



# County of Santa Cruz

## COMMISSION ON THE ENVIRONMENT

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October 27, 2017

Cannabis Comments c/o Matt Johnston  
Planning Department, 701 Ocean Street, 4th floor  
Santa Cruz, CA 95060

**Subject: Commission on the Environment comments on the Draft Environmental Impact Report (EIR) for the Commercial Cannabis Cultivation and Manufacturing Regulations and Licensing Program**

Dear Mr. Johnston,

Thank you for the opportunity to comment on the above referenced draft EIR. The Commission is impressed by the breadth and depth of this multifaceted and far-reaching analysis of an issue that strongly impacts the environment of Santa Cruz County. Our comments focus on areas of the DEIR that we feel need revision, and do not mention many other areas that we feel were well analyzed.

The Commission strongly endorses each point made by the Water Advisory Commission in their comments on this draft EIR. Their comments are attached for reference. Without diminishing the importance of other points made, the Commission on the Environment (COE) would like to emphasize the Water Advisory Commission (WAC) comments that:

- County cultivation regulations should not be less stringent than those adopted by the State Water Resources Control Board or other State agencies

- Third party certification and product branding should be developed to incentivize adherence to regulations, such that only licensed cultivators and manufacturers benefit from Santa Cruz brand recognition and access to legal markets
- Trucked water should not be allowed for any commercial cultivation activities because this opens up otherwise unacceptable areas to cultivation and allows for potential abuses of water rights and water extraction policies
- The Resource Conservation District should be enlisted to provide training and support for implementation of best practices to protect water, soil, habitat, biological and energy resources
- Specific regulations should be included to prohibit or greatly limit tree removal to create space for Cannabis cultivation. This is particularly important in redwoods and sensitive habitats. Deforestation concerns, especially with compounding impacts from climate change, could be significant and are not adequately addressed in any of the Biological Resources Impact categories
- Water rights must be validated by the SWRCB, and Streambed Alteration Agreements must be in place before water is allowed to be drawn from surface waters or extracted from groundwater where such groundwater extraction is expected to affect stream base flows
- Riparian set-backs and organic cultivation practices must be enforced to protect streams and riparian habitat from degradation due to increased temperatures, sedimentation, eutrophication or pollution
- Preferred Alternative: We agree with the WAC that the most permissive alternative is not the most environmentally protective. The premise that the most permissive ordinance will bring the most growers into compliance is predicated upon a respected level of enforcement and substantial disincentives for illegal growers. However, the County faces serious enforcement challenges, and illegal grows will continue to be widespread because of illicit grower difficulty with a complex licensing process and because penalties for illegal grows are minimal. It is very likely that greater environmental

protection would result from higher standards, better brand recognition and greater market access for legal operations.

In addition to our support for the above points made in greater detail by the WAC, we offer the following comments, which focus primarily on Section 3.7 Greenhouse Gas Emissions and Climate Change, Section 3.14 Utilities and Energy Conservation, and assumptions about the effectiveness of suggested mitigation measures for these impacts.

### **Section 3.7 Greenhouse Gas Emissions and Climate Change**

The greenhouse gas emissions analysis in Section 3.7.6 is thorough, but includes key assumptions that, if not borne out, could add substantial greenhouse gas emissions that make it far more difficult for the County to meet its Climate Action Strategy goals. While climate change is heavily driven by many factors beyond County control, the countywide impacts of climate change will be overwhelming, and substantial sacrifices by others in the County would be required to compensate for the additional burden of sourcing and paying for carbon-free energy equivalent to the 273,266 MT/y of carbon that the Cannabis industry is expected to produce (34% over current levels).

The key assumption (MM GHG-1.1. Alternative Energy Sources) that Cannabis operations will acquire that much carbon-free power from Monterey Bay Community Power puts substantial additional performance expectations on a joint powers authority that has yet to begin operations. Encouraging onsite solar generation and conservation is good, but it will take strong regulations or incentives to induce indoor growers to devote the capital and space necessary to produce carbon-free energy to even partially offset the demands of intensive lighting and heating equipment operating up to 18 hours per day year-round.

The assumption that 273,266 MT/y of carbon can be mitigated is too great a leap to declare this impact “less than significant with mitigation,” even with the proposed revisions to SCCC Chapter 7.128 and 7.132 that require alternative energy sources as stated in MM GHG-1.1. Most growers, if they comply at all, will simply opt for MBCP electricity, leaving this new JPA and the rest of the community to deal with acquiring more than a third more carbon-free power than it would otherwise need.

A more realistic and equitable approach would be to allow indoor cultivation (or other excessive energy demand operations) to be licensed only if they generate a far greater proportion of carbon-free power onsite.

The ordinance and EIR should evaluate another way to mitigate the excessive energy use of some Cannabis operations by adopting a taxation system similar to that in Arcata. In November 2012, citizens of the City of Arcata passed Measure I, electing to levy a tax on excessive electricity use in residential households. Passing with a vote of 68% to 32%, the measure assesses a 45% tax on residential household meters that use more than 600% of baseline electricity. The stated goals of the tax are to:

- Assist the City in meeting its adopted greenhouse gas emission reduction goals,
- Align the City of Arcata with emerging California energy policy, and
- Create a disincentive for “egregious” energy use in residential neighborhoods.

That egregious use includes high energy demand by Cannabis operations. Such a surcharge could be levied by Monterey Bay Community Power and used to more successfully obtain carbon-free energy, at higher prices if necessary. It would also provide a strong incentive for Cannabis operations to produce more renewable power as part of their operations.

### **Section 3.14 Utilities and Energy Conservation**

#### **Evaluating Implementation of MM GHG-1.1**

The comments above related to greenhouse gas emissions are directly relevant to impacts related to energy consumption. The DEIA states (on page 3-14-25):

“As provided in Appendix F, operation of the Program is estimated to result in the demand for an additional 844 GWh/year of electricity for cannabis cultivation alone, approximately 69 percent of the 2015 total County electricity demand...”

This demand is clearly significant, and assumptions that it can be mitigated without stringent regulations or incentives are hard to accept without extensive further analysis. The DEIR should include some analysis of the mechanisms by which conservation efforts would be required and implemented, as well as an estimate of the energy savings that would accrue. The conclusion that implementation of MM GHG-1.1 would maximize use of alternative energy sources and increase energy efficiency, resulting in impacts less than significant, appears to be wishful

thinking. This issue is too important to rely on conservation and alternative energy implementation assumptions that have not been demonstrated in any significant US jurisdiction over past decades.

### **Preferred Alternative**

As mentioned above in reference to comments by the Water Advisory Commission, we do not agree that the most permissive alternative is the most environmentally protective. The premise that the most permissive ordinance will bring the most growers into compliance is predicated upon a respected level of enforcement and substantial disincentives for illegal growers. However, the County faces serious enforcement challenges, and illegal grows will continue to be widespread because of illicit grower difficulty with a complex licensing process and because penalties for illegal grows are minimal. We believe that greater environmental protection would result from higher standards, better brand recognition and greater market access for legal operations, as is more closely represented by Alternative 1 — Most Restrictive Alternative.

Thank you for your important work on this issue and for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Hunt', with a long horizontal flourish extending to the right.

John Hunt, Chair  
Santa Cruz County Commission on the Environment

**Attachment:**  
**Water Advisory Commission Comments on Cannabis Draft EIR**

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**COUNTY OF SANTA CRUZ**

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**WATER ADVISORY COMMISSION**

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October 6, 2017

Cannabis Comments c/o Matt Johnston  
Planning Department  
701 Ocean Street, 4th floor  
Santa Cruz, CA 95060

**Re: Comments on the Draft Environmental Impact Report (DEIR) for the Commercial Cannabis Cultivation and Manufacturing Regulations and Licensing Program**

Dear Mr. Johnson,

Thank you for the opportunity to comment on this DEIR. It is obvious that staff have taken this complicated policy matter very seriously and considered the impacts of the various projects alternatives very thoroughly. Overall, the document has a high level of sophistication as a planning tool. While there are many aspects of the document that we are supportive of, we will limit our comments to those issues which we feel warrant clarification or further analysis:

**1. Mapping/GIS analysis.** Many of the figures have inappropriately identified parcels for their respective role in a future licensing program. For example, City of Santa Cruz lands on Newell Creek are identified as being eligible for cultivation in Figure 2-6 and federal land in Bonny Doon is also identified as eligible for cultivation in other figures. Hopefully, the impacts analysis is not GIS-based. However, if the analysis is GIS-based, then it seems prudent to clarify and correct mapping errors and refine the environmental review.

**2. Land use.** Commercial cannabis cultivation and the related concentrates manufacturing activities would be no different than other industrial agribusiness activities if not for its federally illegal status and the associated culture which has grown around illegal cultivation since the 1970s. Rather than trying to impose rigorous licensing conditions upon operations that are inherently ill-suited to their current locations, primarily in the mountains, which the County plainly admits in this document that it is likely to be less successful than desired. Limiting this

commercial activity to areas already dominated by agribusiness seems more appropriate. The existing infrastructure for cannabis-related activities is located in the mountains not only because the growing conditions are favorable there, but also because the illegal status and subsequently inflated value of cannabis over the decades has required defensible and secure cultivation locations. However, with cannabis now coming out of the legal shadows and the relatively new found ability to openly cultivate in greenhouses, an alternative would be to consciously move this activity into existing agribusiness – dominated areas of the County and out of mountainous areas, which provide other important functions for the County water supply, cold water fisheries, recreation, etc.

**3. Alignment with state policies.** Several of the standards in the County cultivation regulations are less stringent than policies already in place in other areas of the state. It is unclear to us what requirement the County has for conformance with these standards, but it seems rational that the County regulations ought to be at least as stringent as state standards. For example, mitigations for riparian buffer widths, water diversion forbearance season limits and the need for farm or water resource management plans are not well aligned with state standards. SWRCB standards can be reviewed in more detail at the following links:

[http://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/cannabis\\_boardworkshop\\_colorfullscreen.pdf](http://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/cannabis_boardworkshop_colorfullscreen.pdf)  
[http://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/cannabis\\_go.pdf](http://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/cannabis_go.pdf)  
[http://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/staff\\_report.pdf](http://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/staff_report.pdf)  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/cannabis/general\\_order/r5-2015-0113\\_att\\_a.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/cannabis/general_order/r5-2015-0113_att_a.pdf)  
[http://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2015/15\\_0023\\_Cannabis\\_Order.pdf](http://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2015/15_0023_Cannabis_Order.pdf)

Assuming the SWRCB will adopt relatively consistent standards statewide, mitigations regarding riparian buffer widths, water diversion and water resource management or farm management plans should be modified to be as protective as their respective state standards.

**4. Market branding.** Support of a market branding program similar to that used in Humboldt County would be an incentives-based method of protecting both the legacy of small “mom and pop” mountain grows and the natural resources potentially threatened by them in the mountain locations where they have historically farmed . While many of the standards already proposed in the County’s proposed regulations are equal to or superior to certified and branded cannabis from other jurisdictions, Santa Cruz County Certified branded cannabis could be developed as a mitigation and include more rigorous environmental protection standards than more traditional cultivation methods. These standards could include, but not be limited to:

- Organic only pest control methods
- Solventless concentrate manufacturing
- Educational requirements for licensees such as the “Master Gardener” program.
- Enhanced forest preservation, water use, erosion control and related standards
- Third party compliance inspections and certification

Some examples of such programs can be found at the following links:

<https://www.cleangreencert.org/>

<https://www.certified-kind.com/certified-kind-rules>

[http://mbmg.ucanr.edu/Learn To Be A Master Gardener/](http://mbmg.ucanr.edu/Learn_To_Be_A_Master_Gardener/)

**5. Allowance for trucked water.** Trucked water should not be allowed for any commercial cultivation activities. Not only does trucked water open up a plethora of new acreage to cultivation that might not otherwise be possible, the ability of the County (not to mention water purveyors) to oversee a trucked water program is highly speculative when consideration is given to the nuances of water rights, use tracking and related issues. Furthermore, we are not aware of any water purveyors who have analyzed this issue at a level of complexity that would allow for thoughtful accommodation for this new system demand through their Urban Water Management, drought contingency and other related plans.

**6. Resource Conservation District role.** Many of the proposed mitigations are not unique to cannabis and could very readily be implemented with the assistance of the Resource Conservation District of Santa Cruz County (RCD). The RCD commonly assists landowners with similar issues and is uniquely qualified to provide technical assistance to this sector of the agribusiness community as well. The RCD may be able to provide a unique role in certifying cultivation operations, given their vast experience with supporting agriculture and the objectivity that would come from their lack of pre-existing connections to the cannabis industry.

**7. Impact AT-3.** Considering all the environmental services that forestlands provide regarding retention of runoff, wildlife habitat, carbon sequestration and overall watershed functions and the fact that many of our watersheds support special status species and water supply for the majority of County residents, the impact of forest conversion or rezoning of TPZ lands could be significant. Furthermore, vegetation community shifts due to climate change predicted by Point Reyes Bird Observatory indicate that redwood forests may be severely limited in the County in the future, thereby exacerbating this issue. Including more rigorous mitigation for this impact such as prohibiting rezoning of TPZ parcels for commercial cannabis cultivation, prohibiting expansion of the agricultural use of TPZ zoned parcels for commercial cannabis cultivation or prohibiting all commercial cannabis operations on TPZ zoned parcels seems appropriate.

**8. Impact Bio-1 – MM BIO-1.1b. Habitat Compensation.** Many permitting authorities use a 3:1 ratio for mitigation rather than a 1:1 ratio. Consideration of a more rigorous mitigation bank concept seems appropriate given the scale of impacts associated with this project. Implementation of any such program will obviously be very challenging and success may be a speculative, remote possibility. That said, leveraging this mitigation to provide improvements on other public lands, which currently have insufficient resources to do so (State Parks, County Parks, etc.) and habitat mitigation banking criteria that have enough flexibility to trade impacts in upland areas for mitigation in riparian areas, for example, may help facilitate the success of this mitigation.

**9. MM BIO-1.1h. Water Draw Restrictions.** We strongly support this mitigation, however it is not entirely consistent with state standards, nor will it necessarily be entirely protective of

instream flows and related aquatic biota. The SWRCB is currently proposing a surface water forbearance period of April 1 – October 31. If it is determined that groundwater diversions have the potential to significantly affect surface water supply, forbearance periods may extend to groundwater diverters as well. In Santa Cruz County there are also instream flow problems during the winter period in some creeks, particularly during drought periods. Aligning this mitigation with state standards and protecting non-forbearance period instream flows during drought would make this mitigation more rigorous. Of course, water rights validated by the SWRCB and Streambed Alteration Agreements for any surface water diversions will also be necessary to make this mitigation meaningful.

**10. MM BIO 4.2. No Cannabis Activities allowed within Sandhills Habitat or Salamander Protection Zone.** We strongly support this mitigation as well. It is notable that this mitigation may also serve as mitigation for hydrologic impacts by reducing the groundwater pumping associated with the project in overdrafted groundwater basins such as the Santa Margarita groundwater basin.

**11. MM BIO-4.1. Avoidance of Conflict with an Approved HCP.** It is likely that the City of Santa Cruz will have an approved Anadromous Salmonid HCP that includes instream flows for the San Lorenzo River, Newell Creek, Laguna Creek, Liddell Creek and Majors Creek within the next two years. Any licenses granted subsequent to that time in these watersheds should not include allowance of activities which affect instream flows or otherwise affect aquatic habitat to the extent that there are conflicts with implementation of this HCP. This may also be true for other water purveyors such as the San Lorenzo Valley Water District or other San Lorenzo River tributaries in the future.

**12. Impact HYDRO-1. Commercial cannabis cultivation under the Program could introduce sediment and other pollutants to surface flows and groundwater, which would cause water resource contamination. With mitigation, this impact would be less than significant.** The County is already considering karst protection language for several existing regulations and inclusion of karst protection standards in commercial cannabis cultivation regulations and inclusion of karst protection standards mitigation measures in this EIR seems appropriate as well. Given that several public and private water sources are located adjacent to “M” zoned parcels in karst terrain where commercial cultivation appears to be possible, the impact is currently not sufficiently mitigated. These standards could include but not be limited to:

- Site-specific geologic investigations
- Setback for any structures, roads and manufacturing from sinkholes or other karst features.
- Routing drainage away from karst features

See the following link for more information on this issue:

[http://santacruzcountyca.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=2578&highlightTerms=karst](http://santacruzcountyca.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=2578&highlightTerms=karst)  
<https://www.americangeosciences.org/sites/default/files/karst.pdf>

**13. Impact HYDRO-2. Commercial cannabis cultivation under the Program could adversely affect groundwater supplies and groundwater recharge. This impact would be**

**less than significant with mitigation.** The additional water demand posed by allowance of tankered water, groundwater pumping and diversion of surface water, particularly during drought during both the wet and dry seasons, are not exhaustively analyzed in this document, nor have they been analyzed by local water purveyors. Therefore the impacts cannot be well-understood at this time. Furthermore, new greenhouse construction could potentially increase runoff rates and reduce groundwater recharge, though it is not clear what analysis has been conducted to characterize this issue and provide commensurately appropriate mitigation in the DEIR. This has been a significant issue in other groundwater basins, particularly the Oxnard Plain, where greenhouse-based cultivation practices have replaced row crops or other agricultural practices that do not result in development of landscape-scale impervious surfaces. Given the existing dire situation with water supply in the County and the mitigations currently proposed, it seems speculative to say that the impact is less than significant with mitigation. Further analysis of the demand posed by the program would facilitate a more rigorous discussion of the true impacts on water utilities.

**14. MM-HYDRO-2.1. Water Efficiency for Cannabis Cultivation.** While we strongly support this mitigation, implementation success of the mitigation will take an ongoing, long term commitment and significant resources. The success of such a mitigation may be enabled by the involvement of a third party such as the Resource Conservation District. Again, RCDs have a long history of success with such programs. Furthermore, this mitigation measure would be much more successful if it included a requirement for metering groundwater pumping.

**15. MM HYDRO-2.3. Water Tank Supply Management.** It is not clear if this mitigation applies to water used for irrigation as well as water used for firefighting purposes. However, as previously mentioned, we support the surface water forbearance period water diversion and tank filling. However, there may be non-forbearance period flow issues to consider and consistency with SWRCB standards that need further consideration in development of this mitigation. Obviously, the standards for the County's program will need to parallel the state standards, if only because state permits are required for water diversions.

**16. Impact HYDRO-4. Commercial cannabis manufacturing under the Program would result in a less than significant effect with mitigation on the introduction of sediment and other pollutants to surface flows and groundwater, and on the groundwater supplies and groundwater recharge. This impact would be less than significant with mitigation.** The County is already considering karst protection language for several existing regulations and inclusion of karst protection standards in commercial cannabis cultivation regulations and inclusion of karst protection standards mitigation measures in this EIR seems appropriate as well. Given that several public and private water sources are located adjacent to "M" zoned parcels in karst terrain where commercial manufacturing appears to be possible, the impact is currently not sufficiently mitigated. These standards could include but not be limited to:

- Site-specific geologic investigations
- Setback for any structures, roads and manufacturing from sinkholes or other karst features.
- Routing drainage away from karst features

See the following links for more information on this issue:

[http://santacruzcountyca.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=2578&highlightTerms=karst](http://santacruzcountyca.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=2578&highlightTerms=karst)  
<https://www.americangeosciences.org/sites/default/files/karst.pdf>

**17. Impact UE-1. The Program could increase demand or result in the expansion of facilities for water, wastewater, or solid waste services within the County due to licensing of commercial cannabis cultivation and product manufacturing activities. This impact would be less than significant with mitigation.** The additional water demand posed by allowance of tankered water, groundwater pumping and diversion of surface water (particularly during drought during both the wet and dry seasons) are not exhaustively analyzed in this document, nor have they been analyzed by local water purveyors. Therefore the impacts cannot be well-understood at this time. Given the existing dire situation with water supply in the County and the mitigations currently proposed, it seems speculative to say that the impact is less than significant with mitigation. Further analysis of the demand posed by the program would facilitate a more rigorous discussion of the true impacts on the water supply

**18. Sustained (and enhanced) enforcement program** - The most permissive alternative may be the most expedient way to get operations into the licensing program, but it seems like a logical stretch to say that it is therefore the environmentally superior alternative. The County will have serious challenges with program implementation on licensed grows and especially with enforcement on unlicensed grows with any project alternative. As the DEIR itself states, it is quite likely that, even with the most permissive project, illegal grows will be rampant due to the complexity of the license process, perceptions of excessive taxation, temptation of illegal out of state markets and related issues. These illegal grows operating in the shadows of legal grows will be even more difficult to enforce if they are scattered county-wide and the standards for legal grows are so low that differentiating between legal and illegal grows is challenging. Furthermore, while our recent experience with County Code Compliance has been mostly positive, it has also been our experience over the years that frequently there have been times when there were insufficient resources for Code Compliance to be adequately responsive to enforcement needs. At the very least, dedication of cannabis licensing and sales - related tax revenue should be implemented to help ensure some long-term viability of an enforcement program that is commensurate with the scale of the industry in the County, be it legal or not. Without this assurance, given the history of Code Compliance, the complex nature of the cultivation regulations and the scale of potential illegal cultivation under any project scenario, it seems somewhat speculative to conclude that impacts will be mitigated to a “less than significant with mitigation” level by a sustained and enhanced enforcement program.

Thank you for your consideration of these important issues. Please do not hesitate to contact me if you have any questions or concerns about these comments.

Sincerely,

Carol Hamilton - Monkerud  
Water Advisory Commission Chair