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**DATE:** April 19, 2019

**TO:** Coastal Commissioners and Interested Parties

**FROM:** Alison Dettmer, Deputy Director  
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**SUBJECT:** **Humboldt County LCP Amendment LCP-1-HUM-16-0075-2 Part C (Commercial Cannabis Land Use Ordinance).**  
For the Commission meeting of Thursday May 9, 2019

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## SUMMARY OF STAFF RECOMMENDATION

The County of Humboldt (County) proposes to amend its local coastal program's (LCP) Implementation Program (IP) to add standards and regulations specifically governing commercial cultivation, processing, manufacturing, distribution, testing and sale of cannabis, as shown in [Appendix A](#). Because Humboldt County has six separate Local Coastal Area Plans (LUPs), the proposed IP amendment must be evaluated for conformity with each. LUP areas are shown in [Exhibit 1](#).

In general, the proposed amendment (1) specifically identifies authorized commercial cannabis uses, (2) identifies in which zones each use would be allowed, and (3) specifies the standards with which cannabis uses must comply, including standards for the protection of coastal resources. [Appendix D](#) provides a summary of allowed uses by zoning district under the proposed amendment.

The proposed amendment specifically identifies the commercial cannabis activities that would be allowed in the following zoning districts: Agriculture Exclusive (AE), Rural Residential Agriculture (RA), Commercial General (CG), Light Industrial (ML), General Industrial (MG), and Coastal-Dependent Industrial (MC) as an "interim use." Described as "*a highly regulated specialty crop*," under the proposed amendment, the commercial cultivation of cannabis and processing of cannabis "*shall not be allowed as a principal permitted use under the General Agriculture use type classification...*". Thus, the proposed amendment expressly identifies commercial cannabis cultivation as a "unique" agricultural use and includes specific regulations to address issues that are not typically applicable to other agricultural products, such as concerns related to security, nuisance odors, proximity to at-risk populations, adequacy of water supply, and other issues.

Commercial cannabis cultivation in the AE and RA zoning districts would generally be limited to parcels 20 acres or larger and would be allowed maximum cultivation areas of one acre. Commercial cultivation in excess of one acre would be allowed on parcels greater than 320 acres in size and also on AE parcels of any size that have greenhouse structures lawfully existing prior to January 1, 2016. New greenhouses would be allowed for commercial cultivation, except on agricultural lands designated for grazing uses (AEG) in certified LUPs. On agricultural lands with prime soils, the cumulative area allowed for commercial cultivation would be limited to 20% coverage of prime soils on the parcel, and removal of native soil and replacement with manufactured soil would be prohibited. No water diversions for primary irrigation would be allowed, and wells to be used for irrigation must demonstrate no drawdown effects on wells on adjacent properties.

All commercial cannabis activities (cultivation and non-cultivation activities) would require adherence to various setback requirements, including setbacks from ESHA and wetlands (100 feet); coastal access sites, parks, and commercial recreational facilities (600 feet); Tribal Cultural Resources (600 feet); and Tribal Ceremonial Sites (1,000 feet). In addition, the proposed amendment includes numerous performance standards related to roads system, biological resources protection, hazardous materials management, stormwater management, archaeological resources, light pollution control, energy use, noise, water storage, wells, soils management, and other standards.

The proposed amendment also includes incentives for provisional permitting of unauthorized “pre-existing” cultivation sites (those determined to be in existence between 2006 and 2015 to encourage operators of unauthorized cultivations to apply for cannabis permits. The incentives include providing a grace period for applications to be filed prior to a local enforcement action being taken against unpermitted operations. For provisional permit applicants with an unauthorized “pre-existing” cultivation site that does not meet the eligibility and siting requirements for commercial cultivation under the proposed amendment, applicants may “retire, remediate, and relocate” (under the proposed “RRR” program) the unpermitted cultivation site to an “environmentally superior site” that meets the eligibility and siting requirements of the proposed amendment. The provisional permit application for the RRR program must include a plan for the full environmental remediation of the removal site within two years, and also requires a bond to be posted by the operator “in a sufficient amount that will allow the County to contract to the complete the [restoration] work” in the event that the operator of the removal site fails to do so.

Finally, the proposed amendment as submitted includes specific caps on the total number of commercial cannabis cultivation permits to be issued, which varies by LUP area. Caps range from zero permits (Trinidad Area Plan) to 112 permits (Eel River Area Plan). Maximum acreages for each LUP area also are specified and range from zero (TAP) to 39 acres (ERAP). The specified caps originate from overall County-wide commercial cannabis cultivation permit cap. Overall, in the coastal zone, the proposed amendment would allow at most 171 commercial cannabis cultivation permits (outdoor, indoor, mixed-light, including provisional permits) that total a maximum of 61 acres in size. Most permits would be allocated to the Humboldt Bay and Eel River LUP areas, since this is where most of eligible agricultural and industrial parcels with the appropriate zoning and minimum parcel sizes are located. Relative to the overall distribution

and acreages of lands available in each of the five LUP areas where cannabis activities would be allowed, there would be relatively few permits and small acreages overall that would be dedicated to commercial cannabis cultivation activities.

Although the proposed amendment establishes numerous standards that address potential ESHA, wetland, water quality, and other coastal resource impacts associated with cannabis-related development, the amendment as submitted raises a number of issues of conformity with the certified LUPs. These issues relate to land use compatibility, stream protection, visual resources, and other issues. Commission staff has coordinated with County staff to resolve these concerns and County planning staff has offered various “friendly” modifications to address the issues as well as to clarify the proposed amendment and correct drafting errors ([Appendix B](#)).

Commission staff has incorporated the County staff’s proposed changes into ten staff recommended suggested modifications to the amendment to enable it to conform with and adequately carry out the six certified Local Coastal Area Plans. [Appendix C](#) shows all specific suggested modification text changes in full:

- Suggested Modification 1 includes several suggested modifications related to land use compatibility to ensure that cannabis uses and activities would be confined to compatible zoning districts in conformance with the land use designations and policy requirements of the six existing certified LUPs for Humboldt County and the existing certified IP standards;
- Suggested Modification 2 would expressly acknowledge the requirement for a CDP throughout the proposed amendment where other permit requirements are listed for commercial cannabis activities, if cannabis activities meet the definition of development;
- Suggested Modification 3 would (i) delete an exception that would allow non-soil-dependent uses on prime agricultural soils; and (ii) require cannabis manufacturing activities in the AE zone to be limited to the processing of raw cannabis materials grown onsite within the permitted commercial cannabis cultivation area;
- Suggested Modification 4 would (i) require setbacks from wetlands and ESHA to conform with prescribed LUP setback requirements; (ii) specify within the amendment text various standards to avoid or minimize significant impacts to biological resources from proposed commercial cannabis activities; and (iii) delete an exception from the biological resources performance standards for commercial and industrial lands that is inconsistent with the LUP policy requirements for wetlands and ESHA protection;
- Suggested Modification 5 would delete an exception that allows cannabis irrigation from diversionary sources (streams and groundwater with connectivity to streams);
- Suggested Modification 6 would strengthen the performance standards for (i) stormwater management; (ii) waste management; and (iii) contingency plan requirements for the redevelopment of commercial and industrial sites;

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- Suggested Modification 7 includes suggested modifications related to adequacy of water supply to support the specifically defined cannabis uses authorized in the particular zoning district;
- Suggested Modification 8 would (i) extend application of the light pollution performance standards relating to security lighting beyond rural residential areas to all areas; (ii) require that greenhouses and fences be sited and designed to protect views to and along the ocean and scenic coastal areas and be visually compatible with the character of surrounding areas; and (iii) specify that an exception to the permit cap in areas served by the Humboldt Bay Municipal Water District shall only apply on MG and CG properties to maintain the scenic character of open agricultural bottomlands around Humboldt Bay and the Mad River consistent with LUP requirements.
- Suggested Modification 9 would require that any reduction or waiver of the 600-foot setback requirement from public parks, coastal access points, and commercial recreational facilities shall ensure conformity with all applicable LUP policies.
- Suggested Modification 10 includes various corrections and clarifications to the amendment language.

County planning staff has indicated its agreement with the Commission staff's recommended suggested modifications summarized above and discussed in the below findings. Therefore, staff recommends that the Commission reject the proposed IP amendment as submitted, and approve it only as modified to ensure that the ordinance conforms with and is adequate to carry out the County's six certified LUPs.

### **DEADLINE FOR COMMISSION ACTION**

On December 30, 2016, Humboldt County transmitted its Commercial Cannabis Land Use Ordinance to the Commission under Implementation Program (IP) Amendment Application No. LCP-1-HUM-16-0075-2. This IP amendment application consists of three parts: (1) Part A amends existing regulations related to indoor cultivation for personal use and adds specific regulations for outdoor cultivation for personal use; (2) Part B adds specific regulations governing facilities involved in retail distribution of cannabis; and (3) Part C adds new regulations for commercial activities associated with cultivation, processing, manufacturing, and wholesale distribution of cannabis.

On December 21, 2018, Commission staff determined all three parts of the proposed LCP amendment to be complete. At the February 8, 2019 hearing, the Commission granted a six-month time extension to act on all three parts of the subject amendment pursuant to Coastal Act Section 30517. The deadline for Commission action on all three parts of the proposed IP amendment application is August 19, 2019.

### **ADDITIONAL INFORMATION**

For further information, please contact Melissa Kraemer at the Commission's North Coast office in Arcata at (707) 826-8950. The amendment is available for review at the Arcata office upon request.

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[Appendix F: Summary of Local Regulation of Cannabis](#)

[Appendix G: Substantive file documents](#)

## **EXHIBITS**

[Exhibit 1 – Humboldt County LUP Areas](#)

[Exhibit 2 – Maps of Prime Agricultural Soils](#)

[Exhibit 3 – Maps of Coastal Scenic Areas & Coastal View Areas](#)

[Exhibit 4 – Resolutions of Adoption/Transmittal](#)

[Exhibit 5 – Adopted Ordinance No. 2598](#)

**I. MOTIONS, RECOMMENDATIONS, AND RESOLUTIONS**

**A. DENIAL OF IP AMENDMENT NO. “LCP-1-HUM-16-0075-2 PART C” AS SUBMITTED**

Motion 1:

*I move that the Commission reject Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part C as submitted by the County of Humboldt.*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the implementation program amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution 1 to Deny the IP Amendment as submitted:

The Commission hereby denies certification of Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part C as submitted for the County of Humboldt on grounds that the implementation program amendment as submitted does not conform with, and is inadequate to carry out the provisions of the certified land use plan. Certification of the implementation program amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the implementation program amendment as submitted.

**B. CERTIFICATION OF IP AMENDMENT NO. “LCP-1-HUM-16-0075-2 PART C” WITH SUGGESTED MODIFICATIONS**

Motion 2:

*I move that the Commission certify Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part C for the County of Humboldt if it is modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the implementation program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution 2 to Certify the IP Amendment with Suggested Modifications:

The Commission hereby certifies the Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part C for the County of Humboldt if modified as suggested on grounds that the implementation program as amended, conforms with and is adequate to carry out the provisions of the certified land use plan. Certification of the

implementation program amendment will comply with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the implementation program amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

## **II. PROCEDURAL ISSUES**

### **A. STANDARD OF REVIEW**

Section 30513 of the Coastal Act addresses certification of the Implementation Program (IP) portion of a Local Coastal Program (LCP) in part as follows:

*The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...*

*...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken.*

*The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions...*

Section 30514 of the Coastal Act addresses LCP amendments in part as follows:

*(a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission.*

*(b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513...*

The standard of review for the proposed amendment to the IP portion of the County of Humboldt certified LCP (in this case, changes to Coastal Zoning Regulations, Chapter 3) is whether the IP as amended conforms with and is adequate to carry out the provisions of the six Local Coastal Area Plans in the Land Use Plan (LUP) portion of the County's LCP. The County has six different certified LUPs (from north to south): (1) North Coast Area Plan (NCAP); (2) Trinidad



Area Plan; (3) McKinleyville Area Plan (MAP); (4) Humboldt Bay Area Plan (HBAP); (5) Eel River Area Plan (ERAP); and (6) South Coast Area Plan (SCAP). Maps of the six LUP planning areas are included as [Exhibit 1](#).

## **B. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in the preparation, approval, certification and amendment of any LCP. The County Planning Department staff held initial community meetings and scoping meetings on the development of this LCP amendment (in conjunction with the development of the inland cannabis ordinance) on 5/12/17 (in Eureka), 10/2/17 (in Garberville), 10/12/17 (in Garberville), and 10/18/17 (in Willow Creek). The County Planning Commission conducted thirteen public hearings on the development of the LCP amendment (in conjunction with the development of the inland cannabis ordinance), including on 4/6/17, 6/1/17, 9/7/17, 9/21/17, 10/5/17, 10/19/17, 11/2/17, 11/16/17, 11/30/17, 12/7/17, 12/14/17, 11/8/18, and 1/18/18. The County Board of Supervisors held seven public hearings, including on 9/13/16, 4/11/17, 6/13/17, 2/27/18, 3/19/18, 4/10/18, and 5/8/18. All twenty public hearings were noticed to the public consistent with Sections 13551 and 13552 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission hearing for this LCP amendment has been distributed to all known interested parties.

## **C. TRIBAL CONSULTATION**

### County's Tribal Consultation

According to the Final EIR adopted for the proposed amendment (Ascent Environmental, Inc. 2018), the County initiated its consultation with those tribes that had expressed interest in notification regarding future projects within the County, pursuant to Assembly Bill 52, beginning in 2017. On 6/23/17, the County sent letters to Bear River Band of Rohnerville Rancheria; Big Lagoon Rancheria; Blue Lake Rancheria; Hoopa Valley Tribe; Karuk Tribe; Round Valley Indian Tribes of the Round Valley Reservation; Intertribal Sinkyone Wilderness Council; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Tsnugwe Council; Wiyot Tribe; and Yurok Tribe. The Blue Lake Rancheria, Karuk Tribe, and Wiyot Tribe undertook formal consultation with the County under AB 52 on the proposed ordinance's potential impact on Tribal Cultural Resources (TCRs).<sup>1</sup> As a result of the formal consultation, the following standards were included in the adopted ordinance: (1) provisions for tribal consultation and notification of the tribes of permit applications for commercial cannabis operation sites within 1,000 feet of the boundary of tribal Reservations, Rancherias, or Areas of Traditional Tribal Cultural Affiliation;<sup>2</sup> (2) establishment of a 600-foot setback for all commercial cannabis sites

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<sup>1</sup> Under the proposed adopted ordinance, "Tribal Cultural Resources" means sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under sections 21074, 21083.2(g), and 21084.1 of the Public Resources Code, respectively. Tribal Cultural Resource shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body. This definition is consistent with the definition included in the Commission's adopted Tribal Consultation Policy.

<sup>2</sup> Under the proposed adopted ordinance, an Area of Traditional Tribal Cultural Affiliation is defined as "geographic areas of historic occupancy and traditional cultural use by local indigenous peoples (California Native American Tribes), as shown on the latest mapping prepared by the Planning & Building Department, created from geographic information supplied by the Tribes of Humboldt County"

from TCRs; and (3) establishment of a 1,000-foot setback for all commercial cannabis sites from Tribal Ceremonial Sites.<sup>3</sup>

The Yurok Tribe was not satisfied with the outcome of the County's consultation, because, among other issues, the Tribe would prefer to have more authority over the County's commercial cannabis permit applications within the Tribe's Area of Traditional Tribal Cultural Affiliation. As a result of the disagreement, the County adopted (on 5/08/18 and 6/19/18) an interim ordinance for a 1-year temporary moratorium<sup>4</sup> on accepting cannabis permit applications within the Yurok Area of Traditional Tribal Cultural Affiliation outside of the coastal zone.<sup>5</sup> The County and the Yurok Tribe are still working to reach an agreement on cannabis permitting for inland areas of concern to the Tribe.

#### Commission's Tribal Consultation

During the process of reviewing the IP amendment application and developing this recommendation, Commission staff reached out via email to representatives from Native American Tribes and affiliated contact groups understood to have current and/or historic connections to the project area. [Appendix E](#) includes a summary of the tribes/groups who were contacted by Commission staff, the initial date(s) of contact, and the date(s) of initial reply from tribes/groups.

In addition, an in-person joint tribal meeting between various tribes and Coastal Commission staff was held on 3/28/19 in Eureka. The meeting was attended by tribal representatives from the Yurok, Wiyot, and Hoopa Valley Tribes, and the County Director of Planning and Building also was present. At the meeting, Commission staff presented an overview of the Commission's LCP amendment application review process, the County's proposal including the provisions providing specific protections for tribal cultural resources, the Commission's recently adopted tribal consultation policy, and background on existing LCP resource protection policies. Commission and County staff answered questions, and there was discussion of the proposed amendment and issues of concern to the tribes. Issues of concern expressed by the Tribes relate to (1) timing of referrals and noticing for commercial cannabis permit applications, and (2) permitting of commercial cannabis operations in Areas of Traditional Tribal Cultural Affiliation. These issues are discussed in Finding IV-C-vi (Archaeological Resources).

### **D. PROCEDURAL REQUIREMENTS**

Pursuant to section 13551(b) of Title 14 of the California Code of Regulations, the County resolution for submittal may specify that a LCP amendment will either require formal local

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<sup>3</sup> Under the proposed adopted ordinance, "Tribal Ceremonial Sites" means locations where ceremonial activities are conducted by a California Native American Tribe within their Area of Traditional Tribal Cultural Affiliation.

<sup>4</sup> The temporary moratorium on accepting cannabis permit applications within the Yurok Area of Traditional Tribal Cultural Affiliation outside of the coastal zone expires on 5/04/19.

<sup>5</sup> All of the non-trust lands of the Yurok Tribe Reservation are outside of the Humboldt County coastal zone, though the Yurok Tribe's Area of Traditional Tribal Cultural Affiliation extends into the Humboldt County coastal zone throughout the North Coast Area Plan LUP and Trinidad Area Plan LUP planning areas. On 10/17/17 and 11/14/17, the County adopted and then extended an interim urgency ordinance to amend the Coastal Zoning Regulations (IP section 313-54) to prohibit all commercial cannabis activities within the coastal zone of the County for a period not to exceed two years. This includes the coastal lands that are within the Yurok Tribe's Area of Traditional Tribal Cultural Affiliation. The interim coastal ordinance expires on 10/17/19.

government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code sections 30512, 30513, and 30519. In this case, the County's Resolution of Transmittal of the IP amendment to the Commission for certification states that the amendment will take effect immediately upon Commission action. Therefore, if the Commission certifies the LCP amendment as submitted, no further County Board action will be necessary. Should the Commission certify the LCP amendment subject to suggested modifications, acceptance of these suggested modifications by the County Board of Supervisors and a determination by the Executive Director of compliance with section 13544 of the Commission's regulations will be required in order for the amendment to take effect. Should the Commission deny the LCP Amendment as submitted without suggested modifications, no further action is required by either the Commission or the County, and the LCP amendment will not become effective.

### III. SUMMARY OF SUGGESTED MODIFICATIONS

The Commission's suggested modifications to the proposed IP amendment are included as [Appendix C](#) to this staff report and summarized below. If Humboldt County accepts each of the suggested modifications within six months of Commission action (i.e., by November 9, 2019), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished.

In summary, the Commission suggests the following ten modifications, generally grouped by policy issue, to the County's adopted ordinance. County planning staff have been supportive of the changes summarized below and discussed in the below findings and have offered additional "friendly" modifications to clarify the proposed amendment and correct drafting errors (e.g., see [Appendix B](#)). The proposed IP amendment, with the identified suggested modifications, is adequate to carry out the County's six certified LUPs. See [Appendix C](#) for the Commission's specific suggested modification text changes in full (the specific sections with suggested modifications in Appendix C are referenced for each suggested modification).

1. Suggested Modification 1 (discussed in Finding IV-C-i-(b) below) includes several suggested modifications related to **land use compatibility** to ensure that cannabis uses and activities would be confined to compatible zoning districts in conformance with the land use designations and policy requirements of the six existing certified LUPs for Humboldt County and the existing certified IP standards. These suggested modifications include deleting the allowances for (i) commercial cultivation in the Commercial General (CG) zoning district where agricultural cultivation is not currently allowed unless the cultivation activity is part of a permitted Microbusiness use); (ii) provisionally permitting unauthorized "pre-existing" cultivation sites on lands reserved for Agriculture Exclusive/Grazing (AEG) uses under the certified LUPs; and (iii) cannabis Bed & Breakfast establishments in zones where, under the existing certified LCP, visitor-serving Bed and Breakfast Establishments are a not a permitted use. Suggested Modification 1 also includes specifying the zoning districts where Adult Use Cannabis Retail Sales are allowed as only those non-priority use zoning districts in the existing certified LCP where

similar retail uses are permitted. (See Appendix C sec. 55.4.6.2.1, .4.6.5, .4.6.5.1, .4.6.5.7, .4.10, and .4.10.6.)

2. Suggested Modification 2 [discussed in Findings IV-C-i-(a)] would expressly acknowledge **requirements for a CDP** by adding references to CDP requirements throughout the proposed amendment as applicable to ensure the proposed standards comply with the certified LCP and Coastal Act with respect to the need for a CDP for cannabis activities that involve development. (See Appendix C sec. 55.4.3.8, .4.3.10, .4.3.11, .4.5.2, .4.5.6, .4.5.7, .4.5.6.1.2(a), .4.5.6.1.2(b), .4.6.2.2(a), .4.7.1, .4.7.2, .4.8.1, .4.8.1.2, .4.8.2.1, .4.8.2.2(a), .4.8.2.3, .4.10.1, .4.10.2, .4.10.3, and .4.12.9.)
3. Suggested Modification 3 (discussed in Findings IV-C-i-(b) and IV-C-iv-(b) below) includes suggested modifications related to the **protection of agricultural resources**, including (i) deleting the exception to the native soil planting requirement for commercial cannabis cultivation on prime agricultural soils to avoid the allowance of non-soil-dependent uses on prime agricultural soils in order to maintain the maximum amount of prime agricultural land in agricultural production consistent with the certified LUP policy requirements; and (ii) requiring cannabis manufacturing activities in the AE zoning district to be limited to the processing of raw cannabis materials grown onsite within the permitted cannabis cultivation area. (See Appendix C sec. 55.4.6.4.3 and .4.6.1.1.)
4. Suggested Modification 4 (discussed in Finding IV-C-ii-(b) below) includes suggested modifications relating to **wetlands and ESHA protection** including (i) requiring setbacks from wetlands and ESHA to conform with certified LUP setback requirements for wetlands, riparian corridors, and other types of ESHA, which, under existing certified LUP policy requirements, may exceed 100 feet in certain cases, depending on the type of ESHA and site-specific factors that may necessitate a larger setback; (ii) specifying within the amendment text the various standards identified in the FEIR adopted for the proposed amendment (Ascent Environmental, Inc. 2018) as necessary to avoid or minimize significant impacts to biological resources from proposed commercial cannabis activities; and (iii) deleting an exception from the biological resources performance standards for commercial and industrial lands that is inconsistent with the LUP policy requirements for wetlands and ESHA protection. (See Appendix C sec. 55.4.5.1.3, .4.12.1.10, .4.6.4.4(f), .4.12.9, .4.12.1.10(a)-(n), .4.12.6, and .4.12.16.)
5. Suggested Modification 5 (discussed in Finding IV-C-ii-(b) below), which relates to **protections for streams**, deletes an exception that allows cannabis irrigation from diversionary sources (streams and groundwater with connectivity to streams), requiring that irrigation shall exclusively utilize stored water from non-diversionary sources in all cases to protect groundwater supplies and stream habitat consistent with the certified LUPs. (See Appendix C sec. 55.4.6.3.2, .4.12.7, and .4.12.8.)
6. Suggested Modification 6 (discussed in Finding IV-C-ii-(b) below) includes suggested modifications related to **water quality protection**, including strengthening the performance standards for (i) stormwater management; (ii) waste management; and (iii) contingency plan requirements for the redevelopment of commercial and industrial sites

with the potential to harbor legacy contamination in soil and groundwater. (*See Appendix C sec. 55.4.12.1.12, .4.12.1.13, and .4.12.1.11.*)

7. Suggested Modification 7 (discussed in Finding IV-C-iii-(b) below) includes suggested modifications related to the **adequacy of water supply** to support specific cannabis uses in particular zoning districts without drawdown impacts on neighboring wells. (*See Appendix C sec. 55.4.4 and .4.12.9.*)
8. Suggested Modification 8 (discussed in Finding IV-C-v-(b) below) includes suggested modifications related to **visual resources protection**, including (i) extending the light pollution performance standard related to security lighting beyond rural residential areas to all areas; (ii) requiring that where greenhouses and/or fences are proposed as part of the permitted open-air activities, structures shall be sited and designed to protect views; and (iii) specifying that the exception to the permit cap in areas served by the Humboldt Bay Municipal Water District only applies to MG and CG properties served by the District, which will ensure the exceptions do not greatly expand the number of permitted commercial cannabis operations beyond the specified cap limits, to help maintain the scenic character of open agricultural bottomlands around Humboldt Bay and the Mad River consistent with LUP requirements. (*See Appendix C sec. 55.4.6.1.2(a), .4.6.8 and .4.12.4(b).*)
9. Suggested Modification 9 (discussed in Finding IV-C-vii-(b) below) includes a suggested modification related to **public access protection**. (*See Appendix C sec. 55.4.6.4.4(f).*)
10. Suggested Modification 10 includes **various corrections and clarifications** to the amendment language by, in part, (i) deleting references to zoning districts or standards applicable to earlier drafts of the ordinance but which were not adopted under the proposed amendment and thus are not applicable to the proposed amendment; (ii) clarifying and correcting definitions, terminology, and numbering as needed; and (iii) adding both cross-references to applicable code sections as well as minor wording and organizational changes to increase clarity and ease of use. (*See Appendix C various sections throughout.*)

#### **IV. AMENDMENTS TO THE IMPLEMENTATION PROGRAM AND FINDINGS FOR DENIAL OF THE SUBJECT IP AMENDMENT AS SUBMITTED AND CERTIFICATION IF MODIFIED**

The Commission finds and declares as follows for proposed Implementation Program (IP) amendment LCP-1-HUM-16-0075-2 Part C:

##### **A. BACKGROUND AND AMENDMENT DESCRIPTION**

###### **i. Local Regulation of Cannabis and Timeline of Submittal to the Commission**

Humboldt County first adopted regulations pertaining to cannabis (marijuana) in 2011. The County's "Commercial Cannabis Land Use Ordinance" (CCLUO) was adopted in four separate

subject matter phases, including: Phase 1 regarding indoor cultivation for personal use; Phase 2 regarding outdoor cultivation for personal use; Phase 3 for dispensaries; and Phase 4 for commercial cultivation, processing, manufacturing, and distribution of cannabis. For each phase, the County has adopted separate ordinances for the coastal zone and inland areas of the County. Generally, the coastal zone ordinance for each phase was modeled based on the corresponding inland area ordinance.

The ordinance for each phase was first adopted after cannabis activities related to personal medical use had been legalized within California but prior to the voter initiative in 2016 that legalized at the state level cannabis activities related to adult recreational use. After passage of the initiative, the County adopted new ordinances amending each phase of the CCLUO to incorporate provisions regulating both personal medical use and adult recreational use of cannabis. The history of the County's adoption and transmittal of coastal cannabis ordinances for certification by the Commission as amendments to the certified IP is summarized below (and see [Appendix F](#)).

#### CCLUO Phase 1 (Indoor Cultivation for Personal Medical Use)

The County adopted regulations for the indoor cultivation of cannabis for personal medical use on 12/13/11. The Commission certified these regulations (County Ordinance No. 2468) for the coastal zone under Minor IP Amendment No. "HUM-MIN-1-12" on 3/9/12.

#### CCLUO Phase 2 (Outdoor Cultivation for Personal Medical Use)

The County adopted regulations pertaining to the outdoor cultivation of cannabis for personal medical use on parcels five acres in size and smaller in the coastal zone on 10/28/14 (Ordinance No. 2523), and subsequently transmitted the amendment for certification on 12/30/16. The adopted ordinance also includes certain changes to the previously certified Phase 1 regulations (County Ordinance No. 2468). Over the past two years, the County has adopted new IP text amendments that affect the previously transmitted IP amendment for Phase 2, and the County staff also has recently offered proposed changes (friendly modifications) to the transmitted amendment (summarized in [Appendix F](#)). On 12/21/18, Commission staff determined that the County had provided sufficient information to deem the IP amendment submitted. On 2/8/19, the Commission granted a six-month time extension to act on the IP amendment application. The Commission will consider Part A of LCP-1-HUM-16-0075-2 at or before the August 7-9, 2019 Commission meeting.

#### CCLUO Phase 3 (Medical Dispensaries)

The County adopted coastal regulations pertaining to medical dispensaries on 7/19/16 under Ordinance No. 2554 and transmitted the amendment for certification on 12/30/16. Similar to the ordinance transmitted as Part A of the IP Amendment submittal, over the past two years, the County has adopted new IP text amendments that modify the previously transmitted IP amendment for Phase 3, and the County staff also has recently offered proposed changes (friendly modifications) to the submittal (summarized in [Appendix F](#)). On 12/21/18, Commission staff determined that the County had provided sufficient information to deem the IP amendment submitted. On 2/8/19, the Commission granted a six-month time extension to act on the IP amendment application. The Commission will consider Part B of LCP-1-HUM-16-0075-2 at or before the August 7-9, 2019 Commission meeting.



CCLUO Phase 4 (Subject IP Amendment Application for Commercial Cannabis Activities)

The County adopted regulations pertaining to the commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use on 9/13/16 under Ordinance No. 2559 (locally referred to as “Cannabis 1.0”). The County subsequently transmitted the amendment for certification on 12/30/16. Over the past two years, the County has repealed its previously adopted and transmitted IP amendment for Phase 4 (Ordinance 2559), adopted and transmitted new regulations for Phase 4 (Ordinance No. 2598) incorporating provision for commercial adult recreational use activities. In addition, the County staff also has recently offered proposed changes (friendly modifications) to the submittal ([Appendix B](#)). The proposed amendment is described below, and [Appendix F](#) provides added detail on the history of changes to this proposed amendment.

**ii. Description of Proposed IP Amendment (LCP-1-HUM-16-0075-2 Part C)**

The subject IP amendment application (Part C) is the largest component of Humboldt County’s four-part CCLUO. The proposed amendment, shown in [Appendix A](#), would add regulations specifically pertaining to the commercial cultivation, processing, manufacturing, distribution, testing and sale of cannabis. Commercial cannabis cultivation could occur throughout the County’s coastal zone, but it would be limited to certain zones with certain minimum parcel sizes and maximum cultivation area size limits. A CDP would be required for commercial cannabis activities in most cases.<sup>6</sup> [Appendix D](#) includes tables summarizing allowed commercial cannabis uses, permit requirements (including permit requirements as proposed to be modified by the Commission’s suggested modifications), and cultivation area size limits by zoning district.

In general, the proposed amendment (1) specifically defines authorized commercial cannabis uses [cannabis cultivation (outdoor, indoor, and mixed-light); cannabis research garden; community propagation center; distribution facility; testing and research laboratories; manufacturing (flammable extraction, non-flammable extraction, and infusion); microbusiness; nursery; and processing facility (onsite and offsite)], (2) specifies in which zoning districts each use would be allowed, and (3) specifies the standards with which cannabis uses must comply, including standards for the protection of coastal resources.

Zoning districts where commercial cannabis activities would be allowed

Commercial cannabis activities would be allowed throughout the County coastal zone in the following zoning districts: Agriculture Exclusive (AE), Rural Residential Agriculture (RA), Commercial General (CG), Light Industrial (ML), General Industrial (MG), and Coastal-

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<sup>6</sup> As adopted on May 8, 2018 by the County and transmitted to the Commission, the proposed amendment does not include the requirement to obtain a CDP for commercial cannabis cultivation in all cases. However, on and after 12/09/19, the County staff submitted County staff proposed changes to the adopted ordinance, including provisions for CDP requirements for commercial cannabis activities. Taking into account the changes offered by County staff, the only instance where a CDP would not be required would be for up to 5,000 square feet of commercial indoor cultivation in CG, ML and MG zones “within an existing lawfully constructed structure where it is not considered development under the Coastal Act” [see proposed section 55.4.8.1.2(a) in [Appendix C](#)], because there would be no new construction and no change in the density or intensity of use.

Dependent Industrial (MC) as an “interim use.”<sup>7</sup> Minimum parcel size requirements vary depending on the type of activity, as summarized below and in [Table 1](#).

#### Commercial cultivation activities

Section 55.4.3.8 of the proposed amendment describes the commercial cultivation of cannabis as “a highly regulated specialty crop” for which cultivation and processing “shall not be allowed as a principal permitted use under the General Agriculture use type classification...” Outdoor, mixed-light, and indoor commercial cultivation would be allowed in the AE, RA, CG, ML, MG, and MC zoning districts. Commercial cannabis cultivation could only occur on MC lands subject to the recently-certified interim use IP provisions (sec. 313-104.1), which allow for the use of vacant or underutilized MC lands by short-term, temporary, conditionally permitted, non-coastal-dependent interim uses in a manner that protects the current and long-term use of MC lands for priority coastal-dependent uses. For outdoor and mixed-light commercial cultivation on agricultural and rural residential lands, the minimum parcel size would be 20 acres, and the maximum size of the cultivation area would be restricted to one acre, in most cases. For outdoor and mixed-light commercial cultivation on commercial and industrial lands, the minimum parcel size would be 2 acres, and there would be no cultivation area size limit. Indoor commercial cultivation on AE and RA lands would be allowed on parcels of any size but would be limited to a 5,000 square-foot area within non-residential structures lawfully existing prior to January 1, 2016. Indoor commercial cultivation on commercial and industrial lands also would be allowed on parcels of any size, and no cultivation area size limit is specified. New greenhouses would be allowed for commercial cultivation, except on agricultural lands designated for grazing uses (AEG) in certified LUPs (i.e., all agricultural lands within the South Coast Area Plan and some lands on Table Bluff in the Humboldt Bay and Eel River areas). Commercial cultivation sites must be confined to areas of the parcel where the slope is 15 percent or less. On agricultural lands with prime soils, the cumulative area allowed for commercial cannabis cultivation would be limited to 20% coverage of prime soils on the parcel, and removal of native soil and replacement with manufactured soil would be prohibited. No water diversions from streams for primary irrigation would be allowed, and wells to be used for irrigation would only be allowed if it has been demonstrated that no drawdown effects will occur on wells on adjacent properties.

#### Accommodations for unauthorized “pre-existing” cultivation; relocation to more suitable sites

To encourage unauthorized cannabis cultivation operations existing prior to adoption of the proposed commercial cannabis regulations (the vast majority of which are outside of the coastal zone)<sup>8</sup> to come into compliance with the amendment standards, the proposed amendment includes provisions to encourage permitting of, on a provisional basis, unauthorized “pre-

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<sup>7</sup> The zoning districts where commercial cannabis activities would **not** be allowed include the Residential Single-Family (RS), Residential Multi-Family (RM), and various other residential zoning districts; the Commercial Recreation districts (CR and CRD); the Public Facility (PF) and Public Recreation (PR) districts; the Natural Resources (NR) zoning district; and the timberland resources zoning districts (TC and TPZ).

<sup>8</sup> According to the January 2018 Final EIR adopted for the proposed IP amendment (Ascent Environmental 2018), a study of 2012 satellite imagery of a random sample of less than half of the County’s 112 sub-watersheds revealed the presence of at least 4,428 unauthorized cannabis cultivation sites. The study concluded that it was reasonable to extrapolate almost double that number as existing in Humboldt County in 2012 (Mintz 2016). Anecdotal information received from observations by local regulatory and enforcement agencies suggests a pattern of rampant growth in the cannabis industry during the past decade, with some estimates of as many as 10,000 to 15,000 cultivation operations currently (2018) in existence.



existing” cultivation sites, which are defined as those unpermitted cultivation sites that can be confirmed (e.g., through aerial photos) to have been in existence between January 1, 2006 and December 31, 2015. Unauthorized sites established in 2016 or later, or any unauthorized sites established prior to 2006, also would be recognized as unpermitted but would not be considered eligible for provisional permitting pursuant to the proposed amendment. Unpermitted commercial cannabis operations in all cases would be subject to potential penalties and enforcement. However, if a site meets all applicable eligibility criteria (e.g., minimum 20-acre parcel size and zoning district), setback requirements, and certain performance standards, an applicant could apply for a special permit and CDP to provisionally permit the unauthorized pre-existing commercial cultivation site with a grace period for applications to be filed prior to a local enforcement action being taken against unpermitted operations. The applicant for a provisional permit for an unauthorized pre-existing commercial cultivation site would not be required to comply with certain performance standards (e.g., related to slopes and energy usage) applicable to new cannabis cultivation operations during the authorization period of the provisional permit. The provisional site would be required to conform with applicable LCP policies and standards, and all violations and areas of non-compliance would require correction at the earliest feasible date, but in no event no more than two years after issuance of the provisional permit unless otherwise stipulated under the terms of a compliance agreement reached at the time of permit approval.

To encourage unauthorized cultivators to apply for provisional cannabis permits, the proposed amendment includes a provision that applications for unauthorized pre-existing cultivation sites submitted in the near-term (i.e., before December 31, 2018) may be permitted at 100% of the documented pre-existing cultivation area, whereas those who apply later (i.e., in 2019) shall not be approved for more than 50% of the documented existing cultivation area. As adopted, no new applications for unauthorized pre-existing cultivation sites would be accepted after December 31, 2019. In addition, in order to “incentivize, promote, and encourage the retirement, remediation and relocation of unauthorized pre-existing cannabis cultivation operations occurring in inappropriate, marginal, or environmentally sensitive sites,” the proposed amendment also includes provisions for relocation of unauthorized “pre-existing” cultivation sites to “environmentally superior sites.” The “RRR” regulations (for Retirement, Remediation, and Relocation) would apply to unauthorized pre-existing cultivation sites that are using an unpermitted diversionary water source, and/or on Tribal Lands (e.g., non-trust lands of the Yurok Reservation), and/or on timberlands, and/or on steep slopes, and/or which do not meet road system standards or other required performance standards. Operators of RRR sites could apply for a permit(s) to establish commercial cannabis cultivation operations on an eligible Relocation Site for an area up to four times the area of the unauthorized pre-existing RRR site, on a 1-for-1 basis (subject to approval of a CDP and conditional use permit). The permit application must include a plan “for the full environmental remediation of the RRR removal site, including removal of all cultivation related materials, equipment and improvements, regrading to pre-existing contours, reseeding with native vegetation, reforestation, habitat restoration, and monitoring.” The operator must execute an agreement to complete the work specified in the remediation plan within 12 months and must post a bond in a sufficient amount that will allow the County to contract to complete the work specified in the plan in the event that the operator of the RRR removal site fails to do so.

**Table 1.** Summary of proposed commercial cannabis activities by zoning district. See also Appendix D.

Zone <sup>A</sup>	Minimum parcel size for cultivation <sup>G</sup>	Maximum cultivation area allowed	Limitations on use of prime soils	Limitations on the use of grazing lands (AEG)	Non-cultivation activities allowed <sup>E</sup>
AE	20 ac.	1 ac. <sup>B</sup>	20%	Yes <sup>C</sup>	Limited <sup>F</sup>
RA	20 ac.	1 ac.	20%	N/A	Limited <sup>F</sup>
CG	2 ac.	No limit <sup>H</sup>	N/A	N/A	Yes
ML	2 ac.	No limit <sup>H</sup>	N/A	N/A	Yes
MG	2 ac.	No limit <sup>H</sup>	N/A	N/A	Yes
MC <sup>D</sup>	2 ac.	No limit <sup>H</sup>	N/A	N/A	Yes

<sup>A</sup> AE=Agriculture Exclusive; RA=Rural Residential Agriculture; CG=Commercial General; ML=Light Industrial; MG=Heavy Industrial; MC=Coastal-dependent Industrial

<sup>B</sup> The ordinance includes an exception to the 1-acre maximum cultivation area for parcels ≤320 acres in size. There are only five parcels in this category in the coastal zone, all within the HBAP and ERAP planning areas. The exception allows for an additional 1 acre of cultivation per 100-acre parcel area, up to a maximum of 8 acres. The acreage limit also is waived for relocation sites under the RRR program, where “Operators of RRR Sites with a Cultivation Area exceeding 20,000 sq. ft. may transfer all recognized prior cultivation area to an eligible Relocation Site, on a 1-for-1 basis (no multiplier) subject to approval of a Use Permit and Coastal Development Permit.”

<sup>C</sup> In the entirety of the SCAP as well as portions of the HBAP and ERAP (portions of Table Bluff), to protect the agricultural lands for grazing purposes consistent with LUP land use restrictions, commercial cultivation activities only are allowed within non-residential structures lawfully constructed prior to January 1, 2016.

<sup>D</sup> Commercial cannabis activities only are allowed as an “interim use” on coastal-dependent industrial (MC) lands pursuant to the Interim Use Performance Standards of section 313-104.1 of the certified IP.

<sup>E</sup> Non-cultivation commercial cannabis activities include Distribution, Off-Site Processing, Enclosed Nurseries, Community Propagation Centers, Testing and Research Labs, and Flammable & Non-Flammable Manufacturing.

<sup>F</sup> Manufacturing activities involving Non-Flammable Extraction may be permitted with a Special Permit and Coastal Development Permit within existing non-residential structures only.

<sup>G</sup> The adopted ordinance does not specify a minimum parcel size for non-cultivation activities (see E above) on commercial and industrial lands. Also, no minimum parcel size is specified for cultivation in either existing greenhouses or non-residential structures on AE lands lawfully existing prior to January 1, 2016.

<sup>H</sup> There is no specified limit to cultivation area size allowed in these zoning districts with a CDP and Use Permit.

Caps on commercial cultivation permits

The proposed amendment includes specific caps on the total number of commercial cannabis cultivation permits to be issued, which vary by LUP area. Caps range from zero permits (Trinidad Area Plan) to 112 permits (Eel River Area Plan). Maximum acreages of commercial cannabis cultivation for each LUP area also are specified and range from zero (TAP) to 39 acres (ERAP):

<b>LUP</b>	<b>Maximum No. of Cannabis Permits</b>	<b>Maximum Acreage</b>
North Coast Area Plan	4	2
Trinidad Area Plan	0	0
McKinleyville Area Plan	4	2
Humboldt Bay Area Plan	38	13
Eel River Area Plan	112	39
South Coast Area Plan	13	5
<b>Total</b>	<b>171</b>	<b>61</b>

The specified caps originate from an overall County-wide commercial cannabis cultivation permit cap of 3,500 adopted by the County under a separate resolution than the resolutions approving the inland and coastal cannabis ordinances.<sup>9</sup>

As adopted under the resolution approving the overall County-wide cap, the 3,500 commercial cannabis cultivation permits are to be distributed among the County's 12 watersheds, six of which are in the coastal zone, based on the total number of "eligible parcels" within each watershed. "Eligible parcels" are those that conform with the zoning and minimum parcel size requirements specified in the ordinances. Those watersheds with a higher percentage of eligible parcels are allocated a greater number of commercial cannabis cultivation permits. The caps listed in the proposed ordinance are based on the percentage of "eligible parcels" in the coastal zone relative to the allocation of permits County-wide based on the division of the overall County-wide cap by watershed scheme described above. Once a permit cap for a given LUP area has been reached, no additional permit applications for proposed commercial cultivation will be processed unless and until the Planning Commission and Board of Supervisors reconsider the caps. The resolution adopting the caps specifies that future reviews of the overall County-wide cap shall occur at a noticed public hearing held during a meeting of the Board of Supervisors, during which the Board shall receive and consider an annual report providing an update on local permitting efforts. The report shall provide County-wide information detailing the number and status of all applications received, permits approved, compliance agreements that have been executed, and code enforcement actions undertaken by the Planning Department. Law enforcement and other relevant officials from local and state agencies shall be contacted and invited to provide and present input to be considered by the Board during annual review. After holding a public hearing and considering all public testimony received, the Board may choose to establish new caps on acreage and permits as well as change their distribution within watersheds. Any proposed change in caps in the coastal zone would require an LCP amendment.

#### Non-Cultivation activities

The proposed amendment allows for distribution, off-site processing, enclosed nurseries, community propagation centers, testing and research labs, manufacturing, and retail sales in commercial and industrial zones. Limited manufacturing activities (involving non-flammable extraction) would be allowed in AE and RA zoning districts, but only within non-residential structures that were in existence prior to 2016. Commercial cannabis activities could occur on MC lands subject to the existing certified IP interim use provisions described above. Businesses

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<sup>9</sup> The methodology used to develop the permit and acreage caps was developed for the entire County, with subsequent allocations made to each of the six LUP areas. The purpose was to limit the amount of commercial cultivation that could be permitted consistent with the assumption used in preparation of the EIR for the proposed CCLUO (Version 2.0) that the expected number of permit applications under the CCLUO version 2.0 (i.e., the proposed amendment and the companion inland ordinance) would be approximately equal to the initial 2,337 applications submitted prior to January 1, 2017 (i.e., to the number of cannabis applications submitted under the inland CCLUO version 1.0, which was never certified for the coastal zone), plus an additional 2,663 applications, or 5,000 total potential permits (2,337+2,663=5,000). That assumption was used to estimate potential impacts and cumulative environmental impacts of the ordinance (i.e., the proposed amendment and the companion inland ordinance, Version 2.0) (FEIR, Section 2.45 Reasonably Foreseeable Compliance Responses). The County considered options for County-wide caps ranging between 3,000 and 5,000 permits and ultimately decided on a "compromise" County-wide cap of 3,500 permits (1,205 acres total) including permits issued under both CCLUO version 1.0 and version 2.0. The County resolved to revisit annually the County-wide cap after considering information on numbers of permits issued, resolved code violations, watershed and other data.

with on-site customer traffic would be required to be located on roads that are paved or otherwise meeting certain minimum road standards. In addition to the setbacks described below, manufacturing activities involving flammable extraction in commercial and light-industrial zones would require a 1,000-foot setback from residences and from certain Community Planning Area boundaries (i.e., Shelter Cove, McKinleyville, and Trinidad) and a 600-foot setback from school bus stops. The proposed amendment also includes regulations for temporary special events, commercial cannabis site tours, on-site consumption, and farm stays.

#### Setbacks and performance standards for all commercial cannabis activities

All commercial cannabis activities (cultivation and non-cultivation activities) would require adherence to various setback requirements, including setbacks from ESHA (100 feet); coastal access sites, parks, and commercial recreational facilities (600 feet); Tribal Cultural Resources (600 feet); and Tribal Ceremonial Sites (1,000 feet). Numerous performance standards are included in the proposed amendment, and failure to comply with the standards would be grounds for permit revocation and administrative penalties. The performance standards relate to roads system, biological resources protection, hazardous materials management, stormwater management, archaeological resources, light pollution control, energy use, noise, water storage, wells, soils management, and other standards.

#### Annual compliance inspections

Permits issued for commercial cannabis activities would terminate one year after permit issuance, unless an annual compliance inspection has been conducted by the County and the permitted site has been found to comply with all conditions of permit approval, applicable eligibility and siting criteria, and performance standards. The same limitation would apply on the anniversary date each year thereafter.

#### Requirements for site restoration upon termination of commercial cannabis cultivation

Upon proposed termination or abandonment of a permitted commercial cannabis cultivation site, the operator and/or property owner would be required to prepare a “Mitigation and Monitoring Plan” that includes provisions for removing all materials, equipment and improvements on the site that were devoted to cannabis cultivation (e.g., bags, pots, tools, fertilizers, pesticides, fuels, hoop house frames and coverings, irrigation pipes, water bladders or tanks, pond liners, electrical lighting fixtures, wiring and related equipment, fencing, cannabis waste products, imported soil or soil amendments not incorporated into native soil, generators, pumps, and structures not adaptable to non-cannabis permitted use of the site). If any material or equipment is proposed to remain, the operator and/or property owner would be required to prepare a plan and description of the non-cannabis continued use of such material or equipment on the site.

## **B. ENVIRONMENTAL SETTING**

Humboldt County has six separate certified Land Use Plans (LUPs), each certified by the Commission in the early 1980’s. LUP planning areas are shown in [Exhibit 1](#) and described below from north to south with summaries on the extent of lands that could support commercial cannabis activities (agricultural, commercial, and industrial lands).

#### North Coast Area Plan (NCAP)

The NCAP area extends from the northern County line approximately 23 miles south to Patricks Point and up to two miles inland. The area also includes nine miles of coastal lagoons (Freshwater Lagoon, Stone Lagoon, and Big Lagoon) and regionally unique wetland habitats (Big Lagoon Bog). Redwood National Park and several State and County parks are within and adjacent to the area. Major creeks and rivers within the area include Redwood Creek, McDonald Creek, Maple Creek and several others, many of which contain habitat for one or more species of threatened salmonids and other sensitive fish.

Most of the LUP area is rural (not served with community sewer or water systems), except Orick (population ~1,000, in part outside of the coastal zone), which is on a community water system, and the Big Lagoon residential subdivision, which occupies about 90 acres and has a community water system. The Orick Community Services District (CSD) and the Big Lagoon CSD are the water service providers within their respective LUP-designated urban services areas. The NCAP area includes approximately ~2,400 acres of agricultural lands,<sup>10</sup> mostly around Redwood Creek estuary. There is only one ~50-acre area planned and zoned for general industrial (MG) uses in the NCAP (a former timber mill east of Big Lagoon), and small number of CG properties (totaling about 10 acres) in the community of Orick.

The NCAP includes an approximately 685-acre Area of Deferred Certification (ADC) over which the Commission retains CDP permitting authority. Commercial cannabis activities within that area would be reviewed by the Commission under the Chapter 3 policies of the Coastal Act rather than under the proposed LCP amendment. The local zoning of most of the lands in the Stagecoach Hill ADC is RA with a minimum parcel size of 20 acres. The main issues that resulted in deferred certification of the ADC area include management of western azalea ESHA, litigation over allegedly illegal land divisions, and density (minimum parcel size designations).

#### Trinidad Area Plan (TAP)

The TAP area extends along approximately six miles of coastline from Patricks Point State Park to Little River State Beach and includes rural lands around the City of Trinidad and the unincorporated community of Westhaven. Several state and County beaches and parks in the TAP area are popular visitor destination areas. Major creeks within the LUP area include Mill, Luffenholtz, Savage, Martin, McNeil and several others, many of which contain habitat for one or more species of threatened salmonids and other sensitive fish. Most of the lands in the TAP are planned and zoned either for rural residential uses or for commercial recreation visitor-serving uses. There are approximately 14 acres of land planned and zoned for CG uses in the LUP area north of the City of Trinidad. There are no agricultural or industrial lands within the TAP area. Most developed properties in the area are on individual wells and onsite wastewater treatment systems, though some water service is provided to certain areas (e.g., portions of Westhaven) by the City of Trinidad or small community services districts.

#### McKinleyville Area Plan (MAP)

The MAP area includes a five-mile-long stretch of coastal lands from the Little River to the Mad River and up to four miles inland (around the Mad River). The unincorporated community of McKinleyville is located partially within the coastal zone atop an uplifted marine terrace

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<sup>10</sup> Source: Humboldt County Planning and Building Dept.

separated from the ocean by a series of coastal dunes and bluffs. Major creeks and rivers within the area include Little River, Patrick Creek, Strawberry Creek, Widow White Creek, Mill Creek and the Mad River, all of which contain habitat for one or more species of threatened salmonids and other sensitive fish. Some lands within the MAP area are subject to bluff erosion hazards (particularly along the Mad River south of Clam Beach).

Much of the MAP area has urban services (water and sewer) and has largely been built out. The MAP area includes approximately ~1,000 acres of agricultural lands, some of which are classified as prime. Except for a one-half-acre CG parcel on School Road, there are no lands planned or zoned for general commercial or industrial uses in the MAP area.

#### Humboldt Bay Area Plan (HBAP)

The HBAP area includes approximately 20 miles of coastline extending from the Mad River to the north end of Table Bluff, plus over 100 additional miles of estuarine shoreline along Humboldt Bay and its tidally influenced tributaries. The LUP area includes the north and south spits of Humboldt Bay, the farmed bottomlands around Arcata and Eureka, and various unincorporated urban areas (e.g., Samoa, Manila, Myrtle town, King Salmon, Fields Landing, and Humboldt Hill). Much of the HBAP area is served with urban services (sewer and/or water), and the LUP boundaries abut the cities of Eureka and Arcata. The Humboldt Bay Harbor, Recreation, and Conservation District manages the Port of Humboldt Bay.

Humboldt Bay and its major tributaries (including, but not limited to, Mad River Slough, Jacoby Creek, Freshwater Slough, Elk River, and Salmon Creek) provide habitat for over 100 fish species, including several rare, threatened and endangered fish. The Bay provides important commercial and recreational fishing access and support facilities, and also supports a thriving aquaculture industry that provides over 70% of the State's total oyster production. The thousands of acres of mudflats and estuarine marshes of the bay are used by dozens of species of shorebirds that migrate annually on the Pacific Flyway. The HBAP area also includes and abuts thousands of acres of coastal dunes, much of which are federally owned and managed (e.g., part of the Humboldt Bay National Wildlife Refuge).

There are over 16,000 acres of agricultural lands within the HBAP area, mostly diked former tidelands. These lands have been used for agriculture since the late 1800s, and many of the lands are classified as prime. In addition, there are almost 1,000 acres of industrial lands in the area, mostly on the North Spit. The lands along the bay adjacent to the dredged channels largely are planned and zoned for coastal-dependent industrial uses (MC). In addition, there are approximately 200 acres of CG lands.

Major issues for the HBAP area include flood hazards (most of the planning area is within the FEMA-mapped 100-year flood zone) and tsunami wave run-up hazards. The Humboldt Bay region has the highest rate of local sea level rise in the state due to the area's active tectonic subsidence, so flooding is expected to increase in frequency and severity in the coming decades.

#### Eel River Area Plan (ERAP)

The ERAP area includes lands that extend from Table Bluff, which lies just south of Humboldt Bay, approximately 11.5 miles southward to the rural ranchlands around and southwest of the

cities of Ferndale and Fortuna. The ERAP area is mostly rural, except for the unincorporated community of Loleta (population approximately 780) north of the Eel River, which has community wastewater and water services. The ERAP area includes the entire Eel River Delta that extends inland over 10 miles to the confluence of the Van Duzen River with the main-stem Eel River. In addition to a 16-mile-long stretch of the Eel River's main channel that is within the LUP area, there also are over 75 miles of associated tributary fresh and saltwater sloughs, including the entire Salt River.<sup>11</sup> The Eel River ranks second among rivers in California in coho salmon and steelhead production and third in Chinook salmon production.<sup>12</sup>

The ERAP area includes over 45,000 acres of agricultural lands, nearly half of which are diked former tidelands. These lands have been used for agriculture since the late 1800s, and many are classified as prime. The agricultural lands in the ERAP account for over half of the cultivated agricultural land in the Humboldt County coastal zone and are the heart of the County's dairy industry. There are approximately 175 acres of CG and industrial lands in the area (MG- and ML-zoned) along the Eel River and within the urban services area of Loleta. Most of the MG-zoned lands along the Eel River currently or historically have been used for sand and gravel extraction (the Eel River exhibits one of the highest loads of suspended sediment in the world).<sup>13</sup> Most of the area, especially south of Loleta, is within the FEMA-mapped 100-year flood zone, and a significant area also is within the mapped floodway. High local SLR rates are expected to exacerbate flooding and drainage issues over the coming decades.

#### South Coast Area Plan (SCAP)

The SCAP area is the largest geographically of the County's six LUPs, extending over 45 miles from the rural ranches around Guthrie Creek (southwest of Ferndale) to the southern County line. Major creeks and rivers within the planning area include the Mattole River, Bear River, Guthrie Creek, Singley Creek, Telegraph Creek and several others, which contain habitat for one or more species of threatened salmonids and other sensitive fish. The federally owned and managed King Range National Conservation Area bisects the planning area into two sections – the “north” SCAP area, including the coastal lands that extend from Guthrie Creek south to the Mattole River estuary, and the Shelter Cove area near the south end of the King Range.

The SCAP area is completely rural except for Shelter Cove, which includes a ~2,640-acre, 4,700-lot residential subdivision (partially developed) served by Resort Improvement District #1 with community sewer and water. The SCAP area includes approximately 24,000 acres of non-prime agricultural lands – mostly large (~600+ acre) ranches. All of the agricultural land in the SCAP has a land use designation of “Agricultural Exclusive/Grazing Lands” (AEG), the purpose of which is “to protect coastal grazing lands for long-term productive grazing use.” There are no industrial lands in the area, and the only commercial lands are in Shelter Cove. Shelter Cove Harbor is an important commercial fisheries access point and is managed by the Humboldt Bay Harbor, Recreation, and Conservation District.

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<sup>11</sup> Eel River Area Plan section 4.20

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

**C. IMPLEMENTATION PLAN CONFORMITY**

To certify proposed changes to an IP, the Commission must find that the changes conform with the certified LUPs and adequately carry out all applicable LUP policies. As described above, Humboldt County has six certified LUPs. In this case, the proposed IP changes do not conform with or adequately carry out the certified LUPs for the reasons discussed below. Therefore, the IP amendment as submitted must be denied pursuant to section 30513 of the Coastal Act. However, the Commission suggests nine Suggested Modifications (shown in [Appendix C](#)) to conform the proposed IP standards consistent with the LUP policies.

**i. Land Use Compatibility**

(a) Summary of LCP policies

The amendment will specifically authorize commercial cannabis activities in various zoning districts. As proposed, commercial cannabis activities are not itemized in the list of allowable use types in the LUPs and/or in the zoning district tables of the IP. The amendment adds a commercial cannabis land use ordinance to the certified IP as a separate section and authorizes specific commercial cannabis activities in eligible zones provided that the personal and commercial cannabis activities meet various textual standards related to minimum parcel size, setbacks, maximum percent slope, etc., and the necessary permits are obtained. Though not itemized in the use types or zoning district tables, cannabis activities for commercial cultivation, distribution, manufacturing, etc. will be regulated similar to other types of non-cannabis activities related to agricultural cultivation, distribution of goods, manufacturing of products, etc., except with additional requirements to address the unique issues related to cannabis activities.

The zoning districts in the certified IP correspond to various land use designations in each of the County’s six LUPs (Tables 2 and 3 below). Some zone districts implement more than one land use type. For example, the AE zone district implements various LUP agricultural land use designations, including Agriculture Exclusive/Prime (AEP), Agricultural/General (AG), Agriculture Exclusive (AE), and Agricultural Exclusive/Grazing Lands (AEG). Land use designations and zone districts are unevenly distributed in total acreage and geographic extent throughout the six LUP areas.

**Table 2.** Land use designations where commercial cannabis activities would be allowed, as described, in applicable part, in the six certified County Land Use Plans (LUPs). \*\*\*Pursuant to section 55.4.3.8 of the proposed amendment, the commercial cultivation of cannabis “shall not be allowed as a principal permitted use under the General Agriculture use type classification...”\*\*\*

<b>Land Use Designation</b>	<b>Purpose</b>	<b>Principal Uses</b>	<b>Conditional Uses</b>
<b>AG</b> Agricultural/ General	<i>To protect productive non-prime agricultural lands from conversion to non-agricultural uses</i>	<i>Production of food, fiber, plants or the grazing of recreational livestock, with a residence incidental to this use ***</i>	<i>Hog production, watershed management for fish and wildlife habitat, recreation... utility transmission lines, farm labor housing, greenhouses, feed lots and similar</i>
<b>AE</b> Agriculture Exclusive/ Prime & Non-Prime	<i>To protect productive prime and non-prime agricultural lands for long term productive agriculture use</i>		



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<b>Lands</b>			<i>confined livestock operations</i>
<b>AEG</b> Agriculture Exclusive/ Grazing Lands	<i>To protect coastal grazing lands for long term productive grazing use</i>		<i>(in the SCAP, cottage industry also is an allowed conditional use)</i>
<b>AEP</b> Agriculture Exclusive/ Prime	<i>To protect prime agricultural lands for long term productive agriculture use</i>	<i>Production of food, fiber or plants...with a residence incidental to this activity... including barns, storage sheds, &amp; similar agricultural structures &amp; principal structures &amp; principal uses permitted under TC...***</i>	
<b>RR</b> Rural Residential	<i>To allow residential use of rural lands not permanently designated for resource protection and not suitable for rural community neighborhood development</i>	<i>Residential</i>	<i>Production of food fiber or plants</i>
<b>CG</b> Commercial General	<i>To allow the integrated development of commercial districts or neighborhood commercial centers providing for the economic well-being and convenience of the community</i>	<i>Retail sales, retail services, office and professional uses</i>	<i>Hotels, motels</i>
<b>MG</b> Industrial/ General	<i>To protect sites suitable for the development of general industrial uses</i>	<i>Light and general manufacturing, warehousing and wholesaling, research and development</i>	<i>Heavy manufacturing, drilling and processing of oil &amp; gas, agricultural-general uses, heavy commercial uses, sand &amp; gravel extraction, electrical generating &amp; distribution facilities, animal &amp; fish reduction plants</i>
<b>MC</b> Industrial/ Coastal-Dependent	<i>To protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor</i>	<i>Any coastal-dependent industrial use that requires access to a maintained navigable channel in order to function...</i>	<i>...Interim uses that will allow for greater use of underutilized MC lands while at the same time avoiding impacts to their long term coastal-dependent industrial use and other priority uses...</i>

**Table 3.** LUP land use designations and implementing IP zoning districts in each of the six LUP planning areas.

Implementing Zoning District:	Land Use Designations in each LUP					
	NCAP	TAP	MAP	HBAP	ERAP	SCAP
<b>AE:</b> Agriculture Exclusive	AEP AG	--	AEP	AE AEG	AE AEG	AEG
<b>RA:</b> Rural Residential Agriculture	RR	RR	RR	RR	RR	--
<b>CG:</b> Commercial General	CG	CG	CG	CG	CG	CG
<b>ML:</b> Light Industrial	--	--	--	--	MG*	--
<b>MG:</b> General Industrial	MG	--	--	MG	MG	--
<b>MC:</b> Coastal-Dependent Industrial	--	--	--	MC	--	--

\* None of the LUPs include ML as a land use designation, but rather it is a zoning district that appears only on lands in the ERAP with a General Industrial (MG) land use designation.

**Summary of Policies Related to Agricultural Land Use Compatibility**

In general, on lands with an agricultural land use designation, the various LUPs only allow for “*Production of food, fiber, plants*” “*with a residence incidental to this use.*” The existing certified IP further details uses allowed on agricultural lands, all of which have the same zoning district (Agriculture Exclusive, AE). The allowed uses in the AE zoning district that relate to the commercial cannabis uses allowed under the proposed amendment include *General Agriculture* and *Cottage Industry*. The certified LCP does not include a definition of “general agriculture,” but the use type description of “General Agriculture” under the certified IP (sec. 313-170.3) means:

*cultivation of food and fiber such as field and tree crops, dairying, pasturage, tree farming, horticulture, floriculture, viticulture, apiaries, and animal and poultry husbandry, but not including feed lots, stock yards, slaughter houses, hog farms, fur farms, turkey farms, frog farms, fertilizer works or plants for the reduction of animal matter.*

“Cottage Industry” refers to (existing certified IP sec. 313-175.4):

*establishments primarily engaged in the on-site production of goods by hand manufacturing which involves only the use of hand tools or domestic mechanical equipment or a single kiln, and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, custom jewelry or small furniture and cabinet manufacturers.*

Cottage Industry uses are required to be permitted consistent with the Cottage Industry IP standards (sec. 313-45.2), which require, in part, that (a) the cottage industry shall conform with the development standards in the applicable zoning district; (b) the dwelling on the site shall be occupied by the owner of the cottage industry; (c) the Cottage Industry shall occupy no more than twenty five percent (25%) or 1,000 square feet (whichever is less) of the floor area of the dwelling or accessory structure; (d) the cottage industry shall not produce evidence of its existence in the external appearance of the dwelling or premises, or in the creation of noise, odors, smoke or other nuisances to a degree greater than that normal for the neighborhood; (e) there shall be no articles sold on the premises; (f) all noise generating operations shall be

buffered so that they do not exceed the exterior ambient noise level anywhere on the site by more than 5 dB(a), or an equivalent standard which achieves comparable results; (g) all lights shall be directed on-site and shielded to reduce glare to adjacent areas; (h) the use shall not generate pedestrian or vehicular traffic beyond that normal in the neighborhood in which it is located; and (i) the cottage industry shall not significantly increase demand for, or require significant amounts of additional services including water, sewer, septic, or wastewater treatment.

The six LUPs include several policies to ensure that agricultural lands are protected for agricultural uses as intended by the land use designations. Each of the LUPs include sections 30241 and 30242 of the Coastal Act as enforceable LUP policies:

Coastal Act section 30241:

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of prime agricultural lands.*

Coastal Act section 30242:

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

Furthermore, each of the LUPs includes the following policy on land use compatibility related to agricultural activities:

*Compatible Uses...a conditional use permit shall be required of any proposed use not directly a part of agricultural production of food or fiber on the parcel; except that on parcels 60 acres or larger, a second house for parents or children of the owner-operator shall be considered a direct part of agricultural production. Other uses considered compatible with agricultural operations include: (a) management for watershed; (b) management for fish and wildlife habitat; (c) recreational uses not requiring non-agricultural development under control of the owner; (d) the erection, construction, alteration, or maintenance of gas, electric, water or communications transmission facilities...; (e) farm labor housing and temporary labor camps of less than one year duration shall require a conditional use permit.*

In addition, the NCAP, MAP, HBAP, and ERAP include the following policy related to greenhouses:

*Compatible Uses...No greenhouse shall be approved for use on prime agricultural land, where the greenhouse has a slab foundation that would cover the underlying soil.*

And the SCAP includes the following policy related to compatible uses:

*Compatible Uses...The establishment of a “cottage industry” shall be considered a compatible use and shall require a conditional use permit which may be approved based on the findings that the use:*

- a. Is consistent with the Resource Protection polices...*
- b. Involves no sales of merchandise other than that grown and processed on the premises or merchandise directly related to and incidental to the industry; and*
- c. Would increase or maintain the viability of the existing principal use of the land, and shall not create noise, odors, smoke or other nuisances which would affect the surrounding area; and*
- d. Is consistent with public safety and meets the requirements of the State and County Building, Health and Safety Codes.*

Moreover, the HBAP and the ERAP include the following policy related to protection of grazing lands:

*Grazing lands on Table Bluff shall be designated for agricultural use to insure availability of upland grazing sites and minimize conflicts with agricultural from conversion of these lands to other uses.*

Agricultural accessory structures, including greenhouses, are regulated under sec. 313-69.1.5 of the existing certified IP. This section allows for the construction of greenhouses as an

agricultural accessory structure in AE and RA (and other) zoning districts but limits greenhouse construction on prime agricultural soils as follows (emphasis added):

*Permitted Agricultural Structures. The following accessory structures shall be permitted in the AE (Agricultural Exclusive), (TC) Commercial Timberland, (TPZ) Timber Production, and (RA) Rural Residential Agricultural zones:*

...

*69.1.5.2 Greenhouses, except that greenhouses with concrete slab floors shall not be located on prime agricultural soil. Concrete, asphalt, and similarly constructed footpaths within a greenhouse may be permitted on prime agricultural soils with a special permit.*

...

The restrictions of this section on greenhouse construction on prime agricultural soils are applicable to greenhouses excluded from CDP requirements pursuant to Categorical Exclusion Order E-86-4, approved by the Commission in 1986. The Order applies to legal lots on lands zoned AE in specified areas throughout the County’s LCP-certified area [non-appealable area only and does not apply to areas within a coastal wetland, or within a mapped “farmed wetland” (designated with a “T” combining zone layer) or within 200 feet of a coastal stream or wetland]. (See additional discussion of Categorical Exclusion Order E-86-4 below.)

### **Summary of Policies Related to Rural Residential Land Use Compatibility**

On rural residential (RR) lands, the certified LUPs allow for both residential and agricultural uses. The Rural Residential Agriculture (RA) zone implements the RR land use designation, and the certified IP describes *General Agriculture, Bed and Breakfast Establishments* and *Cottage Industry* all as allowed uses in the RA zone.

### **Summary of Policies Related to Commercial Land Use Compatibility**

There are two types of commercial lands in the six LUPs: Commercial Recreation (CR) and Commercial General (CG). Commercial cannabis activities will be allowed on CG lands but not on CR lands. The purpose of the CR land use designation is “*to protect sites suitable for the development of commercial recreational facilities, and for visitor service facilities appropriate to assure recreational opportunity for visitors in the area.*” Each of the LUPs includes the following related Coastal Act policies that protect priority visitor-serving commercial recreational uses as enforceable LUP policies:

§ 30213 (in part):

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred*

§ 30222:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry*

§ 30223:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible*

As summarized above in Table 2, the purpose of the CG designation is “*to allow the integrated development of commercial districts or neighborhood commercial centers providing for the economic well-being and convenience of the community.*” While CG lands under the certified LUPs allow for retail and transient habitation uses, the existing certified IP lists several additional uses allowed on CG lands, including several that relate to commercial cannabis activities that will be specifically authorized under the proposed amendment: *Office and Professional Service, Cottage Industry, Warehousing, Storage, and Distribution, Heavy Commercial, Research/Light Industrial*, and several other uses. “Warehousing, Storage and Distribution” refers to “establishments or places of business primarily engaged in enclosed or open-air wholesaling, storage, distribution and handling of materials and equipment other than live animals and plants” (IP sec. 313-172.19). Heavy Commercial includes “activities such as transfer, storage or processing of used, scrap or waste materials, including automobile wrecking, the sales, storage of building materials, construction and agricultural equipment, kennels, and animal hospitals” (IP sec. 313-172.5). “Research/Light Industrial” includes (IP sec. 313-175.7):

*non-nuisance, industrial, low-impact manufacturing, and development activities which do not create objectionable levels of noise, vibration, air pollution, odor, humidity, heat, cold or glare on nearby residential or commercial uses, such as the manufacture of electrical and electronic equipment, industrial and scientific research, medical testing and analysis and product testing, carpentry and cabinetmaking shops, clothing manufacture, contractor’s yards, dry cleaning and laundry plants, lumber yards, metal-working shops, wholesale outlet stores, painter’s and decorators’ yards, plumbing shops, printing and lithographing, and associated administrative offices*

### **Summary of Policies Related to Industrial Land Use Compatibility**

General industrial (MG) lands under the certified LUPs allow for “*Light and general manufacturing, warehousing and wholesaling, [and] research and development*” uses as well as various conditionally permitted industrial related uses. All lands with an MG land use designation have either a light industrial (ML) or general industrial (MG) implementing zoning district. These two zoning districts are similar in terms of allowed uses with respect to use types within which cannabis activities fall. Both zones allow *Warehousing, Storage, and Distribution, Research/Light Industrial, Heavy Commercial*, and *General Agriculture*. A key difference between the two zones is that the ML zone allows for retail sales and services, whereas the MG zone does not, and the MG zone allows for heavy and hazardous industrial uses, whereas the ML zone does not. “Heavy Industrial” refers to industrial plants “engaged in manufacturing, compounding, processing, assembling, packaging, treatment or fabrication of materials and products...” (IP sec. 313-175.6). “Hazardous Industrial” means “any industrial activity which involves the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would, if released or ignited, constitute a significant risk to adjacent human populations or development” (IP sec. 313-175.5).

While coastal-dependent industrial (MC) lands are to be reserved for coastal-dependent uses, conditionally allowed uses in the MC zoning district include heavy industrial uses. In addition, the Humboldt Bay Area Plan LUP (sec. 3.13; and sec. 4.10-A cited in Table 3 above), which is the only LUP out of the six LUPs where MC lands are located, also allows for the utilization of underutilized MC lands by a variety of additional conditional non-coastal-dependent uses on a short-term temporary basis, provided such uses are permitted as conditional “interim uses” subject to the interim use performance standards of the certified IP (sec. 313-104.1). HBAP sec. 3.13 states in applicable part as follows:

*3.13 COASTAL-DEPENDENT DEVELOPMENT*

...

*B. DEVELOPMENT POLICIES*

*1. Industrial:*

...

- c. as interim conditional uses within MC designations to allow greater use of underutilized MC lands, certain uses allowed in the MG: Industrial/General land use designation and in the ML: Light Industrial zone district (Section 313-3.2 of the Coastal Zoning Regulations) subject to interim use performance standards to avoid impacts to coastal-dependent industrial uses and other priority uses including visitor-serving recreational facilities that require channel access and coastal-related industrial uses.*

The non-coastal-dependent conditional interim uses allowed on MC lands, per IP sec. 313-3.4, include, in part, the following use types within which the various cannabis activities proposed under the IP amendment may be classified (depending on specific use/activity): *Heavy Commercial; Warehousing, Storage, and Distribution; Research/Light Industrial; and General Agriculture*. IP section 313-104.1 specifies the performance standards for permitting interim uses on MC lands, which require, in part, that interim uses do all of the following:

- 104.1.3.1.1 be compatible with, and not interfere with, the operation of existing onsite and offsite coastal-dependent industrial uses or other priority uses;*
- 104.1.3.1.2 allow the site where they are located to be converted back to a coastal-dependent industrial use when the site is needed for such use;*
- 104.1.3.1.3 use existing improvements where feasible;*
- 104.1.3.1.4 in addition to complying with subsection 104.1.3.3, be located in the areas least likely to be required by a future coastal-dependent industrial use or other priority use on a particular site to the extent feasible;*
- 104.1.3.1.5 only provide those site improvements that are nonpermanent and removable or relocatable in a feasible manner, or such improvements that would preserve or enhance the utility of the*

*project site for future coastal-dependent industrial uses, if new improvements are required; and*

104.1.3.1.6 *not inhibit the eventual use of MC zoned land for coastal-dependent industrial use or other priority use.*

**(b) Findings for Denial as Submitted and Approval if Modified**

As summarized in Table 4 below, the zoning districts in the IP correspond to the various land use designations in each of the County’s six LUPs, and some zone districts implement more than one land use type. In general, most of the County’s agricultural lands occur in the Humboldt Bay, Eel River, and South Coast LUP areas, and most of the industrial lands are centered around Humboldt Bay.

**Table 4.** Summary of land use types and potential for commercial cannabis activities in each of the six LUP planning areas.

Zoning District:	Land Use Designations in Each LUP					
	NCAP	TAP	MAP	HBAP	ERAP	SCAP
Combined acreage (and number) of AE- and RA-zoned “Eligible Parcels” <sup>A</sup> in LUP area	963 (17)	42 (1)	1,081 (18)	8,354 (147)	26,054 (419)	8,635 (46)
Total acreage of all AE-zoned lands in each LUP area <sup>B</sup>	2,400	0	1,900	16,700	46,000	24,000
Total acreage of all general commercial & industrial lands in each LUP area <sup>C</sup>	60	14	<1	1,200	175	23
<b>Overall maximum acreage/maximum number of permits for commercial cultivation allowed in each LUP area<sup>D</sup></b>	<b>2 ac./ 4</b>	<b>0 ac./ 0</b>	<b>2 ac./ 4</b>	<b>13 ac./ 38</b>	<b>39 ac./ 112</b>	<b>5 ac./ 13</b>

<sup>A</sup> “Eligible parcels” are counted as APNs that are at least 20 acres in size and that have a zoning designation of AE or RA. However, all “eligible parcels” in this category may not actually be eligible for commercial cultivation due to ordinance restrictions such as parcels with slopes greater than 15%. The eligible parcel data layer was developed by County staff, and acreages are approximated. For parcels that bisect the coastal zone boundary, both the parcel itself and its entire acreage were included in the calculated numbers.

<sup>B</sup> Source: Humboldt County Planning and Building Dept.

<sup>C</sup> Source: Humboldt County public web mapping application: <http://webgis.co.humboldt.ca.us/HCEGIS2.0/>.

<sup>D</sup> Note that caps pertain to all zoning designations where commercial cultivation may be allowed (e.g., AE, RA, CG, MG, etc.) and to outdoor, mixed-light, and indoor cultivation.

The proposed amendment specifically authorizes commercial cannabis activities within agricultural, industrial, and commercial general land use designations in all LUP areas except for the Trinidad Area Plan (TAP). As summarized in note “A” to Table 4 above, the first row of Table 4 identifies the number and acreage of eligible parcels in each of the LUP areas. However, overall, in the coastal zone, the County will issue at most 171 commercial cannabis cultivation permits that total a maximum of 61 acres in size. Most permits will be allocated to the Humboldt Bay and Eel River regions, since this is where the majority of eligible agricultural and industrial parcels are located. Only four permits at a maximum total acreage of 2 acres each will be issued in the NCAP and MAP areas. The fact that the proposed permit cap would allow no commercial cannabis activities within the TAP area is due to the fact that there is only one sufficiently sized and appropriately designated parcel to support such cannabis activities in the TAP. Relative to the overall distribution and acreages of lands available in each of the five LUP areas where



cannabis activities will be allowed, there will be relatively few permits and small acreages overall that will be dedicated to commercial cannabis cultivation activities (because of the permit caps and maximum acreages as shown in the last row of Table 4 above; see Finding IV-A-ii above for background on the origin of the LUP caps).

Under the proposed amendment, cannabis activities for commercial cultivation, distribution, manufacturing, retail sales, etc. are regulated similarly to other types of non-cannabis activities involving agricultural cultivation, distribution of goods, manufacturing of products, retail sales and services, etc., except with additional requirements to address the unique issues related to cannabis. Each type of cannabis activity for each land use type is evaluated below for LUP conformity.

### **Commercial Cultivation**

The proposed amendment defines “commercial cannabis cultivation” as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana or cannabis, including nurseries, that is intended to be processed, manufactured, distributed, dispensed, delivered, and sold.” Separate definitions are included for “outdoor,” “mixed-light,” and “indoor” cultivation, which relate to the use and intensity of artificial light rather than whether a cultivation operation is within an enclosed structure. For example, commercial cultivation within a greenhouse may be considered “outdoor” cultivation if no artificial light is used in the operation. The proposed amendment uses the term “open-air activities” to refer to outdoor and mixed-light cultivation, nurseries, and on-site processing activities that are not conducted entirely within an “enclosed” structure (i.e., a structure employing mechanical ventilation controls in concert with carbon filtration or similar method of odor control).

Section 55.4.3.8 of the proposed amendment describes the commercial cultivation of cannabis as “a highly regulated specialty crop” for which cultivation and processing “shall not be allowed as a principal permitted use under the General Agriculture use type classification...” Thus, the proposed amendment considers cannabis cultivation to be a “unique” agricultural use and includes specific regulations to address issues that are not typically applicable to other agricultural products, such as concerns related to security, nuisance odors, proximity to at-risk populations, adequacy of water supply, and other issues. Despite these cannabis-specific issues, the proposed amendment recognizes that cannabis is akin to other agriculture operations and thus specifically authorizes commercial cannabis cultivation within the AE, RA, CG, ML, and MG zoning district and in the MC zoning district as an interim use. While the proposed amendment does not specifically authorize commercial cannabis cultivation on timberlands (which is consistent with the timberland resources protection policies, as discussed in Finding IV-C-iv below), the proposed amendment inadvertently references TC and TPZ lands in some places. To clarify the text and for internal consistency within the proposed amendment, **Suggested Modification 9 (Clarifications/Corrections)** would delete incorrect references to TC and TPZ lands throughout the proposed amendment where applicable [[Appendix C](#), sections 55.4.10.2, 55.4.12.6, and 55.4.12.11(c)].

The definition of cultivation in the proposed amendment is consistent with the use type definition of “General Agriculture” in the existing certified IP cited above, which is allowed in the AE, RA, ML, and MG zoning districts and in the MC zoning district as an interim use. The definition also

is consistent with the definition of agriculture in the adopted Categorical Exclusion Order mentioned above (“*the tilling of the soil, the raising of crops, horticulture, vermiculture, viticulture, livestock, farming, dairying, and animal husbandry, including all uses customarily incidental and necessary thereto*”). Thus, for these zoning districts, the proposed amendment allows for commercial cultivation activities in compatible zones consistent with the certified LCP.

1) Indoor Commercial Cultivation on AE and RA Lands

While the proposed amendment will allow for indoor commercial cultivation of cannabis on agricultural lands, no structures will be allowed to be built for indoor cultivation on AE or RA lands. Indoor commercial cultivation only will be allowed within non-residential structures lawfully existing prior to January 1, 2016 with a maximum cultivation area size limit of 5,000 square feet. This restriction will ensure that lands in the AE and RA zoning districts are not covered with structures that would limit future agricultural and rural residential uses (respectively). Therefore, as proposed, the allowance of indoor commercial cultivation on AE and RA lands conforms with the certified LUPs.

2) Commercial Cultivation on Industrial Lands

Structures for indoor commercial cultivation will be allowed on lands in the ML and MG zoning districts, but the size of the indoor cultivation area under each permit will be restricted to 10,000 square feet or less. In the MC zoning district, commercial cultivation will be allowed only as an interim conditional use, provided that the interim use complies with the required IP performance standards of sec. 313-104.1 to protect the priority-use lands. **Suggested Modification 2 (Requirement for a CDP)** is needed to clarify [[Appendix C](#) sections 55.4.6.2.2(a) and 55.4.8.1] that in all cases where a commercial cannabis activity is proposed on MC lands, including cultivation activities, both a CDP and conditional use permit are required, pursuant to HBAP sec. 3.13 and 4.10-A and the interim use performance standards of the certified IP (section 313-104.1). This clarification will ensure that commercial cannabis uses permitted on MC lands will protect such lands for priority coastal-dependent uses consistent with the certified LCP. As modified, the proposed allowance of commercial cultivation in the MC zoning district is consistent with the certified LUP.

3) Commercial Cultivation on Commercial Lands

As summarized above in the policy summary for commercial lands, there are two types of commercial lands in the six LUPs: Commercial Recreation (CR) and CG. The purpose of the CR land use designation is “*to protect sites suitable for the development of commercial recreational facilities, and for visitor service facilities appropriate to assure recreational opportunity for visitors in the area.*” As the proposed amendment will exclude commercial cannabis activities on CR lands, and the amendment requires a minimum 600-foot setback from commercial recreational facilities as defined in the existing certified IP<sup>14</sup> [see [Appendix A](#) sec. 55.4.6.4.4(c)], the amendment as submitted protects such lands for priority visitor-serving CR uses consistent with the purpose of the land use designation and with the priority use protection policies of the

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<sup>14</sup> IP sec. 313-153 defines Commercial Recreational Facilities as “*Facilities serving recreational needs but operated for private profit, including, for example, special occupancy parks, tent camps, chartered fishing boats, tourist attractions and amusement or marine parks.*”

certified LUPs, including Coastal Act sections 30213, 30222, and 30223, which are incorporated into the certified LUPs.

The amendment will allow open-air (outdoor and mixed-light) commercial cannabis cultivation in the CG zone, which is inconsistent with the certified LUP, because agriculture is not included in any of the use types allowed on CG lands under the certified LUPs. In addition, the use is inconsistent with the purpose of CG lands as described in the LUPs, which is *To allow the integrated development of commercial districts or neighborhood commercial centers providing for the economic well-being and convenience of the community*. However, if the commercial cultivation activities were confined to microbusiness<sup>15</sup> situations only, and therefore limited to, and inclusive of, associated retail, distribution, and/or manufacturing activities, all of which are allowed in on CG lands, the proposed amendment as modified would be compatible with the permitted uses in the CG zoning district under the certified LCP. Therefore, **Suggested Modification 1 (Land Use Compatibility)** would restrict open-air activities in the CG zoning district only to Microbusiness situations ([Appendix C](#) section 55.4.6.2.1).

#### 4) Commercial Cultivation on Grazing Lands

Some of the agricultural lands in the County (e.g., some of the lands on Table Bluff and all the 24,000 acres of agricultural lands in the SCAP area) are designated in the LUPs exclusively for grazing purposes. These lands have an AEG land use designation that is implemented by the AE zoning district. The purpose of the AEG designation, as cited in Table 2 above, is *“to protect coastal grazing lands for long-term productive grazing use.”* These lands generally do not contain prime agricultural soils. The proposed amendment recognizes the purpose of these lands and therefore limits commercial cultivation activities on AEG lands, consistent with the certified LUPs. Outdoor and mixed-light commercial cultivation are not authorized in AEG. Only relatively small-scale ( $\leq 5,000$  square feet) indoor commercial cultivation is allowed (as discussed above), and in those cases only within non-residential structures lawfully existing prior to January 1, 2016. Although the proposed amendment includes the above protections for AEG lands in the proposed regulations for open-air and indoor cultivation activities, **Suggested Modification 1 (Land Use Compatibility)** is needed to provide similar protections for provisional permitting of unauthorized “pre-existing” cultivation sites ([Appendix C](#) sections 55.4.6.5 and 55.4.6.5.1) as well as permitting of the relocation of provisional sites under the proposed amendment’s RRR program ([Appendix C](#) section 55.4.6.5.7). As modified to limit commercial cultivation activities on AEG lands only to small-scale indoor cultivation within non-residential structures lawfully constructed prior to 2016 and combined with the caps on commercial cultivation permits to be issued in each LUP area (e.g., the SCAP cannabis cultivation acreage cap is a total of 13 permits not to exceed 5 acres total), the County’s coastal grazing lands will be protected for long-term productive grazing use consistent with the certified AEG land use designation.

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<sup>15</sup> The proposed amendment defines “Microbusiness” as “a facility host to several Commercial Cannabis Activities under a single license including cultivation on an area less than 10,000 square feet, distribution, manufacturing without use of volatile solvents, and retail sales.” According to the State Bureau of Cannabis Control’s website, the State may issue a microbusiness license for cultivation on an area less than 10,000 square feet and in conjunction with distribution, Level 1 manufacturing, and retail. In order to hold a microbusiness license, a licensee must engage in at least three of the four listed commercial cannabis activities.

5) Commercial Cultivation on Prime Agricultural Soils

Some of the agricultural lands in the County are designated as prime agricultural lands either by virtue of their LUP land use designation (i.e., AEP lands in the NCAP and MAP areas) and/or by the presence of mapped prime agricultural soils (e.g., mapped prime soils occur on various lands in the AE land use designation throughout the HBAP and ERAP areas, as shown in [Exhibit 2](#)). The purpose of both the AEP and AE land use designations is to protect productive prime agricultural lands for long-term productive agricultural use. The proposed amendment recognizes the importance of prime agricultural soils in several ways. First, the cumulative area of any commercial cannabis cultivation site may not exceed 20% of the area of prime agricultural soil on the parcel (section 55.4.6.4.3). In this way, prime agricultural soils will be retained for diversified agricultural uses, which will help assure the protection of the agricultural economy on these valuable prime agricultural lands. Also, where prime soils are present, the proposed amendment specifies that cultivation may only occur within the native soil. Removal of native soil and replacement with manufactured soil is prohibited. A soils management plan is required for all cannabis permits (55.4.11 & 55.4.12.10), which will be required to describe how the native soil on the property is intended to be used as part of the cannabis cultivation operation (the soils management plan also is required to detail the use of any imported soil proposed in cases where imported soil is allowed).

In addition, as described above, the existing certified IP allows only greenhouses without concrete slab floors to be constructed on prime agricultural soils, so that even if such greenhouses are excluded from CDP requirements under the County's existing categorical exclusion order, prime agricultural lands will be maintained for long-term productive agricultural use consistent with the certified LCP.<sup>16</sup> Greenhouses constructed without CDP authorization pursuant to coverage under the County's Categorical Exclusion Order are required to comply with the IP standards for agricultural accessory structures (concrete slab is allowed only for footpaths within greenhouses on prime agricultural soils). Finally, as previously mentioned, the required caps on commercial cultivation permits for each LUP area relative to the total acreage of agricultural land available in each area (Table 4), much of which is classified as prime ([Exhibit 2](#)), will result in a limited number of permits and small acreages over all the coastal agricultural lands in the County that will be dedicated to commercial cannabis cultivation.

As proposed, the amendment allows for an exception to the native soil planting requirement subject to approval of a conditional use permit. Such an exception will only be approved "if it can be demonstrated that the native soil will not be impaired or damaged" (sec. 55.4.6.4.3). In December of 2018, County staff offered changes to the adopted ordinance (friendly modifications, [Appendix B](#)) to add a requirement that a CDP also should be required for an exception to the native soil planting requirement on prime agricultural lands. Even though the County staff's friendly modification would require a CDP to authorize any such exception, removal of native soil and replacement of the native soil with manufactured soil constitutes

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<sup>16</sup> Once certified, the standards of this proposed amendment, as suggested to be modified, will be applicable to greenhouse construction covered by Categorical Exclusion Order E-86-4 pursuant to Condition H of the Categorical Exclusion Order. In order to be excluded from CDP requirements, Condition H of the order requires qualifying greenhouses to meet the standards of this proposed amendment as certified if such standards are more restrictive than current IP standards. Greenhouses not meeting the more restrictive standards would not qualify as categorically excluded development and must obtain CDP authorization

“development” under the Coastal Act, and the exception itself conflicts with the LUP policies that protect prime agricultural lands. Coastal Act section 30241 requires that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area’s agricultural economy. To allow a non-soil-dependent use on prime agricultural soils does not conform with the parallel agricultural land protection policies of the certified LUPs. Therefore, **Suggested Modification 3 (Agricultural Resources)** deletes the proposed exception ([Appendix C](#) section 55.4.6.4.3).

6) CDP Requirements for Commercial Cultivation

**Suggested Modification 2 (Requirement for a CDP)** would add the requirement for a CDP throughout the proposed amendment as applicable (where cannabis activities meet the definition of development) along with other permit requirements listed for commercial cannabis activities. Even though the proposed amendment describes various types of permits required for commercial cannabis activities, including a Zoning Clearance Certificate, Special Permit, and Conditional Use Permit, the requirement for a CDP is not consistently specified for commercial cannabis development. For example, sections 55.4.6.1.2(a)(1) and (2) require a CDP, among other types of permits, for the development of up to an acre of commercial mixed-light cultivation (which may involve the construction of greenhouses) on AE- and RA-zoned parcels between 20 acres and 320 acres in size. However, section 55.4.6.1.2(b) as proposed would allow for the development of a mixed-light cultivation operation (which by definition involves a structure, such as a greenhouse) of up to 8 acres in size on parcels 320 acres or larger with no CDP required (only a conditional use permit is specified). Similarly, section 55.4.8.1.1 requires a CDP, among other types of permits, for the development of up to 5,000 square feet of commercial indoor cultivation on AE and RA lands within non-residential structures lawfully existing prior to January 1, 2016. However, section 55.4.8.1.2 would allow for an even larger indoor cultivation operation (up to 10,000 square feet) on commercial and industrial lands without a reference to a requirement for a CDP, even though such an operation would be an intensification of use of the site meeting the definition of development. Because a CDP is required for development that is not exempted or excluded, and to avoid misinterpretation of the IP as amended with regard to CDP requirements (because it specifies in the ordinance other types of permits that are required for cannabis activities without specifying the need for a CDP in cases where cannabis activities and uses involve development), County staff has proposed changes to the adopted ordinance (friendly modifications, [Appendix B](#)) to add CDP requirements for various cannabis activities and uses where appropriate. Thus, **Suggested Modification 2** would incorporate the County staff’s recommended changes to the amendment to add CDP requirements where needed to ensure the amendment is clear with respect to all permit requirements ([Appendix C](#)). This suggested modification will ensure the proposed standards are clear with respect to the need for a CDP for cannabis-related development outside restricted locations and ensure case-specific consistency of the proposed commercial cannabis use with the land use compatibility policies and standards of the certified LCP. [Appendix D](#) presents summaries of the permit requirements by zoning district, as suggested to be modified by the Commission, for the various allowed commercial cannabis uses.

There may be instances under the proposed amendment where some components of a proposed commercial cannabis operation would require a CDP whereas other components of the operation would be excluded from CDP requirements due to coverage under Categorical Exclusion Order

E-86-4. In order to be categorically excluded, specified development must be proposed consistent with both the terms and conditions of the Categorical Exclusion and the most restrictive certified LCP standard, as amended. The Order covers specified types of agricultural accessory development that may be involved in a proposed commercial cannabis cultivation operation, including greenhouses (“except that greenhouses with concrete slab floors shall not be located on prime agricultural soil”), fences, and wells. The order applies only to legal lots within certain portions of the AE zoning district. For example, the Order does not apply to lands within a designated “T” (Transitional Agricultural Land) Combining Zone under the certified LCP, or to lands within 200 feet of a coastal stream or wetland, or to areas of the Commission’s original or retained CDP jurisdiction, or to lands within a mapped appealable area on Commission certified post-certification maps. Table 5 below identifies lands whereon qualifying greenhouses, wells, and fences for commercial cannabis cultivation have the potential to be excluded from CDP requirements if such qualifying development meets all terms and conditions of Categorical Exclusion Order E-86-4.

<b>Table 5.</b> Description of APNs whereon qualifying greenhouses, wells, and fences for commercial cannabis cultivation have the potential to be excluded from CDP requirements if such qualifying development meets all terms and conditions of Categorical Exclusion Order E-86-4.	
NCAP	<ul style="list-style-type: none"> <li>• One (1) approx. 113-acre APN on the inland side of Highway 101 near McDonald Creek Rd.</li> </ul>
MAP	<ul style="list-style-type: none"> <li>• One (1) approx. 75-acre APN on the inland side of Highway 101 off of Clam Beach Rd., on the south side of Patrick Creek</li> <li>• One (1) approx. 53-acre APN inland of Highway 101 at the end of Bugenig Ave.</li> </ul>
HBAP	<ul style="list-style-type: none"> <li>• Several APNs along the western boundary of Arcata</li> <li>• One (1) approx. 21-acre APN in the Bayside area west of Old Arcata Rd. near Jacoby Creek</li> <li>• Several APNs around Elk River Road south of Eureka</li> <li>• Three (3) APNs, each over 57 ac., between Humboldt Hill Rd. and Tompkins Hill Rd.</li> </ul>
ERAP	<ul style="list-style-type: none"> <li>• Numerous APNs around Ferndale and the Salt River</li> </ul>

Qualifying greenhouses, wells, and fences for commercial cannabis cultivation on the lands in Table 5 could potentially be excluded from CDP requirements under the Order only if all conditions and terms of the Order are satisfied and such qualifying development is: (a) located in the AE zoning district; (b) at least 20 acres in size; (c) designated for an agricultural land use designation other than AEG; (d) not located within a designated “T” (Transitional Agricultural Land) Combining Zone under the certified LCP; and (e) not located within areas of the Commission’s original or retained CDP jurisdiction or within a mapped appealable area on Commission certified post-certification maps.

Once certified, the standards of this proposed amendment, as suggested to be modified, will be applicable to greenhouses, wells, and fence construction covered by Categorical Exclusion Order E-86-4 pursuant to Condition H of the Categorical Exclusion Order.<sup>17</sup> In

<sup>17</sup> Categorical Exclusion Order E-86-4, Condition H states: *In the event an amendment of the Humboldt County LCP is certified by the Coastal Commission pursuant to Section 30514 of the Coastal Act, development under this order shall comply with the amended LCP except where the terms and condition of this order specify more restrictive development criteria...*



order to be excluded from CDP requirements, Condition H of the order requires qualifying greenhouses, wells, and fences to meet the standards of any certified amendment if such standards are more restrictive than current IP standards. Greenhouses, wells, and fences not meeting the more restrictive standards would not qualify as categorically excluded development and must obtain CDP authorization.

Because of the fact that (1) the Order does not apply to areas that are within 200 feet of a coastal stream or wetland, and (2) there are various setbacks, eligibility requirements, and performance standards in the proposed amendment that disqualify certain lands from being eligible for commercial cannabis cultivation, including caps on the maximum number of cultivation permits/acres in each LUP area, not all of the lands listed in Table 5 above can be developed with greenhouses, wells, and fences for commercial cultivation.

### **Cannabis Support Facilities**

Cannabis support facilities include facilities for Distribution, Off-Site Processing, Enclosed Nurseries, Community Propagation Centers and Testing and Research Laboratories. As proposed, commercial cannabis support facilities will not be allowed on AE- or RA-zoned lands, where no such similar uses are currently allowed under the certified LUPs, but will be allowed in the CG, ML, and MG zones and in the MC zone as an interim use, where such uses are allowed under the certified LUPs.

Cannabis support facilities fall within certified use types identified in the existing certified LCP. For example, a commercial cannabis “distribution facility” is defined as “a facility where a person conducts the business of procuring cannabis from licensed cultivators or manufacturers for sale to licensed retailers, and performs or coordinates the inspection, quality assurance, batch testing, storage, labeling, packaging and other related processes, as well as transportation to or from other licensees.” This use type is compatible with the “Warehousing, Storage, and Distribution” use type, which, as summarized above, is an allowed use on both commercial and industrial lands under the certified LUPs and under the certified IP. Distribution activities will require a CDP and will be required to meet all applicable performance standards, including, but not limited to those related to waste management, stormwater management, energy use, road access, and various others. Activities also will be required to meet various eligibility (e.g., related to the use of renewable energy) and siting criteria (e.g., setbacks from schools). Thus, the proposed amendment specifically identifies cannabis distribution facilities in compatible zones consistent with the certified LCP.

Some cannabis support facilities, such as Testing and Research Labs and other types of support facilities, are Research/Light Industrial uses, which, as cited above, involve activities, including industrial and scientific research activities, that do not create objectionable levels of noise, vibration, odor, etc. on nearby residential or commercial uses. This use type also is allowed on both commercial and industrial lands under the certified LUPs and under the certified IP. Similar to distribution facilities, testing and research labs will require a CDP and will be required to meet all applicable performance standards, eligibility criteria and siting criteria. Thus, the proposed amendment specifically identifies cannabis testing and research activities in compatible zones consistent with the certified LCP.

As cannabis support facilities in the MC zone only can be permitted as an interim use, **Suggested Modification 2 (Requirement for a CDP)** again is needed to clarify ([Appendix C](#) section 55.4.7.1) that in all cases where a cannabis support facility is proposed on MC lands, both a CDP and conditional use permit are required, pursuant to HBAP sec. 3.13 and 4.10-A and the interim use performance standards of the certified IP (section 313-104.1). As modified, the proposed allowance of cannabis support facilities in the MC zone is consistent with the land use designations and zoning district standards of the certified LCP.

### **Cannabis Manufacturing Facilities**

Cannabis manufacturing is defined as when raw agricultural product is transformed into a concentrate, an edible product, or a topical product either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. The proposed amendment describes three types of manufacturing activities: (1) flammable extraction (using compressed and uncompressed liquid solvents, such as pentane, hexane, butane, propane, etc. to make cannabis concentrates/oils (closed-loop only); (2) non-flammable extraction (using cold water, heat press, lipids, or other non-chemical extraction methods to make cannabis products), and (3) infusion (directly incorporating cannabis into a product formulation (e.g. oil, milk, butter, other lipids) to produce edibles, tinctures, lotions, soaps, vape pens, etc.).

The proposed amendment considers cannabis manufacturing activities as similar to other types of “non-nuisance, industrial, low impact manufacturing” uses (which falls under the “Research/Light Industrial” use type) and/or “activities such as... processing of... materials” (which falls under the “Heavy Commercial” use type). These types of uses are allowed on commercial and industrial lands under the certified LUPs and under the certified IP. The proposed amendment allows these manufacturing uses in the CG, ML and MG zoning districts and within the MC zoning district as an interim use consistent with the use limitations of the certified LCP. However, as previously discussed, **Suggested Modification 2 (Requirement for a CDP)** would clarify ([Appendix C](#) sections 55.4.8.2.1, 55.4.8.2.2 and 55.4.8.2.3) that in all cases where a cannabis manufacturing facility is proposed on MC lands, both a CDP and conditional use permit are required, pursuant to HBAP sec. 3.13 and 4.10-A and the interim use performance standards of the certified IP (section 313-104.1). As modified, the proposed allowance of cannabis manufacturing in the MC zoning district will protect such lands for priority coastal-dependent uses consistent with the land use designation and zoning district standards of the certified LCP.

Depending on the size of the manufacturing operation, cannabis infusion exclusive of other commercial cannabis activities may be permitted as a Cottage Industry (subject to the cottage industry regulations of the existing certified IP) in all zoning districts that allow cottage industry uses (i.e., in the AE, RA, and CG zoning districts). The numerous requirements in the existing certified IP regulating cottage industry uses (e.g., regulations for lights, noise, traffic, maximum area allowed for the cottage industry use, etc.) will ensure that such cannabis infusion activities conform with the development standards in the applicable zoning district and are compatible with the zoning district. Therefore, the allowance of cannabis infusion activities in the AE, RA, and CG zoning districts conforms with and is adequate to carry out the certified LUPs.



The amendment also proposes to allow non-flammable cannabis manufacturing within the AE and RA zoning districts. These zoning districts currently allow for some processing and manufacturing of agricultural products, such as through the Cottage Industry uses described above as well as the processing (e.g., drying and curing) of crops grown and harvested on site. Therefore, some types of small-scale cannabis manufacturing of cannabis products that are grown on-site are consistent with the currently certified LUP use designation. In addition, other larger-scale end-product manufacturing (such as operations with mechanized equipment for wholesale production) would not be allowable consistent with the agricultural resource protection policies and standards cited above due to the potential for this type of activity to convert agricultural land or otherwise impair agricultural viability, inconsistent with sections 30241 and 30242 of the Coastal Act, which are enforceable policies of each of the LUPs. The proposed amendment also requires a CDP for cannabis manufacturing within the AE and RA zoning districts and restricts such activities only to non-flammable and infusion uses. Furthermore, manufacturing activities only may occur within an existing (pre-2016) non-residential structure. This limitation will help ensure that prime agricultural land is not converted to non-agricultural manufacturing uses. However, unless the manufacturing operation is tied to on-site agricultural commercial cultivation uses (i.e. the manufactured product is grown on-site and thus tied to the land), the use would not be considered a compatible agricultural use under the certified LUPs, because it would not be “directly a part of agricultural production” on the parcel and could impermissibly convert agricultural land to non-agricultural uses. Therefore, **Suggested Modification 3 (Agricultural Resources)** would require cannabis manufacturing activities in the AE zoning district to be limited to the processing of raw cannabis materials grown onsite within the permitted commercial cultivation area ([Appendix C](#) section 55.4.6.1.1). As modified to require that manufacturing be limited to non-flammable and infusion uses only, tied to onsite commercial cultivation, restricted to occur within existing structures only, and required to be authorized by a CDP to ensure case-specific consistency of the proposed use with the agricultural land protection and compatibility policies, cannabis manufacturing in the AE and RA zoning districts is consistent with the requirements of the certified LCP.

### **Cannabis Retail Facilities**

Cannabis retailers are defined as facilities that offer cannabis products for sale to the general public, whether for medicinal or adult use. The amendment defines retailer as including medical cannabis dispensaries. As summarized in Finding IV-A-i above, the County’s proposed dispensary regulations were separately adopted (CCLUO Phase 3) and submitted to the Commission for certification under Part B of the subject LCP amendment application but are not yet part of the certified IP (the application is expected to be scheduled for the Commission’s consideration by August 2019). Therefore, County staff has proposed adding as a friendly modification a parallel definition of dispensary that would apply independently within the currently proposed amendment ([Appendix B](#), sec. 55.4.4).

The proposed amendment states that Adult Use Retail Sales “are a permitted use subject to the same permit requirements that apply” to the (not-yet-certified) dispensary regulations. Under these not yet certified regulations, dispensaries would be allowed, subject to approval of both a CDP and conditional use permit, in the CG and ML zoning districts (as well as the Neighborhood Commercial (CN) and Business Park (MB) zoning districts). Unlike several of the other cannabis uses that the proposed amendment specifically authorizes in the CG, ML, MG,

and MC zoning district, the still pending dispensary regulations would not allow the retail sale of cannabis in the MG or MC zoning district. Because the CG and ML zoning districts currently allow for retail sales and services, whereas the other zones generally do not, Adult Use Retail Sales of cannabis in the CG and ML zoning districts is consistent with the land use and zoning standards of the certified LCP. However, as indicated above, the County's proposed dispensary regulations were separately adopted (CCLUO Phase 3) and submitted to the Commission for certification under Part B of the subject LCP amendment application but are not yet part of the certified IP (the application is expected to be scheduled for the Commission's consideration by August 2019). Therefore, because the dispensary regulations referenced in the proposed amendment are not yet part of the certified LCP, **Suggested Modification 1 (Land Use Compatibility)** is needed to independently specify the zones where retail sales are allowed versus not allowed. ([Appendix C](#), section 55.4.10.1). As modified, Adult Use Retail Sales would be specifically identified in the CG, CN, MB, and ML zoning districts, consistent with the uses allowed in these areas under the certified LUPs, and would only be permitted in both the MG zoning district and in the MC zoning district as an interim use provided that the retail sale use is combined with other cannabis uses within a permitted Microbusiness consistent with proposed section 55.4.10.2. This cited section allows microbusiness activities as a permitted use, subject to a CDP, in the CG, ML, and MG zoning districts and in the MC zoning district as an interim use. In addition, road access for both Adult Use Retail Sales and Microbusiness uses are required to be paved and compliant with minimum road width and public safety standards. **Suggested Modification 1** also deletes the exception to the road standard requirement provided in section 55.4.10 to ensure safe road access for the public for retail cannabis uses and to prevent cannabis retail facilities from encroaching into rural areas with substandard road systems.

Consistent with the policies of the LUP that prioritize visitor-serving commercial uses, the proposed amendment will not allow commercial cannabis activities, including Adult Use Retail Sales or Microbusiness, on CR lands. Therefore, the CR lands are protected for priority visitor-serving commercial recreational uses consistent with the certified LUPs.

Therefore, because the proposed amendment as modified would: (a) specifically identify retail sales and microbusiness uses in compatible zones where similar uses are allowed; (b) restrict the retail sale use to microbusiness situations only in the industrial zones where retail sales exclusively are not allowed; and (c) prohibit cannabis retail sales in CR lands which are protected for visitor-serving uses, the amendment, only as modified, allows cannabis retail uses within zones consistent with the land use designations and zoning district standards of the certified LCP.

### **Cannabis Bed and Breakfasts**

The proposed amendment will allow a Bed and Breakfast (B&B) use in conjunction with a permitted commercial cannabis operation (referred to as "cannabis farm stays" in the amendment), subject to approval of a CDP and when meeting the standards applicable to B&B establishments in the certified IP. The B&B standards (IP sec. 313-44.1) relate to occupancy (a maximum of eight guests/four guest bedrooms is allowed), provision of meals, and signage (one maximum 4-square-foot sign is allowed, which "*shall be non-moving, and shall have, if any, only illumination which is indirect and non-flashing and shielded to prevent illumination off-site*"). B&B's are an allowed use in the RA zoning district, a residential zone where agriculture is

allowed, but not in any of the other zones where cannabis uses will be allowed, including not within the AE zoning district. Because the proposed amendment regulates this visitor-serving use not as an agricultural use (e.g., “farm stay”) but rather as a B&B operation, County staff has offered a friendly modification to the proposed amendment to specifically limit cannabis “Farm Stays” to the RA zoning district where both agricultural activities and visitor-serving B&B uses are allowed. This proposed change is consistent with the agricultural resources protection policies of the certified LUPs, because it will ensure that there is no potential for conversion of agricultural lands for a non-agricultural use. Therefore, **Suggested Modification 1 (Land Use Compatibility)** would incorporate the County staff’s suggested change to section 55.4.10.6 ([Appendix C](#)) and also specifically define the use as visitor-serving rather than agricultural. Therefore, as modified, the proposed allowance of cannabis farm stays on RA-zoned lands is consistent with the land use designations and zoning district standards of the certified LCP.

## **Conclusion**

The proposed amendment provides a comprehensive regulatory program for commercial cannabis with explicit requirements related to the types and extent of activities that can occur in particular areas plus a variety of standards that more generally address the specific issues associated with cannabis. These include, but are not limited to, nuisance odors, proximity to at-risk populations, and other issues. Despite these cannabis-specific issues, the proposed amendment recognizes that cannabis is akin to other agricultural operations and thus allows commercial cultivation within various zones where agriculture is allowed. In some cases, the proposed amendment appropriately allows for cannabis activities in compatible land use designations consistent with the certified LUP. However, in other cases, the amendment proposes cannabis activities in areas where such uses are not compatible with the policies and standards of the certified LUP. Therefore, the Commission suggests various Suggested Modifications ([Appendix C](#)) to conform the proposed new IP standards consistent with the LUP policies. These suggested modifications, among other things, would only allow commercial cannabis activities within comparable land use designations and would require a CDP for all commercial cannabis uses to ensure that future cannabis-related development would be individually reviewed for consistency with all LUP policies on a case-by-case basis consistent with the proposed regulatory framework. The Commission finds that the proposed amendment, only as modified, is consistent with and adequate to carry out the policies of the certified LUPs.

### **ii. Protection of Wetlands, ESHA, and Water Quality**

#### **(a) Summary of LUP policies**

All six LUPs include various policies related to the protection of wetlands, streams, and environmentally sensitive habitat areas (ESHA), as summarized below, including the following Coastal Act policies as enforceable LUP policies:

§ 30233, in applicable part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource-dependent activities...*

§ 30236 (emphasis added):

*Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

§ 30240:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, all the LUPs except for the ERAP include sections 30230 and 30231 of the Coastal Act as enforceable LUP policies, and three of the LUPs (NCAP, MAP, and HBAP) include Coastal Act section 30232 (emphasis added):

§ 30230, in applicable part, states (emphasis added):

*Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance...*

§ 30231 states (emphasis added):

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with the surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

§ 30232 states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Furthermore, all six LUPs include the following additional policies related to the protection of natural drainage courses and riparian corridors (emphasis added):

*Natural drainage courses, including ephemeral streams, shall be retained and protected from development which would impede the natural drainage pattern or have a significant adverse effect on water quality or wildlife habitat. Stormwater outfalls, culverts, gutters and the like shall be dissipated and, where feasible, screened.*

...

*New development within stream channels shall be permitted when there is no less environmentally damaging feasible alternative, where the best feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to: (a) wetlands, fishery, and wildlife enhancement and restoration projects; (b) road crossings...[provided that the length of the road within the riparian corridor shall be minimized, where feasible, by rights of way which cross streams at right angles and do not parallel streams within the riparian corridor]; (c) maintenance dredging for flood control and drainage purposes consistent with Transitional Agricultural Lands policies; (d) development consistent with [the provisions of “new development within riparian corridors” policy- see below]...*

*Riparian corridors on all perennial and intermittent streams shall be, at a minimum, the larger of the following: (a) 100 feet, measures as the horizontal distance from the stream transition line on both sides; (b) 50 feet plus four times the average percent of slope, measured as a slope distance from the stream*

transition line on both sides of intermittent and perennial streams; (c) Where necessary, the width of riparian corridors shall be expanded to include significant areas of riparian vegetation adjacent to the corridor, slides, and areas with visible evidence of slope instability, not to exceed 200 feet measured as a horizontal distance.

...

*New development within riparian corridors shall be permitted when there is no less environmentally damaging feasible alternative, where the best mitigation measures feasible have been provided to minimize adverse environmental effects and shall be limited to the following uses: (a) timber management activities...; (b) timber harvests...; (c) maintenance of flood control and drainage channels; (d) wells in rural areas; (e) road and bridge replacement or construction...; (f) removal of trees for disease or public safety purposes; (g) removal of firewood for personal use on the property...; (h) public access trails...*

*Mitigation measures for development within riparian corridors shall, at a minimum, include replanting disturbed areas..., retaining snags..., and retaining live trees with visible evidence of current use as nesting sites by hawks, owls, eagles, osprey, herons, or egrets...*

The ERAP includes a policy specific to the Eel River requiring that a minimum 200-foot buffer of woody riparian vegetation be maintained between agricultural activities and the mainstem of the Eel River.

With respect to stream diversions, the NCAP, TAP, MAP, ERAP, and SCAP each include similar policies that relate to the allowance for water withdrawals, consistent with section 30236 of the Coastal Act, from specific streams within each of the respective LUP areas (i.e., water withdrawals may be allowed for necessary water supply projects; for flood control where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or for developments where the primary function is the improvement of fish and wildlife habitat). Essentially, stream diversions in limited cases may be conditionally allowed for agricultural operations (e.g., on Little River, Patrick Creek, and Mill Creek in the MAP area), but only if it can be demonstrated that such diversions would not impact aquatic resources. In other cases (e.g., Strawberry Creek and Widow White Creek in the MAP), new development may not rely on the use of water withdrawals or diversions from streams. In all cases where water withdrawals or diversions are allowed, the applicants are required “to seek feasible alternatives which will minimize impacts.”

The LUPs also include several additional policies related to the protection of wetlands. The NCAP, MAP, and HBAP include the following policies regarding wetland buffer areas and wetland setbacks, and similar standards also are included in the existing IP (emphasis added):

No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value...

*New Development except for (1) ... [(a) allowed uses in transitional agricultural lands; (b) permitted uses within wetlands planned Resource Dependent (MR); and (c) permitted uses within wetlands planned Natural Resources (NR)<sup>18</sup>]; (2) wells in rural areas; and (3) new fencing, so long as it would not impede the natural drainage, shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetlands habitat values...*

*Within an urban limit line, the setback shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the “stringline method.” That method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetlands.*

*Outside an urban limit line, the setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.*

*In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when: (a) the prescribed buffer would prohibit development of the parcel for the principal permitted use for which it is designated; or (b) the applicant for the proposed development demonstrates, to the satisfaction of the [CDFW] that a setback of less than the distance specified above will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats. Any such reduction in development setback may require mitigation measures...to ensure new development does not adversely affect the wetland habitat values...*

The above cited policies, while limiting the uses allowed in wetlands and requiring new development to be sufficiently setback to protect the wetland habitat values, do allow for certain uses to occur within wetland buffers, including: (1) the uses allowed under sections 30233 and 30236 of the Coastal Act; (2) ongoing agriculture use in historically farmed wetlands (diked former tidelands, called “transitional agricultural lands”); (3) resource-dependent uses (e.g., aquaculture, restoration, nature study); and (4) uses allowed in areas designated Natural Resources (e.g., restoration, nature study, fish and wildlife habitat management, incidental public services purposes, and similar uses).

(b) Findings for Denial as Submitted and Approval if Modified as Suggested

**Wetlands and ESHA**

While the proposed amendment (in sec. 55.4.5.1.3) requires a minimum 100-foot setback from ESHA and wetlands for all new commercial cannabis activities, in some cases a 100-foot setback

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<sup>18</sup> Combined, these allowed/permitted uses included: (a) ongoing agricultural activities in farmed wetlands; (b) the uses allowed under Section 30233 of the Coastal Act; and (c) fish and wildlife management.



does not conform with nor is adequate to carry out LUP policies requiring a larger setbacks in certain areas and/or adjacent to certain types of ESHA, as summarized above. For example, in rural areas, a 100 foot to 200 foot setback is required, and in areas adjacent to riparian corridors on steep slopes, a setback of 50 feet plus four times the average percent of slope is required). Therefore, **Suggested Modification 4 (Wetland/ESHA)** would clarify ([Appendix C](#), sec. 55.4.5.1.3) that a 100-foot setback as proposed in the amendment is the minimum requirement, but setbacks must be consistent with LUP requirements sometimes require that a greater than 100-foot setback, depending on the type of ESHA and site-specific factors. The suggested modification further clarifies that other provisions of the proposed amendment, specifically the Biological Resources Protections Performance Standard (sec. 55.4.12.1.10), may impose additional buffer requirements to which permitted commercial cannabis activities must adhere.

Two additional setback clarifications are needed in section 55.4.6.4.4 related to “standard setbacks” for all commercial cannabis cultivation sites. First, in subsection (f) of this section, the proposed amendment requires a 600-foot setback for commercial cultivation sites from publicly owned lands managed for open space and/or wildlife habitat purposes. This setback is consistent with LUP policy requirements that require development in areas adjacent to ESHA and parks and recreation areas to be sited and designed to prevent impacts which would significantly degrade those areas, such as potential odor, lighting, and noise impacts associated with commercial cannabis cultivation operations. However, the proposed amendment allows for the setback requirement to be waived with approval of a Special Permit, provided that advanced notice is given to the person or agency responsible for managing or supervising the management of those lands. There is no minimum setback distance that is required to be maintained with the allowed setback reduction, nor are there any standards identified that should be considered in an evaluation of a request for a setback reduction. Therefore, **Suggested Modification 4 (Wetlands/ESHA)** would specify that any permitted setback less than 600 feet shall, as required by section 30240(b) of the Coastal Act, be sufficient to prevent impacts that would significantly degrade adjacent open space/habitat areas and shall be compatible with the continuance of the habitat areas, consistent with LUP ESHA-protection policy requirements and in no case shall be less than 100 feet [[Appendix C](#), sec. 55.4.6.4.4(f)]. Furthermore, to ensure that there are adequate setbacks from streams to prevent the depletion of groundwater supplies and substantial interference with the surface water flow consistent with LUP policy requirements (section 30231 of the Coastal Act), **Suggested Modification 4** adds text to section 55.4.12.9 ([Appendix C](#)), which is the performance standard for new wells, to cross-reference the wetland/ESHA setback requirement of sec. 55.4.6.4.4(i) related to standard setbacks, which requires that commercial cultivation sites and appurtenant facilities, including agricultural wells and similar infrastructure, are required to “*observe all prescribed setbacks and limitations pertaining to the use of land located within or affecting Environmentally Sensitive Habitat Areas (ESHA) or Wetlands, as defined under Coastal Act regulations in Humboldt County Code and Local Coastal Area Plans.*”

The proposed amendment also requires additional clarifications with respect to the Biological Resources Protections Performance Standard. As proposed, sec. 55.4.12.1.10 of the proposed amendment requires commercial cannabis activities to implement the various biological resources protection measures from the FEIR adopted for the project (Ascent Environmental, Inc. 2018), which include, but are not limited to, required pre-construction surveys to identify



sensitive species and habitats at a project site and to establish minimum prescribed buffers from a specific list of sensitive resources identified in the FEIR as having the potential to be impacted by commercial cannabis activities. However, the amendment only provides a list of the FEIR mitigation measures by name and number, without providing any details on the specific requirements of each measure identified in the FEIR as being necessary to avoid or minimize significant impacts to biological resources from proposed commercial cannabis activities. Without specifying the actual standards required to protect the various types of ESHA that may be impacted by the proposed uses, the proposed amendment does not conform with and is inadequate to carry out the ESHA, wetland, stream, and riparian corridor protection requirements of the certified LUPs. Therefore, **Suggested Modification 4 (Wetlands/ESHA)** would supplement the list of FEIR mitigation measure names and numbers within the amendment text [[Appendix C](#), sec. 55.4.12.1.10(a)-(n)] to add the detailed standards of the adopted FEIR mitigation measures related to biological resources protections for commercial cannabis activities. These include the identified standards for biological surveys and specific protections for special-status amphibians, western pond turtle, nesting raptors, Northern spotted owl, Marbled murrelet, other special status nesting birds, American badger, fisher, Humboldt marten, special-status bats, special-status voles, special-status plants, sensitive natural communities, and coastal wetlands and waters. Similarly, Suggested Modification 4 would strengthen the performance standards in the proposed amendment related to noise ([Appendix C](#), sec. 55.4.12.6) and invasive species control ([Appendix C](#), sec. 55.4.12.16) to integrate the FEIR requirements deemed necessary to protect ESHA resources from potential cannabis-related impacts.

Finally, **Suggested Modification 4 (Wetlands/ESHA)** would delete an exception included in section 55.4.12.1.10 (Performance Standards for Biological Resources) that is inconsistent with the LUP policy requirements for wetlands and ESHA protection cited above. As proposed, the performance standards for biological resources protection “*would not apply to new development activities within the footprint of existing structures or proposed on lands planned or zoned for commercial or industrial activities.*” However, nesting raptors (especially osprey) are known to roost and sometimes nest on vacant and underutilized industrial lands of Humboldt Bay. Without the requirement to conduct surveys for and establish buffers around active nests located on proposed commercial cannabis industrial sites, the amendment as proposed does not conform with LUP policy requirements to protect sensitive habitat areas from significant disruption of habitat values. In addition, although existing structures typically provide little habitat value for biological resources, there are several species of special-status bats with the potential to roost in abandoned industrial warehouses and other existing structures, including those that are located around Humboldt Bay that could be redeveloped for commercial cannabis uses under the proposed amendment. Again, without the requirement to conduct surveys for and establish suitable buffers around active hibernation and/or maternal bat roosting habitat areas that may be located within the footprint of existing structures on commercial and industrial lands where cannabis activities would be allowed, the amendment as proposed is inconsistent with LUP ESHA protection policy requirements. Furthermore, there are undeveloped commercial and industrial lands that contain coastal wetlands, and the certified LUPs require protection and appropriate buffering of wetlands from impermissible uses, including commercial cannabis uses. Therefore, Suggested Modification 4 deletes the exception that commercial cannabis activities within the footprint of existing structures or on commercial and industrial lands needn’t comply with the biological resources mitigation measures of the FEIR ([Appendix C](#) sec. 55.4.12.1.10).

The Commission thus finds that the proposed amendment, only as modified, is consistent with and adequate to carry out the ESHA, wetland, and riparian protection policies of the certified LUPs.

### **Stream Diversions**

Commercial cannabis cultivation is allowed under the proposed amendment in rural areas that lack public water systems (e.g., most of the SCAP) and which in some cases rely on stream or spring diversions (“diversionary sources”) for domestic and agricultural uses, consistent with section 30236 of the Coastal Act (“necessary water supply projects”). In some cases, the use of water pumped from a domestic or agricultural well may be considered diversionary, if the pumping of groundwater is hydrologically connected to a river or stream. Diverting water from streams and springs for domestic and agricultural uses can result in significant impacts to water quality and aquatic and riparian habitats, including impacts to sensitive plant, amphibian, and fish habitat areas.

Consistent with section 30236 of the Coastal Act, the certified LUPs, as cited above, generally permit river and stream diversions for “necessary water supply projects” provided that the diversion is the least environmentally damaging feasible alternative and the best mitigation measures feasible are incorporated. However, some LUP policies prohibit diversions from certain streams altogether. Any permissible stream or natural drainage course alteration that is permissible must protect water quality and aquatic and wildlife habitats. An important mitigation measure to minimize impacts associated with water diversions is to require storage and forbearance during certain periods of the year, such as during the dry season period of May to October.

As adopted, section 55.4.6.3.2 prohibits the use of water from a diversionary source for irrigation purposes, except in limited cases. Irrigation from diversionary sources is allowed for “dry farmed outdoor or mixed-light commercial cultivation sites,” and in those cases only for “propagation areas and transplantation” of commercial cannabis rather than principal cultivation areas. Section 55.4.12.7 requires commercial cultivation operations to obtain a discretionary permit for all diversions and to forbear during periods of low or reduced stream flows, in accordance with requirements of the State Water Resources Control Board. In addition, the performance standard for cannabis irrigation source water (section 55.4.12.7) includes requirements for (1) documenting past and proposed use(s) of water on the property to assist in identifying and establishing an appropriate forbearance period for cannabis irrigation; (2) developing on-site water conservation measures (e.g., rainwater catchment systems, drip irrigation, timers, mulching, irrigation water recycling, etc.); (3) developing adequate on-site water storage to provide for irrigation, based on the size of the area to be cultivated; and (4) installing and maintaining a metering device on all discrete points of diversion or other locations of water withdrawal (including wells) and keeping record of all water used in irrigation of permitted cultivation areas (which shall be reported to the County on an annual basis).

As discussed above, some LUPs (e.g., the MAP) include policies that prohibit diversions from specific streams in all cases. After adoption of the proposed amendment, to avoid any inconsistency with such LUP policies, and because the use of diversionary sources for cannabis

irrigation already is prohibited for principal commercial cultivation areas (and only allowed in certain limited types of cultivation and only for propagation/transplantation sites), County staff offered a friendly modification ([Appendix B](#) sec. 55.4.6.3.2) to require that irrigation shall exclusively utilize stored water from non-diversionary sources in all cases. The proposed modification deletes the exception that otherwise would allow the use of diversionary water for commercial propagation areas and transplantation uses for outdoor and mixed-light dry-farmed cannabis operations. This proposed change is consistent with LUP requirements that (a) new development permitted in rural areas that lack public water systems shall not have significant adverse effects on coastal resources or substantially interfere with surface water flow, and (b) only allow “substantial alterations” of rivers and streams for three specified uses, and in the case of water supply projects, the use must be demonstrated to be “necessary.” Therefore, **Suggested Modification 5 (Streams)** would make this change to section 55.4.6.3.2 ([Appendix C](#)) to require that irrigation shall exclusively utilize stored water from non-diversionary sources in all cases. Therefore, the proposed amendment, only as modified, will not result in increased water demand reliant on diversionary sources and protects groundwater supplies and stream habitat consistent with the certified LUPs.

The County’s offered friendly modification described above related to the use of diversionary sources for irrigation also includes a proposed deletion of the performance standard for cannabis irrigation (summarized above) in its entirety ([Appendix B](#) sec. 55.4.12.7). However, the requirements of this performance standard for developing onsite water conservation measures and its provisions related to metering and record keeping also are relevant to non-diversionary cannabis irrigation source water in general and were determined in the FEIR to be feasible mitigation measures to minimize hydrological impacts. Thus, Suggested Modification 5 also would preserve the proposed performance standard for cannabis irrigation ([Appendix C](#) sec. 55.4.12.7) but update it to remove references to the use of diversionary source irrigation water and associated forbearance requirements. In addition, Suggested Modification 5 updates a related performance standard for water storage ([Appendix C](#) sec. 55.4.12.8) to remove the standard’s existing reference to off-channel ponds, which, as a type of diversionary water source, would be prohibited under the proposed amendment as modified.

Therefore, the Commission finds that proposed amendment, only as modified, is consistent with and adequate to carry out the stream protection policies of the certified LUPs.

### **Water Quality**

Commercial cannabis activities have the potential to impact water quality in several ways, as evidenced by the myriad of unregulated cannabis operations in the County mostly outside of the coastal zone that have significantly degraded watershed resources in various areas. First, development of new commercial cannabis cultivation sites and modification of existing unauthorized cultivation sites under the proposed amendment may involve clearing grading, and road construction, all of which has the potential to lead to accelerated erosion and sedimentation that may degrade the quality of coastal waters in terms of turbidity and pollutants. Topography in much of the unincorporated county is rugged and steep, and poorly constructed unpaved roads, prone to accelerated wear and erosion, can fail, especially at culverts and other types of watercourse crossings, which contributes to the degradation of water quality and riparian habitats. Second, commercial cultivation activities can result in the discharge of pesticides,

fertilizers, soil amendments, and other pollutants via stormwater or irrigation runoff into coastal waters. Third, as discussed above, stream water quality can be greatly impaired when streams are diverted for irrigation during low-flow periods (e.g., the dry season). Finally, development under the proposed amendment may include construction of new facilities for the manufacturing, processing, and dispensing of cannabis. Construction of new or expanded facilities for these uses could in some cases involve excavation for the construction of building foundations, roads, driveways, and utility trenches. While such development would be restricted to commercial and industrial areas, legacy pollutants at commercial and industrial sites to be redeveloped (e.g., dioxin contamination in soil and groundwater at sites where timber mills historically operated) have the potential to be mobilized in during construction, which could lead to contamination of surface water or groundwater.

The proposed amendment includes various standards to address these potential water quality impacts. Outdoor and mixed-light commercial cultivation sites must be confined to areas where slopes are 15% or less (sec. 55.4.6.4.1). Although there is an exception to the slope requirement for provisional permitting, according to County planning staff, there are only three known unauthorized “pre-existing” cultivation sites in the coastal zone that the County expects may apply for provisional permitting by the prescribed deadline (the end of 2019), none of which are on lands with slopes that exceed 15% (two of the sites are on Table Bluff and the third is near the Mattole River). More importantly, all cannabis permits, including provisional permits, are required to produce a stormwater management plan to address drainage of the site in a manner that protects water quality consistent with the LUP policies requirements of Coastal Act section 30231. As modified as discussed above, the amendment requires a minimum 100-foot setback from wetlands, streams, and riparian ESHA (sec. 55.4.5.1.3, [Appendix C](#)). Also as discussed above, the proposed amendment, as modified, prohibits stream diversions to support commercial cannabis operations (sec. 55.4.6.3.2, [Appendix C](#)). Moreover, roads providing access to any commercial cannabis site must comply (under sec. 55.4.12.1.8) with various water quality protection standards, including, but not limited to, measures to reduce velocity of runoff, capture and detain stormwater from road systems to enable settling of transported sediments, and minimize the potential for direct delivery of sediments to nearby watercourses. Furthermore, applications for cannabis permits are required (under sec. 55.4.12.1.12) to include a plan detailing stormwater management for the property, including the location, capacity, and operation of all existing and proposed drainage facilities and features. The performance standard requires the plan, which is to be submitted as part of the cannabis permit application, to describe current drainage conditions and prescribe measures to ensure that the project will retain pre-project drainage conditions and avoid any net increase in the volume of stormwater runoff from the property. The Commission attaches **Suggested Modification 6 (Water Quality)** to require in the stormwater management performance standard ([Appendix C](#) sec. 55.4.12.1.12) that improvement rather than retention of pre-project drainage conditions may be needed in cases where existing (pre-project) conditions are not protective of water quality. To retain such conditions would conflict with the water quality protection policies of the certified LUP, including section 30231 of the Coastal Act, which requires that the biological productivity and the quality of coastal waters shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment and controlling runoff.

The Commission also suggests strengthening the performance standard for the management of waste and hazardous materials consistent with the FEIR requirements necessary to protect water quality from the potential impacts associated with cannabis-related waste. Such waste may include solid waste such as plant material, greenhouse framing, plastics and tarpaulin used in greenhouse sheathing and coverings, product packaging and containers, irrigation tubing, pots, etc. In addition to the water quality protection requirements of Coastal Act section 30231, section 30232 of the Coastal Act (also an enforceable LUP policy in all six LUPs) directs that protection against the spillage of hazardous substances shall be provided in relation to any development.

**Suggested Modification 6** ([Appendix C](#) sec. 55.4.12.1.13) therefore integrates all the FEIR requirements related to the required preparation of waste and hazardous materials management plans, including the requirements that (a) all projects shall prepare a Materials Management Plan for proper disposal of project-related waste at legally authorized disposal sites; and (b) where projects involve storage and use of hazardous materials, applicants shall prepare a hazardous materials management plan. Both plans are to be submitted with the permit application, and commercial cannabis permits shall not be granted without approval of the relevant agencies (County Division of Environmental Health and public agencies or private enterprises accepting waste materials).

Finally, the proposed amendment would allow the development of commercial cannabis operations on sites where existing or past industrial or commercial land uses have operated. Construction activities that disturb subsurface materials could encounter previously unidentified contamination from past practices, placement of undocumented fill, or even unauthorized disposal of hazardous wastes. In general, to address the potential for documented and undocumented hazards on a site, the American Society for Testing and Materials has developed widely accepted standards of practice for the preliminary evaluation of site hazards (E-1527-05). As described in the FEIR adopted for the proposed amendment:

Phase I Environmental Site Assessments (ESAs) include an on-site visit to determine current conditions; an evaluation of possible risks posed by neighboring properties; interviews with persons knowledgeable about the site's history; an examination of local planning files to check prior land uses and permits granted; file searches with appropriate agencies having oversight authority relative to water quality and/or soil contamination; examination of historic aerial photography of the site and adjacent properties; a review of current topographic maps to determine drainage patterns; and an examination of chain-of-title for environmental lines and/or activity and land use limitations. If a Phase I ESA indicates the presence, or potential presence of contamination, a site-specific Phase II ESA generally is conducted to test soil and/or groundwater. Based on the outcome of a Phase II ESA, remediation of contaminated sites under federal and State regulations may be required prior to development. Phase I ESAs can also be used to identify the potential for presence of hazardous building materials in situations where older structures intended for demolition could contain lead-based paint, asbestos containing materials, mercury, or polychlorinated biphenyls. It is common practice for lending institutions to require a Phase I ESA to be prepared to research and disclose the prior uses of the site and the likelihood that residual hazardous materials and/or waste might be present in underlying soil and/or groundwater when properties change hands.

The proposed amendment requires (in sec. 55.4.12.1.11) that where commercial cannabis activities are proposed on a property previously developed with an industrial or heavy commercial use, permit applications shall include a Phase I ESA to evaluate the presence of potential hazardous materials on the site. If the initial Phase I assessment indicates the presence or likely presence of contamination, the performance standard requires that a Phase II ESA be prepared. In addition, where demolition activities are proposed, the required ESA(s) shall also include a survey for the presence of hazardous building materials and specify appropriate treatment of solid waste during demolition and disposal. Furthermore, where contamination at the project site has been verified, a hazardous materials contingency plan shall be submitted for County review and approval during permit review.

These standards do not protect water quality consistent with the LUP water quality protection requirements (Coastal Act sections 30231 and 30232 discussed above), because, in part, they do not specify the necessary actions that would be taken if unanticipated evidence of contaminated oil or groundwater is encountered during construction. Therefore, **Suggested Modification 6 (Water Quality)** would add supplemental language to strengthen the performance standard consistent with the LUP water quality protection requirements (and also FEIR requirements; see [Appendix C](#), sec. 55.4.12.1.11). Namely, where contamination at the project site has been verified by the Phase II ESA or where ground disturbance is proposed on property previously developed with an industrial or commercial use, a hazardous materials contingency plan shall be submitted for County review and approval during permit review, in consultation with County Division of Environmental Health (DEH), North Coast Regional Water Quality Control Board (RWQCB), and Department of Toxic Substances Control (DTSC), as applicable. The contingency plan shall identify conditions that could indicate potential hazardous materials contamination and include the provision that if, at any time during constructing the project, evidence of soil and/or groundwater contamination with hazardous material is encountered, construction shall immediately cease, and the County shall be contacted. Work shall not recommence until the discovery has been assessed/treated appropriately to the satisfaction of DEH, RWQCB, and DTSC (as applicable). Assessment and treatment may include soil or groundwater sampling and remediation if potentially hazardous materials are detected above threshold levels.

The Commission finds, that the proposed amendment, only as modified, protects water quality consistent with LUP policy requirements due to the added suggested standards to effectively control stormwater runoff and protect against the mobilization of hazardous substances.

### **Conclusion**

The proposed amendment establishes a variety of standards that address potential ESHA, wetland, and water quality impacts associated with cannabis-related development. These standards include, minimum setbacks requirements, restrictions on the use of stream diversions for principal irrigation, and various water quality protection standards. Although these measures generally provide protections for coastal resources to address the issues posed by cannabis, in some cases the proposed amendment is inadequate to carry out the certified LUP requirements. Therefore, the Commission attaches Suggested Modifications 4, 5, and 6 ([Appendix C](#)) to: (a) require setbacks from wetlands and ESHA to conform with prescribed LUP setback requirements for wetlands, riparian corridors, and other types of ESHA; (b) specify the various standards



identified in the FEIR adopted for the proposed amendment as necessary to avoid or minimize significant impacts to biological resources from proposed commercial cannabis activities; (c) delete the exception that allows cannabis irrigation from diversionary sources in some cases; and (d) strengthen the performance standards for stormwater management, waste management, and for preparation of contingency plans required for the redevelopment of commercial and industrial sites with the potential to harbor legacy contamination in soil and groundwater. The Commission finds that the proposed amendment, only as modified, is consistent with and adequate to carry out the wetland, ESHA, and water quality protection policies of the certified LUPs.

**iii. Adequacy of Water Supply Sources**

(a) Summary of LCP policies

§ 30250, in applicable part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

§ 30254:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; ... Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

In addition, the NCAP, TAP, MAP and HBAP state in part as follows (emphasis added):

*The development of lands within the Urban Limit for the uses indicated on the Area Plan Map... [is] contingent upon the ability of the area to accommodate the development... More specifically, no lands within the Urban Limit shall be developed...unless the following findings are made... (1) That water supply and adequate provision for sewage disposal...is available...*

(b) Findings for Denial as Submitted and Approval if Modified

The FEIR evaluated water supply issues for the County's adopted CCLUO (coastal and inland amendments) and identified, in some cases, possible significant impacts on water supply systems and water resources. Cultivation and the other commercial cannabis activities allowed under the

proposed amendment (commercial cultivation in particular) will require an adequate supply of water. Water demand for commercial cannabis cultivation varies depending on several factors, including local climate conditions, watering methods, type of cultivation (indoor, outdoor, or mixed-light), number of harvests per year, and other variables. According to the FEIR, indoor cultivation uses approximately 11 gallons of water per canopy square foot per year, and outdoor and mixed-light cultivation use between 1.23 gallons to 14.71 gallons per canopy square foot per year (median value of 7.97 gallons per canopy square foot per year). The FEIR determined, assuming each outdoor site would complete one harvest, each mixed-used site would complete two harvests, and each indoor site would complete five harvests, that water demand for cannabis cultivation equates to 17.4 gallons per square foot or ~760,000 gallons per acre of cultivation.

Under the amendment as adopted, irrigation water for commercial cultivation and other water needed to support the proposed commercial cannabis uses will be provided by public water supplies or non-public supplies. Public sources in the unincorporated County coastal zone generally are associated with special districts, such as Community Services Districts (CSDs), which, according to the FEIR, vary in terms of their ability to service projected growth in their service areas (see Table 6 below). Developed lands outside of public service districts in the unincorporated County coastal zone receive domestic water through individual onsite water systems supplied either by stream or spring diversions or from groundwater wells. In addition, water to support agricultural operations typically is derived from groundwater pumping or artesian springs. The proposed amendment includes regulatory standards for each of the various water supply sources (individual diversions, public systems, and individual wells).

### **Stream diversion water systems**

As previously discussed, the proposed amendment specifically authorizes commercial cannabis cultivation in areas that lack public water systems and which currently rely on diversionary sources of water for domestic and agricultural uses. **Suggested Modification 5 (Streams)**, also discussed above, would require that irrigation for commercial cannabis operations shall exclusively utilize stored water from non-diversionary sources (e.g., groundwater or rainwater catchment systems) in all cases to avoid inconsistency with LUP policies that prohibit stream diversions. Applications for commercial cultivation operations must demonstrate that adequate capacity exists for irrigation use, as determined by the Public or Private Water Supplier (sec. 55.4.6.3.2), and a will-serve letter from the supplier is an application filing requirement (sec. 55.4.11). The amendment also requires that applicants identify how much water they will use and how much water they have available, including documentation of their water source (sec. 55.4.12.7, Performance Standard for Cannabis Irrigation). Thus, the proposed amendment, only as modified, will ensure that commercial cannabis activities will not increase water demand on stream systems in rural areas.

### **Public water systems**

Public water systems in the unincorporated County coastal zone vary in terms of water supply and the system's ability to service projected growth in their service areas, as summarized in Table 6. New commercial cannabis cultivation and non-cultivation operations located within CSD boundaries or other service entities may obtain public water service, if the CSD determines that capacity for new hook-ups is available.



**Table 6.** Public water service providers in the unincorporated County coastal zone.\*

<b>Water Service Provider</b>	<b>LUP Area</b>	<b>Water Source</b>	<b>Adequacy of Supply to Serve Service Area</b>
Orick CSD	NCAP	Groundwater	Limited (storage capacity)
Big Lagoon CSD	NCAP	Groundwater	<b>Limited (supply)</b>
Westhaven CSD	TAP	Spring water from Two Creek; also groundwater	<b>Limited (supply)</b>
McKinleyville CSD	MAP	Mad River (from HBMWD)	Adequate/No limitations
Patrick Creek CSD	MAP	Mad River (from HBMWD)	
Humboldt Bay Municipal Water District (HBMWD)	HBAP	Mad River	
Humboldt CSD	HBAP	Mad River (from HBMWD) and groundwater	
Manila CSD	HBAP	Mad River (from HBMWD)	
Samoa Pacific Group	HBAP	Mad River (from HBMWD)	
Loleta CSD	ERAP	Groundwater	Adequate (recent improvements)
Riverside CSD	ERAP	Groundwater	Limited (lack of fire hydrants)
Resort Improvement District #1	SCAP	Springs associated with Rick Spring & Upper Telegraph Creek	Adequate (recent improvements)

\*Information in part from the FEIR (Ascent Environmental, Inc. 2018)

The FEIR concluded that the proposed regulations will lead to increased water demand from public water systems that could exceed supply and related infrastructure, particularly to CSDs that are already at their service capacity. In the coastal zone, public water suppliers with inadequate water supply to serve their respective service areas include Big Lagoon CSD and Westhaven CSD. However, as proposed, no commercial cultivation permits will be issued for the TAP area, where the Westhaven CSD is located, and only a maximum four permits (2 acres total) will be issued in the NCAP area. Moreover, none of the “eligible parcels” for commercial cultivation (parcels that meet the minimum parcel size and zoning district requirements) are within the Big Lagoon CSD’s service area (instead they’re in the Orick CSD service area or outside of service area boundaries and served by individual onsite water systems). Thus, the proposed amendment will not significantly increase water demand in any public water service area that potentially lacks adequate water supply. In addition, as discussed above, the proposed amendment requires all applicants for commercial cannabis permits to identify how much water they will use and how much water they have available, including documentation of their water source [including will-serve letters from applicable providers of water services (sec. 55.4.11)]. Therefore, the commercial cannabis development within public water service areas that will be permitted under the proposed regulations conforms with the certified LUPs, because it will be located in areas with adequate public water services that will not lead to significant adverse effects on coastal resources.

## Wells

Groundwater is anticipated to be the primary source of water supply to new operations in areas that lack public water given restrictions on the use of diversionary sources discussed above. (As previously discussed, diversionary sources include streams, springs, and wells with connectivity to streams.) The FEIR determined that the project could result in an increase in demand for local groundwater resources that could contribute to cumulative groundwater supply impacts in areas of the County with limited groundwater resources. Depending on the location of extraction and condition of local groundwater resources, it is possible for drawdown at a well in one location to affect groundwater elevations in other wells. According to the FEIR, one of the most important factors is distance; larger parcels generally have larger areas to draw from, thereby reducing the potential to adversely affect adjacent properties.

The proposed amendment contains testing requirements for new wells on parcels 40 acres or smaller where proposing irrigation with water from a proposed or an existing well located within 400 feet of a property line. As previously discussed, the minimum parcel size for commercial cultivation activities on AE and RA lands is 20 acres. The purpose of the testing is to determine if drawdown would occur on any adjacent wells. Unless the drawdown testing is performed by a qualified individual, the testing may be inadequate to determine if drawdown impacts will occur. Therefore, **Suggested Modification 9 (Clarifications/ Corrections)** clarifies that the testing must be done by a qualified professional and authorized by any required CDP. These requirements further state that use of a well for cannabis related irrigation may be prohibited, limited, or subject to provisional approval and monitoring.

While these requirements will address the potential groundwater impacts of the initial installation of a new well, they may not identify later operational impacts that could result in unanticipated reductions in local groundwater levels that could adversely impact adjacent wells. Therefore, **Suggested Modification 7 (Water Supply)** adds a “reopener clause” to the performance standard ([Appendix C](#) sec. 55.4.12.9) to require additional measures to minimize the potential for future impacts on groundwater resources in the event that such future conditions arise (e.g., during a prolonged drought). The added measures would require the reporting of annual monitoring of groundwater conditions to the County as part of the annual inspections of commercial cannabis operations, and identification of adaptive measures (e.g., forbearance, water conservation measures, reductions in on-site commercial cultivation, alteration of the groundwater pumping schedule, or other measures determined appropriate) to recover groundwater levels to pre-project conditions and thereby avoiding significant impacts to adjacent wells if it is determined that future onsite well operations could result in groundwater drawdown impacts. Implementation of this mitigation measure will require a CDP and be required as part of annual commercial cannabis operations permit renewals. Suggested Modification 7 also would correct the definition of “Forbearance Period” ([Appendix C](#) sec. 55.4.4) consistent with the FEIR description of the term, to apply to wells in addition to water bodies such as streams. This correction is needed to clarify that forbearance is an adaptive management measure applicable to wells. As discussed above, the standards of this proposed amendment, as suggested to be modified, will be applicable to wells covered by Categorical Exclusion Order E-86-4 pursuant to Condition H of the Categorical Exclusion Order, which requires that qualifying wells meet the standards of any certified amendment if such standards are more restrictive than current IP standards. Therefore, all wells developed for commercial cannabis operations, whether

categorically excluded or not, must comply with the testing and other requirements of the amendment as modified. Thus, the proposed amendment, only as modified, will ensure adequacy of water supply and prevent depletion of groundwater supplies consistent with LUP policies.

### **Conclusion**

As adopted, water for commercial cultivation and other water needed to support the commercial cannabis uses under the proposed amendment will be provided by either public water supplies or non-public supplies. The proposed amendment includes regulatory standards for each of the various water supply sources. **Suggested Modification 5 (Streams)** would require that irrigation for commercial cannabis operations shall exclusively utilize stored water from non-diversionary sources to avoid inconsistency with LUP policies that prohibit stream diversions and protect stream habitat. Similarly, the proposed amendment will not significantly increase water demand in any public water service area that potentially lacks adequate water supply, given the proposed caps on commercial cultivation permits in areas with rural public water systems with limited capacity. Finally, to avoid the possibility that a drawdown at a well in one location adversely affects groundwater elevations in other wells, the proposed amendment includes testing requirements for new wells on parcels 40 acres or smaller to determine if drawdown would occur on any adjacent wells. **Suggested Modification 7 (Water Supply)** would strengthen the performance standard to require the reporting of annual monitoring of groundwater conditions to the County as part of the annual inspections of commercial cannabis operations, and identification of adaptive measures (e.g., forbearance and storage) to recover groundwater levels at adjacent wells if it is determined that future onsite well operations result in groundwater drawdown impacts. The Commission thus finds that the proposed amendment, only as modified, will (a) not increase water demand on stream systems in rural areas; (b) be located in areas with adequate public water services that will not lead to significant adverse effects on coastal resources; and (c) prevent depletion of groundwater supplies consistent with LUP policies.

#### **iv. Agricultural and Timberland Resources**

As previously discussed, there are an estimated 88,400 acres of agricultural lands in the coastal zone. In addition, the County contains over 1.8 million acres of forestland (approximately 600 acres of which are in the coastal zone) covering approximately 80% of the county's total land area (Ascent Environmental Inc. 2018). As such, both agriculture and timber production are important components of both the local economy and community character. Thus, each of the six LUPs include various policies for the protection of agricultural lands and timberlands.

##### (a) Summary of LCP policies

As summarized above in Finding IV-C-i-(a), the AE zone district implements various agricultural land use designations of the certified LUP, including the Agriculture Exclusive/Prime (AEP), Agricultural/General (AG), Agriculture Exclusive (AE), and Agricultural Exclusive/Grazing Lands (AEG) designations. In general, on lands with an agricultural land use designation, the various LUPs only allow for "*Production of food, fiber, plants*" "*with a residence incidental to this use.*" The existing certified IP further details uses allowed in the AE zone that relate to the cannabis uses allowed under the proposed amendment, including *General Agriculture* and *Cottage Industry* (among other limited uses). The policies related to protection of coastal agricultural lands in the six LUPs, as summarized above, include sections 30241 and 30242 of the Coastal Act and policies related to land use compatibility, prohibiting greenhouses

with concrete slab floors on prime agricultural soils, and protecting lands designated for grazing purposes, such as on portions of Table Bluff and throughout the South Coast Area Plan.

With respect to timberlands in the coastal zone, there is one LUP land use designation: Coastal Commercial Timberland (TC). The purpose of the TC land use designation is “*to protect productive timberlands for long-term production of merchantable timber.*” The TC land use designation is implemented by one of two types of similar zoning districts under the existing certified IP: (1) Commercial Timberland (TC); and (2) Timberland Production Zone (TPZ). General Agriculture is an allowed use on lands in the TC zoning district but not on lands within the TPZ zoning district.

All six LUPs include policies to protect the long-term productivity of soils and timberland resources, including Section 30243 of the Coastal Act as an enforceable LUP policy:

*The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.*

(b) Findings for Denial as Submitted and Approval if Modified

**Agricultural Lands**

As previously discussed, the proposed amendment (sec. 55.4.3.8) describes the commercial cultivation of cannabis as “*a highly regulated specialty crop*” for which cultivation and processing “*shall not be allowed as a principal permitted use under the General Agriculture use type classification...*” (emphasis added). Thus, the proposed amendment describes cannabis cultivation as a unique agricultural use that requires specific regulations to address issues that are not typically applicable to other agricultural products. The proposed amendment recognizes that cannabis is similar to other agriculture operations and specifically authorizes commercial cultivation within the AE (and RA) zoning district. As summarized in [Table 4](#) above, most of the County’s AE lands occur in the Humboldt Bay, Eel River, and South Coast areas. Relative to the overall distribution and acreages of agricultural lands available in each of the five LUP areas where cannabis activities are specifically authorized ([Table 4](#)), there will be relatively few permits and small acreages involving the use of coastal agricultural lands for commercial cannabis cultivation activities.

The proposed amendment includes various standards to protect coastal agricultural lands from incompatible uses and from conversion to non-agricultural uses consistent with LUP policy requirements. First, new open-air commercial cultivation operations in most cases will be restricted to lands that are at least 20 acres in size with a cultivation size limit not to exceed 1 acre. This means that smaller agricultural lands and large portions of most of the County’s coastal agricultural lands in general will be reserved for non-cannabis uses, which will help maintain a diverse agricultural economy consistent with LUP policy requirements (e.g., section 30241 of the Coastal Act). An exception for parcels at least 320 acres in size allows an additional acre of commercial cultivation for each additional 100-acre increment of the parcel, but there are only five such large-sized parcels in the coastal zone, all within the HBAP and ERAP. Second,

commercial indoor cultivation only is allowed within pre-2016 non-residential structures and may not exceed 5,000 square feet in size. This limitation will ensure that AE soils are appropriately reserved for agricultural use and will prevent the proliferation of new structures on agricultural lands that would otherwise reduce the productivity of the land for future agricultural operations. Second, no new outdoor or mixed-light commercial cultivation is allowed on lands designated for exclusive grazing use under the certified LUPs (AEG land use designation). This standard serves to preserve designated grazing lands for long-term productive grazing use consistent with LUP requirements. Third, the proposed amendment protects prime agricultural land by (a) limiting the cumulative area of any commercial cultivation site to 20% or less of the area of prime agricultural soil on the parcel, thereby retaining a large percentage of prime soils for diversified agricultural uses and assuring protection of the area's agricultural economy; (b) requiring a soils management plan to be prepared as an application filing requirement for commercial cannabis permits that details how the native soil on the property is intended to be used as part of the commercial cultivation operation; and (c) and where prime agricultural soils are present, requiring commercial cultivation to occur only within the native soil and prohibiting the removal of native soil and replacement with imported soil. As previously discussed, **Suggested Modification 3 (Agricultural Resources)** deletes the allowance for granting an exception to the native soil planting requirement for cannabis activities on agricultural land with prime agricultural soils to maintain the maximum amount of prime agricultural land in agricultural production consistent with the certified LUPs ([Appendix C](#) sec. 55.4.6.4.3).

In addition, the proposed amendment further guards against the conversion of agricultural land to non-agricultural uses by limiting non-cultivation cannabis activities allowed on agricultural lands to only two types (and subject to approval of a CDP for such uses): (a) cottage industry uses, such as cannabis infusion activities, subject to the existing certified IP provisions for cottage industry related to lights, noise, traffic, maximum area allowed, etc.; and (b) non-flammable manufacturing only within non-residential structures lawfully existing prior to January 1, 2016. As previously discussed, **Suggested Modification 3** would also require cannabis manufacturing activities in the AE zone to be limited to the processing of raw cannabis materials grown onsite within the permitted commercial cultivation area ([Appendix C](#) sec. 55.4.6.1.1). Finally, **Suggested Modification 1 (Land Use Compatibility)** would delete the allowance for cannabis Farm Stays on agricultural lands since, as a type of visitor-serving use (Bed and Breakfast Establishment) under the existing certified IP, this use type is not allowed in agricultural zones, but is allowed in the RA zone, a residential zone which allows both agricultural and visitor-serving B&B uses without affecting agricultural land.

In addition to the above protections for agricultural lands, County staff offered a friendly modification related to coverage limits for commercial cannabis cultivation within existing (pre-2016) commercial greenhouses in the AE and RA zoning districts [[Appendix B](#) sec. 55.4.6.1.2(c)]. Under the County staff proposed friendly modification, the amendment would allow up to one acre of commercial cannabis cultivation with a CDP and Zoning Clearance Certificate within commercial greenhouses lawfully existing prior to January 1, 2016. Additionally, a commercial cultivation area greater than one acre in size would be allowed with a CDP and Conditional Use Permit. In no case would the total commercial cultivation area be allowed to exceed 20% of the area of the parcel. The intent of this proposed friendly modification is to avoid any significant displacement of non-cannabis agricultural crops that are

important to the area’s agricultural economy (e.g., the commercial fresh cut-flower industry).

**Suggested Modification 3 (Agricultural Resources)** would modify section 55.4.6.1.2(c) ([Appendix C](#)) to include the County’s proposed friendly modification with respect to AE lands with prime agricultural soils, consistent with Coastal Act section 30241 cited above. This modification also brings internal consistency to the proposed amendment, since, as proposed, section 55.4.6.4.3 requires that the cumulative area of any commercial cultivation site located in areas identified as having prime agricultural soil shall not exceed 20 percent of the area of prime agricultural soil on the parcel. Only as modified will the proposed amendment protect prime agricultural lands and the area’s agricultural economy consistent with the certified LUPs.

Given that the proposed amendment references “greenhouse” in the section related to open-air activities [[Appendix A](#) sec. 55.4.6.1.2(d)], **Suggested Modification 9 (Clarifications/Corrections)** is needed to add a definition of “greenhouse” ([Appendix C](#) sec. 55.4.4) that would apply to commercial cannabis cultivation. In the context of the proposed amendment, “open-air activities” refers to outdoor and mixed-light commercial cultivation that rely, at least in part, on natural sunlight. This contrasts with the definition of “indoor” in the proposed amendment, which refers to commercial cultivation reliant solely on the use of artificial light. Thus, the term “greenhouse” as used in the context of the proposed amendment conflicts with the existing IP definition of greenhouses (IP sec. 313-142), which means “*A facility for indoor propagation of plants, constructed with transparent or translucent panels*” (emphasis added). Since the existing IP definition of greenhouse conflicts with the meaning of the term greenhouse under the proposed amendment, only as modified would the proposed amendment be internally consistent. The modified definition of greenhouse would read:

“Greenhouse” means an agricultural accessory structure typically constructed with transparent or translucent panels used for Indoor, Outdoor, or Mixed-Light Commercial Cannabis Cultivation.

The code section cited in the proposed new definition of greenhouse is important, because the existing certified IP (sec. 313-69.5.1 cited above) allows for the construction of greenhouses as an agricultural accessory structure in AE and RA zoning districts, but limits greenhouse construction on prime agricultural soils to only soil-dependent greenhouses. Therefore, the proposed amendment, as modified, protects prime agricultural soils consistent with the certified LUPs. In addition, as previously mentioned, the restrictions of this section on greenhouse construction on prime agricultural soils also are applicable to greenhouses excluded from CDP requirements pursuant to Categorical Exclusion Order E-86-4 (see Footnote 17) All of these provisions combined with the fact that (1) the proposed amendment prohibits new greenhouse construction on lands designated for exclusive grazing use (AEG), and (2) imposes caps on the total acreage of commercial cultivation to be permitted within each LUP area will reduce the potential for new greenhouse proliferation under the proposed amendment. Therefore, the proposed amendment, only as modified, protects agricultural lands consistent with the policies and standards of the certified LCP.

Finally, **Suggested Modification 9 (Clarifications/Corrections)** provides clarifications to section 55.4.6.1.2 with respect to minimum parcel size and allowed commercial cultivation area in the AE and RA zoning districts.



### **Timberlands**

As previously discussed, commercial cannabis activities will be allowed in much of the County coastal zone within various land uses types. Appropriately, no commercial cannabis activities will be allowed in either the TC or TPZ zoning districts, which is consistent with the timberland resources protection policies of the certified LUPs. While the proposed amendment does not allow commercial cannabis cultivation on timberlands, the proposed amendment inadvertently references in some places TC and TPZ lands. To clarify the text and for internal consistency within the proposed amendment, **Suggested Modification 9 (Clarifications/Corrections)** would delete outdated references to TC and TPZ lands throughout the proposed amendment where applicable [[Appendix C](#), sections 55.4.10.2, 55.4.12.6, and 55.4.12.11(c)].

### **Conclusion**

The Commission finds that the proposed amendment as submitted includes various standards to protect coastal agricultural lands and timberlands consistent with LUP policy requirements. These include various protections for prime agricultural soils and for lands designated for grazing uses under the certified LUPs. However, in some cases the amendment requires new or modified standards to adequately protect prime and non-prime agricultural lands consistent with LUP requirements. The suggested modifications in part would: (a) delete the standard for granting an exception to the native soil planting requirement on prime agricultural soils; (b) limit manufacturing activities in the AE zone to the processing of raw cannabis materials grown onsite only; (c) delete the allowance for cannabis Farm Stays on agricultural lands, since the existing IP prohibits visitor-serving uses (Bed and Breakfast Establishments) in the AE zone; (d) limit the size of commercial cultivation areas within lawfully commercial greenhouses lawfully existing prior to January 1, 2016 to avoid significant displacement of non-cannabis agricultural crops, and (e) add a definition of “greenhouse” that conforms with the existing IP provisions related to greenhouses that require only soil-dependent structures on prime agricultural soils. Therefore, the Commission finds that the proposed amendment, only as modified, conforms with and is adequate to implement the agricultural resources protection policies and standards of the certified LCP.

#### **v. Visual Resources**

##### **(a) Summary of LUP policies**

All six LUPs include the following Coastal Act policies as enforceable LUP policies:

§ 30251, in applicable part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...*

§ 30253(e):

*New development shall do all of the following:...*

...

*(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

In addition, all six LUPs include the following additional visual resources protection policy (in applicable part):

*Physical Scale and Visual Compatibility: No development shall be approved that is not compatible with the physical scale of development as designated in the zoning for the subject parcel...*

The above policy requires conformance with standards related to height and bulk and, in some cases (e.g., when visible from the nearest public road), compatibility “with the styles and visible materials of existing development or land forms in the immediate neighborhood.” Generally, in areas where the LUPs have identified a “desire to preserve or enhance the area’s historical, cultural or scenic values,” a Design Review (“D”) combining zone applies. The combining zone designation requires a Special Permit for all development within the zone, which must conform to various specified standards, including, in part, the following (from IP sec. 313-19.1):

- 19.1.5.2 Protection of natural land forms through minimizing alterations caused by cutting, filling, grading or clearing, except to comply with fire hazard reduction laws.*
- 19.1.5.3 Exterior lighting that will be compatible with the surrounding setting and will not be directed beyond the boundaries of the parcel.*
- 19.1.5.4 Screening or softening the visual impact of new development through the use of vegetative plantings. If appropriate, species common to the area should be used. Known fire resistive plants should be considered where appropriate.*
- 19.1.5.5 Where feasible, new utilities should be underground. When above-ground facilities are the only feasible alternative, they should be sited as unobtrusively as possible.*
- 19.1.5.6 Setbacks from roads and property lines are appropriate to protect the scenic and visual qualities of the site and area.*
- 19.1.5.7 Off-premises signs, which are needed to direct visitors to permitted commercial recreation areas should be attractively designed in keeping with the surrounding setting and clustered at appropriate locations.*

The six LUPs each also include policies related to the protection of natural landforms:

*Protection of Natural Landforms: Natural contours, including slope, visible contours of hilltops and treelines, bluffs and rock outcroppings, shall suffer the minimum feasible disturbance compatible with development of any permitted use, and the following standards shall at a minimum secure this objective:*



- a. *Under any permitted alteration of natural landforms during construction, mineral extraction or other approved development, the topography shall be restored to as close to natural contours as possible, and the area planted with attractive vegetation common to the region.*
- b. *In permitted development, land form alteration for access roads and public utilities shall be minimized by running hillside roads and utility corridors along natural contours where feasible, and the optional waiving of minimum street width requirements, where proposed development densities or use of one-way circulation patterns make this consistent with public safety, in order that necessary hillside roads may be as narrow as possible.*

Some LUPs (the NCAP, TAP, MAP, and HBAP, as shown in [Exhibit 3](#) and summarized in Table 7 below) designate certain areas as “Coastal Scenic Areas (CSAs). The intent of designating CSAs is “*that all development be subordinate to the character of the designated area, and to the scenic use and enjoyment of public recreational lands within these areas.*” The “D” combining zone described above applies to these areas. Within CSAs, the following standards apply (in applicable part, emphasis added):

- a. *New industrial and public facility development shall be limited to:*
  - 1) *Temporary storage of materials and equipment for the purpose of road and utility repair or improvement provided that this is necessary to the repair or improvement, and no feasible site for storage of equipment or material is available outside such area.*
  - 2) *Underground utilities, telephone lines, and above ground power lines less than 30 KV.*
- b. *Commercial uses shall be approved only where permitted by the Area Plan and zoning, and only such uses as serve the ordinary needs of tourist or recreational users of the area shall be permitted, as follows:*
  - 1) *Recreational Vehicle parks, and private campgrounds.*
  - 2) *Boating rentals.*
  - 3) *Sport fishing and recreational retail services up to 1000 square feet.*
  - 4) *As an adjunct to recreational vehicle parks or private campgrounds, a general retail service which may include food, beverage and hardware items, up to 1000 square feet.*
  - 5) *Other uses meeting the requirement of this subsection, as determined by the Planning Commission after public hearing including facilities identified in (3) and (4) which are greater than 1000 square feet in area.*
- c. *All permitted development shall be subject to the following standards for siting and design for structures integral to agricultural use and timberland management subject to CDF requirements for special treatment areas.*
  - 1) *Siding and roofing materials shall not be of reflective materials, exception glass and corrugated roofing. Solar collectors for on site use shall be permitted and exempt from this standard*

- 2) The highest point of a structure shall not exceed 30' vertically measured from the highest point of the foundation, nor 40' from the lowest point of the foundation
- 3) Setbacks from property lines and public roads shall be as established in the Area Plan, except that in no case shall such setbacks be less than 50' from a public road, nor 30' from a property line. In areas significantly developed, 50% or greater, where the setback shall be the average of the setbacks of existing structures
- 4) Exterior lighting shall be shielded so that it is not directed beyond the boundaries of the parcel...
- d. Proposed development which cannot satisfy these prescriptive standards but is in conformance and compatible with the goals and objectives of this section and the area plan may be submitted to the Design Assistance Committee for review and recommendation to the Planning Commission.

In addition, some LUPs (i.e., the NCAP, TAP, and HBAP, as shown in [Exhibit 3](#) and summarized in Table 7 below) designate certain areas as “Coastal View Areas” (CVAs). The intent of designating CVAs is “no development shall block coastal views to the detriment of the public.” The “D” combining zone described above applies to these areas. The following uniform and conditions shall apply to all development other than agricultural and timberland management related development that may be visible from a designated CVA (in applicable part, emphasis added):

- a. No off-premise signs shall be permitted; and on-premise signs to a total area of 40 square feet shall be permitted. Existing billboards (offsite signs) shall be phased out where feasible.
- b. Where the use is residential...
- c. Where the principal use is commercial or industrial, the proposal shall include a detailed plan for exterior design of all structures and signs, location and intensity of outdoor lighting, parking, and landscaping, and this plan shall be the subject of public hearing at which the following findings shall be made:
  - 1) That the development does not block any part of the view to the coast, coastal waterway, or Coastal Scenic Area; except that an industrial use that is both coastal-dependent and dependent on the particular site in question shall only meet this requirement where feasible.
  - 2) That the exterior design, lighting and landscaping combine to render the overall appearance compatible with the natural setting as seen from the road.
  - 3) That no development, other than landscaping, signs, utilities, wells, fences and a driveway for access to the public road where required, be located within 50 feet of the public road.
  - 4) That all feasible steps have been taken to minimize the visibility of parking areas from the public road.
  - 5) Exterior lighting shall be shielded so that it is not directed beyond the boundaries of the parcel...

- 6) ...
- d. Uses other than these defined in "a" through "c" of this section shall be subject to the requirements of section in so far as these are relevant.
- e. *Proposed development which cannot satisfy these prescriptive standards but is in conformance and compatible with the goals and objectives of this section and the area plan may be submitted to the Design Assistance Committee for review and recommendation to the Planning Commission.*

In areas covered by the County’s existing Categorical Exclusion Order (E-86-4), which applies to legal lots within certain portions of the AE zoning district (see Table 5 above), the construction of qualifying greenhouses, fences, and certain other agricultural accessory structures have the potential to be categorically excluded from CDP requirements. If qualifying development is excluded from CDP requirements, the above-cited visual resources protection policies and standards do not apply unless a Special Permit is required (e.g., in a designated CSA with a “D” combining zone). As previously discussed [Finding IV-C-i-(b)], there may be instances under the proposed amendment where other qualifying components of a proposed commercial cannabis operation would require a CDP whereas other components of the proposed commercial cultivation operation would be excluded from CDP requirements if consistent with all terms and conditions of Categorical Exclusion Order E-86-4.

(b) Findings for Denial as Submitted and Approval if Modified

The above-cited policies, which apply in all six LUP areas, require in part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where appropriate, to protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. In addition, within Coastal Scenic Areas (CSAs), as designated on LUP area plan maps, development must be subordinate to the character of the designated area and to the scenic use and enjoyment of public recreational lands within these areas. Furthermore, for development that may be visible from public roadways that have a designated Coastal View Area (CVA) designation as shown on certified LUP maps, the development must, among other requirements, not block coastal views to the detriment of the public and must, in the case of commercial and industrial development, blend with the natural setting as seen from the road. The designated CSAs and CVAs in the certified LUPs are shown in [Exhibit 3](#) and summarized in Table 7 below.

<b>Table 7.</b> Geographic distribution of LUP-designated CSAs and CVAs. See <a href="#">Exhibit 3</a> .		
<b>LUP Area</b>	<b>Coastal Scenic Areas (CSAs)</b>	<b>Coastal View Areas (CVAs)</b>
NCAP	From the Redwood Creek Estuary south along both sides of Hwy 101 to the south end of Big Lagoon, including lands in the AE, RA, TC, TPZ, NR, and PF zones	Views from Hwy 101 in both directions south of Orick to the south end of the LUP area, including views to lands in the CG, CR, PR, and NR zones
TAP	(1) Most lands west of, and some lands east of, Patricks Point Dr. and Stagecoach Rd. from Patricks Pt. to Trinidad, including lands in the RA, CR, TC and TPZ zones; and (2) lands on both sides of	(1) Views from Patricks Point Dr. in both directions around Scotty Point (to surrounding RA and TC lands); and (2) Views from Scenic Drive in both directions, including to RA-zoned lands for the extent of the overlapping

	Scenic Dr. from Trinidad Rancheria south to south of Loop Pl. and Houda Pt., including lands in the RA, NR, and PR zones	CSA
MAP	Lands west of Hwy 101 from Little River to just north of Airport Rd. (mostly NR and PR lands) as well as a narrow band of lands east of the highway for approximately the same distance	None
HBAP	Elevated lands (mostly zoned RA and smaller than 20 acres in size) north and south of Indianola Cutoff, from the Walker Point Rd. area north to the end of Antrim Ln.	(1) Views in both directions from portions of Highway 101 between Arcata and Eureka, including views of lands in the AE, RA, MG, and NR zones; (2) views in both directions from portions of Hwy 255 between Arcata and Manila to lands mostly in the AE zone; (3) views in both directions from portions of Hwy 255 along Humboldt Bay between Manila and Samoa to lands in the CR and RS zones; (4) views in both directions along New Navy Base Rd. from Samoa to Fairhaven, including to MG- and NR-zoned lands; (5) views from the road on the South Spit in both directions to NR-zoned lands; (6) views in both directions from portions of Hwy 101 from Elk River to College of the Redwoods, including to AE-and CG-zoned lands; (7) views in both directions from Hookton Rd. and Table Bluff Rd., mostly to surrounding lands in the AE zone
ERAP	None	None
SCAP	None	In Shelter Cove, views from the road in both directions along a portion of Lower Pacific Dr. to surrounding lands in the CG, RS, and NR zones

The proposed amendment specifically defines authorized commercial cannabis operations in various residential, agricultural, commercial, and industrial zoning districts throughout the County’s coastal zone except in the Trinidad Area Plan LUP area. There are several ways in which such cannabis-specific operations could affect visual resources. First, on-site features commonly associated with commercial cannabis operations may be visible from public vantage points and may impair public coastal views. Common on-site features include greenhouses, hoop houses or other non-permanent structures supported with PVC pipes draped with opaque plastic sheeting, water storage tanks, storage buildings for equipment and materials, solar panels, and employee/caretaker housing. In addition, commercial cannabis cultivation sites often are screened from public views along roadways with six-foot-tall solid wooden fencing, while open wired fencing sometimes is erected to border the perimeter of the overall cannabis operation. Such fencing may block or degrade public views to the ocean and scenic coastal areas. Mixed-light commercial cultivation operations may use lighting to extend the photoperiod for the cannabis plants. Such lighting may emit glow and degrade scenic vistas, disrupt public views, highlight the presence of development in otherwise dark areas at night, be out of character with

the rural and agricultural uses in the area, and otherwise adversely affect adjacent and nearby properties, residences, and/or motorists traveling on nearby roadways. In addition, security lighting that commonly is installed at commercial cultivation sites could affect nighttime views or disturb neighboring residents. New security lighting and lighting used in the commercial cultivation and processing of cannabis could increase exterior lighting within the rural areas of the County. Artificial night lighting used for commercial cultivation operations also could result in adverse ecological effects on terrestrial, aquatic, and marine resources.

The proposed amendment includes additional standards to protect visual resources. The proposed caps on permits and total acreages of commercial cultivation to be permitted are low to none in three out of the four LUP areas (a cap of 0 in the TAP, and only 4 permits/2 acres max. in the entirety of the NCAP and MAP areas). In a fourth LUP area (the SCAP), a low permit/acreage cap (13 permits/5 acres max.) combined with a prohibition on structures for cultivation will further reduce the potential for a proliferation of commercial cannabis operations with light-emitting and other visual impacts throughout these coastal areas. The limited allowances for commercial cultivation and the caps on permits and acreages will help avoid the proliferation of view-impacting greenhouses. Although qualifying greenhouses and fencing are categorically excluded from the need for a CDP in specified cases (pursuant to Categorical Exclusion Order E-86-4), the limits on commercial cultivation areas and the caps on the number of operations which can be authorized will ensure there are no more cannabis greenhouses than are needed to support the limited commercial cannabis cultivation acreage that the proposed amendment would allow. In addition, any fencing proposed as part of a cannabis operation would be required to be identified in a Security Plan that is a permit application filing requirement. Because commercial cultivation sites are required to be setback at least 30 feet from a property lines, and the proposed amendment minimizes fencing impacts and ensures they will not obstruct or significantly impair coastal views from public vantage points is limited,

Second, the proposed amendment includes a performance standard related to light-pollution control ([Appendix A](#), sec. 55.4.12.4) that requires structures that are used for commercial mixed-light cultivation and nurseries to be shielded at night (e.g., with tarps) so that no light escapes between sunset and sunrise. The performance standard also requires that security lighting for commercial cannabis activities be shielded and angled in such a way as to prevent light from spilling outside of the boundaries of the parcel or premises or directly focusing on any surrounding uses. However, this latter requirement only applies to parcels that abut a rural residential district or that are within a rural residential area. While it is important to minimize exterior lighting impacts in and around rural residential areas, the policies and standards of the certified LCP cited above require the same view protection standards for new development in other areas along the coast as well. Therefore, the Commission includes **Suggested Modification 8 (Visual Resources)** to expand the view protecting lighting standards to apply throughout the coastal zone by deleting the provision in sec. 55.4.12.4(b) ([Appendix C](#)) that the security lighting standards apply only to areas in and around rural residential lands.

In addition to the requirements outlined above in the proposed amendment, other regulations of the existing certified IP also will protect and maintain scenic resources and vistas within the County's coastal zone while allowing cannabis uses and activities in the various zoning districts as proposed. As summarized in subsection (a) above, designed CSAs and CVAs in the County,

which are scattered in throughout the different LUP areas ([Table 7](#) and [Exhibit 3](#)), are indicated with a “D” (Design Review) combining zone, the purpose of which is to “*provide design review for conformance of new development with the policies and standards of the [LUPs], and to provide for a design review process where neighborhoods within the same zone district desire to preserve or enhance the area’s historical, cultural or scenic values.*” The combining zone designation requires a Special Permit (separate and apart from other required permits, such as CDPs) for all new development within the zone, which must conform to various specified standards related to protection of natural land forms, exterior lighting compatibility, screening with vegetative plantings, placing utilities underground, minimum setbacks from roads and property lines, and off-premises signs. The design review permit process also ensures that new development adheres to the policies summarized above for CSAs and CVAs to ensure (respectively) that (a) all development is subordinate to the character of the designated area and to the scenic use and enjoyment of public recreational lands within the CSA; and (b) no development will block coastal views to the detriment of the public.

As previously discussed, in areas covered by the County’s existing Categorical Exclusion Order, which applies to specified lands zoned AE throughout the County’s LCP-certified area, the construction of qualifying greenhouses and fences (among certain other agricultural accessory structures) is categorically excluded from CDP requirements. However, in the event an amendment of the Humboldt County LCP is certified by the Coastal Commission pursuant to section 30514 of the Coastal Act, development under Categorical Exclusion order shall comply with the amended LCP except where the terms and condition of this order specify more restrictive development criteria (see Footnote 17). Therefore, the above-cited visual resources protection policies and standards still apply in areas with a “D” combining zone since a Special Permit is required. Accordingly, even if specified development qualifies for under the Categorical Exclusion Order, the County still will need to consider the above-cited visual resource protection policies and standards of the LUPs in exercising its discretion to grant the local Special Permit.

Nevertheless, to ensure that commercial cannabis related development under the proposed amendment meets the various standards of the certified LCP even in cases where greenhouses and fences are categorically excluded from CDP requirements and where the “D” combining zone does not apply, **Suggested Modification 8 (Visual Resources)** is included to ensure that development would be sited in a manner that protects public views and is designed to blend with the character of the area. This modification [[Appendix C](#) sec. 55.4.12.17] would add a performance standard for visual resources protection that requires that all development associated with a commercial cannabis operation shall comply with all applicable policies of the LUPs for the protection of public visual resources. In addition, the standard specifies that greenhouses, fencing, and other structures in AE and RA zones (a) shall not block blue water views or blue sky views as seen from public roadways and other public vantage points; and (b) shall be sited to cluster all development near existing structures to the maximum extent feasible to maintain and maximize views of open areas available from public roads and other public vantage points. These standards would also be applicable to qualifying greenhouse, well and fence construction covered by the County’s Categorical Exclusion Order pursuant to Condition H of Categorical Exclusion Order E-86-4 (see Footnote 17). Because, if certified, the standards of the proposed amendment as modified would be more restrictive than current IP standards, the



certified amended standards would apply to greenhouses, wells, and fences constructed pursuant to Categorical Exclusion Order E-86-4. Thus, greenhouses, wells, and fences not meeting these restrictive standards would not qualify as categorically excluded development and must obtain CDP authorization.

The Categorical Exclusion Order requires the County to notify the Commission within five working days of local approval of a development covered by the Order, and the Commission's dispute resolution procedures allow the Commission to challenge any such determination made by the County where there is disagreement over whether or not a particular development is excluded under the Order. Also, as stated above, the Order does not apply to many of the lands where commercial cannabis activities could be allowed under the proposed amendment, including RA-zoned lands, lands within the Commission's extensive public trust jurisdiction (e.g., much of agricultural bottomlands around Humboldt Bay and the Eel River), and areas within 200 feet of any coastal wetland.

Finally, **Suggested Modification 8 (Visual Resources)** would add a County staff's proposed friendly modification related to an exception to the proposed cap on permits to sec. 55.4.6.8 (see [Appendix B](#)). As discussed above, the proposed cap on permits helps to protect visual resources in the rural agricultural lands of these LUP areas by reducing the potential for a proliferation of commercial cannabis operations with light-emitting and other visual impacts. As adopted by the County ([Appendix A](#) sec. 55.4.6.8), even though the amendment specifies a cap on the maximum number of commercial cannabis cultivation permits and the maximum acreages of commercial cultivation that would be allowed in each LUP area, the amendment includes an exception to the cap for lands with public water from the Humboldt Bay Municipal Water District. Generally, the District's service area includes most of the HBAP and MAP areas. As proposed, the amendment imposes a cap of 4 permits/2 acres in the MAP area and 38 permits/13 acres in the HBAP area. Given the total acreage of lands in the MAP and HBAP with the potential for commercial cannabis activities (over 1,000 acres and 8,000 acres, respectively as summarized in [Table 4](#)), without the specified caps in these areas, the proposed amendment does not adequately carry out the LUP policies that require protection of visual resources and community character.

The limits to the exception proposed under the friendly modification means that the specified caps in the proposed amendment only would apply to the scenic open bottomlands of the MAP and HBAP areas which are largely served by the Humboldt Bay Municipal Water District and otherwise wouldn't be subject to the caps. These areas have a character defined by wide-ranging views from public roads with few structures, fencing, or other visual clutter to degrade the public viewshed. Greenhouse proliferation would not be compatible with this visual character of the bottomlands. Therefore, **Suggested Modification 8 (Visual Resources)** would add the County's newly proposed friendly modification to sec. 55.4.6.8 ([Appendix C](#)) to maintain the scenic character of open agricultural bottomlands around Humboldt Bay and the Mad River consistent with LUP requirements. Application of the exception is also limited because there are no MG properties in the District's water service area in the MAP and only one CG property in this area. In addition, all the MG and CG properties in the HBAP where the District provides water service are urbanized areas already developed with structures, fences, security lighting, and other development similar to the type of development to be expected with commercial cannabis operations under the proposed amendment.

## **Conclusion**

The Commission finds that the proposed amendment as submitted includes various standards to protect visual resources. First, the proposed caps on permits and total acreages of commercial cultivation to be permitted will minimize the potential for a proliferation of commercial cannabis operations with light-emitting and other visual impacts throughout the coastal zone. Second the proposed amendment includes a cannabis-specific performance standard related to light-pollution control that requires structures that are used for mixed-light commercial cultivation and nurseries to be shielded (e.g., with tarps) so that no light escapes between sunset and sunrise. In addition, the proposed amendment requires that security lighting for commercial cannabis activities be shielded and angled in such a way as to prevent light from shining outside of the boundaries of the parcel. Further, the amendment proposes additional cannabis-specific standards or modifications to standards to protect visual resources consistent with LUP requirements. The suggested modifications required by the Commission would: (a) delete the limitation in the light pollution performance standard that security lighting standards apply only to rural residential areas and instead require that the standards shall apply in all areas; (b) add a cannabis specific performance standard for the protection of visual resources; and (c) specify that the exception to the permit cap in areas served by the Humboldt Bay Municipal Water District only applies on MG and CG properties, which will maintain the scenic character of open agricultural bottomlands around Humboldt Bay and the Mad River consistent with LUP requirements. The Commission finds that the proposed amendment, only as modified, conforms with and is adequate to implement the visual resources protection policies and standards of the certified LCP.

### **vi. Archaeological Resources**

#### **(a) Summary of LUP policies and IP standards**

All six LUPs include section 30244 of the Coastal Act as enforceable LUP policy:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The LUPs each further describe “reasonable mitigation measures:”

*Reasonable mitigation measures may include but are not limited to: (1) Changing building and construction sites/and/or road locations to avoid sensitive areas. (2) Providing protective cover for sites that cannot be avoided. (3) Where appropriate and with the approval of all parties concerned, provide for the removal or transfer of culturally significant material by a professional archaeologist or geologist.*

The existing certified IP applies two types of Archaeological Combining Zones to areas of the coast known to have great archaeological and paleontological value and/or the potential for archaeological resources. The “A” combining zone for areas outside of Shelter Cove include



lands along major coastal water bodies, including the lagoons, Redwood Creek, Little River, Mad River, Humboldt Bay, and Eel River delta (within the NCAP, MAP, HBAP, and ERAP areas) as well as lands around Patricks Point (within the TAP). In addition, the “A” combining zone is applied to some of the lands within the Shelter Cove area within the SCAP. Because Shelter Cove is an area identified by the State Historic Preservation Officer as having significant archaeological and paleontological value, there are two separate “A” combining zone standards for areas within and outside of Shelter Cove.

In general, the purpose of both “A” certified combining zone standards is to provide for reasonable mitigation measures where development would have an adverse impact upon archaeological and paleontological resources. The following mitigation measures apply to Archaeological Resource Area lands designated with an “A” combining zone both within and outside of Shelter Cove (IP sec. 313-16.1 and -16.2):

*Measures to mitigate adverse environmental effects of development within Archaeological Resource Areas shall include, but are not limited to, the following:*

- *Relocate planned structures and roads to avoid or mitigate impacts on archaeological sites;*
- *Provide protective cover for sites that cannot be avoided;*
- *Where appropriate, and providing all parties concerned approve, the removal or transfer of culturally significant material by a professional archaeologist shall be permitted.*

The combining zone standards for designated archaeological resource areas outside of Shelter Cove include additional protections for graves, cemeteries, burial grounds, or ceremonial sites:

*Prior to final approval or authorization of such development, the County shall consult with representatives of the Northwest Information Center of the California Archaeological Inventory (NICCAI), Department of Anthropology, Sonoma State University, and the Native American Heritage Commission (NAHC) and any known interested Native Americans. Such consultation will be directed to the questions of whether the project or operation will adversely affect Indian graves, cemeteries, burial grounds, or ceremonial sites, and whether there are reasonable alternative means of accomplishing the project or operation which would not adversely affect such graves, cemeteries, burial grounds or ceremonial sites.*

Based upon the information and recommendations received during the above review, “*the project application shall be acted on in a manner that provides the best feasible protection to cultural sites*” (IP sec. 313-16.1.5.2). This requirement is applicable to all archaeological resource areas outside of Shelter Cove.

The combining zone standards for designated archaeological resource areas within Shelter Cove are more detailed and restrictive and include detailed procedures for determining required mitigation where development might have an adverse impact upon archaeological and paleontological resources (IP sec. 313-16.2):

- 16.2.5.1 *Prior to final development approval or authorization, the County shall condition the Coastal Development Permit to include an agreement to stop work in the event of discovery of any archaeological resources during construction. Said agreement shall provide for work stoppage on the affected resource area until a qualified archaeologist can determine the significance of the resource and suggest appropriate mitigation measures. The agreement shall not require an applicant to stop work for a period in excess of five (5) days, but shall provide an assurance that opportunity for reasonable mitigation to be carried out will be provided in the event significant archaeological resources are encountered.*
- 16.2.5.2 *The stop work agreement requirement (see subsection 16.2.5.1) may be waived where responsible referral agencies have indicated such an agreement is not necessary or appropriate.*
- 16.2.5.3 *On lands designated “A” on the Shelter Cove Coastal Zoning Maps, the County shall, prior to authorization or approval of development, consult with representatives of the Northwest Information Center of the California Archaeological Inventory (NICCAI), Department of Anthropology, Sonoma State University, the Native American Heritage Commission (NAHC), any known interested Native Americans, and the Bureau of Land Management staff archaeologist assigned to the King Range Area. Such consultation shall be directed at determining whether or not the proposed project would adversely affect significant archaeological or cultural heritage resources.*
- 16.2.5.4 *Where the response to the above consultation provides substantial information which indicates that significant archaeological resources would be adversely affected, the County, where feasible, shall require the project to avoid the significant resources and to allow for permanent protection of such resources.*
- 16.2.5.5 *Where avoidance of such resources is not feasible, a plan of excavation shall be required to be prepared and carried out for the portions of the site that would be disturbed or covered by improvements such as foundations, drive-ways, and utility hookups.*
- 16.2.5.6 *The plan of excavation shall:...*
- 16.2.5.7 *Where the cost of carrying out the excavation is neither feasible nor reasonable, the County shall determine the appropriate limits on mitigation in accordance with California Environmental Quality Act guidelines, as may be applicable at the time of project review.*

**(b) Findings for Approval as Submitted**

As summarized in Finding II-C and [Appendix E](#), there are several Native American Tribes and affiliated contact groups understood to have current and/or historic connections to the lands where commercial cannabis activities would be allowed under the proposed amendment. The amendment includes various standards for protection of archaeological and tribal cultural

resources. First, no commercial cannabis activity may be permitted within Tribal Lands<sup>19</sup> without the express written consent of the Tribe (sec. 55.4.5.1.2). Second, the proposed amendment requires the County to notify tribes of a proposed commercial cannabis application when the permit application has been determined to be “complete” for processing [sec. 55.4.5.1.4(b)]. Notice is to be provided by first class mail for projects located within 1,000 feet of the boundary of Tribal Lands.

During the Commission staff consultation meeting with local tribes (discussed in Finding II-C), the Yurok Tribe requested that the noticing provisions of the proposed amendment be modified to require notice and referral of applications for commercial cannabis activities upon receipt of the application by the County rather than after the application is filed as complete. As discussed above, although the Commission’s adopted Tribal Consultation Policy recommends communicating and engaging with Tribes “at the earliest possible stage in the review and decision-making process,” including, if possible, prior to filing an application as “filed” (pursuant to CCR § 13056), the Commission’s policy does not provide a basis for requiring the County to modify the proposed amendment as requested by the Tribe.

Further, the County Planning Director responded that often the applications as initially submitted are too incomplete to provide sufficient information to enable meaningful review by referral agencies and tribes. Also, the Director pointed out that this issue raised by the Tribe related to the timing of the County’s transmittal of notices and referrals is a more general issue applicable to all types of applications, not just cannabis projects. Finally, as noted in Finding II-C, the County’s noticing as proposed under the amendment meets the minimum noticing requirements for appealable and non-appealable development set forth in the Commission’s regulations:

Sections 13565 and 13568 of the Commission’s regulations address the requirements for providing notice of CDPs for appealable development as follows:

***§ 13565. Notice of Appealable Developments.***

*Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information...*

...

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<sup>19</sup> “Tribal Lands” means land within the boundaries of a Reservation or Rancheria, land held in trust by the United States of America for a Tribe outside the boundaries of a Reservation or Rancheria, land owned by the Tribe associated with a Reservation or Rancheria or other land held in trust for that Tribe, fee parcels owned by members of the Tribe within a Reservation or Rancheria of that Tribe, and fee parcels located within the boundaries of a Reservation or Rancheria, owned by non-tribal members.

2) the date of filing of the application...

...

**§ 13568. Notice of Non-Appealable Developments.**

(a) Notice of developments within the coastal zone that require a public hearing under local ordinance, but which are not appealable pursuant to Public Resources Code Section 30603 (and which are not categorically excluded) shall be provided in accordance with existing local government notice requirements which shall provide at a minimum:

Notice of developments shall be given at least ten (10) calendar days before a hearing in the following manner:...

(b) Notice of developments within the coastal zone which are not appealable pursuant to Public Resources Code Section 30603 and which do not require a public hearing under local ordinance (and which are not categorically excluded) shall be provided as follows:

...

2) the date of filing of the application...

...

A second tribal issue involves a tribal request to grant the tribes the authority to require that commercial cannabis operations within a tribe’s Areas of Traditional Tribal Cultural Affiliation be designed to avoid, minimize, or mitigate impacts to Tribal Cultural Resources. Under the proposed amendment, notice is required for projects within Areas of Traditional Tribal Cultural Affiliation (sec. 55.4.5.1.5). Prior to approving a permit in such an area, the proposed amendment requires the County to coordinate with the Tribal Historic Preservation Officer (THPO) or other tribal representatives. During this process, the tribe may request that operations associated with the clearance or permit be designed to avoid, minimize or mitigate impacts to Tribal Cultural Resources.<sup>20</sup> During the Commission’s tribal consultation process with Tribes (summarized in Finding II-C) representatives from the Yurok Tribe requested that the proposed amendment be modified to expressly grant to the tribes the authority to require that commercial cannabis operations within a tribe’s Areas of Traditional Tribal Cultural Affiliation be designed to avoid, minimize, or mitigate impacts to Tribal Cultural Resources. However, neither the certified LCP nor Coastal Act provide Tribes with such authority. Nonetheless, the requirement of Section 55.4.5.1.5 that the County “engage” with local tribes provides an opportunity for the concerns of the tribes over specific projects to be taken into account by the County during County review of proposed development and before it acts on the project applications. In addition, as summarized above, the “A” (Archaeological Resources Area) combining zone requirements of the existing certified IP provide protections for archaeological and paleontological resources in areas known to have significant archaeological and paleontological

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<sup>20</sup> “Tribal Cultural Resources” means sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under sections 21074, 21083.2(g), and 21084.1 of the Public Resources Code, respectively. Tribal Cultural Resource shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body.

value and/or the potential for archaeological resources to be present. These standards include detailed processes for consulting with tribes in areas with an “A” combining zone beyond the standards specified in the proposed amendment. For example, in the Shelter Cove area, where the consultation process provides substantial information which indicates that significant archaeological resources would be adversely affected, the County, where feasible, shall require the project to avoid the significant resources and to allow for permanent protection of such resources.

Another standard for the protection of archaeological resources in the proposed amendment as submitted is a requirement for a minimum 600-foot setback for commercial cannabis operations from Tribal Cultural Resources and a minimum 1,000-foot setback from Tribal Ceremonial Sites (which are defined in the proposed amendment as locations where ceremonial activities are conducted by a Tribe within its Area of Traditional Tribal Cultural Affiliation) (sec. 55.4.6.4.4). The setback required from these areas may only be waived or reduced with the express written consent of the Tribe.

In addition, an application filing requirement for commercial cannabis activities specified in the proposed amendment (sec. 55.4.11) is a completed survey by a qualified archaeologist or tribal representative for archaeological and tribal cultural resources in projects that propose ground disturbance.

Finally, the proposed amendment as submitted includes a cannabis-specific performance standard for the inadvertent discovery of archaeological resources (sec. 55.4.12.1.15). The standard requires that if cultural resources are encountered during ground disturbing activities, the contractor on site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist, as well as the appropriate THPO(s), are to be contacted to evaluate the discovery and, in consultation with the applicant and County, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials.

Each of the six LUPs requires that reasonable mitigation measures shall be required where development would adversely impact archaeological resources. The proposed amendment includes cannabis-specific mitigation measures to protect archaeological resources consistent with LUP policy requirements. As discussed above, a minimum 600-foot setback is required for commercial cannabis operations from tribal cultural resources, and a minimum 1,000-foot setback is required from tribal ceremonial sites. In addition, the proposed amendment includes a performance standard for the inadvertent discovery of archaeological resources. Furthermore, the amendment includes various requirements for noticing and consulting with tribes for proposed commercial activities within Areas of Traditional Tribal Cultural Affiliation. Therefore, the Commission finds that the proposed amendment, as submitted, conforms with and is adequate to implement the archaeological resources protection policies and standards of the certified LUPs.

## **vii. Public Access**

### (a) Summary of LUP policies

The six LUPs each include several Coastal Act policies related to public access protection as enforceable LUP policies. These include section 30210, which requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Also, section 30212, which requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. The LUPs also include Coastal Act section 30211, which requires that development not interfere with the public's right to access gained by use or legislative authorization. Even without direct incorporation into the certified LCP, those cannabis developments located between the first public road and the sea are subject to the Coastal Act public access policies. Thus, the requirements of section 30214 of the Coastal Act that public access be implemented in a manner to regulate the time, place, and manner of public access, depending on the facts and circumstances, are applicable to commercial cannabis developments located between the first public road and the sea.

(b) Findings for Denial as Submitted and Approval if Modified

The proposed amendment includes protections for public access by expressly requiring (in sec. 55.4.11) that all applications for commercial cannabis activities shall “include an analysis of how the activity will conform to all applicable Local Coastal Area Plan policies and regulations, including those protecting ESHA's, wetlands, coastal public access, and visitor-serving uses.” In addition, the proposed amendment requires [in sec. 55.4.6.4.4(c)] a minimum 600-foot setback from public parks, public access points, and commercial recreational facilities. The setback requirement applies to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership. To approve a CDP for cannabis-related development in such areas, the County must find that the development is consistent with the Coastal Act public access policies in addition to finding the project meets the 600-foot setback requirement.

The proposed standards for public access protection allow [in sec. 55.4.6.4.4(f)] for a waiver or reduction of the 600-foot setback requirement from coastal access facilities, and there are no standards specified for the evaluation of such a setback waiver or reduction. The only requirement is that the setback waiver or reduction must be approved in writing by “qualified officials or representatives representing these protected uses” (“protected uses” include public parks, coastal public access sites, and commercial recreational facilities, among other “Sensitive Receptors”). To ensure that adequate protections remain for any reduced setback granted for commercial cannabis activities proposed less than 600 feet from public access and recreational facilities, **Suggested Modification 9 (Public Access)** would require that findings be made that the setback reduction conforms with all applicable policies of the certified LUP and the access policies of the Coastal Act.

Because CDP applications for cannabis uses and activities permitted under the proposed regulations must provide the required analysis and are subject to the Coastal Act public access policies and the 600-foot setback requirement, the proposed amendment will protect designated public access, including the access points listed in the access inventories of each of the certified LUPs. Therefore, the Commission finds that the proposed amendment, only as modified,

conforms with and is adequate to implement the public access protection policies and standards of the certified LUP.

## **V. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The County adopted the Final Environmental Impact Report (EIR) for the County's Commercial Cannabis Land Use Ordinance, dated January 2018, on May 8, 2018 (SCH #2017042022).

As set forth in section 21080.9 of the California Public Resources Code, CEQA exempts local government from the requirement of preparing an EIR in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Thus, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP amendments. Instead, the CEQA responsibilities are assigned to the Commission, and the Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].

The County's LCP Amendment consists of an IP amendment only. The Commission incorporates its findings on LUP conformity into this CEQA finding as it is set forth in full. As discussed herein, the IP amendment as originally submitted is not in conformity with, or adequate to carry out, the provisions of the six Local Coastal Area Plans in the certified LCP. The Commission, therefore, has suggested modifications to bring the IP Amendment into full conformance with the six Local Coastal Area Plans in the certified LUP. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

The Commission finds that the LCP Amendment, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of CEQA. Further, future individual projects would require CDPs, issued by the County. Throughout the Coastal Zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures which would further reduce the potential for significant adverse environmental impacts.