel shall not exceed the following number of plants or square footage in size:
- (1) For parcels of one acre or less, two marijuana plants or 50 square feet;
 - (2) For parcels between one acre and 2 ½ acres, four plants or 100 square feet;
 - (3) For parcels between 2 ½ and five acres, six plants or 200 square feet;
 - (4) For parcels between five and ten acres, six plants or 300 square feet;
 - (5) For parcels of ten acres or greater, eight plants or 400 square feet.

For purpose of these size restrictions, any stacked growing levels or stories shall be measured separately as part of the total area permitted. The term "area," as used in this section, shall also be considered contiguously (i.e., plants may not be grown in separate areas of the property and their respective square footages combined to calculate area.) No part of a plant's canopy shall extend beyond the perimeter of the permitted area.

- (h) An individual property may also cultivate additional marijuana plants so long as such plants are immature. An immature plant is one where no part of the plant is flowering or displaying its sex. The number of immature plants that may be cultivated, when combined with the number of mature plants, shall not

exceed twice the number of plants permitted for each size category stated in paragraph (g).

- (i) Indoor cultivation of mature marijuana plants shall be limited to the same maximum size standards as stated in paragraph (g). Such cultivation may be conducted only in an approved accessory structure appropriate for that purpose, as defined by the current California Building and Fire Code standards.
- (j) Should marijuana cultivation, harvesting processing, drying, or assembling activities generate any odor-related complaint from property owners or residents who reside within one-quarter mile (1,320 feet) from the location of the parcel on which the activities occur, and if such odor can be independently verified in the location by a designated County representative, the County may declare the creation of such odor a public nuisance and abate the same in accordance with Chapter 8.64 of the County Code or other applicable law.

(k) Other provisions

- (1) This Section shall be enforced only by means that are civil in nature. The County shall not commence or undertake any criminal proceedings to enforce this ordinance.
- (2) Any activities conducted under this Section must strictly comply with Proposition 215, the MMPA, and the California Attorney General's Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended.
- (3) Neither this Ordinance, nor any of its provisions, shall be deemed to provide a defense or immunity to any action brought against any person by the Trinity County District Attorney, the Attorney General of State of California, or other state law enforcement authority. Nor is this ordinance intended to alter or exempt any provision of federal law prohibiting the cultivation, processing, drying, assembly, or of cannabis, or the enforcement of federal law by federal authorities.

SECTION III. This ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this ordinance may be construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that this Ordinance has no possibility of having a significant effect on the environment, as set forth in California Code of regulations, title 14, section 15061, subdivision (b)(3). Further, this ordinance extending an interim urgency ordinance is exempt from CEQA pursuant to the provisions of Public Resources Code section 21080, subdivision (b)(4) and California Code of regulations, title 14, sections 15307 and 15308.

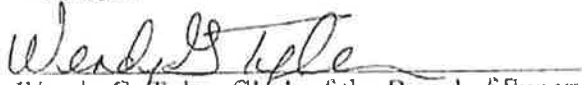
Presented to the Planning Commission of the County of Trinity on May 16, 2012, and passed and adopted by the Board of Supervisors of the County of Trinity on June 5, 2012, by the following roll call vote, to-wit:

AYES: Supervisors Pflueger, Chapman, Morris and Jaegel
NOES: Supervisor Otto
ABSENT: None
ABSTAINING: None



Anton R. Jaegel
Chairman of the Board of Supervisors
of the County of Trinity, State of California

ATTEST:



Wendy G. Tyler, Clerk of the Board of Supervisors
County of Trinity, State of California