



AGENDA ITEM NO.

# COUNTY OF HUMBOLDT

Meeting Date: January 5, 2016

To: Board of Supervisors

From: Robert S. Wall, AICP, Interim Director of Planning and Building *RSW*

Subject: Public hearing for consideration of approval, modification or disapproval of Planning Commission recommendation on proposed Ordinance adding section 313-55.4 et seq. to Title III, Division I, Chapter 3, Section B, Part 1 (Coastal Zoning Regulations), and section 314-55.4 et seq. of Title III, Division 1, Chapter 4, Section B, Part I (Inland Zoning Regulations) to the Humboldt County Code relating to Phase IV of the Medical Marijuana Land Use Ordinance setting for regulations for cultivation, processing, manufacture and distribution operations and facilities

### RECOMMENDATION(S):

That the Board of Supervisors:

1. Conduct a public hearing to consider approval, modification, or disapproval of Planning Commission recommendation transmitted to the Board of Supervisors on December 15, 2015, the draft Mitigated Negative Declaration dated October 1, 2015, and public comments received on the draft Mitigated Negative Declaration;
2. Determine if the public hearing should be continued to future regular or special meetings of the Board of Supervisors;
3. Deliberate and provide direction to staff regarding any possible modifications to the recommended draft ordinance and Mitigated Negative Declaration, with possible substitution of mitigation measures, within the range of alternatives previously considered by the Planning Commission during its hearings;

Prepared by *SL* Steve Lazar, Senior Planner

CAO Approval *Cheryl Dillingham*

REVIEW:	Auditor _____	County Counsel <i>JWZ</i>	Human Resources _____	Other _____
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TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**

Upon motion of Supervisor \_\_\_\_\_

Seconded by Supervisor \_\_\_\_\_

Ayes \_\_\_\_\_

Nays \_\_\_\_\_

Abstain \_\_\_\_\_

Absent \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kathy Hayes, Clerk of the Board

4. Set a date for the conclusion of the public hearing to be held before the Board of Supervisors when the Mitigated Negative Declaration and ordinance may be adopted; and
5. Direct the Clerk of the Board to publish the pre-adoption summary of the Ordinance and to post a certified copy of the full text of the proposed Ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the Ordinance will be adopted. [Government Code Section 25124(b)(1)].

#### SOURCE OF FUNDING:

There is no specific budget allocation for this ordinance preparation. A Supplemental Budget to cover Planning Commission and staff costs incurred in this effort will be submitted to the Board of Supervisors for consideration at a future date.

#### DISCUSSION:

These proposed amendments to the Zoning Ordinance and Local Coastal Program (LCP) provide for local regulation of land uses involving the commercial cultivation, processing, manufacturing and distribution of cannabis for medical use of consistent with newly enacted state law, the Medical Marijuana Regulation and Safety Act (“MMRSA”) (SB643, AB266, and AB243) and other applicable regulations (including the Cannabis Cultivation Waste Discharge Regulatory Program administered by the North Coast Regional Water Quality Control Board). The ordinance is part of ongoing efforts to regulate land uses associated with medical marijuana in the county. The proposed ordinance would establish where within the county the commercial cultivation, processing, manufacturing and distribution of cannabis for medical use could take place, and would establish a permitting structure to allow for county oversight of these commercial medical marijuana activities. The proposed ordinance would apply throughout the unincorporated areas of Humboldt County, including the Coastal Zone.

These Zoning Ordinance and Local Coastal Program amendments were developed in response to direction from the Board of Supervisors on September 15, 2015, that an ordinance should be in effect on or before March 1, 2016, in order to preserve the County’s prerogative to exercise local control in the regulation of commercial cultivation of cannabis for medical use. The perceived necessity for this deadline is in direct response to the ambiguous and highly problematic provision in AB 243, codified at Health and Safety Code section 11362.777, subd. (c)(4):

“(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning<sup>1</sup>, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division [of the Department of Food and Agriculture] shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.”

Assemblyman Jim Wood, the sponsor of AB 243, has announced his introduction of cleanup legislation (AB 205, as amended) as an urgency measure to omit the language quoted above from the MMRSA. AB 205 will be taken up in the legislative session beginning in January 2016. At

<sup>1</sup> The phrase, “principles of permissive zoning,” is not defined. The California State Association of Counties and the League of California Cities interpret it as meaning a zoning scheme in which uses that are not specifically enumerated as permitted within a given zone are prohibited.

this time there is no certainty when or if AB 205 will be passed by the legislature and signed by the Governor. It is unlikely that this could occur before the January 28, 2016 deadline to enact a local ordinance to prohibit or regulate cultivation of marijuana, or to “choose not to administer a conditional permit program,” so as to avoid the possible loss of local control.

A strong legal argument can be made that Humboldt County has already adopted a land use ordinance that regulates the cultivation of marijuana. Ordinance 2523, adopted October 28, 2014, regulates indoor and outdoor medical marijuana cultivation on parcels five acres or less by qualified patients for their own personal use, provided that specified performance standards are met. Any violation of these limitations is deemed unlawful, declared a public nuisance *per se*, and subject to injunction, abatement, or any other remedy available to the County (Sections 55.1.6 and 55.2.8.1 in both coastal and inland ordinance provisions). Commercial cultivation of medical marijuana (i.e, not for a single qualified patient’s personal use) anywhere in the unincorporated area of the County that does not meet these requirements, regardless of parcel size or zoning, is therefore prohibited.

The Board of Supervisors may elect not to rely solely upon this restrictive interpretation of Ordinance 2523 as the means of preserving local control. The MMRSA establishes a new paradigm for commercial cultivation of medical marijuana that provides an opportunity for the County to begin to mitigate the adverse environmental effects of unregulated marijuana cultivation operations that exist throughout the County, and to provide a legitimate framework for legal economic activity that can benefit both these agricultural operators and the general public. Beginning to affirmatively regulate commercial cultivation of cannabis for medical use can be an important first step.

The Board of Supervisors has discretion to proceed with the expedited adoption of some type of ordinance to take effect by March 1, 2016, both as a cautionary measure to preserve local control due to the uncertainty associated with Section 11362.777 (c)(4), and to begin to bring sensible regulation to what has heretofore been a largely underground activity. The Board could also choose to rely on the promise of corrective legislation, or on a narrow interpretation of its existing ordinance, and engage in a more deliberative process in considering the adoption of local regulations for commercial cannabis activities. Options include adoption of a short-term explicit prohibition of commercial cultivation of cannabis for medical use, or more limited ordinance as a placeholder and follow up with subsequent amendments that develop a expansive or comprehensive regulatory program, as appropriate.

The dilemma posed by the March 1, 2016 deadline is the time necessary to complete all of the procedural requirements for the adoption of a land use ordinance, which include compliance with:

- 1) California Environmental Quality Act (“CEQA” Pub. Res. Code § 21000, *et seq.*);
- 2) Planning and Zoning Law requirements for the planning commission to study, report and make recommendations on proposed zoning ordinance amendments (Gov. Code §§ 65853 – 65857) and for the Board of Supervisors find that the ordinance is consistent with the General Plan (Gov. Code § 65860); and,
- 3) California Coastal Act requirement for certification by the California Coastal Commission of zoning ordinance amendments governing areas of Humboldt County located within the coastal zone before such amendments can take legal effect (Pub. Res. Code §§ 301513, 30514 (a)).

The constraints and recommended steps to satisfy these requirements by March 1, 2016, are discussed in greater detail in separate sections of this report, below.

### Planning Commission Hearings and Recommendations

The Board of Supervisors gave further guidance to staff on October 13, 2015, to prepare policy alternatives to the initial draft ordinance for consideration by the Planning Commission. Staff presented an extensive range of alternatives to the Planning Commission as part of the November 5, 2015 staff report. (See Attachment 1) These alternatives formed the basis for an in-depth discussion of relevant policy issues considered during the public hearing conducted over the course of ten meetings between November 5 and December 3, 2015. Additional issues were brought to the Commission's attention through written and oral public comments. The Commission directed staff to prepare the revised draft ordinance that is now before the Board of Supervisors for consideration.

The Commission recommended significant changes to the initial draft ordinance, many of which are enhancements and improvements. Some recommended changes address important issues, but may benefit from additional refinement. Other recommendations are more problematic given the limitations of the type of environmental review that can be accomplished in the relatively short time period available for the adoption of an ordinance to be effective by March 1, 2016. In all, the Planning Commission deserves high praise for its diligence and serious effort to expand and advance the scope of policies the Board of Supervisors may consider in adopting an ordinance regulating commercial cannabis cultivation, processing, manufacturing and distribution that will allow for the comprehensive implementation of the MMRSA in Humboldt County.

The detailed modifications recommended by the Planning Commission may be found by reviewing the redline-strikeout comparison of the original and recommended versions of the ordinance that is attached as Attachment 1 to this report. The changes can be summarized, as follows:

- Adds a separate permitting process for medical marijuana processing facilities (drying, curing, trimming, etc.) separate from cultivation sites
- Establishes performance standards for processing facilities – on site and off site of cultivation area, for health & safety of workers (toilets, handwashing facilities, safety standards, etc.)
- Adds provisions resulting from AB 52 Tribal Consultation regarding permitting of medical marijuana facilities on Tribal Lands, and a process for evaluating and protecting against impacts on Tribal Cultural Resources
- Allows retail nurseries in heavy commercial and industrial zones; wholesale & supply nurseries in AE zones, all with use permits
- Added land use permitting process for manufacturing and distribution facilities in commercial and industrial zoned properties
- Provides options for prescribed water diversion forbearance period (May 15 – Sept. 30) and storage, including qualified professional-prepared water plan or compliance with Regional Board approved plan

- Prohibits use of trucked water as primary (not defined) water source. On-site water source required except for emergencies, as defined.
- Incorporates coastal stream setbacks or Streamside Management Ordinance standards in all permits
- Calls for development of a program for recognition and certification of Humboldt Artisanal branding (proposed as “Humboldt Heritage” but already claimed as trademark by private party) for grows of less than 3,000 sq ft with grower residing on the same property using “organic” or equivalent methods, with only natural light
- Calls for development of a program to incentivize retirement, remediation and relocation of existing cultivation sites in inappropriate or marginal locations to relocate to environmentally superior site locations
- Establishes performance standards for mixed-light cultivation addressing light and noise pollution from generators
- Restricts indoor cultivation to on grid power with municipal or well water, narrower class of zoning districts where permissible and adds heavy commercial and industrial zoned parcels
- Adds Pre-Application Registration of Existing Cultivation Site (amplifies Board Resolution authorizing Commercial Cannabis Activity Registration program)
- Limits the number of commercial cannabis activity permits of any type that can be issued to any one person or related entity to four
- Limits the number of zoning clearance (ministerial) permits to one per legal parcel. Additional permits on the same parcel would require special or use permits
- Allows multiple applicants to obtain separate permits within area subject to permit tier size limit and permit types to be combined within a single permit tier size limit for the same parcel
- Restricts indoor cultivation to on grid power with municipal or well water in AG and AE zones and adds heavy commercial and industrial zoned parcels
- Limits code violation compliance (enforcement) agreements for existing cultivation sites to those conditions related to commercial cannabis activities with up to two (2) years to complete correction
- All applications must be complete within 1 year, two years to complete improvements required
- Calls for inclusion of medical marijuana cultivation in ag zones as explicit part of Right to Farm disclosure form
- Places no cap on the total number of permits that can be issued. Calls for quarterly evaluation by Planning Commission for consideration of imposing caps
- Significantly increases cultivation area thresholds for ministerial permit processing (Zoning Clearance) for all parcels over 5 acres, scaled to size of parcel to as much as 22,000 sq ft on parcels larger than 320 acres. Use permits would potentially allow permits up to state maximums (1 acre for outdoor, 22,000 sq ft for mixed light or indoor)
- Allows expansion of existing and establishment of new cultivation sites on timberlands within 3-acre conversion exemption areas on TC, FR and TPZ zoned parcels

Unfortunately, the pace of the hearings and highly compressed timeframe did not allow for staff to provide the Commission with contemporaneous comprehensive review and analysis of the implications of the recommended changes with regard to CEQA, General Plan consistency, and Coastal Act conformance. That review is incorporated in this report for consideration by the Board of Supervisors.

The Board of Supervisors has the discretion to approve, modify or disapprove the draft ordinance as revised and recommended by Planning Commission. So long as any modifications that may be made at the direction of the Board of Supervisors are within the range of alternatives previously considered by the Planning Commission, a modified ordinance need not be referred back to the Planning Commission for its additional report and recommendation. (Gov. Code § 65857). Given the aforementioned breadth of policy review conducted by the Commission, staff is confident the Board has ample room to operate in implementing changes to the ordinance without requiring the matter be referred back to the Planning Commission for further review.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

Adoption of a zoning ordinance amendment by the County of Humboldt is a “project” that is subject to the California Environmental Quality Act (“CEQA”). Unlike the first three phases of the county’s Medical Marijuana Land Use Ordinance, staff has determined that the Phase IV regulations do not qualify for a statutory or categorical exemption. An Initial Study prepared by staff determined that no substantial evidence exists that the proposed project, as set forth in a proposed draft ordinance dated October 1, 2015, may have a significant environmental effect that cannot be fully mitigated to a less-than-significant level. A draft Mitigated Negative Declaration (“MND”) was prepared for this Project (SCH # 2015102005) and circulated for public comment beginning October 3, 2015. The formal public comment period closed on November 4, 2015.

The Board of Supervisors must consider the proposed MND and any comments received during the public review period. If comments received contain substantial evidence supporting a fair argument that the project (as originally proposed or as modified by the Planning Commission) may cause significant environmental impacts, the Board of Supervisors must either, (1) make modifications to the ordinance to mitigate the impacts to a level less than significant; or (2) prepare an Environmental Impact Report (EIR). If the MND must be substantially revised to address new, avoidable significant effects identified after public notice and prior to adoption of the MND, and mitigation measures or project revisions must be added in order to reduce those effects to a level less than significant, a revised MND must be circulated for public comment for 30 days. Recirculation is not required if the originally proposed mitigation measures are replaced with equal or more effective measures, but only after conducting a public hearing on the proposed replacements and making written findings

The Planning Commission recommended substantial modifications to the original draft ordinance dated October 1, 2015, (summarized separately in this report, above) that may affect the adequacy of the draft MND that was previously circulated. Particularly problematic are the high thresholds for ministerial permits (Zoning Clearance) that would be exempt from future project level CEQA review that would otherwise be required for discretionary permits (Special and Use Permits). Also of concern is potential cumulative impact due the allowance of expanded or new cultivation sites in zones largely characterized by timberland (TC, TPZ, FR and U), where watershed and habitat impacts of existing grows are increasingly suspected to be significant. Deferral to future quarterly reviews by the Planning Commission of a decision on

whether or not to impose a cap on the number of permits, is generally not considered an adequate mitigation measure under CEQA.

It is not feasible to either prepare and recirculate a revised MND for public comment, or prepare and certify an EIR, and still adopt an ordinance so that it can be in effect by March 1, 2016. Either of these courses of action risk loss of local control if AB 205 deleting the March 1, 2016 deadline and sole state licensing authority provision is not enacted into law.

To be clear, the changes proposed by the Planning Commission are not outside the County's discretion, but are constrained by the limitations on the scope of a program that may reasonably be approved with a MND within the time available. The County has much broader discretion to adopt an ordinance that may have significant environmental effects, even those that cannot be feasibly mitigated to a level less than significant, but only if it prepares and certifies an EIR and makes the additional necessary findings.

If the Board of Supervisors elects to proceed with adoption of the MND, staff recommends that the Board of Supervisors conduct a public hearing concerning replacement of currently proposed program elements and mitigation measures with those that it finds are equal or more effective and that will not themselves cause any potentially significant effect on the environment. In adopting a MND, the Board of Supervisors must find that the MND reflects the Board of Supervisors' independent judgment and analysis. It must also specify the location and custodian of the documents that constitute the record of proceeding. In addition the County must adopt a mitigation monitoring program.

Should the Board of Supervisors decide not to adopt an ordinance, or to adopt only an explicit prohibition of marijuana cultivation, perhaps as a temporary placeholder to preserve local control in case AB 205 is not enacted into law, no MND or EIR are necessary. Denial of a project is not subject to CEQA and a prohibition would be exempt from CEQA as having no potentially significant environmental effect. If a prohibition is the preferred choice, County will then have time to proceed with preparation of an EIR if the Board wishes to adopt the Planning Commission proposed draft, or revise and recirculate the MND for a more limited first step, as appropriate. Either of these steps could result in considerable delay and loss of momentum.

## CONSISTENCY WITH THE GENERAL PLAN

In adopting a zoning ordinance, the Board of Supervisors must make a finding that the ordinance is consistent with the County General Plan that has been officially adopted, and that the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the General Plan. (Gov. Code §65860). This finding must be supported by substantial evidence in consideration of the whole record.

Most pertinent to the draft ordinance as modified and recommended by the Planning Commission under consideration here is the current 1984 Framework Plan policy 2721, “No use shall be permitted in Timber Production that significantly detracts from or inhibits the growing and harvesting of timber,” and limits compatible uses to include:

- “A) Watershed management.
- B) Management for fish and wildlife habitat.
- C) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas (*portable chippers and portable sawmills are considered a part of "processing"*).
- D) The erection, construction, alteration or maintenance of gas, electricity, water or communication transmission facilities *consistent with Section 2514.2*.
- E) *Grazing and other agricultural uses.*
- F) *No more than two single-family dwelling units and normal accessory uses and structures for owner and caretaker. The second dwelling unit shall require a use permit and shall be conditioned so as to not constitute a subdivision of the parcel. Minor conversion of timberland for residential use is limited to an area of 5% of the total parcel, to a maximum area of two acres for a homesite and appurtenant uses. The total area need not be a contiguous unit.*
- G) *Temporary labor camps, less than one year in duration, accessory to timber harvesting, processing or planting operations.*
- H) *Recreational uses under the control of the owner which will not significantly detract from or inhibit timber or agricultural production on the project site or adjoining lands.”*
- I) *All prudent reforestation activities including site preparation.”*

The first six criteria (A-F) are derived from the definition of compatible use in the California Timberland Productivity Act of 1982, Government Code section 51104 (h), with additions or modifications in italics that were adopted by the County as required by section 51111 of that Act. While it may be argued that cultivation of medical marijuana is an “other agricultural use,” the appropriateness of incentivizing 3-acre conversion exemptions by permitting cultivation of a high value irrigated row crop would have to be addressed in its finding regarding General Plan consistency if the Board of Supervisors wishes to permit expansion of marijuana cultivation in TPZ and other timberlands, as recommended by the Planning Commission.

Many public commenters supported the initial draft prohibition of new cultivation activities on parcels zoned TPZ, TC and FR because they view marijuana cultivation as an incompatible use (The Buckeye, The Nature Conservancy/Trout Unlimited/CalTrout, Environmental Protection Information Center, Humboldt Baykeeper, Northcoast Environmental Center, California Department of Fish & Wildlife, Friends of the Eel River, The Yurok Tribe, California Department of Forestry and Fire Protection, Humboldt County Farm Bureau, the National Marine Fisheries Service, the City of Arcata, Humboldt Redwood Company, the Jere Mello Foundation, the forestry consulting firm Baldwin, Blomstrom, Wilkinson and Associates, Inc., as well as a number of individual commenters). A few of those commenters qualified their

objections as limited to cultivation outside a possible three-acre conversion exemption area on contiguous TPZ parcels under the Forest Practices Rules, while most made no such exception. It may be credibly argued that providing for that exception incentivizes more three-acre conversions than would otherwise occur, and thus significantly detract from and inhibit timber production. Two individual commenters opposed any prohibition or regulation of marijuana cultivation on 3-acre conversion exemption areas of TPZ lands different from any other agricultural zone.

At its December 17, 2015 meeting the Humboldt County Forestry Review Committee reviewed the Planning Commission revised draft Phase IV MMLUO ordinance. Draft minutes of the meeting note the following motions were voted on:

1. Growing and harvesting timber is the highest and best use of TPZ land. 6-0
2. Commercial cannabis cultivation could be compatible with appropriate environmental protections, law enforcement, and the same level of review applied to timberland owners. 4-2
3. The current draft cultivation ordinance does not contain adequate protection measures to ensure the protection of timberland. 6-0
4. The Planning Commission's recommended draft ordinance may not adequately address cumulative effects. 6-0

It was noted that the Forestry Review Committee is agreeable to holding a study session with the Board of Supervisors to address impacts on timberlands.

The remote locations and historically clandestine nature of outdoor cannabis cultivation in the county has led to an undeniable blind spot in our collective understanding of the footprint and scale of this industry, resulting in a lack of useful baseline data concerning prior timberland conversion occurring in association with outdoor cannabis cultivation. Projecting the likely acceleration of conversion that might occur following explicit local sanction is even more problematic, frustrating efforts to effectively consider and mitigate the potential for cumulative impacts.

Given the extensive public record including what would likely be considered to be substantial credible evidence by individuals and agencies with expertise in forestry matters, a finding that permitting new cultivation of medical marijuana on TPZ and other timberlands is consistent with the existing General Plan policies may be difficult to sustain. A similar analysis would apply to CEQA evaluation of potentially significant cumulative environmental impacts of permitting new or expanded cannabis cultivation on timberland in TPZ, FR, TC and U zones.

#### CALIFORNIA COASTAL ACT CONFORMANCE:

Pursuant to the California Coastal Act, Public Resource Code section 30000, *et seq.*, Humboldt County's local coastal land use plan elements and its zoning ordinance and district maps applicable within the Coastal Zone and other implementing actions, together comprise its local coastal program. The zoning ordinance amendments must be in conformance with the Coastal Resources Planning and Management Policies set forth in the Act. (Pub. Res. Code §§ 30200 – 30265.5 regarding Public Access, Recreation, Marine Environment, Land Resources (including environmentally sensitive habitat areas, agriculture, and timberlands), Development (with siting and design so as to protect visual resources), and Industrial Development. The ordinance must be submitted to the Coastal Commission for approval. The Coastal Commission has 60 days

after receipt to reject the amendments or they will be deemed approved. (Pub. Res. Code § 30513). Amendments to the zoning ordinance applicable within the Coastal Zone do not take effect until they have been certified by the Coastal Commission (Pub. Res. Code § 30514 (a)).

Coastal Commission staff indicated in a meeting with Planning Department staff on December 16, 2015, that the staff would not recommend that Commission approve provisions of the original or Planning Commission revised draft ordinance that would allow conversion of timberland for marijuana cultivation, indoor cultivation on agricultural land, or a significant amount of large greenhouse (mixed-light) operations which might adversely impact visual resources within the coastal zone. Should the Coastal Commission reject the ordinance, it must specify the particular provisions of the ordinance involved and the reasons for rejection, and the Commission may suggest modifications that the local government may adopt. The County of Humboldt may also elect to meet the Commission's rejection in some other manner and resubmit the revisions for Commission approval. Commission staff also indicated that the Commission would not likely reject any zoning ordinance amendment that simply prohibits medical marijuana cultivation in the coastal zone.

Because of the 60 day period for Coastal Commission review, even if the Board of Supervisors modified the draft ordinance provisions affecting the coastal zone to avoid the potential for rejection by the Coastal Commission, the ordinance could not take effect by March 1, 2016. There is unavoidable risk of the loss of local control to regulate medical cannabis cultivation in the coastal zone if corrective legislation to omit the March 1, 2016 deadline is not enacted, depending on how the rather ambiguous language in Health and Safety Code section 11362.777, subd. (c)(4) is interpreted or implemented by the State of California. For this reason, the County may wish to rely upon earlier phases of the Medical Marijuana Land Use Ordinance that have been certified by the Coastal Commission to assert that it has adopted land use regulations regarding the cultivation of marijuana in the coastal zone, until such time as the Coastal Commission can certify a more comprehensive ordinance.

#### ALTERNATIVES FOR BOARD ACTION AND STAFF RECOMMENDATION

The alternatives for action by the Board of Supervisors are summarized on the following page. Staff recommends that the Board of Supervisors adopt the third option: direct staff to prepare a revised ordinance that combines features of the initial draft ordinance and a number of the Planning Commission recommended changes. Staff recommends that the revision be narrowly crafted to avoid causing environmental effects that are not mitigated to a level less than significant so that it may be adopted in conjunction with adoption of the Mitigated Negative Declaration previously circulated. The main features that staff recommends be incorporated in the revised ordinance are outlined in the summary, which may include appropriate variations or additional amendments as directed by the Board of Supervisors.

This alternative should be viewed as a provisional first step toward more comprehensive regulation of commercial cannabis activities, with possible expansion at a later date when additional data for full analysis of the potential environmental impacts of a broader program becomes available, in part through experience gained through implementation of this initial phase. The primary operative principle for the first phase is to reduce the impacts of the existing baseline of unregulated marijuana cultivation by requiring compliance with performance standards designed for that purpose. This is in keeping with and mirrors much of the approach taken by the Regional Water Quality Control Board during their recent adoption of the Cannabis Waste Discharge Regulatory Program (CCWDRP). Potential cumulative impacts of expanded

existing grows and permitting new grows will be avoided by only allowing new cultivation activities in areas where the impacts will not be any different than those from historical agricultural uses attendant to cultivation of any other agricultural irrigated field crops such as alfalfa, corn or tomatoes.

It must also be recognized that the MMRSA is in a state of flux, with several possible amendments being proposed in the legislature. State agency regulations proposals may begin to emerge in the next year that may require amendments to locally adopted regulations. It is also anticipated that one or more initiatives will be on the November 2016 ballot that authorize recreational use of marijuana in California with provisions for cultivation, manufacture, distribution, taxation and sale that may alter the regulatory landscape for medical marijuana. It seems prudent to begin with an ordinance to be in effect only until the end of 2016, and then consider re-adoption or appropriate amendments as circumstances warrant.

## Medical Marijuana Land Use Ordinance Alternatives for Board of Supervisors Action

<u>Option</u>	<u>Potential Consequences</u>
1. No Action	1. Possible loss of local control if AB 205 deleting 3/1/16 deadline doesn't become law or existing ordinance is deemed insufficient
2. Affirm that MMLUO Phases 1 and 2 Prohibit all Commercial Cultivation of Medical Marijuana	2. Preserves local control / allows for later adoption of ordinance in phases with appropriate levels of environmental review scaled to potential impacts. Delays advancing legalization of local commercial medical marijuana economy or reduction of existing grow impacts
3. Adopt MND and narrow ordinance (modified 10/1/15 draft with some PC changes) <ul style="list-style-type: none"><li>• limit ministerial approval of existing grows 2,000 sq ft or less subject to strict performance standards including forbearance of water diversions May 15 – Sept. 30 unless enforceable watershed management agreement for all grows in watershed can be developed</li><li>• optional ministerial approval threshold of 3,000 sq ft for existing grows meeting Humboldt Artisanal standards, residence on site &amp; organic equivalent)</li><li>• larger existing grows only with Special Permit to 5,000 sq ft or Use Permit 10,000 - 20,000 sq ft and subsequent project level environmental review</li><li>• new grows with ministerial permits up to 5,000 sq ft only on RA, FP, DF, AG and AE parcels with Class I or II ag soils, less than 9% slopes, within 1 mile of paved county road or state hwy, and non-diversionary source of water unless with DWR water right permit, set back of 100 ft from watercourse. Limit marijuana cultivation to no more than 20% of tillable area of such parcels.</li><li>• add provision to incentivize retirement, remediation and relocation of TPZ, FR and timberland grows to no impact ag sites</li><li>• no diesel, gasoline or propane generator use for lights or drying</li><li>• no trucked water, except narrowly defined emergencies</li><li>• mixed-light grows or nurseries with artificial lights only with on-grid or solar power on AG or AE parcels with same permit thresholds as outdoor existing</li><li>• indoor grows, manufacturing or distribution , subject to Use Permits only in heavy commercial or industrial zones with on-grid or solar power, indoor grows zero net energy or full carbon offsets</li><li>• no new or expanded grows on TPZ, FR, TC or U zone timberland</li><li>• no pesticide use allowed</li><li>• maximum grow size of 20,000 sq ft</li><li>• clearance or permit application period closes 12/31/16, reopening only with amendment of ordinance and additional available data for environmental review</li></ul>	3. Preserves local control / advances legalization of local commercial medical marijuana economy and reduction of existing grow impacts. New grows only allowed on sites with no adverse environmental impacts. Future expansion of program possible with additional environmental review.
4. Revise and Recirculate MND, adopt with scaled back Planning Commission Draft Ordinance	4. Possible loss of local control if AB 205 deleting 3/1/16 deadline doesn't become law
5. Prepare and certify EIR, adopt modified Planning Commission draft ordinance	5. Possible loss of local control if AB 205 deleting 3/1/16 deadline doesn't become law
6. Adopt current MND and Planning Commission Recommended Draft Ordinance	6. Advances legalization of local commercial medical marijuana economy with limited reduction of existing grow impacts, high potential unanalyzed cumulative impacts from expanded and new grows

FINANCIAL IMPACT:

This matter involved two regular and eight special meetings of the Planning Commission and attendant staff work and will also involve anticipated preparation and public hearings before the Board of Supervisors for a yet to be determined number of meetings. There is no specific budget allocation for this ordinance preparation. A Supplemental Budget to cover Planning Commission and Board of Supervisor meetings and staff costs incurred in this effort will be submitted to the Board of Supervisors for consideration at a future date.

It is anticipated that application and inspection fees will cover the cost of administration of the permitting program. Additional budget allocations for planning and inspection staff from other departments may be necessary until permit costs are recovered, depending on the level of demand which is at present unknown.

This ordinance conforms to the Board of Supervisors' Strategic Framework Priorities for New Initiatives by engaging in and influencing areas of statewide concern.

OTHER AGENCY INVOLVEMENT:

County Counsel has participated in the preparation of this amendment.

ATTACHMENTS:

- 1 – Pre-Adoption Summary of Proposed Ordinance
- 2 – Planning Commission Policy Options & Alternatives Matrix
- 3 – CMMLUO - Compare Document of Initial and Planning Commission Drafts

The staff report for the November 5<sup>th</sup> Planning Commission meeting includes the initial draft of the ordinance and Mitigated Negative Declaration, and is being provided separate from this report. Public comments received during the Planning Commission's review of the ordinance have also been provided separately.