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DATE: July 26, 2019

TO: Coastal Commissioners and Interested Parties

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SUBJECT: **Humboldt County LCP Amendment No. LCP-1-HUM-16-0075-2 Part A**
(Commercial Cannabis Land Use Ordinance – Personal Use Cultivation)
For the Commission meeting of Wednesday August 7, 2019 in Eureka

SUMMARY OF STAFF RECOMMENDATION

The County of Humboldt (County) proposes to amend its local coastal program's (LCP) implementation program (IP) to change its certified standards for indoor cultivation of cannabis for personal use and to add new regulations pertaining to the outdoor cultivation of cannabis for personal use, as shown in Appendix A. The County first adopted regulations pertaining to cannabis (marijuana) in 2009 in response to concerns surrounding medical marijuana management within the County. Beginning in 2011, the County's "Commercial Cannabis Land Use Ordinance" (CCLUO) was adopted in four separate subject matter phases. The subject IP amendment request represents "Phase 1" and "Phase 2" of the County's CCLUO.

Under the proposed IP amendment application as adopted by the County in 2014 and transmitted to the Commission in 2016 (Appendix A), there are several proposed non-substantive changes to the existing IP standards for indoor personal cultivation of medical marijuana. The proposed IP amendment application also includes new standards for the outdoor cultivation of medical marijuana for personal use on parcels less than 5 acres in size. The proposed standards include standards related to yard setbacks, cultivation in proximity to schools, effluent discharge, and public health and safety.

State law allows for the cultivation by adults of up to six cannabis plants for personal use either indoors or outdoors, subject to all local regulations. The cultivation of cannabis for personal use consistent with state law on residential property is an accessory activity that can be recognized as to be part of the residential use of the property. Under the proposed regulations, the cultivation of cannabis for personal use will be considered an accessory use, will be allowed only where a private residence exists, will be limited to a maximum of six plants, and is required to comply with specified standards related to setbacks, waste products, and cultivation area size limits.

Thus, the proposed IP amendment does not change the kind, location, intensity, or density of a use that has been found consistent with the certified LUP. Rather, the proposed amendment adds wording to the IP making the allowance for this accessory residential use more specific. Furthermore, due to the minimal size of cultivation area allowed under the proposed regulations, and the requirement that the personal cultivation only be allowed as an accessory use to an existing developed residential use of a property, the proposed IP amendment as submitted protects priority use lands where existing residential development may be located, consistent with the County’s six LUPs.

Since the time that the County adopted and transmitted the proposed IP changes described above, (1) the state legalized cannabis for adult recreational use, and (2) the County updated regulations for commercial cannabis cultivation (Part C of the subject LCPA application, which will be effectively certified on August 7, 2019). To promote consistency with current state law as well as more recently adopted terminology, definitions, and other standards adopted by the County after 2014, County staff offered several proposed “friendly modifications” related to indoor and outdoor cultivation for personal use on February 28, 2019 (Appendix B). The proposed friendly modifications offered by County staff would (1) delete outdated code references; (2) update terminology; (3) make the regulations applicable to both medical and recreational cannabis use; (4) allow personal cultivation only as an accessory use to an existing developed use on a property; (5) conform the regulations to state law by specifying the maximum number of cannabis plants that may be cultivated for personal use (i.e., six); (6) delete references to minimum or maximum parcel sizes where personal cultivation may occur; and (7) simplify the enforcement provisions. At the County staff’s request, staff recommends that the Commission incorporate the County staff’s proposed “friendly modifications” as **Suggested Modification 1** with additional minor changes recommended by Commission staff to reduce redundancy and promote clarity and internal IP consistency. Appendix C displays the totality of the Commission’s suggested modifications.

The appropriate motions and resolutions to adopt the staff recommendation are on page 5.

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. At the Coastal Commission meeting of May 9, 2019 in Oxnard, the Commission certified Part C of the proposed application with suggested modifications. The deadline for Commission action on the remaining two parts of the proposed IP amendment application, including Part A, the subject of this staff recommendation, is August 19, 2019.

ADDITIONAL INFORMATION

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

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APPENDICES

[Appendix A: County Adopted Amendment](#)

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[Appendix C: Commission Suggested Modifications \(all modifications\)](#)

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EXHIBITS

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

[Exhibit 2 – Resolutions of Adoption/Transmittal](#)

[Exhibit 3 – Adopted Ordinance No. 2523](#)

I. MOTIONS, RECOMMENDATIONS, AND RESOLUTIONS

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

Motion 1:

I move that the Commission reject Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part A 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 A 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 A” WITH SUGGESTED MODIFICATIONS

Motion 2:

I move that the Commission certify Implementation Program Amendment No. LCP-1-HUM-16-0075-2 Part A 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 A 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; (2) Trinidad Area Plan; (3) McKinleyville Area Plan; (4) Humboldt Bay Area Plan; (5) Eel River Area Plan; and (6) South Coast Area Plan. 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 Commission conducted nine public hearings on the development of the LCP amendment (in conjunction with the development of the inland cannabis ordinance), including on 1/6/11, 2/3/11, 5/12/11, 8/18/11, 3/16/14, 4/3/14, 5/1/14, 6/6/14, 6/19/14. The County Board of Supervisors held seven public hearings, including on 11/15/11, 12/13/11, 3/5/13, 5/7/13, 10/22/13, 7/5/14, and 10/28/14. In addition, four public community meetings arranged by County staff to solicit feedback on the proposed ordinance were held in April of 2013 in Garberville, Willow Creek, Petrolia, and McKinleyville. All 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

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 D 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. The tribal representatives expressed no issues of concern regarding Part A of the application.

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 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 includes **Suggested Modification 1** (Appendix C) to incorporate proposed “friendly modifications” offered by County staff on February 28, 2019 (Appendix B) and after, to promote consistency with current State law and to update terminology, definitions, code citations, and numbering. Appendix C displays the Commission’s suggested modifications in full, which include the proposed friendly modifications plus additional minor changes to reduce redundancy and promote clarity and internal IP consistency.

IV. 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 A:

A. AMENDMENT DESCRIPTION AND BACKGROUND

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

The subject IP amendment application (Part A) includes changes to the previously certified Phase 1 regulations related to indoor cultivation for personal use and new regulations pertaining to outdoor cultivation for personal use, as described below. The proposed adopted IP text changes are shown in Appendix A.

Existing Certified Phase 1 Regulations (Indoor Personal Cultivation)

The existing certified IP includes standards regarding the indoor cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law. At the time that the regulations were certified by the Commission (in 2012 under LCP Amendment No. HUM-MIN-1-12), State law allowed for the cultivation and possession of medical marijuana for the personal use of a qualified patient without fear of criminal prosecution against the patient, the patient’s caregiver, or the physician who recommended medical marijuana for the patient. Thus, the existing certified standards relate to potential nuisance and health and safety impacts associated with marijuana cultivation and processing, including (a) residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana; (b) soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows; (c) excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operations; and (d) conversion of rental houses to grow structures and associated deterioration of neighborhood character; and odor

nuisances interfering with neighboring owners' use and enjoyment of their property. The existing certified standards include, but are not limited to, the following:

- Medical marijuana cultivation in a residence or detached accessory building shall not exceed 50 square feet or 10 feet in height per residence on a parcel;
- A total of 50 square feet of indoor medical marijuana cultivation for personal use, which does not exceed 10 feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building;
- The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient;
- Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1,200 watts total;
- All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired;
- The use of gas products for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited;
- No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of Section 1703 of the California Fire Code have been met;
- To minimize odor, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method;
- From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses;
- No effluent, including but not limited to waste products, chemical fertilizers, or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems, or other drainage systems, including those that lead to rivers, streams, and bays as a result of indoor residential cultivation of medical marijuana; and
- A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

Proposed Changes to Existing Certified Phase 1 regulations (Indoor Personal Cultivation)

Under the proposed IP amendment application as adopted by the County in 2014 and transmitted to the Commission in 2016 (Appendix A), there are several proposed non-substantive changes to the existing IP standards for indoor personal cultivation of medical marijuana, including (1) revising numeric code sections for consistency with numbering conventions found elsewhere in the IP; (2) adding references to Government Code sections 65850 and 53069.4 (which relate to a local government's regulatory); (3) retitling the sectional name; (4) removing the section on

“Findings;” (5) adding a clause clarifying the relationship to other state and federal laws; (6) reference to new specialized abatement provisions; (7) revisions to the definition of “detached accessory building;” and (8) clarification that outdoor cultivation for personal use is prohibited if there is indoor cultivation for personal use on the same parcel.

Proposed New Phase 2 Regulations (Outdoor Personal Cultivation)

The proposed IP amendment application also includes new IP standards for the outdoor cultivation of medical marijuana for personal use on parcels less than 5 acres in size. The standards were originally adopted by the County in 2014 and transmitted to the Commission for certification in 2016. The proposed standards include, but are not limited to, the following:

- On parcels 1 acre or smaller in size, total plant canopy may not exceed 100 square feet, and on parcels between 1 acre and 5 acres in size, total plant canopy may not exceed 200 square feet in size;
- No cultivation may occur within 20 feet of a property line;
- No cultivation may occur within 600 feet of any School, School Bus Stop, Public Park, Place of Religious Worship, or Traditional Native American Cultural Site, “...so long as these uses existed prior to the outdoor cultivation of medical marijuana in compliance with this Code...”;
- Both indoor and outdoor cultivation may not occur on the same parcel;
- Cultivation within a greenhouse or hoophouse is considered “outdoor” cultivation under the regulations;
- No effluent, including but not limited to waste products, fertilizers, and pesticides, shall be discharged into drains, septic systems, community sewer systems, water systems or other man-made or natural drainage systems as a result of cultivation of medical marijuana;
- Outdoor cultivation shall not adversely affect the health or safety of residents, neighbors, or nearby businesses “...by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana;...”
- Where applicable, private water systems utilized in association with outdoor cultivation of medical marijuana shall comply with Section 1602 of the Fish and Game Code; and
- On lands within the Shelter Cove community served by the Resort Improvement District, outdoor cultivation may only occur by a qualified patient who occupies a permitted residence located on the same property that is host to the cultivation activities. If the qualified patient is not the owner of the property, the occupant must be a leaseholder or lawful occupant who has retained the notarized consent of the property owner, or their designated agent.

The ordinance also details a “specialized abatement process” for violations of the ordinance involving noticing provisions for “nuisance” declarations, administrative procedures, hearing procedures, and details on liability for costs. Finally, the proposed ordinance includes a number of advisory “good neighbor” cultivation practice recommendations “designed to insure compatibility with adjacent land uses, medicine safety, and responsible environmental stewardship” including: (1) using low odor strains “to alleviate the potential for unwelcome odors escaping beyond the property and affecting neighboring residents during the flowering period...”; (2) designing greenhouses with a filtration system to minimize odors; (3) using water

from a municipal source, rain catchment system, or, if from a private system, only stored water July through November; (4) avoiding the use of chemicals and other potentially harmful substances; (5) encouraging the use of “best management practices” for farming related to water conservation measures, minimization of dust and erosion, soil conservation, and disease and pest control (the Best Management Practices are compiled in a “Farmers Guide” developed by a local growers association).

County Staff Proposed “Friendly Modifications”

Since the time that the County adopted and transmitted the proposed IP changes described above, (1) the state legalized cannabis for adult recreational use, and (2) the County updated regulations for commercial cannabis cultivation (Part C of the subject LCPA application, certified by the Commission with suggested modifications on May 9, 2019). To promote consistency with current state law as well as more recently adopted terminology, definitions, and other standards adopted by the County after 2014, County staff offered several proposed “friendly modifications” related to indoor and outdoor cultivation for personal use on February 28, 2019 (Appendix B). The proposed friendly modifications offered by County staff would:

- delete outdated code references;
- update terminology (e.g., changing “marijuana” to “cannabis”) and definitions for internal IP consistency and consistency with the more recently developed Part C regulations;
- make the regulations applicable to both medical and recreational cannabis use;
- allow personal cultivation only as an accessory use to an existing developed use on a property;
- conform the regulations to State law by specifying the maximum number of cannabis plants that may be cultivated for personal use (i.e., six);
- delete references to minimum or maximum parcel sizes where personal cultivation may occur; and
- simplify the enforcement provisions.

2. County Regulation of Cannabis and Timeline of Submittal to the Commission

Humboldt County first adopted regulations pertaining to cannabis (marijuana) in 2009 in response to concerns surrounding medical marijuana management within the County. Two members of the County Board of Supervisors served on a subcommittee to research medical marijuana management alternatives and investigate policy options. Beginning 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 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 E).

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. Changes to Phase 1 are the subject of this amendment, IP Amendment Application No. LCP-1-HUM-16-0075-2 Part A.

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, described above). 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, summarized above) to the transmitted amendment. 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. Phase 2 is the subject of this IP Amendment Application No. LCP-1-HUM-16-0075-2 Part A.

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 E). 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 IP Amendment Application No. LCP-1-HUM-16-0075-2 at the August 7, 2019 Commission meeting.

CCLUO Phase 4 (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 prior two years, the County 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 offered proposed changes (friendly modifications) to the submittal. Appendix E provides added detail on the history of changes to this proposed amendment. At the Coastal Commission meeting of May 9, 2019 in Oxnard, the Commission (a) denied the County of Humboldt Implementation Program (IP) Amendment Application No. LCP-1-HUM-16-0075-2 Part C as submitted, and (b) certified the IP amendment as recommended by staff with suggested modifications described in the April 19th staff report, as modified orally at the May 9th hearing. Humboldt County has accepted the suggested modifications by formal resolution of the Board of Supervisors, and the modified amendment will become effectively certified at the August 7, 2019 Commission hearing prior to hearing of the subject amendment.

B. ENVIRONMENTAL SETTING

Humboldt County has six separate certified Land Use Plans (LUPs), each certified by the Commission in the early 1980's. Each of the LUPs is described briefly below (and see Exhibit 1).

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.

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. 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 separated from the ocean by a series of coastal dunes and bluffs. Much of the MAP area has urban services (water and sewer) and has largely been built out.

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 HBAP 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 about the cities of Eureka and Arcata. The Humboldt Bay Harbor, Recreation, and Conservation District manages the Port of Humboldt Bay.

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.

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. 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 with community sewer and water by Resort Improvement District #1.

C. IMPLEMENTATION PLAN CONFORMITY

The six LUPs each include policies that protect priority uses, including, as policies, the agricultural land protection policies of the Coastal Act (sections 30241 and 30242). Some lands planned and zoned for agricultural uses under the certified LCP are developed with existing residences. In addition, some lands around Humboldt Bay that are planned and zoned for coastal-dependent industrial uses under the certified Humboldt Bay Area Plan (LUP) are developed with legal nonconforming residences. Under section 30255 of the Coastal Act, coastal-dependent developments shall have priority over other developments on or near the shoreline.

State law allows for the cultivation by adults (age 21 and over) of up to six cannabis plants for personal use either indoors or outdoors, subject to all local regulations. The cultivation of cannabis for personal use consistent with state law on residential property is an accessory activity that can be considered to be part of the residential use of the property. Under the proposed regulations, the cultivation of cannabis for personal use will be recognized an accessory use that will be allowed only where a private residence exists, will be limited to a maximum of six plants, and is required to comply with specified standards related to setbacks, waste products, and cultivation area size limits. Thus, the proposed IP amendment does not change the kind, location, intensity, or density of a use that has been found consistent with the certified LUP. Rather, the proposed amendment adds wording to the IP making the allowance for this accessory residential use more specific. Furthermore, due to the minimal size of cultivation area allowed under the proposed regulations, and the requirement that the personal cultivation only be allowed as an accessory use to an existing developed residential use of a property, the proposed IP amendment as submitted protects priority use lands where existing residential development may be located, consistent with the LUP policies summarized above.

Improvements to an existing single family structure to accommodate cannabis cultivation for personal use performed consistent with the proposed regulations for indoor and outdoor cultivation in most cases would not require a coastal development permit (CDP). Section 30610(a) of the Coastal Act and the County’s coastal zoning regulations exempts improvements to existing single family residences from CDP requirements, except for those classes of development that the Commission specifies by regulation involve a risk of adverse environmental effects and require that a permit be obtained. Only in limited circumstances would interior and exterior improvements to an existing residential structure to accommodate cannabis cultivation for personal use performed consistent with the proposed IP standards involve a risk of adverse environmental effect and require a CDP pursuant to Commission-adopted section 13250 of Title 14 of the California Code of Regulations. These limited circumstances include, but are not limited to [pursuant to CCR sec. 13250(b)], improvements that are located (a) on a beach; (b) in a wetland, sand dune, or other environmentally sensitive habitat area; (c) within 50 feet of the edge of a coastal bluff; or (d) in an area designated as highly scenic in a certified land use plan.

At the County staff’s request, the Commission incorporates the County staff’s proposed (on February 28, 2019, Appendix B) “friendly modifications” as **Suggested Modification 1** with additional minor changes suggested by the Commission to reduce redundancy and promote clarity and internal IP consistency. As summarized above, the County staff’s proposed friendly modifications are offered to clarify that the personal cultivation must be an accessory use consistent with the County’s findings for approval of the LCP amendment, to promote consistency with current State law, and to update terminology, definitions, code citations, and numbering. Appendix C displays the totality of the Commission’s suggested modifications.

Therefore, the Commission finds that the IP amendment, only as modified, conforms with and is adequate to implement the policies and standards of the certified LCP.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 (LCP). 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.

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, which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].