



# COUNTY OF SANTA CRUZ

## FISH AND WILDLIFE ADVISORY COMMISSION

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October 31, 2017

Cannabis Comments % Matt Johnston  
Santa Cruz County Planning Department  
701 Ocean St.  
Santa Cruz, CA 95060

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

Dear Mr. Johnston,

Thank you for the opportunity to comment on this DEIR. As you know, the Fish and Wildlife Advisory Commission (FWAC) is charged with advising the Board of Supervisors on policy matters as they regard protection of our County's great biodiversity. Therefore we take this matter very seriously. Given the existence in the baseline condition of a virtually unregulated, illegal industry and the state vs. federal legal status discord, this is obviously an incredibly complicated policy matter requiring a unique CEQA strategy. 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 further clarification or analysis:

**1. Mapping/GIS analysis.** Many of the figures have inappropriately identified parcels for their respective role in a future licensing program. For example, public 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.

Mappy errors should be corrected and, if the impacts analysis in this DEIR is GIS-based, then it should also be reviewed in preparation of the FEIR.

**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. 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), 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 covert, defensible and secure cultivation locations.

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 (including coastal areas) and out of mountainous areas, which provide other important functions for the County like water supply, cold water fisheries, recreation, etc.

Specifically with regard to zoning, this DEIR does not include an environmental review of the proposed zoning changes on parcels zoned RA, TP, and SU (Appendix C Proposed SCCC Section 13.10 amendments, pages 1 - 6). According to CEQA (and upheld by the courts), enactment and amendment of zoning ordinances are considered projects subject to CEQA. The zoning changes that are recommended in this EIR clearly “has potential for a direct physical change or a reasonably foreseeable indirect physical change in the environment”.

These zoning changes will affect over 100,000 acres (Table 2-10 page 2-40), and almost 200,000 acres in the “Environmentally Superior most Permissive Alternative” (Table 4.4, page 4-37), while the DEIR only reviews the potential environmental effects on less than 300 acres (Chapter 3, page 3.9).

The DEIR also states that any future increase in the number of cultivation licenses (or canopy increases) would be subject to further environmental review (Chapter 2, page 2-34). However, this future environmental review will take place in a legal context where the zoning has already been changed to allow such use. And, as stated in the DEIR notes (Appendix G, LCP policy 5.1.6): enforcing the County Sensitive Habitat Ordinance is limited by the landowner’s legal rights to use their land. The right to cultivate commercial cannabis will have a strong legal basis once the zoning is changed. Zoning limitations are one of the most effective means of limiting activities on private land.

Also, further project-specific review will always be evaluating incremental increases and will likely find that such impacts are less than significant, even as total cultivation area grows. This DEIR only looks at impacts for less than 300 acres (DEIR Chapter 3, DEIR Assumptions for the Program, Section: Calculating the Projected New and Expanded Cannabis Activities Beyond the Baseline Page 3.9). That is why most impacts are found to be less than significant or less than significant with mitigation.

Cumulative impacts are also found to be less than significant even though there is no real review of cumulative impacts. This DEIR does not evaluate the cumulative loss of wildlife habitat, wildlife habitat fragmentation, native plant community losses, stream sedimentation, and water use that will occur if even a small percentage of the total acres in the Santa Cruz mountains zoned to allow it are eventually cultivated. Cumulative impacts are not seriously considered in the two program alternatives and are dismissed in Sec. 3.4.6.4 by stating that there is no way to measure potential or actual habitat loss from the landscape. While all of the predictions in this document are based on presumptions and incomplete data, there is no real prediction of future cumulative impacts (particularly for Alternative 2). There are ways to examine potential cumulative impacts. For example, by looking at a few scenarios where a percentage of eligible habitat is cultivated and extrapolating that across the County. The Final Environmental Impact Report (FEIR) should include a more rigorous evaluation of cumulative impacts.

A more thorough review of the full extent of impacts related to the proposed zoning changes should be conducted for the FEIR. Alternatively, the zoning changes could be removed and the County could develop a new mitigation that includes granting waivers to the small number of pre-existing (yet compliant) sites covered by this DEIR. Any future expansion of the program requires further environmental review, and zoning changes can be revisited with new information on the effectiveness of the currently-proposed mitigation measures.

We also ask for a more thorough review of cumulative impacts beyond the initial 300 acres considered in the FEIR.

**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 currently proposed state standards.

SWRCB standards can be reviewed in more detail at the following links:

[https://www.waterboards.ca.gov/board\\_info/agendas/2017/oct/101717\\_6\\_final\\_draft\\_cannabis\\_policy\\_with\\_att\\_a\\_clean\\_version.pdf](https://www.waterboards.ca.gov/board_info/agendas/2017/oct/101717_6_final_draft_cannabis_policy_with_att_a_clean_version.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 ultimately 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 current state standards in the North Coast and Central Valley SWRCB regions.

Additionally, the State of CA has published that under MAUCRSA, Senate Bill 94 The Medicinal and Adult-Use Cannabis Regulation and Safety Act: 6 Compliance with Local Authority “Applicants are no longer required to demonstrate local authorization as a prerequisite to obtaining a state license.” Therefore even though the grower is supposed to have a county permit there will be times when a state permit is procured without a county permit. Local enforcement, especially without the zoning restrictions, will be difficult when someone with a state license feels empowered to go ahead and grow without a local permit.

A deeper analysis of the relationship between SB 94 and County regulations and their relative effects on the environment should be conducted prior to completion of the FEIR.

**4. Market branding.** Development of a market branding program similar to those used elsewhere would be a “value-added” or incentives 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, including prohibition on rodenticide use
- Solventless concentrate manufacturing
- Educational requirements for licensees such as the “Master Gardener” program [http://mbmg.ucanr.edu/Learn\\_To\\_Be\\_A\\_Master\\_Gardener/](http://mbmg.ucanr.edu/Learn_To_Be_A_Master_Gardener/)
- Enhanced forest preservation, water use, erosion control and related standards

Furthermore, this program would be an obvious “plug in” for third party certification by private parties or an agency like the Resource Conservation District. Some examples of similar programs can be found at the following links:

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

<http://www.humboldtsfinestfarms.com/sungrown/>

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

**5. Allowance for trucked water.** Trucked water should not be allowed for any commercial cultivation activities. Not only does trucked water open up substantial amounts 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. Finally, trucked water will exacerbate rural road problems that already plague our streams with excessive amounts of sediment. It is not practical to assume that - in spite of newly proposed road standards - increasing the density and frequency of use of rural roads by heavy equipment can be maintained on a long term scale without additional impacts to Santa Cruz County streams.

**6. 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 is likely to be significant. Furthermore, vegetation community shifts due to climate change predicted by Point Reyes Bird Observatory[1] indicate that redwood forests may be severely limited in the County in the future, thereby exacerbating this issue.

Therefore we request 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 beyond what is initially allowed or prohibiting all commercial cannabis operations on TPZ zoned parcels if timber production and active forest management is not maintained on such parcels.

**7. Impacts BIO-1 and BIO-1.1.** Although this DEIR only evaluates the impacts on a very limited number of cultivated acres, the program could have “adverse effects on unique, rare, threatened, or endangered plant or wildlife species”, and, “Impacts would be less than significant with mitigation.” Impacts have also been identified for “non-sensitive upland habitats” which according to the DEIR “represent a very small proportion of the upland habitats that support these species regionally. Thus, loss of regionally common habitat is not expected to result in a substantial effect on these species’ populations.”

Too many acres of our diverse native plant habitats in the Santa Cruz mountains are put at risk under this plan, and the limited scope of the DEIR doesn’t give a true picture of the future expansion of the program that is set in motion by proposed zoning changes on RA, TP, & SU properties. These “common habitats” include large connected areas used by wildlife, yet there is

no review of potential habitat fragmentation. Further analysis of the loss and fragmentation of “non-sensitive” habitats is needed to fully understand biological impacts.

The identified biological impacts all require complex and costly mitigations (that have limited likelihood of success). Evaluation of the costs associated with these mitigations (both to the licensee and the County) is necessary to determine if these mitigations are feasible.

**8. MM BIO-1.1a Special Status Species Habitat Assessment.** Relocating special status species (especially plants, and many animals) may not be a viable method of conservation according to many studies. While we acknowledge that this is standard practice in environmental regulatory permitting and CEQA contexts, it is not always biologically defensible and should be evaluated more critically.

Also, in this same section - enhancing the mitigation site can include “removal of invasive species in adjacent suitable but currently unoccupied habitat”. This can be a good tactic, but only if non-natives are monitored and managed over many years.

“The permanent protection and management of mitigation lands shall be ensured through an appropriate mechanism, such as a conservation easement or fee title purchase.” Please explain funding sources for this critical component.

All mitigations require that the licensee either hire a biologist, or request the County to do biological assessments, and if necessary, develop and implement mitigation and long-term monitoring plans. It is hard to imagine that the County staff will be able to fulfill these commitments, especially as the program grows in scale. Please analyze the projected revenue and costs associated with implementation of this program, as that will help determine the likelihood of their successful implementation and their indirect effects on bolstering the illegal cannabis market.

**9. 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 some flexibility may help facilitate the success of this mitigation.

**10. MM BIO B-1.1d Prevention and Spread of Non-Native Invasive Plants.** Update language to not require planting with native seed or nursery stock if there is a local native seed bank on the property or on adjacent properties. In that case let there be a requirement for

weeding non-natives during native recruitment with a requirement to plant native seeds if recruitment is not satisfactory.

**11. 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. This could be especially problematic for early winter run salmonids such as coho salmon - which are currently on the verge of extinction.

Therefore we request that the FEIR further consider alignment of this mitigation with state standards. Protecting non-forbearance period instream flows during drought (at a minimum) would make this mitigation more rigorous. Of course, water rights validated by the SWRCB and Streambed Alteration Agreements that include instream flow requirements for any surface water diversions will also be necessary to make this mitigation meaningful.

**12. MM BIO 4.2. No Cannabis Activities allowed within Sandhills Habitat or Salamander Protection Zone.** 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. As such, it provides benefits to impacts on water supply and also instream flow. Many of the streams in the Santa Margarita groundwater basin area support salmonids such as coho salmon, therefore we strongly support this mitigation. In addition, should new habitat protection zones be required in the future to protect our County's biodiversity, a mechanism for phasing out commercial cannabis cultivation and manufacturing activities in those areas should also be included in this mitigation.

**13. 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.

Please clarify how the ordinance will be implemented in the case of future HCP's.

**14. Impact HYDRO-1 and Impact HYDRO-4. Commercial cannabis cultivation/manufacturing 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/less than significant with mitigation.** Karst groundwater systems can make important contributions to instream flow in streams that support anadromous salmonids like endangered coho salmon - particularly in Laguna Creek, San Vicente Creek and on the east side of Ben Lomond Mountain.

Including karst protection standards in the relevant mitigations would not only help mitigate Hydro - 1 and Hydro - 4 impacts but also strengthen biological mitigations.

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:

<https://www.americangeosciences.org/sites/default/files/karst.pdf>

The County is already considering karst protection language for several existing regulations and inclusion of karst protection standards in commercial cannabis cultivation and manufacturing regulations and inclusion of karst protection standards mitigation measures in this DEIR seems appropriate as well.

[http://santacruzcountyca.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=2578&highlightTerms=karst](http://santacruzcountyca.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=2578&highlightTerms=karst)

**15. 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 in the FEIR.

**16. 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.

**17. 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 due to its intent to protect dry season anadromous salmonid rearing flows. However, there may be non-forbearance period flow issues to consider and the aforementioned 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.

**18. 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 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 and thereby allow a better understanding of the indirect effects on instream flows and impacts on anadromous salmonids and other aquatic biota that may precipitate from this added demand.

**19. Sustained (and enhanced) Enforcement Program.** Unfortunately, the DEIR examines how restrictions will lead to unregulated grows, but does not examine how the program's unwieldy requirements and opening up new zones to cultivation and manufacturing could also lead to more unregulated grows. The most permissive alternative may be the most expedient way to get some 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.

**20. Alternative 2**, The Most Permissive, is identified in this DEIR as the Environmentally Superior Alternative. This alternative gives county licensing officials discretion on minimum parcel size and setbacks (Section 4.2.3, page 4-33) which are as of yet undetermined. There is no way to estimate how such discretionary rules will impact natural resources, and no way to determine how the program will be administered.

We request that the FEIR and code clearly state how the program will be administered, that enforcement be prioritized and that the County reject the Most Permissive Alternative should the FEIR not provide more assurance that the impacts posed by it can be mitigated to a less than significant level with more certainty.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Berry', with a stylized, cursive script.

Chris Berry  
Fish and Wildlife Advisory Commission Chair

cc: WAC, COE, Kristen Kittelson

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[1] <http://data.prbo.org/cadc2/index.php?page=154>