

**TRINITY COUNTY PLANNING COMMISSION STAFF REPORT
DRAFT ENVIRONMENTAL IMPACT REPORT
FOR THE TRINITY COUNTY CANNABIS PROGRAM**

BACKGROUND:

CEQA requires that public agencies consider the significant adverse environmental effects of projects over which they have discretionary approval authority before taking action on those projects (Public Resources Code Section 21000 et seq.). The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

According to State CEQA Guidelines Section 15064(f)(1), preparation of an EIR is required whenever there is substantial evidence that a project may result in a significant adverse environmental impact. An EIR is an informational document used to inform public agency decision makers and the public of the significant and potentially significant environmental effects of a project, identify possible ways to mitigate or avoid the significant effects, and describe a range of reasonable alternatives to the project that could feasibly attain most of the basic objectives of the project while substantially lessening or avoiding any of the significant environmental impacts. Public agencies are required to consider the information presented in the EIR when determining whether to approve a project.

- **October 2016:** Trinity County implemented the Trinity County Commercial Cannabis Program (Cannabis Program). The County, as lead agency, recognized the need to prepare an environmental document to evaluate the physical environmental effects of the Cannabis Program.
- **December 21, 2018:** Trinity County signed the Notice of Preparation for the Trinity County Cannabis Program Draft Environmental Impact Report (DEIR), (State Clearinghouse No. 2018122049). In accordance with State CEQA Guidelines Section 15168, this document is a program EIR that examines the environmental impacts of a series of actions (e.g., issuing discretionary permits or zoning clearance certificates). This type of EIR focuses on the changes in the environment that would result from the issuance of rules, regulations, plans, or other general criteria attributable to a continuing program. In accordance with State CEQA Guidelines Section 15168, a program EIR must examine the overall environmental effects of the entire program and potential actions carried out as part of the program, including construction and operational activities.

- **May 28, 2019:** The DEIR became available for review. Public comment on the document was invited for a 45-day period from May 29 through July 12, 2019.
- **July 12, 2019:** DEIR 45-day comment period closed. All comments received during this period will be responded to in writing in the Final EIR.
- **Tonight:** Trinity County Planning Department (Planning) is inviting additional feedback from regulatory agencies and the public regarding the DEIR. Before the Planning Commission is presented with the DEIR and asked to provide a recommendation of findings to the Board of Supervisors to support certification of the document, Staff is providing information during this public meeting in an effort to better inform the Commission regarding recurring issues identified during the public comment period. This meeting is intended to be an additional opportunity for the public and the Commission to hear what the key environmental issues are. The goal is the production of an environmental document that is considered adequate and reflects any potential changes to the Cannabis Program. The meeting is not intended to be a debate forum, nor is it a formal extension of the public comment period. Staff's intent is to daylight key environmental issues, provide input on these issues and receive feedback from the Commission and the public.

Any additional issues not identified among the key environmental issues may also be identified by the Commission or the public. Staff and the EIR consultant will provide initial input on new issues directly related to the Cannabis Program or the DEIR. All issues will be recorded to verify that the comment has been accurately received.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission: (1) Receive a staff presentation reviewing the comments received on the DEIR on key environmental issues; (2) Discuss and ask questions of staff and the EIR consultant; (3) Receive public comments regarding the Cannabis Program and/or EIR to address environmental issues that the County should consider; and (4) Provide direction to staff.

Note: The Final EIR will contain complete written responses to all comments received during the 45-day comment period and will be presented to the Planning Commission with any updates to the Cannabis Program at a subsequent public hearing for consideration by the Commission.

ATTACHMENT:

- 1— Trinity County Cannabis Program Draft EIR Summary of Key Environmental Issues and Initial Responses

DISCUSSION:

Overview of the Cannabis Program and EIR

The County Cannabis Program is based on County Resolution No. 2016-077, “A Resolution of the Board of Supervisors of the County of Trinity Adopting Four Principles on Local Regulation of Cannabis:”

- Trinity County will be a safe place for all residents to live, to work or enjoy retirement and to raise their families; and
- The historical quality of life and natural environment in Trinity County will be protected and restored; and
- Cannabis cultivation in Trinity County will take place without environmental damage and without detriment to neighbors or communities; and
- Trinity County will regain its reputation as a popular tourist destination.

Since the adoption of the four guiding principles, the County has passed 15 ordinances regulating commercial cannabis activities including cultivation, testing, nurseries, distribution, non-storefront retail, microbusiness, and manufacturing. Staff endeavors to respect the spirit and letter of the four guiding principles and follow the regulations provided in each ordinance.

Following implementation of the County’s Cannabis Program, Staff has recognized the deep commitment and tremendous investment of Trinity County commercial cannabis licensees in establishing commercial cannabis businesses conforming to the rules of the county and the state. Staff fully recognizes that legal commercial cannabis licensees are motivated by a strong environmental ethic and willingness to comply with regulatory agencies to reduce or avoid environmental impacts. Staff also realizes the prevalence of illegal cannabis sites in Trinity County persists and that illegal cannabis operations are likely to cause widespread and extensive environmental damage compared to the impacts associated with legal cannabis sites.

The intent of the program DEIR is to provide county-wide programmatic environmental review of the reasonably foreseeable environmental impacts of implementing the Cannabis Program (construction and operation of new and expanded cannabis cultivation and noncultivation uses). In order to estimate the reasonably foreseeable environmental impacts of future cannabis cultivation and noncultivation uses the DEIR establishes assumptions for these future uses based on publicly available information on cannabis uses consistent with State CEQA Guidelines Section 15144 (Forecasting). This section of the State CEQA Guidelines states:

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

The program EIR approach allows for streamlined environmental review for later individual applications under the Cannabis Program that would limit or avoid the need for further environmental review. California Department of Food and Agriculture (state agency responsible for the CalCannabis Program) encourages the use of program EIRs to cover and streamline later activities associated with local agency cannabis regulations.

As noted above, the DEIR public review period closed in July. Comments received on the DEIR provide input to the County to consider refinements and/or corrections to impact and mitigation measures in the EIR as well as consider possible changes to the Cannabis Program due to issues disclosed in the EIR. Recirculation of a DEIR is only necessary if new significant information is added that identifies substantial adverse environmental effect of the Cannabis Program that was not previously disclosed in the DEIR (State CEQA Guidelines Section 15088.5). Refinements to impacts and mitigation measures that do not result in the identification new significant environmental impacts do not trigger recirculation.

In a context of considering the immense efforts of legal cannabis operations while balancing the interests and needs of the diverse population of Trinity County residents, Staff seeks to provide information that clearly validates the merits and benefits of legal cannabis operations while articulating impacts associated with legal operations and mitigation measures as a means of complying with CEQA and facilitating an environmentally-responsible path forward.

Overview of Draft EIR Comments Received

A total of fifty (50) comment letters were received on the Draft EIR. A summary of these comments are provided below: total that breakdown as follows:

- Three (3) public agency comments from California Department of Fish and Wildlife, California Department Food and Agriculture, and North Coast Regional Water Quality Control Board.
 - Requested minor changes to the Draft EIR text and refinement of the mitigation measures.
- Two (2) comments from Safe Alternatives for Our Forest Environment.
 - Identified concerns with the DEIR evaluation of illegal cannabis cultivation, mitigation measures, and cumulative impacts.
- Forty (45) comment letters from the public and private organizations

- Approximately 75 percent of the comments expressed general concerns with cannabis cultivation impacts without specific comments on the DEIR concerns.
- Approximately 15 percent of the comments state that the DEIR understated environmental impacts of cannabis uses.
- Approximately 10 percent of the comments state that the DEIR overstated environmental impacts of cannabis uses.

Key environmental issues raised in the comments DEIR include the following. Staff and the EIR consultant are in the process of preparing written response to all comments received on the Draft EIR during the 45-day comment that will be included in the Final EIR:

1. Baseline used in the Draft EIR
2. Addressing illegal cannabis cultivation
3. Noise concerns
4. Odor concerns
5. Traffic concerns
6. Tiering from the CalCannabis EIR/reliance on requirements of CalCannabis and SWRCB Cannabis Policy
7. EIR analysis assumptions

ATTACHMENT 1
Trinity County Cannabis Program Draft EIR
Summary of Key Environmental Issues and Initial Responses

1. Baseline Conditions Used in the DEIR

Several comment letters state that the DEIR does not adequately define baseline conditions in a manner that allowed for proper and consistent analysis in the EIR technical sections (e.g., air quality, biological resources, hydrology, and traffic). Some comments also identify concerns that the extent of illegal cannabis cultivation operations and their impacts were not fully evaluated in the DEIR. Comments related to the consideration of illegal cannabis cultivation sites are addressed in a separate response below.

As described in DEIR Chapter 2, “Project Description,” the Trinity County Cannabis Program consists of the readoption of the six ordinances that regulate commercial cannabis operations in the unincorporated area of the county. The DEIR impact analysis evaluates the construction and operation of new commercial cannabis cultivation and noncultivation uses under the Cannabis Program as well as operational impacts associated with renewal of licenses for existing licensed cultivation sites. State CEQA Guidelines Section 15125(a)(1) provides the following guidance for establishing the baseline in an EIR:

- (a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.
- (1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

The notice of preparation (NOP) was released on December 21, 2018. As described on DEIR page 3.0-1, physical environmental conditions and available data on environmental conditions that existed in December 2018 served as the baseline for the DEIR impact analysis. DEIR page 3.0-1 identifies that the County had approved to a total 286 commercial cannabis licenses as of December 2018 and the estimated total extent of cannabis cultivation at 3,927 sites encompassing approximately 1,108 acres based on 2016 satellite imagery and GIS mapping data

(licensed and illegal). This is consistent with the CEQA requirements identified above for baseline conditions. Countywide baseline conditions for each environmental issue area are also described in DEIR sections 3.1.2 through 3.16.2 and are based on the most recent information and technical studies that were available from December 2018 as well as updated information available through May 2019.

2. Consideration of Illegal Cannabis Cultivation

Several comment letters assert that the DEIR does not adequately address the impacts of illegal cannabis cultivation activities in relation to the Cannabis Program. Comment letters also state that the DEIR declines to address illegal cannabis cultivation sites as an important and existing contribution to cumulative impacts. These comment letters identify that the impacts of current illegal cannabis cultivation are significant and well-documented and request that the EIR address impacts of illegal operations and their interaction with the Cannabis Program. This includes concerns that the Cannabis Program will exacerbate the environmental damage already caused by existing illegal cannabis cultivation if they are not able to be licensed under the Cannabis Program because of the 530 license limit and other licensing requirements.

The intent of CEQA is the disclosure of the potential environmental effects of a proposed project. CEQA is not a policing law, and relies on compliance with planning and zoning laws, as well as other laws that regulate resource use.

It is acknowledged that historic illegal cannabis cultivation activities in the County and state-wide have created substantial and adverse environmental effects. The details of the effects are not always known. Because these operations are illegal, there is no database available to track the extent to which adverse effects have occurred. Nevertheless, based on discussions with County staff, a review of technical studies regarding cannabis cultivation, and experience by the consultant, some of the known effects include:

- ▶ Cannabis cultivation operations within public and private lands have led to illegal water diversions; this has contributed to dewatering of some streams during a period of drought which likely has adversely effected aquatic habitat.
- ▶ Illegal operations have resulted in removal of sensitive vegetation, likely including rare and endangered plants. Further, vegetation removal as well as improper grading has exposed hillsides to erosion. In turn, this erosion has likely silted streams, further effecting aquatic habitat. Several water bodies in the County are already designated as “impaired” under Section 303d of the Clean Water Act (see DEIR Table 3.10-7) that are being further impacted by cannabis cultivation. Cannabis cultivation has also resulted in discharged pesticides, fertilizers, fuels, trash, and human waste around the sites, that then discharges into surface waters.
- ▶ It is well documented that illegal cannabis operations have used illegal pesticides and rodenticides. These poisons have killed wildlife such as Pacific fishers, who are in turn consumed and poison animals up the food chain (including species protected under the state and federal endangered species acts as well as other regulations).

In addition to these environmental impacts, illegal cannabis cultivation activities have resulted in soil contamination from improper handling of pesticides, fertilizers, and other materials. These sites are also potential sources of fire hazards from improper electrical wiring. Some illegal grow sites also host unsanitary encampments during the harvesting/ “bud trimming” seasons, with inadequate waste elimination systems.

These illegal activities have resulted in serious concerns among regulators, environmentalists, and the general public. These concerns have resulted in the desire by many agencies, including Trinity County, to develop and implement regulations that address, control, and minimize environmental impacts from cannabis operations. The County believes that regulating cannabis operations will result in the conversion of current illegal cultivation sites to legal sites that agree to comply with County and state regulations and the eventual eradication of illegal operators who choose to avoid or ignore the permitting process. The County has conducted a total 65 eradication activities on illegal cultivation sites that have removed 154,000 plants during the 2018/2019 fiscal year.

DEIR page 3.0-1 identifies that the County had approved to a total 286 commercial cannabis licenses as of December 2018 and the estimated total extent of cannabis cultivation at 3,927 sites encompassing approximately 1,108 acres based on 2016 satellite imagery and GIS mapping data (approximately 93 percent of these identified sites are illegal). The DEIR made the following acknowledgement that not all cannabis operations in the County have elected to participated in the Cannabis Program:

Cultivation operations that do not comply with the Cannabis Program would be considered illegal. Enforcement activities targeting operations out of compliance would be taken by the County in coordination with other agencies with the intent that some would be brought into compliance with County and state standards and the closure of others. However, it is acknowledged that illegal cannabis operations would continue to occur in the county because legality has been shown to not constrain operations to date. Although this DEIR acknowledges the adverse environmental effects of continued illegal cannabis operations as part of the environmental baseline condition, because they are existing (and illegal) they are not part of the project; in this context, they would not result in environmental effects associated with the project and would not be mitigated. (DEIR page 3-1)

DEIR Section 3.2 through 3.13 and Chapter 4 disclose the environmental conditions of historic and on-going illegal cannabis cultivation. Because the State CEQA Guidelines (Section 15125[a]) state that the baseline physical conditions are the basis by which a lead agency determines whether an impact of the project is significant, impact significance and mitigation is not assigned to these illegal activities. Published case law has confirmed that baseline conditions include unpermitted and harmful activities that have occurred before a project has been analyzed.

The Cannabis Program has been successful in the conversion of pre-existing cultivation sites to licensed cultivation sites. Approximately 75 to 81 percent of the County’s licensed cultivation sites consist of pre-existing cultivation sites. However, the Cannabis Program has not provided

sufficient incentive for illegal cultivation operations to become legal; this is evidenced by the fact that the 530 license limit has yet to be reached. It is acknowledged that the conversion of existing illegal cannabis cultivation operations to compliance with the Cannabis Program, State Water Resources Control Board Order WQ 2019-0001-DWQ would improve baseline environmental conditions.

3.Noise - Barking Dogs and Enforcement of Noise Standards

Several comments raised the issue of project-generated noise impacts related to barking dogs and other noise sources.

Section 6.04.050 of the Trinity County Code of Ordinances, subsection B. directly addresses noise issues related to animals. This subsection states that it is unlawful for the owner or possessor of any animal to allow said animal to disturb the peace by loud and unreasonable howling, barking, or by the making of other loud and unreasonable noise. Additionally, Section 6.04.100 of the Trinity County Code of Ordinances details fees, penalties, and nuisances related to animals. Thus, the Trinity County Code of Ordinances governs and provides the enforcement mechanism for addressing noise associated with barking dogs; this would be addressed via citizen complaints and response by the County.

Additionally, the Cannabis Program states that activity related to cannabis cultivation shall not generate noise levels that exceed the noise level standards set forth in the Trinity County General Plan, as measured at the property line. Therefore, through enforcement of the Cannabis Program noise standards, adjacent land uses would not be exposed to noise levels that exceed applicable noise standards in the County's General Plan.

4.Odors Associated With Cannabis Cultivation

Several comment letters identify concerns related to cannabis odors from commercial cultivation and suggest additional mitigation measures or ordinance performance standards be established. Other comment letters disagree with the DEIR cannabis odor impact analysis (Impact 3.3-3) conclusion that a significant and unavoidable impact would occur and request further details on how the impact analysis was conducted.

Odors are generally regarded as an annoyance rather than a health hazard. However, manifestations of a person's reaction to foul odors can range from psychological (e.g., irritation, anger, or anxiety) to physiological (e.g., circulatory and respiratory effects, nausea, vomiting, and headache). Odor is inherently complex because it is often caused by a mixture of chemical substances and has subjective components associated with human perception by the olfactory senses. Odorants (odor-causing chemicals) are often complex mixtures of chemical substances, and even slight changes in the chemical composition of the mixtures can greatly affect how humans perceive a particular odor. People may have different reactions to the same odor; an odor that is offensive to one person may be perfectly acceptable to another. It is important to also note that an unfamiliar odor is more easily detected and is more likely to cause complaints than a familiar one. (DEIR page 3.3-10)

As described in DEIR Section 3.3, “Air Quality,” the typical smell of cannabis originates from roughly 140 different terpenes. A terpene is a volatile, unsaturated hydrocarbon that is found in essential oils of plants, especially conifers and citrus trees. Dispersion modeling has been conducted by other counties to determine the distance from which cannabis odor may be detected. Kern County modeling indicated that specific cannabis compounds may be detectable at a distance of 2 miles or more depending on weather conditions. Nevada County released an EIR (State Clearinghouse No. 2018082023) for its Commercial Cannabis Cultivation Ordinance in 2019, and the odor detection modeling factored elevated terrain conditions (similar to Trinity County) It identified that cannabis odors could be detected in some circumstances between 100 feet and as far 1 mile.

As described in DEIR page 3.3-11, a review of recent scientific publications identified no studies that evaluated the health effects associated with exposure to cannabis odors. An evidence brief prepared by Public Health Ontario states that “most substances responsible for odors in the outdoor air are not present at levels that can cause long-term health effects. However, exposure to unpleasant odors may affect an individual’s quality of life and sense of well-being.” This statement was made in reference to odors in general and not cannabis odors in particular. The City of Denver prepared a Cannabis Environmental Best Management Practices document (City of Denver 2018), which states that “the rate of VOC [volatile organic compound] emissions from cannabis cultivation facilities is relatively unknown.... [T]hese VOCs from the cannabis industry typically do not pose a direct threat to human health.” Although research is limited, it is anticipated that the concentration of cannabis odors is not significant enough to create a public health concern for off-property residential receptors.

The DEIR qualitatively evaluates the potential of cannabis uses to create odors that create a public nuisance or adversely affect nearby residents or businesses. As shown in DEIR Figure 2-4, existing cannabis cultivation is concentrated near the existing communities in the County where residential uses are also concentrated. It is assumed that new commercial cannabis uses may locate in these areas as well and may result in new localized cannabis odor impacts or expanded odor impacts from existing conditions near these concentrated population areas. The exact extent of these odor impacts cannot be determined accurately at the programmatic analysis level of this EIR.

5. Traffic Concerns

Several comment letters expressed concerns about traffic impacts to local roadways and damage from traffic associated with cannabis operations.

The DEIR identified significant operational traffic impacts on SR 3 under existing and cumulative conditions and significant impacts on SR 299 under cumulative conditions during assumed peak harvest conditions with all cannabis uses operating at the same time (four weeks of the year). While no significant traffic congestion impacts are expected on local roadways, the DEIR does identify potential roadway and access issues that could result in safety impacts. Mitigation Measure 3.14-3 requires documentation showing that site access is in compliance with Chapter 12.10: Design Policies of the Trinity County Code of Ordinances that consists of

the County roadway design standards. Roadway maintenance would be accommodated by the County for public roadways and roadway maintenance associations for private roadways.

6. Reliance on the CalCannabis Licensing Program EIR

Some comment letters questioned the need for the Trinity County Cannabis Program DEIR and expressed concerns that the DEIR did not rely on the impact conclusions of CalCannabis Licensing Program EIR (State Clearinghouse No. 2016082077) to address the impacts of the Cannabis Program.

The California Department of Food and Agriculture (CDFA) was tasked under state law with licensing commercial cannabis cultivation, as well as establishing a “track-and-trace” system, which involves development of a unique identifier for each plant, a reporting system, and documentation of the path of plants from cultivation to distribution as a commercial cannabis product. CDFA established the CalCannabis Cultivation Licensing program and the regulations for the medical and adult use licensing program and track-and-trace system. The final regulations were adopted in January 2019 under the California Code of Regulations (CCR) Title 3, Division 8 (Cannabis Cultivation).

CDFA certified the Program EIR on November 13, 2017 for its cannabis license activities. While the Program EIR evaluated the environmental impacts at a state-wide level, it was not intended to provide environmental review for individual cannabis applications approved by cities and counties. The Program EIR provides no technical information or analysis on the environmental conditions and impacts that may occur in Trinity County that could be used in project-specific environmental review for County commercial cannabis cultivation projects

CDFA recently released a memorandum titled “Cities and Counties Issuing Cannabis Cultivation Permits and Licenses” that provide recommendations on CEQA compliance approaches and environmental review streamlining (CDFA 2019). This memorandum identifies the benefits of environmental streamlining that are available when a lead agency prepares a program EIR for its local cannabis program.

The Trinity County Cannabis Program DEIR evaluates the environmental impacts countywide of the adoption and implementation of the Cannabis Program. The DEIR does reference and use state regulations for all commercial cannabis uses that provide environmental protection measures from the following agencies that include CalCannabis:

- ▶ CDFA and the CalCannabis Program: cultivation, processing, nurseries,
- ▶ California Bureau of Cannabis Control: distributors, retailers, testing laboratories, and microbusinesses,
- ▶ California Department of Public Health, Manufactured Cannabis Safety Branch: manufacturing,
- ▶ State Water Resources Control Board: Order WQ 2019-0001-DWQ

7.EIR Analysis Assumptions

Some comment letters questioned the assumptions that were used to analyze potential environmental impacts of the Cannabis Program and expressed concerns that the findings in the DEIR are the result of overstated impacts.

The intent of the DEIR is to provide countywide programmatic environmental review of the reasonably foreseeable environmental impacts of implementing the Cannabis Program (construction and operation of new and expanded cannabis cultivation and noncultivation uses). In order to estimate the reasonably foreseeable environmental impacts of future cannabis cultivation and noncultivation uses the DEIR establishes assumptions for these future uses based on publicly available information on cannabis uses consistent with State CEQA Guidelines Section 15144 (Forecasting). Table 2-3 in the DEIR summarizes what is reasonably foreseeable within Trinity County upon implementation of the Cannabis Program. It presents assumptions based on County staff expertise, review of current cannabis operations in the County, state-licensed cannabis operations in other rural communities with similar rural land use characteristics, available cannabis application data, and other published information regarding cannabis operations. The future of cannabis operations in the County may vary from what is set forth there because the cannabis business is market-driven and guided by unpredictable economic and regulatory forces. The DEIR assumptions regarding the extent of cannabis use operations in the County may be considered conservative. The Final EIR is anticipated to contain corrections to some impacts and mitigation measures based on DEIR comments that provides new technical data and improves the assumptions regarding the potential extent of cannabis use impacts.