

FINAL ENVIRONMENTAL IMPACT REPORT FOR THE

Licensing of Commercial Cannabis Cultivation in Mendocino County Project

State Clearinghouse No. 2023080049



Prepared for:



Department of
Cannabis Control
CALIFORNIA

October 2024

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LIST OF ABBREVIATIONS

2022 Scoping Plan	<i>2022 Scoping Plan to Achieve Carbon Neutrality</i>
AB	Assembly Bill
BAAQMD	Bay Area Air Quality Management District
BMP	best management practice
CAAQS	California Ambient Air Quality Standards
CalEEMod	California Emissions Estimator Model Program
CARB	California Air Resources Board
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEC	California Energy Commission
CEQA	California Environmental Quality Act
CO ₂ T	total carbon dioxide
County	Mendocino County
CPUC	California Public Utilities Commission
DCC	California Department of Cannabis Control
Draft EIR	draft environmental impact report
DWR	California Department of Water Resources
Final EIR	final environmental impact report
GHG	greenhouse gas
HFC	hydrofluorocarbon
HVAC	heating, ventilation, and air condition
lb/day	pounds per day
LSA Agreement	Lake and Streambed Alteration Agreement
MAUCRSA	Medicinal and Adult-Use Cannabis Regulation and Safety Act
MCAQMD	Mendocino County Air Quality Management District

MCCR	Mendocino Cannabis Cultivation Regulations
MND	mitigated negative declaration
MT/yr	metric tons per year
NAAQS	National Ambient Air Quality Standards
NOP	Notice of Preparation
PG&E	Pacific Gas and Electric Company
PRC	Public Resources Code
project	Licensing of Commercial Cannabis Cultivation in Mendocino County Project
RPS	Renewables Portfolio Standard
SB	Senate Bill
SWRCB	State Water Resources Control Board
USFWS	US Fish and Wildlife Service
VMT	vehicle miles traveled
VOC	volatile organic compound
ZEV	Zero-Emission Vehicle

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1 INTRODUCTION

This final environmental impact report (Final EIR) has been prepared by California Department of Cannabis Control (DCC), as lead agency, in accordance with the requirements of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (California Code of Regulations [CCR], section 15132). This Final EIR contains responses to comments received on the draft environmental impact report (Draft EIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County Project (project). The Final EIR consists of the Draft EIR and this document (responses to comments document), which includes comments on the Draft EIR, responses to those comments, and revisions to the Draft EIR.

1.1 PURPOSE AND INTENDED USES OF THIS FINAL EIR

CEQA requires a lead agency that has prepared a Draft EIR to consult with and obtain comments from responsible and trustee agencies that have jurisdiction by law with respect to the project and to provide the public with an opportunity to comment on the Draft EIR. The Final EIR is the mechanism for responding to these comments. This Final EIR has been prepared to respond to comments received on the Draft EIR, which are reproduced in this document, and to present corrections, revisions and other clarifications, and amplifications to the Draft EIR, including project updates, made in response to these comments and as a result of the applicant's ongoing planning and design efforts. The Final EIR will be used to support the DCC's decision regarding whether to approve the Licensing of Commercial Cannabis Cultivation in Mendocino County Project.

1.2 PROJECT LOCATION

Mendocino County (County) is located along the Pacific Ocean in the northwestern portion of California. The County is bordered by Humboldt and Trinity Counties to the north; Tehama, Glenn, and Lake Counties to the east; and Sonoma County to the south (see Figure 2-1 in Chapter 2, "Project Description," of the Draft EIR). The County is approximately 2,247,000 acres (including the incorporated cities).

The County is predominantly rural, with a majority of its land area consisting of forest and agricultural areas. Approximately 16 percent of the County's land area is under federal, state, and tribal ownership. Development (residential, commercial, office, and industrial) is located within the County's nine unincorporated communities (Anderson Valley/Boonville Area, Round Valley/Covelo Area, Fort Bragg Area, Hopland/Sanel Valley Area, Laytonville Area, Potter Valley Area, Redwood Valley Area, Little Lake Valley Area, and Ukiah Valley Area) and the incorporated cities of Fort Bragg, Point Arena, Ukiah, and Willits.

1.3 PROJECT OBJECTIVES

The objectives of the project are to:

- ▶ Implement the DCC’s cultivation licensure program in the County in an effort to minimize the public health and safety risks associated with unlicensed commercial cannabis activity, while promoting a robust and economically viable legal cannabis industry in the County;
- ▶ Effectively transition qualified existing provisional cannabis cultivation licenses to annual licenses through a streamlined cannabis licensing process to ensure that such provisional cannabis cultivation license holders complete the annual license process by the statutory timeframes identified in Business and Professions Code section 26050.2;
- ▶ Provide a mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process;
- ▶ Ensure that cannabis cultivation by licensees is conducted in accordance with applicable state and local laws related to land conversion, air quality, electricity usage, water usage, water quality, biological resources, agricultural discharges, and similar matters;
- ▶ Protect natural and built resources in Mendocino County; and
- ▶ Minimize potential adverse effects of cannabis cultivation activities on the environment.

1.4 SUMMARY DESCRIPTION OF THE PROJECT

The project consists of commercial cannabis cultivation conducted under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in Mendocino County.

As of April 2023, there are 623 commercial cannabis cultivation sites within the unincorporated areas of Mendocino County that hold provisional state cannabis cultivation licenses and that may therefore operate under MAUCRSA on a conditional basis for a limited period. Of the 623 sites, 23 currently also have associated cannabis distribution transport-only operations. DCC is considering whether to transition some or all of these provisional licenses to annual licenses (i.e., whether to issue annual licenses to some or all of these provisional licensees). DCC may also consider other annual licensing actions (e.g., the issuance of new, additional annual cultivation licenses) for future commercial cannabis cultivation within the unincorporated areas of Mendocino County.

1.5 CEQA PUBLIC REVIEW PROCESS

On May 3, 2024, DCC released the Draft EIR for a 45-day public review and comment period. To ensure the public had sufficient time to comment on the Draft EIR, the review period was extended an additional 7 days to June 24, 2024. Virtual public meetings were held by DCC on June 4, 2024, and June 20, 2024. These meetings were recorded, and a transcript was prepared.

As a result of these notification efforts, written and verbal comments were received from California Department of Fish and Wildlife, organizations, and individuals on the content of the Draft EIR. Chapter 2, “Responses to Comments,” identifies these commenting parties, their respective comments, and responses to these comments. None of the comments received, or the responses provided, constitute “significant new information” by CEQA standards (State CEQA Guidelines, section 15088.5).

1.6 ORGANIZATION OF THE FINAL EIR

This Final EIR is organized as follows:

- ▶ **Chapter 1, “Introduction,”** describes the purpose of the Final EIR, summarizes the Licensing of Commercial Cannabis Cultivation in Mendocino County Project, provides an overview of the CEQA public review process, and describes the content of the Final EIR.
- ▶ **Chapter 2, “Responses to Comments,”** contains a list of all parties who submitted comments on the Draft EIR during the public review period, comments received, and responses to the comments.
- ▶ **Chapter 3, “Revisions to the Draft EIR,”** presents revisions to the Draft EIR text made in response to comments or to amplify, clarify, or make minor modifications or corrections.
- ▶ **Chapter 4, “References,”** identifies the documents used as sources for the analysis.
- ▶ **Chapter 5, “List of Preparers,”** identifies the lead agency contacts, as well as the preparers of this Final EIR.

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2 RESPONSES TO COMMENTS

This chapter contains comment letters received during the public review period for the Draft EIR, which concluded on June 24, 2024, and transcribed comments received during virtual public meetings held by the California Department of Cannabis Control (DCC) on June 4, 2024, and June 20, 2024. In conformance with section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the Draft EIR.

The comment letters below are reproduced exactly as they were submitted. Spelling, grammatical, and other errors in the original letters have not been corrected. Actual bracketed comment letters on the Draft EIR are provided in Appendix A of this Final EIR.

2.1 LIST OF COMMENTERS ON THE DRAFT EIR

Table 2-1 presents the list of commenters, including the numerical designation for each comment letter received, the author of the comment letter, and the date of the comment letter.

Table 2-1 List of Commenters

Letter No.	Commenter	Date
AGENCIES		
A1	Tina Bartlett, California Department of Fish and Wildlife	June 24, 2024
ORGANIZATIONS		
O1	Ellen Drell, Willits Environmental Center	June 21, 2024
O2	Steven Amato, Amy Wynn, and Meghan Durbin, Mendocino Cannabis Alliance with Wynn Coastal Planning & Biology	June 22, 2024
O3	Editte Lerman, Emerald Law Group	June 24, 2024
O4	Nancy and Brantly Richardson, Neighborhood Coalition	June 20, 2024
INDIVIDUALS		
I1	Chantal Simonpietri	May 8, 2024
I2	Evan Mills	June 4, 2024
I3	Dennis Slota	June 18, 2024
I4	Victor Ruffa	June 20, 2024
I5	Laura & Marty Clein, Martyjuana	June 21, 2024
I6	Hannah Nelson	June 22, 2024
I7	Tamara (no last name)	June 24, 2024
JUNE 4, 2024, VIRTUAL PUBLIC MEETING ON THE DRAFT EIR		
PM1-1	Steven Amato, Mendocino Cannabis Alliance	—
PM1-2	Steven Amato, Mendocino Cannabis Alliance	—
PM1-3	Steven Amato, Mendocino Cannabis Alliance	—
PM1-4	Steven Amato, Mendocino Cannabis Alliance	—
PM1-5	Steven Amato, Mendocino Cannabis Alliance	—
PM1-6	Steven Amato, Mendocino Cannabis Alliance	—
PM1-7	Steven Amato, Mendocino Cannabis Alliance	—

Letter No.	Commenter	Date
PM1-8	Steven Amato, Mendocino Cannabis Alliance	—
PM1-9	Susan	—
PM1-10	Unidentified Commenter 1	—
PM1-11	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-12	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-13	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-14	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-15	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-16	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-17	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-18	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-19	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-20	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-21	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-22	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-23	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-24	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-25	Hannah Nelson	—
PM1-26	Hannah Nelson	—
PM1-27	Hannah Nelson	—
PM1-28	Hannah Nelson	—
PM1-29	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-30	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-31	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-32	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-33	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-34	Hannah Nelson	—
PM1-35	Hannah Nelson	—
PM1-36	Hannah Nelson	—
PM1-37	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-38	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-39	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-40	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-41	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-42	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-43	Hannah Nelson	—
PM1-44	Hannah Nelson	—
PM1-45	Hannah Nelson	—
PM1-46	Hannah Nelson	—

Letter No.	Commenter	Date
PM1-47	Hannah Nelson	—
PM1-48	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-49	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-50	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-51	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-52	Meghan Durbin, Mendocino County Land Use Consultant	—
PM1-53	Hannah Nelson	—
PM1-54	Hannah Nelson	—
PM1-55	Susan	—
PM1-56	Susan	—
PM1-57	Susan	—
PM1-58	Michelle Shot	—
PM1-59	Michelle Shot	—
PM1-60	Michelle Shot	—
PM1-61	Michelle Shot	—
PM1-62	Amy Wynn, Wynn Coastal Planning and Biology in Fort Bragg	—
PM1-63	Bill	—
PM1-64	Bill	—
PM1-65	Hannah Nelson	—
PM1-66	Susan	—
PM1-67	Michelle Shot	—
JUNE 20, 2024, VIRTUAL PUBLIC MEETING ON THE DRAFT EIR		
PM2-1	Editte Lerman, Emerald Law Group	—
PM2-2	Editte Lerman, Emerald Law Group	—
PM2-3	Zee Handoush	—
PM2-4	Editte Lerman, Emerald Law Group	—
PM2-5	Editte Lerman, Emerald Law Group	—
PM2-6	Tiffany Kowalski, Emerald Law Group	—
PM2-7	Leon Acosta, Emerald Law Group	—

2.2 MASTER RESPONSE

Several comments raised similar issues. Rather than responding individually, a master response has been developed to address the comments comprehensively. A reference to the master response is provided, where relevant, in the individual comment responses.

2.2.1 Master Response 1: Baseline Conditions Used in the Draft EIR

Several comment letters identify concerns regarding the baseline conditions used in the Draft EIR impact analysis and the application of those conditions to Draft EIR mitigation measures. Some comment letters request that the Draft EIR use a baseline date of August 26, 2016, to cover cannabis cultivation activities that existed prior to the adoption of Mendocino County's Mendocino Cannabis Cultivation Regulations (MCCR) to address environmental impacts that have occurred since the legalization of cannabis in California while other comment letters request that the baseline date be the publication date of the EIR Notice of Preparation (NOP) of August 2, 2023.

State CEQA Guidelines, section 15125(a) provides the following guidance for establishing the baseline in an EIR:

- (a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.
- (1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

In other words, the impacts of a proposed project must be evaluated by comparing expected environmental conditions after project implementation to the conditions identified as the baseline. The ultimate goal of the analysis of the EIR is to disclose impacts of DCC's proposed project to the public and its decision makers. DCC acknowledges that the courts have recognized it may be appropriate to deviate from the use of conditions existing on the NOP date in limited circumstances where it presents a better, more accurate presentation of the project's impacts; however, such baselines reflect current conditions, including unauthorized conditions. (See *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549 (*Citizens for East Shore Parks*) [upholding State Lands Commission's decision to adjust baseline to reflect the current operating condition of a marine terminal]; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310 (*Communities for a Better Environment*) [rejecting use of pollutant emission levels allowed under prior permits, but not reflective of actual existing emissions, as a baseline]; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242–243 [EIR prepared in conjunction for application to expand mining operation “properly discussed the existing physical condition of the affected area as including the long-operating mine”].) Given the data gaps and practical difficulties associated with accurately describing environmental resources at

an earlier date, DCC determined that describing conditions at an earlier date would not be reflective of actual existing conditions within the County and would not provide an accurate presentation of the project's expected impacts.

To that end, in accordance with State CEQA Guidelines, section 15125, the date on which the NOP is issued is considered appropriate for establishing the baseline. The Draft EIR uses baseline conditions that existed at the release of the NOP on August 2, 2023. DCC acknowledges that Draft EIR page 3-2 may have created confusion as it describes the evolution of commercial cannabis cultivation licensing in Mendocino County with its initial approval of local commercial cannabis cultivation regulations on March 27, 2017, and subsequent processing of County cannabis cultivation licenses. The Draft EIR also identifies that the state began accepting applications and issuing temporary licenses for commercial cannabis activities on January 1, 2018. While there have been 1,708 commercial cannabis cultivation license applications submitted to Mendocino County since 2017, the Draft EIR baseline condition includes the operation of 623 provisionally licensed commercial cannabis cultivation sites, 23 of which have associated cannabis distribution transport-only operations, and 19 annual licensed commercial cannabis cultivation sites that were considered active at the time of NOP release. Notably, a vast majority of the provisionally licensed commercial cannabis cultivation sites that are part of the baseline have been in operation prior to January 1, 2016, and have submitted proof of their prior cultivation to the County as part of the local jurisdiction's review process.

To provide clarification, the text on page 3-2 of the Draft EIR has been revised. The original text in the first sentence of the first paragraph on Draft EIR page 3-2 states:

For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review.

The revised text in the first sentence of the first paragraph on Draft EIR page 3-2 now states:

For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review as of the publication of the Notice of Preparation, August 2, 2023.

The Draft EIR acknowledges that there are unlicensed cannabis cultivation sites located in the County, including cannabis cultivation sites located on state and federal lands. (Draft EIR, pages 3-2 through 3-7.) A complete inventory of unlicensed cannabis sites in the County has not been prepared by either Mendocino County or DCC. The Draft EIR estimates that for every licensed cannabis cultivation site, there are approximately six unlicensed cultivation sites. According to this ratio, the unincorporated area of the County could contain roughly 3,850 unlicensed cannabis cultivation sites. (Draft EIR, page 3-2.) Cultivation operations that do not obtain a license from DCC and Mendocino County are considered illegal. Enforcement activities targeting unlicensed or noncompliant cultivation operations are taken by the County in coordination with other agencies, including DCC, with the intent that such cultivation operations would be brought into compliance with County and state standards or closed. However, it is acknowledged that unlicensed cannabis cultivation sites may continue to occur in the County.

Although the Draft EIR acknowledges the adverse environmental effects of continued illegal cannabis operations as part of the environmental baseline condition described in Draft EIR Sections 3.1 through 3.17, because they are existing (and illegal), they are not considered part of the project; in this context, they would not result in environmental effects associated with the project that would need to be mitigated. This is consistent with the requirements of CEQA, which is to consider the proposed project and existing case law, as further discussed below.

As noted above, section 15125(a) of the State CEQA Guidelines provides that the baseline physical conditions are the basis by which a lead agency determines whether an impact of a project is significant. The courts have recognized that although how present conditions come to exist may interest enforcement agencies, the baseline physical conditions must reflect the “physical conditions existing at the time [the] environmental analysis begins,” even if the current condition includes unauthorized or illegal activities that never received prior environmental review. (*Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 248 (citing *Communities for a Better Environment, supra*, at p. 323); see also *Citizens for East Shore Parks, supra*, at p. 549, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 (holding that existing long-term unauthorized land use should be considered part of the baseline); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 (holding that existing conditions was the proper baseline, despite prior illegal discing and habitat removal).)

Requiring the development of early baselines would impose a huge burden on lead agencies in determining the nature of prior illegality; a more prudent method of dealing with prior illegality is to rely on direct enforcement by agencies charged with doing so. (*Riverwatch, supra*, 76 Cal.App.4th at p. 1452.) “[P]reparation of an EIR is not generally the appropriate forum for determining the nature and consequences of prior conduct of a project applicant, and environmental impacts should be examined in light of the environment as it exists when a project is approved.” (*Eureka Citizens Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 370.) Thus, existing illegal cannabis cultivation operations are disclosed as part of the baseline condition in the Draft EIR, consistent with CEQA.

2.3 COMMENTS AND RESPONSES

The verbal and written individual comments received on the Draft EIR and the responses to those comments are provided below. The comment letters and verbal comments made at the public hearing are reproduced verbatim in their entirety and followed by the response(s). Where a commenter provides multiple comments, each comment is indicated by a line bracket and an identifying number in the margin of the comment letter.

The individual comments contained in each comment letter are reproduced below. No edits have been made to the original comments, and spelling, grammatical, and other errors have been retained.

2.3.1 Agencies

Letter A1 California Department of Fish and Wildlife

Tina Bartlett, Regional Manager
June 24, 2024

Comment A1-1

“The California Department of Fish and Wildlife (Department) has reviewed the Draft Environmental Impact Report (DEIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County (Project). The Department received the DEIR from the Department of Cannabis Control (DCC) on May 3, 2024. The Department previously commented on the Notice of Preparation (NOP) for the Project.

The Department has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and their habitat. As a Responsible and Trustee Agency, the Department administers the Lake or Streambed Alteration (LSA) Program, California Endangered Species Act (CESA), and other provisions of the Fish and Game Code (FGC) that conserve the State’s fish and wildlife public trust resources. The Department provides the following comments and recommendations on the proposed Project in our role as a Trustee Agency pursuant to the California Environmental Quality Act statute (CEQA; California Public Resources Code [PRC] section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations [CCR], Title 14, section 15000 et seq.).

The Department continues to support efforts to effectively regulate cannabis cultivation, and to address the numerous and substantial associated environmental impacts. The Department believes that greater regulatory oversight and enforcement by state and local Lead Agencies can help minimize the environmental impacts of cannabis cultivation.”

Response A1-1

This comment provides introductory information and is noted.

Comment A1-2

“As outlined in the CEQA Guidelines (14 CCR section 15002(a)), one basic purpose of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. As the DEIR states (page 3-1), “CEQA Guidelines, section 15125(a) states the physical environmental conditions as they exist at the time the NOP is published normally constitute the baseline physical environmental conditions by which a Lead Agency determines whether an impact is significant.” However, unlike a typical CEQA review process, preparation and review of the DEIR for licensing of cannabis cultivation in the County of Mendocino (County) is primarily addressing environmental impacts for existing, ongoing projects.”

Response A1-2

This comment provides introductory information and is noted. Discussion surrounding the NOP publication date and baseline is included in “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment A1-3

“The County adopted a Mitigated Negative Declaration (MND) pursuant to CEQA for its Cannabis Cultivation Regulations¹ (Ordinance) in April 2017. Most of the sites addressed by

the DEIR are provisionally-licensed by the DCC and the licensees have submitted a permit application to the County under the 2017 Ordinance, and many have been allowed to continuously operate prior to permit issuance. Applications submitted under Phase 1 of the 2017 Ordinance, which apply to the majority of sites with provisional DCC licenses, were required to demonstrate that cannabis cultivation existed prior to January 1, 2016. The County's MND defined the baseline as August 26, 2016, the date on which the County submitted requests for early consultation to Trustee and Responsible and agencies and other interested parties.

¹ Mendocino County Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation, adopted April 2017, State Clearinghouse number 2016112028."

Response A1-3

This comment provides introductory information and is noted.

Comment A1-4

"The Approach to the Environmental Analysis narrative (page 3-2) references the date the County approved the 2017 Ordinance (March 27, 2017), and the date the state began accepting applications and issuing licenses (January 1, 2018). The DEIR states there have been 1,708 commercial cannabis cultivation license applications submitted since 2017 and of these, 1,319 application submittals have been submitted to DCC since 2018.

The DEIR states, "*For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review.*" Although the DEIR does not appear to identify a specific date as the baseline, the Department believes the unique circumstances and environmental history surrounding this project make it impracticable to use the date of the Notice of Preparation (NOP) as the baseline date. Whereas the NOP date would be appropriate for projects that are proposed but not yet implemented, the proposed project and associated activities contemplated in the DEIR have been ongoing and continuous prior to the County adopting its 2017 Ordinance.

For this reason, the Department believes that August 26, 2016, is the appropriate CEQA baseline date for cannabis projects with cannabis cultivation that existed prior to adoption of the Ordinance, or with existing applications in the County's cannabis regulatory program, and site-specific environmental review for licensing under the EIR should reflect this date.

(Recommendation #1)"

Response A1-4

The reader is referred to "Master Response 1: Baseline Conditions Used in the Draft EIR." As noted in this master response, baseline physical conditions used in an EIR must reflect the physical conditions existing at the time the environmental analysis begins.

Comment A1-5

"In the Regulatory Setting section (3.1.1), the DEIR reviews a wide range of laws and regulations that apply to cannabis cultivation sites. The DEIR extensively cites Resource Management policies contained in the County General Plan. It also includes portions of the 2017 County Ordinance related to biological resources. Importantly, the DEIR includes the following quote from the Ordinance: "*A cultivator that cannot demonstrate that there will be a*

less than significant impact to sensitive species will not be issued a CCBL [Cannabis Cultivation Business License].” The requirements in the DEIR relating to avoidance of significant impacts to biological resources are not a new requirement, but a continuation and clarification of the standards identified by the County upon adoption of its local cannabis regulation.

Many projects seeking a County permit and state license are subject to permits previously obtained from other agencies, such as a Lake or Streambed Alteration Agreement (LSAA), or a State Water Resources Control Board (SWRCB) certification. As the DEIR describes, SWRCB Order WQ-20230102-DWQ Attachment A includes requirements for state-licensed cultivation sites that are associated with biological resources. Term 10 requires that *“Prior to commencing any cannabis land development or site expansion activities, the cannabis cultivator shall retain a Qualified Biologist to identify sensitive plant, wildlife species, or communities at the proposed development site. If sensitive plant, wildlife species, or communities are identified, the cannabis cultivator and Qualified Biologist shall consult with CDFW and CAL FIRE to designate a no-disturbance buffer to protect identified sensitive plant, wildlife species, and communities. A copy of the report shall be submitted to the appropriate Regional Water Board.”*

Consistent with the above referenced provisions, and the basic purposes of CEQA, the Department urges DCC to ensure its review and approval of projects will yield in the appropriate biological survey information and applicable avoidance, minimization and mitigation measures. Such documentation may be required by DCC for licensing under the EIR or pursuant to a different discretionary authorization. **(Recommendation #2)**”

Response A1-5

The Draft EIR’s regulatory setting analysis presents information on the laws, regulations, plans, and policies that relate to the project and includes the ordinances and regulations—as noted by the commenter—that all applicants are required to comply with.

The Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) requires commercial cannabis operators to be dual licensed, receiving local authorization and a state license prior to conducting operations; DCC may not approve an application for a state annual license if approval of the license will violate the provisions of a local jurisdiction’s commercial cannabis ordinances or regulations. (Business and Professions Code section 26055(d).) DCC works closely with local jurisdictions, such as Mendocino County, to ensure that prospective state annual licensees are in compliance with the local jurisdiction’s ordinances prior to issuance of a state annual license.

As noted in the Draft EIR, existing provisionally licensed commercial cannabis cultivation and associated processing and/or distribution transport-only operations are not anticipated to be substantially altered through the annual licensing process and would not result in adverse impacts. For future licensed sites or existing provisionally licensed commercial cannabis cultivation sites that seek to expand their cultivation activities prior to issuance of their annual license, the Draft EIR impact analysis and application of mitigation measures focus on physical impacts that would occur with proposed cannabis cultivation conditions. Approval of the project evaluated in the Draft EIR would require the adoption of a mitigation monitoring and reporting program that specifies how mitigation measures are implemented as part of license application review and issuance as required under State CEQA Guidelines, section 15097.

Comment A1-6

“The CEQA Guidelines (14 CCR section 15355) define cumulative impacts as “two or more individual effects which, when considered together, are considerable...” and may include “the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” This section continues, “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.””

Response A1-6

This comment provides introductory information and is noted.

Comment A1-7

“In its NOP comment letter, the Department expressed concerns about cumulative impacts not only as they relate to licensed cannabis cultivation and associated development, but also unpermitted cannabis cultivation, and cannabis cultivation sites that have been abandoned without remediation. The Department is aware that the County has denied a substantial number of local permit applications. However, many cannabis cultivation sites in the permitting process were allowed to continue operations for years prior to permit denial. To adequately address cumulative impacts, we recommended the DEIR address unpermitted cultivation and abandoned sites, as well as cannabis cultivation sites that will ultimately receive a license.”

Response A1-7

In the Draft EIR, pages 4-3 and 4-4 identify existing unlicensed/illegal cannabis operations as part of the cumulative setting. Cultivation operations that do not obtain licensure from DCC and Mendocino County are considered illegal and not part of this project and the associated Draft EIR impact analysis. While unlicensed/illegal cannabis cultivation operations would likely continue to occur in the County in the future, the details on the full extent of the environmental effects of unlicensed/illegal cannabis operations are considered speculative and not assessed in this evaluation of cumulative impacts.

Notably, enforcement activities targeting unlicensed or noncompliant cannabis cultivation operations are taken by the County in coordination with other agencies, including DCC, California Department of Fish and Wildlife (CDFW), the State Water Resources Control Board (SWRCB), and the North Coast Regional Water Quality Control Board. Enforcement actions are conducted with the intent that such cultivation operations would be brought into compliance with County and state standards or closed.

To the extent that cannabis cultivation sites are in the licensing process and obtain coverage under SWRCB Order WQ 2023-0102-DWQ, such sites are subject to a Site Closure Report. A Site Closure Report describes how the site will be decommissioned to prevent sediment and turbidity discharges that degrade water quality. If construction activities are proposed in the Site Closure Report, a project implementation schedule shall be included in the report. A Notice of Termination must be submitted (Attachment C of SWRCB Order WQ 2023-0102-DWQ) with the Site Closure Report. SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ. Cannabis cultivation operations that do not comply with SWRCB Order WQ 2023-0102-DWQ may be subject to further disciplinary action. Unauthorized activities may also be subject to enforcement actions by DCC, Mendocino County, CDFW, or the North Coast Regional Water Quality Control Board.

Comment A1-8

“The DEIR (page 3-7) acknowledges unlicensed cannabis cultivation sites and recognizes them as part of the environmental baseline for the Project. In its analysis, Ascent Environmental, Inc. estimated there were approximately six (6) unlicensed cannabis cultivation sites for every licensed site. Because unlicensed cannabis cultivation sites are not considered part of the Project, the DEIR states “*they would not result in environmental effects associated with the project that would need to be mitigated.*”

On page 3-2, the DEIR discloses that “*According to Mendocino County records as of April 2023, there have been 1,708 commercial cannabis cultivation license applications submitted since 2017.... Of these County license applications, 1,319 application submittals have been submitted to DCC since 2018. Currently there are 623 provisional licenses and 19 annual licenses that have been issued by the state and are considered active.*” No additional information is provided regarding the current status of the cannabis cultivation sites for which a County permit or state license was sought and that have not remained in the process. Based on the information in the DEIR, this may include approximately 1,066 unlicensed sites associated with the Project. The Department urges DCC to address these impacts by ensuring that cannabis cultivation sites no longer engaged in permitting processes have been decommissioned and/or restored, based on what is appropriate for the site.

(Recommendation #3)”

Response A1-8

DCC maintains records of all cannabis cultivation sites that have submitted an application for licensing. As described in the Draft EIR, on pages 3.10-11 and 3.10-12, cultivation sites that are in the licensing process and obtain coverage under SWRCB Order WQ 2023-0102-DWQ are required to prepare a Site Closure Report if the cultivation site is no longer in operation. A Site Closure Report describes how the site will be decommissioned to prevent sediment and turbidity discharges that degrade water quality. If construction activities are proposed in the Site Closure Report, a project implementation schedule shall be included in the report. A Notice of Termination must be submitted (Attachment C of SWRCB Order WQ 2023-0102-DWQ) with the Site Closure Report. While SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ, additional enforcement actions for unauthorized activities may be taken by DCC, Mendocino County, CDFW, or the North Coast Regional Water Quality Control Board.

Comment A1-9

“The DEIR describes robust requirements for identification of biological resources, and avoidance or mitigation of potentially significant impacts on a site-specific basis. To be effective, these protections must be applied appropriately with regard to all project activities conducted after the baseline. The majority of projects subject to review and potential annual DCC license issuance have been in existence and possibly operating since at least 2017, and potentially 2016.

In several sections, the DEIR includes the statement that “*it was determined that no impact would occur on existing provisionally licensed sites,*” or other language to that effect. For example, the quoted statement is included in the Environmental Impacts and Mitigation Measures section under Impact 3.5-1: Result in Disturbance to or Loss of Special-Status Plant Species and Habitat. The DEIR does not provide evidence to support this claim, and this conclusion is not in line with the Department’s observations during project review (see below).

The Impact 3.5-1 narrative also acknowledges that *“it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license”* and states that these sites would continue to be subject to Terms 4 and 10 of the SWRCB Cannabis Policy (which prohibit impacts to special status species and require biological surveys, respectively). The Department recommends that each project is carefully assessed for expansion after the baseline date of August 26, 2016, and appropriate avoidance, minimization and mitigation measures applied pursuant to the EIR. (**Recommendation #4**)”

Response A1-9

The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR,” regarding the proper definition of baseline for purposes of the EIR impact analysis consistent with CEQA. The reader is also referred to the responses to Comments I6-3 and I6-7 regarding clarifying edits to the Draft EIR mitigation measure application associated with new applications for annual cannabis cultivation licensure and proposed expansion of existing provisionally licensed cannabis cultivation operations.

Comment A1-10

“This section appropriately determines that “because potential expansion of existing provisionally licensed and future licensed commercial cannabis cultivation sites could substantially affect the abundance, distribution, and viability of local and regional populations of special-status plant species, the impact related to these species would be **potentially significant**.” The Department concurs with the further conclusion that implementation of proposed mitigation measures, including conducting pre-approval biological surveys and implementation of appropriate avoidance, minimization and mitigation measures based on survey results should reduce impacts to a less than significant level.

This pattern is repeated in several sections in the Biological Resources portion of the DEIR, including Impact 3.5-2: Result in Disturbance to or Loss of Special-Status Wildlife Species and Habitat. This section appears to focus on *“Expanded and new”* sites, and states that *“transitioning to annual licensure would not result in additional impacts to special-status wildlife species and their habitats as operations are not anticipated to be altered through the annual licensing process.”* This statement does not account for past loss of habitat after the baseline, and existing water use and disturbance from light, noise, and other cultivation operation activities.

Similar to comments relating to Impact 3.5-1, the Department concurs with the determination that *“the loss of special-status wildlife species and their habitat could substantially affect the abundance, distribution, and viability of local and regional populations of these species, this impact would be **potentially significant**.”* We also concur that the measures described, including appropriate surveys, avoidance, minimization and mitigation measures, should reduce impacts to a less-than-significant level.”

Response A1-10

The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR,” regarding the evaluation of past impacts of cannabis cultivation development and operation and responses to Comments I6-3 and I6-7 regarding clarifying edits to the Draft EIR mitigation measure application associated with new applications for annual cannabis cultivation licensure and proposed expansion of existing provisionally licensed cannabis cultivation operations. The comment’s concurrence with the determination of Draft EIR Impact 3.5-2 and associated mitigation measures that address special-status wildlife species and their habitats is noted.

Comment A1-11

“As is described in the DEIR, pursuant to the 2017 Ordinance, certain cannabis projects are referred to the Department for review and comment. Projects are referred for review when they do not meet certain performance standards, as contained in the policy described in the regulation, developed in collaboration with the Department, and adopted by the County in 2020. For example, of approximately 220 projects referred since April 2023, approximately 125 of those were referred, in whole or in part, due to expansion beyond the development footprint that existed on January 1, 2016. Of the 220 projects, approximately 55 were referred due to proximity to a known northern spotted owl (*Strix occidentalis*) activity center. Most of these projects have been operating without having had biological surveys or environmental review conducted. While they will be subject to review, and potentially will incorporate avoidance, minimization and mitigation measures through Department review and DCC licensing, without additional information it is not possible to state that these projects are not currently creating significant environmental impacts.

Consistent with the CEQA Guidelines (14 CCR section 15002(a)), the Department urges DCC to disclose information and/or assumptions relied upon to conclude that “no impact would occur on existing provisionally licensed sites.” The DEIR does not appear to include the supporting documentation informing this assertion. The Department would like to underscore the point that cannabis cultivation sites will require biological surveys or environmental review to inform site-specific mitigation measures. The potential impacts of existing cannabis cultivation sites with expansion after the baseline, and potential impacts from ongoing operation, should be assessed and avoided, minimized or mitigated on each site, as described in the DEIR. (**Recommendation #5**)”

Response A1-11

The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR,” regarding the evaluation of past impacts of cannabis cultivation development and operation and responses to Comments I6-3 and I6-7 regarding clarifying edits to the Draft EIR mitigation measure application associated with new applications for annual cannabis cultivation licensure and proposed expansion of existing provisionally licensed cannabis cultivation operations.

Comment A1-12

“The Department appreciates the opportunity provided in the DEIR to consult with applicants regarding their projects, and to provide recommendations to agency staff regarding appropriate surveys and mitigation measures required to avoid or minimize potential or existing impacts. The Department requests that this process be further clarified, to allow for effective and expedient engagement with Department staff. Given the high number of referrals received by the Department, and those forthcoming, additional transparency on the process for multiagency coordination will enhance public understanding of the measures taken to mitigate environmental impacts associated with cannabis cultivation. For example, further information should be provided regarding how the County, DCC or applicants will request consultation with the Department. It should be made clear what entity will request consultation. In addition, the Department will be most effective and expedient in carrying out its Trustee and Responsible Agency roles when individual project applications are completed prior to consulting with the Department, and consultation regarding all potentially-impacted biological resources are requested at the same time for a given project or site. To ensure the public and agencies have the opportunity to comment effectively on the Project, the DEIR should clarify how consultation provided by the Department will be considered and integrated into the County and DCC

processes, how licenses and permits will be implemented in relationship to each other, and how they will interact with other existing permits and processes. **(Recommendation #6)**”

Response A1-12

As noted in the Draft EIR, MCCR section 10A.17.100(A)(2) requires Mendocino County to consult with CDFW prior to the County’s issuance of a commercial cannabis cultivation license. Mendocino County, CDFW, and DCC continue to coordinate and improve the sharing of information gathered as part of the County’s consultation process to ensure thorough consideration of biological resource impacts. In addition, the biological resource mitigation measures identified in the Draft EIR that are associated with new applications for annual cannabis cultivation licensure and proposed expansion of existing provisionally licensed cannabis cultivation operations are consistent with the biological resource protections measures in SWRCB Order WQ 2023-0102-DWQ, would address special-status species and sensitive habitat conditions specific to Mendocino County, and are intended to be identified in biological resource reports and related materials provided as part of license application submittals to Mendocino County and DCC for CDFW review and input.

Comment A1-13

“The Department concurs with the requirement for pre-approval biological surveys in Mitigation Measure 3.5-1a. However, the condition includes the statement *“If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures identified in the ordinance.”* The Department urges DCC to ensure that biological reports are reviewed by appropriate, knowledgeable agency staff to determine whether the biological surveys and reports are adequate, prior to accepting the conclusions. **(Recommendation #7)**”

Response A1-13

To add clarity regarding the review requirements under Mitigation Measure 3.5-1a, this measure has been edited to clarify the role of DCC for review of survey reports.

The original text of Mitigation Measure 3.5-1a on Draft EIR page 3.5-69 states:

Mitigation Measure 3.5-1a: Conduct Preapproval Biological Surveys

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirements and Prohibitions – Term 4 and 10 and MCCR 10A.17.100(A)(2)), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following technical information. It shall be used to determine whether there is potential for special-status plant species, special-status wildlife species, or sensitive habitats identified in this Program EIR to be present within a proposed expanded or new commercial cannabis cultivation sites seeking a license from DCC.

- ▶ Before approval of any application for commercial cannabis operations, a biological survey shall be conducted by a qualified biologist. The survey area shall include the proposed expanded or new commercial cannabis cultivation sites, including areas of anticipated construction and ground disturbance, as well as staging areas, areas of anticipated light or noise impact, ingress and egress routes, and utility routes. The survey area shall be large enough to encompass areas subject to both direct and

indirect impacts. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plants, special-status wildlife, and sensitive habitats identified as having potential to occur in the County. The biologist shall provide a letter report to the project applicant and DCC with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur in the proposed development area. At a minimum, the letter report shall include:

- date, time, and weather conditions if a reconnaissance survey is conducted as part of the biological survey;
 - a description and explanation of whether the site conditions are considered typical or atypical, if a reconnaissance survey is conducted as part of the biological survey;
 - a map depicting the proposed development area and the unique, rare, and special-status species, sensitive habitats, or sensitive natural communities found;
 - a vegetation map of the proposed development area using the National Vegetation Classification System (e.g., A Manual of California Vegetation) and an associated table, including acreage of vegetation types that could be adversely affected by project implementation;
 - a special-status species table generated from review of the CNDDDB, the California Native Plant Society Inventory of Rare and Endangered Plants, lists maintained by USFWS, and the most recent, best-available range information for special-status species;
 - a description of survey methods and any protocols utilized during the survey; and
 - a list of common and special-status species and habitats observed in the proposed development area.
- ▶ If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures identified in the ordinance.
 - ▶ If special-status species or sensitive habitats are present or have the potential to be present, the letter report will include a discussion of potential direct and indirect impacts on these resources, and the appropriate biological resource protection measures identified in Mitigation Measures 3.5-1b, 3.5-1c, 3.5-2a through 3.5-2o, 3.5-4a, 3.5-4b, 3.5-5, and 3.5-6b shall be implemented.

The revised text of Mitigation Measure 3.5-1a on Draft EIR page 3.5-69 now states:

Mitigation Measure 3.5-1a: Conduct Preapproval Biological Surveys

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirements and Prohibitions – Term 4 and 10 and MCCR 10A.17.100(A)(2)), the DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following technical information. It shall be used to determine whether there is potential for special-status plant species, special-status wildlife species, or sensitive habitats identified in this Program EIR to be present within a proposed expanded or new commercial cannabis cultivation sites seeking a

license from DCC. This mitigation measure and Mitigation Measures 3.5-2a through 3.5-2p do not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

- ▶ Before approval of any application for commercial cannabis operations, a biological survey shall be conducted by a qualified biologist. A qualified biologist would, at a minimum:
 - Hold a bachelor's or advanced degree in wildlife biology, botany, ecology, forestry, or other relevant degree from an accredited university;
 - Have at least 2 years of field experience in the biology and natural history of local plant, fish, and wildlife resources present in the region surrounding the cannabis cultivation site;
 - Be knowledgeable in relevant species life histories and ecology;
 - Be able to correctly identify relevant species and habitats;
 - Be knowledgeable about survey protocols;
 - Be knowledgeable about state and federal laws regarding the protection of special-status species; and
 - Have experience with CDFW's California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS).
- ▶ The survey area shall include the proposed expanded or new commercial cannabis cultivation sites, including areas of anticipated construction and ground disturbance, as well as staging areas, areas of anticipated light or noise impact, ingress and egress routes, and utility routes. The survey area shall be large enough to encompass areas subject to both direct and indirect impacts. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plants, special-status wildlife, and sensitive habitats identified as having potential to occur in the County. The biologist shall provide a letter report to the project applicant and DCC with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur in the proposed development area. DCC staff will review the letter report and conclusions and determine whether the evidence provided to support the conclusions is sufficient. At a minimum, the letter report shall include:
 - Date, time, and weather conditions;
 - A description and explanation of whether the site conditions are considered typical or atypical;
 - A map depicting the proposed development area and the unique, rare, and special-status species, sensitive habitats, or sensitive natural communities found;
 - A vegetation map of the proposed development area using the National Vegetation Classification System (e.g., A Manual of California Vegetation) and an associated table, including acreage of vegetation types that could be adversely affected by project implementation;
 - A special-status species table generated from review of the CNDDDB, the California Native Plant Society Inventory of Rare and Endangered Plants, lists

- maintained by USFWS, and the most recent, best-available range information for special-status species;
- A description of survey methods and any protocols utilized during the survey; and
 - A list of common and special-status species and habitats observed in the proposed development area.
- ▶ If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures identified in the ordinance.
 - ▶ If special-status species or sensitive habitats are present or have the potential to be present, the letter report will include a discussion of potential direct and indirect impacts on these resources, and the appropriate biological resource protection measures identified in Mitigation Measures 3.5-1b, 3.5-1c, 3.5-2a through 3.5-2o, 3.5-4a, 3.5-4b, 3.5-5, and 3.5-6b shall be implemented.

Comment A1-14

“The DEIR uses the terms “qualified biologist” and “qualified botanist,” which are not defined in the document. The SWRCB Cannabis Order, and the Department’s General Lake or Streambed Alteration Agreement for Activities Related to Cannabis Cultivation regulatory text, each contain definitions for “qualified biologist” that have been adopted by the respective agency. “Qualified biologist” and “qualified botanist” should be defined in the DEIR. **(Recommendation #8)**”

Response A1-14

A definition for “qualified biologist” has been added to Mitigation Measure 3.5-1a (see response to Comment A1-13), and a definition for “qualified botanist” has been added to Mitigation Measure 3.5-1b.

The original text of Mitigation Measure 3.5-1b on Draft EIR page 3.5-70 states:

Mitigation Measure 3.5-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following information should special-status plant species are determined to have potential to be present on the proposed commercial cannabis cultivation sites:

- ▶ During the blooming period for the special-status plant species with potential to occur on the site, a qualified botanist shall conduct protocol-level surveys for special-status plants in all proposed disturbance areas following survey methods from the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018a).
- ▶ If special-status plants are not identified, the botanist shall document the findings in a letter report to the applicant, DCC, and CDFW, and no further mitigation shall be required.

- ▶ If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial cannabis cultivation site improvements that shall be reflected in application materials to DCC. If the special-status plant species cannot be avoided, the application shall be denied.

The revised text of Mitigation Measure 3.5-1b on Draft EIR page 3.5-70 now states:

Mitigation Measure 3.5-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following information should special-status plant species be determined to have potential to be present on the proposed commercial cannabis cultivation sites:

- ▶ During the blooming period for the special-status plant species with potential to occur on the site, a qualified botanist shall conduct protocol-level surveys for special-status plants in all proposed disturbance areas following survey methods from the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. (CDFW 2018a.) A qualified botanist would, at a minimum:
 - Hold a bachelor's or advanced degree in biology, botany, ecology, forestry, or other relevant degree from an accredited university;
 - Have at least 2 years of field experience in the biology and natural history of local plant, fish, and wildlife resources present in the region surrounding the cannabis cultivation site;
 - Be knowledgeable about plant taxonomy;
 - Be familiar with plants of the region, including special-status plants and sensitive natural communities;
 - Have experience conducting floristic botanical field surveys as described in the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, or experience conducting such botanical field surveys under the direction of an experienced botanical field surveyor;
 - Be familiar with the California Manual of Vegetation (Sawyer et al. 2009 or current version, including updated natural communities data at <http://vegetation.cnps.org/>); and
 - Be familiar with federal, state, and local statutes and regulations related to plants and plant collecting.
- ▶ If special-status plants are not identified, the botanist shall document the findings in a letter report to the applicant, DCC, and CDFW, and no further mitigation shall be required.
- ▶ If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial

cannabis cultivation site improvements that shall be reflected in application materials to DCC. If special-status plants cannot be avoided, then the applicant shall consult with CDFW to determine if an incidental take permit should be obtained (i.e., for special-status species listed under CESA) or if compensatory mitigation would be required. Impacts on special-status plant species would be mitigated such that there would be no net loss of occupied habitat or individuals. Mitigation measures shall include, at a minimum, preserving and enhancing existing populations, establishing populations through seed collection or transplantation from the site that is to be affected, and restoring or creating habitat in sufficient quantities to achieve no net loss of occupied habitat or individuals. Habitat and individual plants lost shall be mitigated at a minimum 1:1 ratio, considering acreage, as well as function and value. Success criteria for preserved and compensatory populations will include the following conditions:

- The extent of occupied area and plant density (number of plants per unit area) in compensatory populations will be equal to or greater than the affected occupied habitat.
- Compensatory and preserved populations will be self-producing. Populations will be considered self-producing when:
 - Plants reestablish annually for a minimum of 5 years with no human intervention, such as supplemental seeding; and
 - Reestablished and preserved habitats contain an occupied area and flower density comparable to existing occupied habitat areas in similar habitat types in the project vicinity.
 - If off-site mitigation includes dedication of conservation easements, purchase of mitigation credits, or other off-site conservation measures, the details of these measures will be included in the mitigation plan, including information on responsible parties for long-term management, conservation easement holders, long-term management requirements, success criteria such as those listed above, and other details, as appropriate to target the preservation of long-term viable populations.
- ▶ Any mitigation plan for unavoidable impacts on special-status plants must be reviewed and approved by DCC and CDFW.

In addition, the edits have been made to the Draft EIR, on page 3.5-71. The original text on Draft EIR page 3.5-71 states:

Significance after Mitigation

Implementation of Mitigation Measures 3.5-1a, 3.5-1b, and 3.5-1c would reduce significant impacts on special-status plants to a **less-than-significant** level because it would require applicants to identify and avoid special-status plants and would prevent the spread of invasive weeds by removal of existing populations on-site and inspecting machinery. These mitigation measures are consistent with the requirements of Attachment A (Section 1, General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ.

The revised text on Draft EIR page 3.5-71 now states:

Significance after Mitigation

Implementation of Mitigation Measures 3.5-1a, 3.5-1b, and 3.5-1c would reduce significant impacts on special-status plants to a **less-than-significant** level because it would require applicants to identify special-status plants and, dependent upon the special-status plants' listing status, either avoid, obtain an incidental take permit (i.e., for CESA-listed species), or compensate for impacts, and prevent the spread of invasive weeds by removal of existing populations on-site and inspecting machinery. These mitigation measures are consistent with the requirements of Attachment A (Section 1, General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ.

Comment A1-15

"The DEIR also uses the phrase "reconnaissance survey," but does not define this term in relation to a "biological survey." The DEIR should provide a description or definition of "reconnaissance survey." (**Recommendation #9**)"

Response A1-15

The term "reconnaissance survey" has been removed from Mitigation Measure 3.5-1a, and the remaining text reflects the intent of the biological survey that would be conducted under Mitigation Measure 3.5-1a. The reader is referred to the response to Comment A1-13.

Comment A1-16

"California has a Mediterranean climate, where most of the state's precipitation falls from October to May (CDFG 2003²), not during the primary cannabis summer growing season. Due to the lack of summer rainfall and the absence of snow, rivers and streams have receding flow from May until September. Water use peaks in the heat of the summer at the same time instream flow is at its lowest, creating a conflict between water demand and water availability for fish and wildlife resources.

In the Cumulative Impacts section (page 4-23), the DEIR concludes that "the contribution to cumulative surface water resource impacts associated with the annual licensing of existing commercial cannabis cultivation sites would not be cumulatively considerable." The Department is concerned there is not adequate flow in most streams to meet the water demand for cannabis cultivation at its current levels, as well as the domestic water use for dwellings and other residential and commercial uses associated with or developed to facilitate cannabis cultivation and processing. Based on numerous field observations and ongoing research, the Department believes that overuse of surface water diversions for cannabis cultivation has and will continue to have significant direct and cumulative impacts on aquatic resources.

The DEIR references existing laws and regulations relating to water, including Ordinance section 10A.17.080(C)(1)(b), "which would require a watershed assessment as well as compliance with the flow standards and diversion requirements set forth under *SWRCB Order WQ 2023-0102-DWQ* standards for water diversions," and Ordinance section 10A.17.080(C)(1)(b) which "*would require a watershed assessment to establish that sufficient groundwater supply is available to serve the proposed commercial cannabis cultivation site*" (page 4-23).

In the narrative for Impact 3.10-3: Result in Diversion of Surface Water, the DEIR acknowledges that "SWRCB has identified the following watersheds, Mattole River, Middle South Fork Eel River, East Fork Russian River, Navarro River, and Dry Creek, as Cannabis

Priority Watersheds in Mendocino County because of water quality, low flow, and other related issues.” Following the pattern described above, this section erroneously concludes that “Continued operation of existing provisionally licensed commercial cannabis cultivation sites transitioning to annual licensure would not result in additional impacts to surface water resources because operations are not anticipated to be significantly altered through the annual licensing process.” This section is inconsistent with the previous statement by acknowledging that “it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they transition to annual licensure.”

² California Department of Fish and Game. 2003. Atlas of the Biodiversity of California. Sacramento, CA.”

Response A1-16

This comment contains introductory information that is responded to in detail in the response to Comment A1-17.

Comment A1-17

“This comment reviews that the Draft EIR has no avoidance, minimization, or mitigation measures to address potential impacts from surface water diversion and instead relies on existing regulations. CDFW urges that during review of license applications, DCC ensures licensed cultivators are in compliance with SWRCB flow standards and reviews any watershed assessment prepared, pursuant to the County regulations, as a condition of license approval. **(Recommendation #10)**”

Response A1-17

As identified in Draft EIR Sections 3.5, “Biological Resources,” and 3.10, “Hydrology and Water Quality,” SWRCB Order WQ 2023-0102-DWQ numeric flow standards and diversion requirements were developed in coordination with CDFW to protect fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability within each watershed. The diversion requirements would ensure that the individual and cumulative effects of water diversions and discharges associated with commercial cannabis cultivation do not affect instream flows necessary for fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability. (SWRCB 2017a.) The policy was scientifically peer-reviewed by four experts. The peer review determined that water quality, instream flow, and diversion requirements of the policy were based on sound scientific knowledge, methods, and data. (SWRCB 2017b.) The effectiveness of compliance with numeric flow standards, associated curtailment of water diversions during flow periods, and the use of water storage is supported by research conducted by the UC Berkeley Cannabis Research Center of 91 watersheds in Humboldt and Mendocino Counties. This research identified that licensed cannabis cultivation sites generated substantially less impact on watershed flow conditions than unlicensed cannabis cultivation sites, as well as residential uses, and consist of 1 to 4 percent of available surface water flows in watersheds evaluated depending on the extent of water storage used. (Dillis et al. 2024.)

SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ, including the numeric flow standards and diversion requirements. Cannabis cultivation operations that do not comply with SWRCB Order WQ 2023-0102-DWQ flow standards and diversion requirements may be subject to further disciplinary action.

Comment A1-18

“The DEIR did not directly address construction of ponds for water storage, a concern the Department raised in its NOP comment letter. In many cases, the County has allowed the construction of new ponds, which often involve substantial grading and fill, under a ministerial grading and/or pond exemption permit with no environmental review. These ponds may pose risks to water quality and sensitive habitats if they are designed and constructed without proper engineering. The Department has observed ponds built in inappropriate locations, and failed ponds that have delivered sediment to nearby streams. In addition, these ponds often provide breeding habitat for non-native, invasive species such as American bullfrog (*Lithobates catesbianus*), a species that preys upon native reptiles and amphibians such as western pond turtle (*Actinemys marmorata*), foothill yellow-legged frog (*Rana boylei*), and northern red-legged frog (*R. aurora*), all California Species of Special Concern.

The DEIR should provide a mechanism to regulate the development of ponds as part of cannabis cultivation permitting, including a requirement for engineered designs where appropriate, and invasive species management plans for all ponds. Ponds may be subject to the notification requirement in Fish and Game Code section 1602 et seq. if they are filled from, or outlet to a stream or wetland. The Department recommends DCC should ensure that, as a condition of approval for cannabis cultivation permits, required approvals from the Department and any other applicable regulatory agency is obtained prior to pond development.

(Recommendation #11)”

Response A1-18

All development activities associated with new applications for annual cannabis cultivation licensure and proposed expansion of existing provisionally licensed cannabis cultivation operations, including new water storage ponds, would be subject to the mitigation measures in Section 3.5, “Biological Resources,” of the Draft EIR, which require avoidance of sensitive habitats. Construction of storage ponds would require application for a grading permit from the County, and the plans subject to the grading permit (e.g., storage ponds) would be subject to review and approval by the County. In addition, Mitigation Measure 3.5-1c has been edited in response to Comment A1-21 to include details regarding aquatic invasive species management in ponds.

Comment A1-19

“Many areas where cannabis cultivation may be permitted include agricultural and other areas within the 100-year floodplain. Floodplains are an important physical and biological component of riverine ecosystems. All rivers flood, and flooding is an expected and recurring event in natural river systems. Development in flood-prone areas disconnects rivers from their natural floodplains and displaces, fragments, and degrades important riparian habitat. Development in floodplains often eliminates benefits of natural flooding regimes such as deposition of river silt on valley floor soils and recharging of wetlands. In addition, braided channel structure, off-channel fish habitat, and backwaters are eliminated, resulting in higher velocity flows. These changes lower habitat suitability for salmonids, which need low-flow refugia to escape flood flows. Structures in flood plains are vulnerable to erosion and flood damage. Once structures are built and threatened by river flooding, property owners often seek to armor riverbanks or build or raise levees to prevent future property damage. Thus, not only does development displace riparian and floodplain habitat when it is built, it often results in further habitat and floodplain loss through additional development to protect structures.

By prohibiting cannabis cultivation within the 100-year floodplain, these impacts can be avoided and mitigated. However, the DEIR did not directly address development in the 100-year floodplain, instead deferring to “*Compliance with the requirements SWRCB Order WQ 2023-0102-DWQ and County regulations*” (Impact 3.10-1) to avoid impacts to floodplains. Development and habitat conversion in floodplains results in degradation of riverine and riparian habitats, and negatively impacts the fish and wildlife species that depend on them. The Department recommends that placement of new permanent structures for cannabis cultivation within the 100-year floodplain of any stream or river be prohibited. (**Recommendation #12**)”

Response A1-19

As described in the Draft EIR, on page 3.10-23, development and placement of structures in the floodplain are regulated by Mendocino County under Chapter 22.17 of the County Code of Ordinances. While the County does not prohibit the placement of structures in the floodplain, Section 22.17.305 requires a development permit to be issued before any construction or other development begins within a floodplain, as defined by the Federal Insurance Administration of the Federal Emergency Management Agency in the Flood Insurance Study, Flood Insurance Rate Maps, and Flood Boundary and Floodway Maps. Permits would be issued to restrict or prohibit uses that are dangerous to health, safety, or property due to water or erosion hazard; require uses that are vulnerable to flood to be protected against flood damage; control the alteration of natural floodplains, stream channels, and natural protective barriers; control filing, grading, dredging, and other development that may increase flood damage; and prevent or regulate the construction of a flood barrier that may increase flood hazards in other areas. DCC does not have authority to alter the floodplain regulations of Mendocino County.

Comment A1-20

“The County’s Cannabis Regulations have been in effect since April 2017. The Department is concerned the County’s existing regulatory framework has not resulted in avoiding, minimizing and/or mitigating the environmental impacts of cannabis cultivation. Pursuant to the CEQA Guidelines (14 CCR section 15002), the DEIR must disclose and evaluate all of the project’s potentially significant impacts; identify ways to avoid or significantly reduce environmental damage; propose, as appropriate, feasible and effective mitigations for those impacts; and disclose reasons for approving the proposed project if significant environmental impacts will occur. In addition, pursuant to 14 CCR section 15126.4(a)(2), mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.

The Department raised this concern in our NOP comment letter and urges DCC to include in the EIR an analysis of the effectiveness of mitigation measures under the current program in avoiding, minimizing or reducing the environmental impacts of cannabis cultivation sites, particularly since the same or similar mitigation measures are proposed for use in DCC’s licensing program. (**Recommendation #13**)”

Response A1-20

The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to evaluate the success of local, state, and federal regulations or actions intended to protect special-status species. Draft EIR Sections 3.1 through 3.17 consider all state, regional, and County laws, regulations, plans, and policies that address environmental impacts of proposed commercial cannabis cultivation operations. Mitigation measures are identified where additional protection measures are needed to address an identified significant environmental impact. Approval of the project evaluated in the Draft EIR would require the adoption of a mitigation monitoring and reporting program that specifies how mitigation

measures are implemented as part of license application review and issuance, as required under State CEQA Guidelines, section 15097. As described in response to Comment A1-12, MCCR section 10A.17.100(A)(2) requires Mendocino County to consult with CDFW prior to the County's issuance of a commercial cannabis cultivation license. Mendocino County, CDFW, and DCC continue to coordinate and improve the sharing of information gathered as part of the County's consultation process to ensure thorough consideration of biological resource impacts.

Comment A1-21

"Several Fish and Game Code sections apply to activities associated with cannabis cultivation. Fish and Game Code section 1602 et seq. requires notification for diversions of water from a surface water source, or of water hydrologically connected to a surface water source (e.g. offset wells), as well as for physical changes to the bed, channel or bank of any river, stream, or lake. State licensing through DCC requires that all cultivators obtain either an LSAA pursuant to FGC section 1602, or verification from the Department stating that an LSAA is not required.

Department staff have documented unpermitted non-native aquatic species introductions to ponds used for water storage and water diversion associated with cannabis cultivation. Fish and Game Code section 6400 requires first submitting for inspection and securing a stocking permit from the Department before planting fish. The Department urges DCC to address the potential environmental impacts from existing non-native species in the DEIR and prohibit the introduction of non-native species to ponds. (**Recommendation #14**)"

Response A1-21

Mitigation Measure 3.5-1c in the Draft EIR, on page 3.5-70, has been edited to incorporate and prohibit introduction of nonnative animals.

The original text of Mitigation Measure 3.5-1c on Draft EIR page 3.5-71 states:

Mitigation Measure 3.5-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 11), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide documentation that the following measures will be implemented:

- ▶ The application shall include identification of invasive plant species that occur on the site and where they are located. The application shall identify specific measures to be employed for the removal of invasive species and on-site management practices.
- ▶ Invasive plant species (defined above in the impact discussion) shall be removed from the site to the extent feasible, using measures appropriate to the species. For example, species that cannot easily reroot, resprout, or disperse seeds may be left on site in a debris pile. Species that resprout readily (e.g., English ivy) or disperse seeds (e.g., pampas grass) should be hauled off-site and disposed of appropriately at a landfill site. A qualified botanist shall determine the appropriate percent cover of invasive species to remove for the site and what type of restoration plantings will be appropriate for the site.

- ▶ The site shall be monitored annually to ensure successful removal and prevention of new infestations of invasive species.
- ▶ Heavy equipment and other machinery shall be inspected for the presence of invasive species before on-site use, and shall be cleaned before entering the site, to reduce the risk of introducing invasive plant species.

The revised text of Mitigation Measure 3.5-1c on Draft EIR page 3.5-71 now states:

Mitigation Measure 3.5-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant and Animal Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 11), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide documentation that the following measures will be implemented:

- ▶ The application shall include identification of invasive plant species that occur on the site and where they are located. The application shall identify specific measures to be employed for the removal of invasive species and on-site management practices.
- ▶ Invasive plant species (defined above in the impact discussion) shall be removed from the site to the extent feasible, using measures appropriate to the species. For example, species that cannot easily reroot, resprout, or disperse seeds may be left on site in a debris pile. Species that resprout readily (e.g., English ivy) or disperse seeds (e.g., pampas grass) should be hauled off-site and disposed of appropriately at a landfill site. A qualified botanist shall determine the appropriate percent cover of invasive species to remove for the site and what type of restoration plantings will be appropriate for the site.
- ▶ The site shall be monitored by a qualified botanist annually for 3 years or until the following success criteria are met, whichever is longer.
- ▶ Cover of existing invasive plants has either decreased or remained unchanged, there are no new infestations of invasive plants that existed on the site before project implementation, and there are no new invasive plant species that were not present onsite before project implementation.
- ▶ Heavy equipment and other machinery shall be inspected for the presence of invasive species before on-site use, and shall be cleaned before entering the site, to reduce the risk of introducing invasive plant species.
- ▶ No nonnative fish species shall be introduced into ponds on project sites. This measure does not apply to any activities conducted pursuant to the California Health and Safety Code, including mosquito control activities conducted by local vector control agencies.
- ▶ If storage ponds would be constructed, the applicant shall hire a qualified biologist to prepare an aquatic invasive species management plan, which will include details regarding monitoring for aquatic invasive species, including bullfrogs (*Lithobates catesbeianus*) and appropriate measures for preventing establishment of these species and controlling invasive species populations. The aquatic invasive species

management plan shall be reviewed and approved by DCC prior to construction of stock ponds.

Comment A1-22

“To ensure understanding and compliance with the various Fish and Game Code provisions applicable to cannabis cultivation, the Department urges DCC to continue close collaboration and consultation with Departmental staff. Examples of other applicable FGC sections include but are not limited to section 2050 et seq. (CESA), section 5650 (prohibits water pollution), section 5652 (prohibits refuse disposal in or near streams), and section 5937 (requires sufficient water bypass and fish passage, relating to dams).”

Response A1-22

This comment is noted. Applicants are required to comply with the law, including the Fish and Game Code. These requirements are further reiterated under SWRCB Order WQ 2023-0102-DWQ Attachment A, such as Term 3, which requires cannabis cultivators to either apply for a Lake and Streambed Alteration Agreement (LSAA) or consult with CDFW to determine if an LSAA is needed, as applicable. In addition, Term 4 of Section 1 (General Requirements and Prohibitions) prohibits cannabis cultivators from taking any action that results in the taking of special-status plants (state-listed and California Native Plant Society 1B.1 and 1B.2), fully protected species, or a threatened, endangered, or candidate species under the California Endangered Species Act, without a take permit, if applicable. Moreover, MCCR section 10A.17.100(A)(2) requires Mendocino County to consult with CDFW prior to the County’s issuance of a commercial cannabis cultivation license. As described in response to Comment A1-12, Mendocino County, CDFW, and DCC continue to coordinate and improve the sharing of information gathered as part of the County’s consultation process to ensure thorough consideration of biological resource impacts.

Comment A1-23

“1. The Department believes that August 26, 2016, is the appropriate CEQA baseline date for cannabis projects with cannabis cultivation that existed prior to adoption of the Ordinance, or with existing applications in the County’s cannabis regulatory program, and site-specific environmental review for licensing under the EIR should reflect this date.”

Response A1-23

The reader is referred to the response to Comment A1-4.

Comment A1-24

“2. Consistent with the above referenced provisions, and the basic purposes of CEQA, the Department urges DCC to ensure its review and approval of projects will yield in the appropriate biological survey information and applicable avoidance, minimization and mitigation measures. Such documentation may be required by DCC for licensing under the EIR or pursuant to a different discretionary authorization.”

Response A1-24

The reader is referred to the response to Comment A1-5.

Comment A1-25

“3. The Department urges DCC ensure that cannabis cultivation sites no longer engaged in permitting processes have been decommissioned and/or restored, based on what is appropriate for the site.”

Response A1-25

The reader is referred to the response to Comment A1-8.

Comment A1-26

“4. The Department recommends that each project is carefully assessed for expansion after the baseline date of August 26, 2016, and appropriate avoidance, minimization and mitigation measures applied pursuant to the EIR.”

Response A1-26

The reader is referred to the response to Comment A1-9.

Comment A1-27

“5. The potential impacts of existing cannabis cultivation sites with expansion after the baseline, and potential impacts from ongoing operation, should be assessed and avoided, minimized or mitigated on each site, as described in the DEIR.”

Response A1-27

The reader is referred to the response to Comment A1-11.

Comment A1-28

“6. To ensure the public and agencies have the opportunity to comment effectively on the Project, the DEIR should clarify how consultation provided by the Department will be considered and integrated into the County and DCC processes, how licenses and permits will be implemented in relationship to each other, and how they will interact with other existing permits and processes.”

Response A1-28

The reader is referred to the response to Comment A1-12.

Comment A1-29

“7. The Department urges DCC to ensure that biological reports are reviewed by appropriate, knowledgeable agency staff to determine whether the biological surveys and reports are adequate, prior to accepting the conclusions.”

Response A1-29

The reader is referred to the response to Comment A1-13.

Comment A1-30

“8. “Qualified biologist” and “qualified botanist” should be defined in the DEIR.”

Response A1-30

The reader is referred to the response to Comment A1-14.

Comment A1-31

“9. The DEIR should provide a description or definition of “reconnaissance survey.””

Response A1-31

The reader is referred to the response to Comment A1-15.

Comment A1-32

“10. The Department urges DCC to ensure, during review of license applications, that licensed cultivators are in compliance with SWRCB flow standards, and should review any watershed assessment prepared pursuant to the County regulations, as a condition of license approval.”

Response A1-32

The reader is referred to the response to Comment A1-17.

Comment A1-33

“11. The Department recommends DCC should ensure that, as a condition of approval for cannabis cultivation permits, required approvals from the Department and any other applicable regulatory agency is obtained prior to pond development.”

Response A1-33

The reader is referred to the response to Comment A1-18.

Comment A1-34

“12. The Department recommends that placement of new permanent structures for cannabis cultivation within the 100-year floodplain of any stream or river be prohibited.”

Response A1-34

The reader is referred to the response to Comment A1-19.

Comment A1-35

“13. The Department raised this concern in our NOP comment letter and urges DCC to include in the EIR an analysis of the effectiveness of mitigation measures under the current program in avoiding, minimizing or reducing the environmental impacts of cannabis cultivation sites, particularly since the same or similar mitigation measures are proposed for use in DCC’s licensing program.”

Response A1-35

The reader is referred to the response to Comment A1-20.

Comment A1-36

“14. The Department urges DCC to address the potential environmental impacts from existing non-native species in the DEIR and prohibit the introduction of non-native species to ponds.”

Response A1-36

The reader is referred to the response to Comment A1-21.

2.3.2 Organizations

Letter O1 Willits Environmental Center

Ellen Drell

June 15, 2024

Comment O1-1

"1. Thank you for extending the comment period due to the technical difficulties at the start of the "in person" public comment meeting."

Response O1-1

This comment is noted. The comment period was extended to June 24, 2024, and a second public meeting on the Draft EIR was held on June 20, 2024.

Comment O1-2

"2. The Range of Alternatives is insufficient. Two Alternatives to the Project, one being "No Project", is not the meaningful "range of alternatives" required by the California Environmental Quality Act (CEQA). The Project is to license qualified Mendocino County commercial cannabis cultivation in such a way that safeguards the natural and human environment. There are multiple possible paths to that end. For example, alternatives could include capping the number of future State annual licenses in the County generally, or per watershed. Why did the DEIR not include a true "range" of alternatives?"

Response O1-2

As described in Draft EIR Chapter 5, "Alternatives," State CEQA Guidelines, section 15126.6(c) provides that the range of potential alternatives to the project shall include alternatives that could feasibly accomplish most of the basic objectives of the project and that could avoid or substantially lessen one or more of the significant effects. EIRs must contain a discussion of "potentially feasible" alternatives. State licensing of commercial cannabis cultivation sites (medical and adult use) and associated uses is regulated by DCC under Division 10 of the Business and Professions Code and CCR, title 4, Division 19. These statutory provisions do not allow DCC to cap or restrict the number of commercial cannabis licenses in Mendocino County. The regulation of location, extent, and number of commercial cannabis licensed sites resides within Mendocino County's land use purview under the MCCR. The Draft EIR includes Alternative 2 (Siting Limitation for Cannabis Cultivation Sites Alternative), which would restrict the licensing of new cannabis cultivation sites to land areas in the unincorporated area outside the Cannabis Priority Watersheds designated by the SWRCB: Mattole River, Middle South Fork Eel River, East Fork Russian River, Headwaters Russian River, Navarro River, and Dry Creek. This is based on the provisions of Business and Professions Code section 26060(a)(2), which states that if SWRCB or CDFW notifies DCC in writing that commercial cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, DCC shall not issue new licenses or increase the total number of plant identifiers within that watershed or area while the moratorium is in effect. Currently, no moratorium is in effect in these watersheds.

Comment O1-3

"3. We object to the use of the concept of "Cannabis Priority Watersheds." "Cannabis Priority Watersheds" is not defined in the DEIR. Neither the term, nor the concept is used at all in Mendocino County's cannabis cultivation ordinance. And yet, this undefined concept seems to

be central to the preferred (and only!) alternative. The DEIR suggests that future growers would locate outside of “priority watersheds”, thus avoiding further impacts to those watersheds where currently there is a higher concentration of commercial cannabis growers. However, the intent of Mendocino County’s ordinance with respect to new commercial cannabis operations is to encourage new growers to locate in the County’s more accessible, visible, serviceable areas of the County. These two ideas seem to conflict. Please address this issue.”

Response O1-3

As described in the Draft EIR, on pages 3.5-59, 3.5-60, and 3.10-34 through 3.10-36, SWRCB, in coordination with CDFW, has identified “Cannabis Priority Watersheds” throughout the state. Draft EIR Figure 3.10-4 identifies the extent of Cannabis Priority Watersheds in Mendocino County. As described in Response O1-2, Cannabis Priority Watersheds contain a high concentration of commercial cannabis cultivation, and Business and Professions Code section 26060(a)(1) requires that if SWRCB or CDFW notifies DCC in writing that commercial cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, DCC shall not issue new licenses or increase the total number of plant identifiers within that watershed or area while the moratorium is in effect. As described on Draft EIR page 3.10-35, a Cannabis Priority Watershed may also meet some or all of the following criteria (SWRCB 2021):

- ▶ contains or supports critical habitat for terrestrial or aquatic species;
- ▶ contains water courses with low-flow conditions where water levels recede or are at risk of receding into the “danger zone” for aquatic life (survival-level flows at which aquatic habitat and species will be harmed);
- ▶ contains a critical water supply, where excessive water use or diversions present unreasonable stress or pose a significant threat to long-term and sustainable water use;
- ▶ is the subject of complaints that allege commercial cannabis cultivation that contributes to or causes natural resources violations or that affects senior water right holders;
- ▶ is part of past or ongoing restoration efforts;
- ▶ is listed under CWA section 303(d) as an impaired water body;
- ▶ contains a surface water body listed as a fully appropriated stream; or
- ▶ contains a water body designated as a “Wild and Scenic River” pursuant to Public Resources Code (PRC) section 5093.

These provisions are associated with DCC licensing regulations and not associated with the regulatory provisions of the MCCR.

Comment O1-4

“4. We do not agree with the DEIR’s claim that Mendocino County’s ground water, including ground water influenced by surface waters, and surface waters are understood, stable and adequate for present and future use by human and non human users. The Ukiah ground water basin is the only basin in Mendocino County required by the State to create a groundwater basin plan. The State did not require groundwater basin studies elsewhere in the County because the other areas are not sufficiently urbanized to warrant the State’s attention, not because these other basins, or the surface water that feeds them, are well understood and

deemed to be stable and adequate, now and in a drier, hotter future, based on rigorous hydrologic investigations.

In fact, what we mostly hear from residents around the County, and outside of the Ukiah groundwater basin area, are grave concerns about dropping well water levels, drying springs that have never been known to fail in the past, creeks running dry earlier and earlier in the summer season, and fears regarding the possible intrusion of naturally occurring pollutants such as arsenic, boron, and magnesium being drawn into previously uncontaminated areas of the aquifer by excessive water extraction. There are currently two citizen-driven proposed water extraction ordinances in the wings waiting for consideration by the Board of Supervisors and the public. One of these addresses water extraction county-wide, the other focuses on Round Valley. Clearly the Ascent Environmental team sees a very different County than we residents are experiencing!"

Response O1-4

As identified in the Draft EIR, on pages 3.10-30 through 3.10-33 and in Impact 3.10-2 (Draft EIR, pages 3.10-42 through 3.10-44), available information indicates that groundwater conditions in local groundwater basins are generally stable and substantial capacity is available throughout the County. Groundwater conditions outside the local basins consist of fractured bedrock conditions that vary under site-specific conditions. The basis of this conclusion is the groundwater-level trend data from the California Department of Water Resources (DWR). The Water Data Library provides groundwater-well monitoring data collected in the local groundwater basins between 1952 and 2024, which includes existing cannabis cultivation groundwater use. The Draft EIR identifies that Covelo Round Valley Groundwater Basin is estimated to contain 230,000 acre-feet of water capacity. According to a review of the existing 20 groundwater-well site monitoring data in the Covelo Round Valley Groundwater Basin between 1952 and 2022, the groundwater conditions are generally stable with no trends in level changes. (Draft EIR, page 3.10-32.) In addition, new wells are subject to issuance of a permit from the County, per Mendocino County Ordinance Chapter 16.04. MCCR section 10A.17.080(C)(1)(b) further requires a watershed assessment to establish sufficient groundwater supply to serve the proposed commercial cannabis cultivation sites and associated processing and distribution transport-only operations.

Comment O1-5

"The DEIR's apparent justification for its assessment that the County's groundwater and associated surface waters are "stable and adequate" is its reference to the multiple regulations and regulatory agencies which monitor and enforce water use in the State, including Mendocino County. For example, the DEIR refers to the daily water use data that cannabis growers are required to send to DWR as a way of monitoring water use in watersheds and sub-watersheds around the County. However, even IF DWR is getting daily water use data from growers, and even if DWR is analyzing that data, that doesn't mean that water quality and/or quantity is being protected. Because very few sub-watersheds in Mendocino County have ever been thoroughly studied, or studied at all, even with daily data DWR has no way of knowing if that watershed's cannabis cultivators are presently over-using the resource to the detriment of other users, wildlife, riparian habitat or aquatic life, much less what the cumulative impacts of future water users will be, especially in the context of a warmer, drier California."

Response O1-5

As identified in Impact 3.10-3 (Draft EIR, pages 3.10-44 and 3.10-45), SWRCB has identified the Mattole River, Middle South Fork Eel River, East Fork Russian River, Navarro River, and

Dry Creek as Cannabis Priority Watersheds in Mendocino County because of water quality, low-flow, and other related issues. The location of existing commercial cannabis cultivation sites in relation to the Cannabis Priority Watersheds are illustrated in Draft EIR Figure 3.10-4. It is estimated that the existing 623 licensed commercial cannabis cultivation sites and associated uses have a total water demand of approximately 387 acre-feet per year. SWRCB Order WQ 2023-0102-DWQ numeric flow standards and diversion requirements were developed in coordination with CDFW to protect fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability within each watershed. The diversion requirements would ensure that the individual and cumulative effects of water diversions and discharges associated with commercial cannabis cultivation do not affect instream flows necessary for fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability. (SWRCB 2017a.) The policy was scientifically peer-reviewed by four experts. The peer review determined that water quality, instream flow, and diversion requirements of the policy were based on sound scientific knowledge, methods, and data. (SWRCB 2017b.) While SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ, additional enforcement actions on unauthorized activities may be taken by DCC, Mendocino County, CDFW, or the North Coast Regional Water Quality Control Board. The comment letter provides no technical analysis demonstrating that compliance with SWRCB Order WQ 2023-0102-DWQ does not address watershed impacts from water use. The reader is referred to the response to Comment O1-4 regarding groundwater resources.

Comment O1-6

“One thing that we do know about Mendocino County’s water resources is that many of the major watersheds outside of the coastal zone are listed as impaired for sediment and temperature, i.e. they cannot support threatened and endangered fish and other aquatic species in certain dry years, and should be off-limits to new water extraction rights now.”

Response O1-6

The reader is referred to the response to Comment O1-5. Draft EIR Table 3.10-7 identifies the listed impaired water features in Mendocino County, pursuant to section 303(d) of the federal Clean Water Act.

Comment O1-7

“A mere listing of regulations, and the agencies charged with enforcing them, is NOT evidence of water and watershed protection and does not in itself justify the continued issuing of licenses that will result in more water extraction from these water-stressed areas. Unfortunately, the regulations exist primarily on paper and appear only to be enforced erratically. (Even the City of Willits, as it turns out, has for years failed to comply with its water impoundment and release agreements with DWR and CDFW. City officials claimed to members of the public that the City’s agreement with the State is a simple “hand-shake” agreement.)”

Response O1-7

As described in the response to Comment O1-5, compliance with the numeric flow standards under SWRCB Order WQ 2023-0102-DWQ ensures that individual and cumulative effects of water diversions and discharges associated with commercial cannabis cultivation do not affect instream flows necessary for fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability. The effectiveness of compliance with numeric flow standards, associated curtailment of water diversions during

flow periods, and the use of water storage is supported by research conducted by the UC Berkeley Cannabis Research Center of 91 watersheds in Humboldt and Mendocino Counties. This research identified that licensed cannabis cultivation sites generated substantially less impact on watershed flow conditions than unlicensed cannabis cultivation sites, as well as residential uses, and consist of 1 to 4 percent of available surface water flows depending on the extent of water storage used. (Dillis et al. 2024.) While SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ, additional enforcement actions on unauthorized activities may be taken by Mendocino County, CDFW, or the North Coast Regional Water Quality Control Board.

Comment O1-8

“As another example, CDFW was to assist the County in identifying which cannabis cultivation applications had the potential to harm wetlands, riparian areas, and/or sensitive species habitat. The County, having no qualified biologist or hydrologist on staff, sent all cannabis cultivation applications to CDFW for review. This quickly overwhelmed the one CDFW biologist with the job of letting the County know in a meaningful and timely way whether or not the proposed cultivation operation even encroached on wetlands or SSH areas let alone be able to propose to the County means to avoid impacts or to advise the County that the applicant revise the application to avoid impacts. Because applicants can continue to cultivate while applications are in review, damage occurred. (It should be noted that the County amended its ordinance to eliminate annual inspections, which will also contribute to lack of enforcement.) If regulations are not able to be enforced, why are they considered to be mitigations?”

Response O1-8

This comment addresses concerns regarding County implementation of the MCCR and does not comment on the DCC licensing review process or adequacy of the Draft EIR. Terms 4 and 10 of Attachment A (General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ require site evaluations by a qualified biologist to address whether special-status wildlife and plant species and associated sensitive habitat occur on the site before development or site expansion to avoid impacts.¹ MCCR section 10A.17.100(A)(2) further requires Mendocino County to consult with CDFW prior to the County's issuance of a commercial cannabis cultivation license. Mendocino County, CDFW, and DCC continue to coordinate and improve the sharing of information gathered as part of the County's consultation process to ensure thorough consideration of biological resource impacts. Biological resource mitigation measures identified in the Draft EIR would address special-status species and sensitive habitat conditions specific to Mendocino County, consistent with these requirements as part of the DCC licensing process. (Draft EIR, pages 3.5-67 through 3.5-110.) Site inspections and enforcement actions associated with natural resources

¹ Term 4: Cannabis cultivators shall not take any action which results in the taking of Special-Status Plants (state listed and California Native Plant Society 1B.1 and 1B.2), Fully Protected species (Fish and Game Code sections 3511, 4700, 5050, and 5515), or a threatened, endangered, or candidate species under either the California Endangered Species Act (ESA) (Fish & Game Code §§ 2050 et seq.) or the federal ESA (16 U.S.C. § 1531 et seq.). If a “take,” as defined by the California ESA (Fish and Game Code section 86) or the federal ESA (16 U.S.C. § 1532(21)), may result from any act authorized under this Policy, the cannabis cultivator must obtain authorization from CDFW, National Marine Fisheries Service, and United States Fish and Wildlife Service, as applicable, to incidentally take such species prior to land disturbance or operation associated with the cannabis cultivation activities. The cannabis cultivator is responsible for meeting all requirements under the California ESA and the federal ESA.

Term10: Prior to commencing any cannabis land development or site expansion activities the cannabis cultivator shall retain a qualified biologist to identify sensitive plant, wildlife species, or communities at the proposed development site. If sensitive plant, wildlife species, or communities are identified, the cannabis cultivator and Qualified Biologist shall consult with CDFW and CAL FIRE to designate a no-disturbance buffer to protect identified sensitive plant, wildlife species, and communities. A copy of the report shall be submitted to the appropriate Regional Water Board.

addressed in SWRCB Order WQ 2023-0102-DWQ are primarily handled by CDFW, SWRCB, and the North Coast Regional Water Quality Control Board.

Comment O1-9

“Justifying the DEIR’s assessment that Mendocino County’s ground water, and surface waters connected to ground water, are stable and adequate to accommodate current and future commercial cannabis cultivation operations, and cumulatively, all other water users, human and non-human, the DEIR also cites the sections of Mendocino County’s cannabis cultivation ordinance that require a “watershed analysis” for new commercial cannabis cultivators. However, the County has never enforced this provision of the ordinance. As in the above examples, unenforced regulations are not mitigations against harm to the environment. (The DEIR notes briefly that the County’s ordinance does not require a “watershed analysis” for cultivation operations on property in the agricultural zone, but then fails to provide any mitigation measures to address this omission in the local regulations.) Please address this issue.”

Response O1-9

This comment addresses concerns regarding County implementation of the MCCR and does not comment on the DCC licensing review process. As addressed in the responses to Comments O1-4, O1-5, and O1-7, the Draft EIR impact conclusions regarding adequacy of groundwater and surface water supplies are based on several technical resources that include groundwater-well monitoring data, technical documentation associated with SWRCB Order WQ 2023-0102-DWQ, and research regarding the water demands of licensed cannabis cultivation uses. SWRCB has primary enforcement responsibility for the terms and requirements of SWRCB Order WQ 2023-0102-DWQ. Cannabis cultivation operations that do not comply with SWRCB Order WQ 2023-0102-DWQ may be subject to further disciplinary action. The Draft EIR impact analysis does not solely rely on County implementation of MCCR section 10A.17.080(C)(1).

Comment O1-10

“5. With regard to the analysis of impacts of the proposed project on other biological resources, specifically forest and woodland communities, the DEIR makes several references to a section of the County cannabis cultivation ordinance that prohibits tree removal for the development of cannabis cultivation operations. Thus the DEIR concludes that no mitigation is necessary. Several months ago the Board of Supervisors amended the County ordinance to “clarify” that the tree removal prohibition applies only to the actual cannabis cultivation area square footage, and not to any other areas disturbed/graded for roads, ponds, structures, support buildings, etc. which support the cultivation activity. Therefore, the County ordinance does not actually avoid loss of tree cover and woodland habitat for the purpose of cultivating cannabis. We recommend that the DEIR include as a mitigation measure for the State’s licensing project a tree removal prohibition that includes tree removal for the development of areas and structures that support and serve the commercial cultivation operation.”

Response O1-10

The Draft EIR does not solely rely on MCCR section 10A.17.040(K) to mitigate impacts to identified sensitive woodland habitat and special-status species from overall site development of cannabis cultivation sites and supporting uses. Draft EIR Impact 3.5-4 addresses impacts to sensitive habitats that include riparian habitat and 15 legacy sensitive natural communities: fish stream habitat (north-central coast fall-run steelhead stream and north-central coast summer steelhead stream) and 13 terrestrial plant communities, including the old-growth forest

community of upland Douglas-fir. Draft EIR Mitigation Measure 3.5-4 requires these habitats to be avoided; demonstration of compliance with MCCR section 10A.17.040(K) for cultivation; and compensation of riparian habitat that cannot be avoided. Draft EIR Mitigation Measures 3.5-2c, 3.5-2e through 3.5-2g, 3.5-2k through 3.5-2m, and 3.5-2o require preconstruction surveys for special-status wildlife species prior to the removal of any trees for cannabis cultivation site development. Complete prohibition of individual tree removal is not necessary to address biological resource impacts.

Comment O1-11

“6. The DEIR states repeatedly and incorrectly that Mendocino County allows commercial cannabis cultivation areas of 22,000 square feet. In fact, the maximum cultivation area per legal parcel is 10,000 square feet, with the exception of nurseries which can occupy up to 22,000 square feet. This repeated error needs to be corrected.”

Response O1-11

Draft EIR Tables 2-2 and 2-3 and the Draft EIR, on pages 3-9, 3.1-15, 3.1-17 through 3.1-19, 3.2-18, 3.9-18, 3.9-21, 3.10-41, 3.10-43, 3.10-45, 3.16-14, 3.16-16, and 3.16-18, identify that the MCCR limits cannabis cultivation and nursery sites to 22,000 square feet. Specifically, the MCCR states that the maximum cannabis canopy is 22,000 square feet for nursery uses, which are considered a cultivation use under DCC licensing. No changes to the Draft EIR are recommended.

Comment O1-12

“The assumption underlying this DEIR is that all existing County permit holders, whether or not they have a state provisional license, are in compliance with Mendocino County’s ordinance 10A.17 and 20.242. This DEIR tiers off the County’s existing ordinance in that any application for state licensure must be compliant with the County’s regulations as a starting point. The State’s licensing process cannot contradict or undermine local land use regulations by allowing weaker or contradictory regulations. Therefore it is essential that this DEIR accurately reflects the County’s cannabis cultivation regulations.”

Response O1-12

The comment is correct that the Draft EIR assumes that existing and proposed licensed cannabis cultivation sites comply with both the MCCR and state cannabis licensing regulations under Division 10 of the Business and Professions Code; CCR, title 4, Division 19; and natural resource protections set forth in SWRCB Order WQ 2023-0102-DWQ.

Comment O1-13

“Please see two attachments which we are including with these comments that address this new controversial issue of doubling allowable maximum cultivation areas. Attached are: 1) a letter from the Willits Environmental Center to the Mendocino County Board of Supervisors regarding an April, 2024 “re-interpretation” of Sec. 10.17.070(D) by county staff; and 2) an accompanying memo from Rachel Doughty, Esq. to the Board of Supervisors outlining why staff’s “re-interpretation” is illogical, not supported by legislative history, and would be a violation of CEQA.”

Response O1-13

This comment addresses concerns regarding County implementation of the MCCR and does not comment on the DCC licensing review process or adequacy of the Draft EIR. The

information provided in Attachments A and B is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Letter O2 Mendocino Cannabis Alliance with Wynn Coastal Planning & Biology

Steven Amato, President of Mendocino Cannabis Alliance, Amy Wynn, Principal Planner of Wynn Coastal Planning & Biology, and Meghan Durbin, Senior Planner of Wynn Coastal Planning & Biology
June 18, 2024

Comment O2-1

“Thank you so much for receiving public comment on the Draft EIR (DEIR) for the Licensing of Commercial Cannabis Cultivation in Mendocino County project.

We wholeheartedly support the Project Objectives, which are:

- Implement the California Department of Cannabis Control’s (DCC) cultivation licensure program in the County, in an effort **to minimize the public health and safety risks associated with unlicensed commercial cannabis activity, while promoting a robust and economically viable legal cannabis industry in the County;**
- **Effectively transition qualified existing provisional cannabis cultivation licenses to annual licenses** through a **streamlined cannabis licensing process** to ensure that such provisional cannabis cultivation license holders complete the annual license process by the statutory time frames identified in Business and Professions Code, section 26050.2;
- Provide a **mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process;**
- **Ensure that cannabis cultivation by licensees is conducted in accordance with applicable state and local laws** related to land conversion, air quality, electricity usage, water usage, water quality, biological resources, agricultural discharges, and similar matters;
- **Protect natural and built resources** in Mendocino County; and
- **Minimize potential adverse effects of cannabis cultivation activities on the environment.**

However, we see that some of these objectives will not be met if the recommendations in the DEIR are not refined and revised.”

Response O2-1

The comment’s support of the project objectives is noted. It is assumed that the comment’s statement related to the Draft EIR recommendations is in reference to the identified mitigation measures. The mitigation measures address the identified physical environmental impacts of the project (DCC actions regarding annual licenses for cannabis cultivation uses in Mendocino County) and do not propose modifications to the project or the project objectives consistent with the requirements of CEQA.

Comment O2-2

“In addition, though it is beyond the scope of the DEIR, it has become evident upon our review that there must be a statutory change to extend the State-mandated deadline for applicants to transition to annual licensure in order to comply with site-specific review and mitigation measures.”

Response O2-2

This comment is noted. The project evaluated in the Draft EIR does not include a proposed change to state deadlines related to the transition of provisional cultivation licenses to annual licenses.

Comment O2-3

“We cannot create a licensure program that is so difficult and expensive to navigate that a good operator cannot obtain their annual license. Applicants who abandon the licensure effort leave a void that may be filled by illegal operators.

- The cohort of applicants who are currently in the licensure program are truly the best of the best. They have been in the legalization program since the end of prohibition. This cohort is the antithesis of the stereotypical image of illegal cultivators. They have complied with (or tried to) every requirement that has been presented to them; however, the goal post of compliance constantly changes, making it exceedingly difficult for them to reach ultimate compliance and annual licensure. Keep in mind that many of these small cannabis farmers are mom-and-pop operators who moved to remote Mendocino County as part of the back-to-the-land movement in the 1970s. Their goal was to live simply, close to the land, in an environmentally friendly manner. To support their off-grid and simple lifestyles, they grew and sold cannabis, which was an easy crop to maintain and sell. The farmers who have entered the legalization process are proud of their work and their continued efforts to produce a high-quality product in an environmentally respectful manner.
- It is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential.
- As stated in the DEIR (Section 3, Page 3-2):
 - *Ascent identified that for every licensed cannabis cultivation site, there were approximately six unlicensed cultivation sites as of September 2023.*
 - *According to this ratio, the unincorporated area of the County could contain roughly 3,850 unlicensed cannabis cultivation sites.*
 - *According to Mendocino County records as of April 2023, there have been 1,708 commercial cannabis cultivation license applications submitted since 2017....*
 - *Of these County license applications, 1,319 application submittals have been submitted to DCC since 2018.*
 - *Currently there are 623 provisional licenses and 19 annual licenses that have been issued by the state and are considered active....*

- Nearly 99% of the original applicants (1,689 out of 1,708) have not transitioned to annual licensure.
- Approximately 62% of the original applicants (1,066 out of 1,708) have dropped out of the process.
- Just over 1% of the original applicants (19 out of 1,708) have transitioned to annual licensure.
- **QUESTION: How many of the remaining 623 provisional licensees are expected to be able to meet the requirements laid out in the DEIR?"**

Response O2-3

The information provided in the comment is noted. It is assumed that the comment's reference to the requirements in the Draft EIR are the identified mitigation measures. As identified in Draft EIR Chapter 2, "Project Description," the project consists of the DCC's potential actions to transition some or all 623 provisional licenses to annual licenses (i.e., whether to issue annual licenses to some or all of these provisional licensees). DCC may also consider other annual licensing actions (e.g., the issuance of new, additional annual cultivation licenses) for future commercial cannabis cultivation within the unincorporated areas of Mendocino County. Draft EIR Sections 3.1 through 3.17 identify that the continued operation of existing provisionally licensed commercial cannabis cultivation sites involving no changes to existing operations, including processing and distribution transport-only operations, transitioning to annual licensure would not result in additional impacts because operations are not anticipated to be altered through the annual licensing process. Thus, no mitigation measures are required for these sites. However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites may have requested a proposed cultivation area expansion after the release of the NOP, triggering the need for a different license type as they transition to annual licensure. These sites would trigger new licensing review and would be subject to compliance with the identified Draft EIR mitigation measures. Future new licensed commercial cannabis cultivation sites would also be subject to compliance with these mitigation measures. The reader is referred to the responses to Comments I6-3 and I6-7 regarding clarifying edits to Draft EIR mitigation measure application.

Comment O2-4

- Should the path to annual licensure for this group prove to be unattainable due to an overly complicated and/or expensive and time-consuming process, it is easy to envision yet more of these farmers abandoning the process altogether, selling their properties, leaving a void to be filled by illegal cultivators.
- Envision the voids being filled by illegal farms that operate in a simpler, more affordable world, but that have the clear potential to impact the resources that we hold so dear in protecting. This is what we seek to avoid.
- Keep in mind that Mendocino County's regulations limit cultivation to a maximum of 10,000 square feet of canopy. This is considered a small farming operation. In the context of all of the costs involved with obtaining and maintaining annual licenses (fees, taxes, etc), there is little budget remaining for these small farms to absorb the high costs of site-specific studies and impact avoidance and mitigation measures laid out by the DEIR.
- When imposing mitigation, lead agencies must ensure that there is a nexus and rough proportionality between the measure and the significant impacts of the project (Nollan and Dollan).

- If a potential farm operation has limited potential to impact a biological resource, then the impact avoidance measure should also be minimal.”

Response O2-4

Concerns regarding perceived difficulty in obtaining annual licensure are noted. The impact analysis in Draft EIR Section 3.5, “Biological Resources,” provides the technical support of the extent of potential biological resource impacts from commercial cannabis cultivation uses and mitigation measures to address these impacts consistent with the requirements of State CEQA Guidelines, section 15126.4(a).

Comment O2-5

“‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.’ (2024 CEQA Statute & Guidelines, AEP, Section 21061.1)

- **QUESTION: Are the impact avoidance and mitigation measures both roughly proportional and feasible for the remaining 623 provisional licensees?**
- **COMMENT: We believe that some of the impact avoidance and mitigation measures are neither roughly proportional nor feasible for the remaining 623 provisional licensees. Nor are some of the protocol-level studies required proportional to the potential impact.”**

Response O2-5

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis operation applications. DCC plans to make full use of existing streamlining provided by CEQA, as well as emerging streamlining techniques that may become available later, as applicable. Individual applications for cannabis cultivation operations would be subject to further site-specific environmental review as applicable under CEQA, in accordance with State CEQA Guidelines, section 15168(c), “Use with Later Activities.” This section of the guidelines addresses environmental review of projects intended to be addressed in a program for which an EIR was prepared. DCC may determine that the environmental impacts of an individual application are adequately addressed in the EIR and that no further environmental review is required. However, DCC may also determine that an additional focused environmental review is required for an individual applicant. Preparation of a site-specific environmental review document, such as a Negative Declaration or a mitigated negative declaration (MND), would be required if DCC determines that the individual applicant’s operations would cause a significant environmental impact that was not examined in the EIR or would substantially increase the severity of a previously identified significant impact under State CEQA Guidelines, sections 15162 and 15168(c).

Draft EIR Sections 3.1 through 3.17 identify that the continued operation of existing provisionally licensed commercial cannabis cultivation sites involving no changes to existing operations, including processing and distribution transport-only operations, transitioning to annual licensure would not result in additional impacts to special-status wildlife species and their habitats because operations are not anticipated to be altered through the annual licensing process. Thus, no mitigation measures are required for these sites. The Draft EIR impact analysis and application of mitigation measures focus on physical impacts that would occur with proposed cannabis cultivation conditions (e.g., requests for cultivation expansion triggering the need a different license type and new cannabis cultivation sites) and not conditions that existed as of the release of the NOP on August 2, 2023. For example,

Mitigation Measure 3.4-1 (Implement Additional Measures to Protect Historic Resources) specifically applies to new licensed commercial cannabis cultivation sites, whereas Mitigation Measure 3.5-1a (Conduct Preapproval Biological Surveys), which evaluates the potential for special-status species and habitats specifically, applies to areas within “the proposed expanded or new commercial cannabis cultivation sites” and not commercial cannabis cultivation operations that currently exist in compliance with required biological resource protections measures in SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirement and Prohibitions – Terms 4 and 10). This performance standard is also used in Mitigation Measures 3.5-1b, 3.5-1c, and 3.5-2a through 3.5-2p, which may be triggered based on the results of Mitigation Measure 3.5-1a. MCCR section 10A.17.100(A)(2) requires Mendocino County to consult with CDFW prior to the County’s issuance of a commercial cannabis cultivation license. Mendocino County, CDFW, and DCC continue to coordinate and improve the sharing of information gathered as part of the County’s consultation process to ensure thorough consideration of biological resource impacts. The reader is also referred to the responses to Comments I6-3 and I6-7 regarding clarifying edits to Draft EIR mitigation measure application.

The Draft EIR mitigation measures are feasible, consistent with resource agency guidance (e.g., measures to address impacts to special-status species consistent with protection measures in SWRCB Order WQ 2023-0102-DWQ Attachment A and greenhouse gas emission reduction measures), and proportionate to the potential environmental impact of commercial cannabis cultivation activity. The comment provides no counter technical analysis that demonstrates infeasibility of the Draft EIR mitigation measures.

Comment O2-6

“In order to achieve these Project Objectives under consideration of the EIR, it is essential to ensure that the Final EIR and resulting permitting process does not place a disproportionate burden on legal farmers, including any requirements that are impossible to meet due to logistics. For instance:

- The agency should keep in mind the cost and time that it takes to perform various studies and implement impact avoidance and mitigation measures;
- The State has conveyed that it will pay for the Biological Studies.
- **QUESTION: Has the State adequately considered the true cost of such studies in setting aside this budget?**
 - A biological study may cost, on average, approximately \$10,000.
 - According to the DEIR, as of April 2023, there are 623 commercial cannabis cultivation sites within the unincorporated areas of Mendocino County that hold provisional state cannabis cultivation licenses.
 - Projecting 623 Biological Studies at ~\$10K each brings the cost to approximately \$6.5 million.
 - If only half of those 623 farms require a Biological Study costing half the average (i.e., 312 farms @ \$5K each), the cost is still \$1.625 million.
- **QUESTION: Has the state set aside over \$1.5 million to perform biological studies?”**

Response O2-6

The reader is referred to the response to Comment O2-5. Draft EIR Section 3.5, “Biological Resources,” provides a programmatic biological resources analysis for cannabis cultivation uses countywide. This includes habitat and species occurrence mapping (see Draft EIR Figures 3.5-1 through 3.5-11), which will be used for the evaluation of review of individual cannabis cultivation license requests. Draft EIR Mitigation Measure 3.5-1a requires provisional licensees requesting to expand their existing sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to conduct a biological survey to determine whether there is potential for special-status plant species, special-status wildlife species, or sensitive habitats identified in this EIR to be present within proposed expanded or new commercial cannabis cultivation sites seeking a license from DCC. If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource evaluation and protection mitigation measures identified in the Draft EIR consistent with the requirements of Terms 4 and 10 of Attachment A (General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ. The reader is also referred to the response to Comment O2-6.

This comment also references funding for Mendocino County annual license applicants’ environmental review, which may include corresponding biological studies. The Budget Act of 2021, Item 1115-101-0001 in Senate Bill (SB) 129 (Statutes of 2021), authorized \$100 million in funding for the Local Jurisdiction Assistance Grant Program (Grant Program). The Grant Program dedicated funding on a one-time basis to aid local jurisdictions with the greatest needs with the transition of provisional licenses to annual licenses. Local jurisdictions that were eligible to receive grant funding, such as Mendocino County, represented those jurisdictions with significant numbers of provisional licenses that are legacy and equity applicants, which are more likely to have outstanding environmental compliance requirements associated with CEQA. Under the Grant Program, Mendocino County’s primary goal was to use funds to aid provisional cultivation licensees within the County complete CEQA compliance requirements necessary to achieve annual licensure, with DCC acting as lead agency on CEQA review. DCC has prepared this Program EIR to evaluate the impacts of DCC’s annual licensing of such provisionally licensed commercial cannabis operations in the County, as well as the environmental impacts of future licensed commercial cannabis operations.

The Draft EIR’s regulatory setting analysis presents information on the laws, regulations, plans, and policies that relate to the project, including MCCR section 10A.17.100(A)(2), which requires Mendocino County to consult with CDFW prior to the County’s issuance of a commercial cannabis cultivation license. Upon consultation, CDFW may recommend approval of the local license, ask to conduct a site inspection, or request additional studies in order to make the determination that no impacts to sensitive species will occur. Notably, CDFW has made grant funds available for commercial cannabis cultivators to address environmental impacts related to cultivation in California. Information regarding these grants is provided at: <https://wildlife.ca.gov/Conservation/Cannabis/Restoration-Grants>. DCC continues to work with Mendocino County and CDFW to coordinate and improve the sharing of information gathered as part of the County’s consultation process to ensure thorough consideration of biological resource impacts.

Comment O2-7

- The State deadline for applying to convert from provisional to annual licenses is December 31, 2024.

- **QUESTION: Has the State taken into consideration the time that it takes to perform the protocol level Biological Studies as specified in the DEIR, including multi-year studies and floristic windows?**
- **QUESTION: Are there enough consultants to perform the specified site-specific studies?**
- **QUESTION: Has the State taken into consideration the agency time required to review and comment on Biological Studies?**
- **QUESTION: Has the State taken into consideration the applicant time required to respond to agency commentary on Biological Studies?"**

Response O2-7

This comment consists of concerns regarding the conversion from provisional to annual licenses and is not associated with the adequacy of the Draft EIR. DCC is coordinating with license applicants to meet statutory requirements for conversion to annual licensure. The reader is referred to the response to Comment O2-6.

Comment O2-8

"C. BASELINE DATE

Section 3 of the DEIR (Page 3-1) states that the *"environmental setting generally serves as the baseline against which environmental impacts are evaluated. State CEQA Guidelines, section 15125(a) states that the physical environmental conditions as they exist at the time the NOP [Notice of Preparation] is published normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."*

- The Notice of Preparation of the EIR is August 2, 2023.
- The DEIR does not make clear what the baseline date should be for studies and analyses required to determine if potential impacts may occur.
- The possibility of there being a minimum of 623 different baseline dates for the various applications seeking transition to full licensure, will not result in a streamlined review. The applicants, consultants and agencies will consume valuable time going back and forth in attempts to accurately and judiciously determine baseline dates for individual projects.
- It is unreasonable to attempt to perform forensic site-specific biological studies for actions performed prior to the Notice of Preparation.
- Therefore, the Streamlined objective of the EIR will not be met.
- **COMMENT: The baseline date for the purposes of studies and analyses required to determine if potential impacts may occur as the result of a proposed licensee's project should be the EIR's Notice of Preparation, which is August 2, 2023."**

Response O2-8

The reader is referred to the response to Comment O2-5 and "Master Response 1: Baseline Conditions Used in the Draft EIR."

Comment O2-9

"D. BIOLOGICAL MITIGATION MEASURES

As stated above, as we consider potential impacts to biological resources, it is important to note that Mendocino County's Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential. The potential for future operations to impact species are limited to these zoning districts. As you will see, some of the biological restrictions are limiting enough that even more parcels within these districts will be prohibited from obtaining licenses without the ability to utilize biological best management impact avoidance measures that are available to other discretionary permit types. The restrictions that the DEIR suggests placing on these properties is disproportional to the potential impact of the operations, especially when simple impact avoidance BMPs are readily employable.

To truly streamline the process of transitioning commercial cannabis cultivators to annual licensure, we recommend the following:

- **Assume presence of certain sensitive resources, rather than perform protocol-level surveys that are both disproportionately expensive and time consuming.**
- **Implement best management practices as impact avoidance measures.**
- **Implement best management practices as impact mitigation measures, including compensatory mitigation.**
- **Change some EIR determinations to Significant and Unavoidable Adverse Impacts.**
 - **COMMENT Allow for compensatory mitigation for Biological resources that the Biology Mitigation Measures do not currently provide.**
 - **Change Mitigation Measures 3.5-1b, 3.5-2a, 3.5-2c and 3.5-4 to allow for best management impact avoidance measures as well as compensatory mitigation and potential Take.**
 - **COMMENT Change the Biological Resources determination to “significant and unavoidable.”**

Response O2-9

The mitigation measures provided in the biological resources section of the Draft EIR (Section 3.5) are consistent with SWRCB Order WQ 2023-0102-DWQ, which requires surveys and avoidance of biological resources. The Draft EIR mitigation approach for biological resources is to identify sensitive resources through surveys and implement avoidance measures if the resource is determined to be present. The Draft EIR's mitigation measures include an option to assume the presence of certain species where this option is appropriate (e.g., impacts could be avoided by conducting construction activities outside of a sensitive season). Protocol-level surveys are included as mitigation in the Draft EIR for species for which protocols have been established, typically by CDFW or US Fish and Wildlife Service (USFWS). These protocols are typically required by the wildlife agencies to determine the presence or absence of these species. The commenter did not describe the best management practices (BMPs) that they would propose to be implemented. However, the Draft EIR mitigation measures include several options for avoiding the need for focused or protocol-level surveys, including avoiding construction activities during the nesting and maternity season and implementing buffers around sensitive habitats, where this option is appropriate and allowable by the wildlife

agencies. In most cases, however, BMPs would not be effective unless surveys have been completed to determine whether a resource is present on a site.

As described in the Draft EIR, due to the current legal status of cannabis activities under federal law, applicants must avoid impacts on resources regulated by the federal government, including wildlife species listed under the federal Endangered Species Act and federally protected wetlands, by implementing no-disturbance buffers or redesigning the project until such time as federal permits may be issued for cannabis activities. Therefore, the Draft EIR cannot include compensatory mitigation or take allowance for federally regulated biological resources. See the responses to Comments O2-11 and O2-12. However, Mitigation Measure 3.5-1b has been edited to provide a mechanism for take of special-status plant species with review and approval by DCC and CDFW.

Pursuant to CEQA, a determination of significant and unavoidable for an impact would result if the impact cannot be reduced to below the threshold level given reasonably available and feasible mitigation measures. Reasonably available and feasible mitigation measures are available for this project and included in Section 3.5, "Biological Resources," of the Draft EIR. These mitigation measures, which include survey requirements and avoidance, are standard measures for special-status plants, special-status wildlife, and other sensitive resources. Therefore, a significant and unavoidable determination for biological resources would not be appropriate.

The reader is also referred to the responses to Comments I6-3 and I6-7 regarding clarifying edits to Draft EIR mitigation measure application in relation to baseline conditions.

Comment O2-10

"The DEIR states that if there are to be certain impacts, then the proposed expansion or new development must be denied. This is more restrictive than other types of agricultural uses. The DEIR states that Impacts to the following resources will result in denial:

Special status plant species (MM 3.5-1b):

*If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial cannabis cultivation site improvements that shall be reflected in application materials to DCC. If the special-status plant species cannot be avoided, the application **shall be denied**.*

- **COMMENT:** Allow for typical Best Management Practices (BMPs) to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Transplanting and relocating species from area of impact to another location within the subject property, restoration areas
 - Removal and management of invasive species
 - Symbolic fencing to prevent development from encroaching into restoration areas"

Response O2-10

The reader is referred to the response to Comment O2-9.

Comment O2-11

"CA red-legged frog (MM 3.5-2a):

*If CRLF are detected during the initial biological survey... or are determined to be likely to occur (i.e., aquatic or **upland habitats potentially suitable** for the species are present on the site), then it shall be assumed that commercial cultivation activities could result in a take of this species, and **the application shall be denied**.*

- **NOTE:** this species is known to migrate over land upwards of 1.7 miles between aquatic habitats. We do not have any land within the CRLF range that is more than 1.7 miles between aquatic habitats. Therefore, assuming presence of CRLF, all expansion and new projects would be denied in the CRLF range. See DEIR Figure 3.5-4 (Aquatic, Riparian, and Meadow).
- **COMMENT:** Allow for typical BMPs to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Qualified biologist train site personnel in the identification of CA red-legged frogs, and on actions and communications required to be conducted in the event that such frogs are observed during ground disturbing activities
 - Perform pre-disturbance searches around the potential impact area
 - Careful debris removal
 - No ground disturbance during a rain event.
 - Create habitat and refugia for amphibians.”

Response O2-11

The reader is referred to the response to Comment O2-9 regarding avoidance of federally listed species. Furthermore, the BMPs recommended by the commenter are measures that are typically implemented when take authorization has been obtained for California red-legged frog. Any pre-disturbance surveys, monitoring, or training for this species would need to be conducted by or under the direction of a USFWS-approved and permitted biologist, and these permits cannot currently be granted for cannabis cultivation activities given its legal status under federal law.

Comment O2-12

“Western pond turtle (MM 3.5-2c):

*If western pond turtle, which is currently a candidate for listing under the ESA, is listed as threatened in the future, take shall be prohibited. If take cannot be avoided, the application **shall be denied**.*

- **COMMENT:** Allow for typical BMPs to avoid and minimize impacts to the species, maintain and improve habitat and, and if necessary provide compensatory mitigation. Typical BMPs include:
 - Qualified biologist train site personnel in the identification of western pond turtles, and on actions and communications required to be conducted in the event that such turtles are observed during ground disturbing activities
 - Perform pre-disturbance searches around the potential impact area
 - Careful debris removal
 - No ground disturbance during a rain event.

- Create habitat and refugia for turtles.”

Response O2-12

The reader is referred to the responses to Comments O2-9 and O2-11. The permit requirements for western pond turtle, if listed under ESA, would likely be the same as for California red-legged frog.

Comment O2-13

“Northern Spotted Owl (MM 3.5-2e)

If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal could cause harm to northern spotted owl populations in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

- **QUESTIONS:** If NSO habitat is not being removed, why would a commercial cannabis cultivation site not be permitted? Could there still be an impact to the habitat by operations even if the habitat isn’t removed? Is what is proposed how this is dealt with in other projects? Are there other alternative measures/mitigations?”

Response O2-13

The comment is correct that removal of habitat optimal for northern spotted owl would be prohibited pursuant to Mitigation Measure 3.5-4, which prohibits alteration of old-growth habitat. However, as noted in Table 3.5-4 of the Draft EIR, on page 3.5-45, spotted owls can sometimes occur in younger forests. This species also uses younger forests for foraging. Therefore, impacts on northern spotted owl habitat may occur as a result of development associated with cannabis uses. Furthermore, potential impacts on northern spotted owl would also include disturbance from noise and visual stimuli associated with cannabis uses. In the Draft EIR, on page 3.5-81, Mitigation Measure 3.5-2e has been edited for clarity and to reflect that impacts on northern spotted owl would not be limited to habitat removal but would also include disturbance from noise and visual stimuli associated with cannabis uses.

The original text of Mitigation Measure 3.5-2e on Draft EIR page 3.5-81 states:

Mitigation Measure 3.5-2e: Conduct Northern Spotted Owl Preconstruction Habitat Suitability Surveys and Determine Presence or Absence of the Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of northern spotted owl from proposed commercial cannabis cultivation sites:

- ▶ To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or habitat suitable for northern spotted owl, removal of old-growth habitat shall be prohibited, as outlined in Mitigation Measure 3.5-4a.
- ▶ If the area of proposed new development activities is within habitat suitable for northern spotted owl (e.g., mature forest), and a qualified biologist determines it is

within a minimum of 1.3 miles (average species home range) of a known occurrence of northern spotted owl, or as recommended by CDFW, the following measures shall be followed:

- Before removal of any trees or ground-disturbing activities adjacent or in nesting, roosting, or foraging habitat (e.g., forest clearings) for spotted owl, a qualified biologist familiar with the species and protocol, shall conduct preconstruction surveys for nests within a minimum 1.3-mile buffer around the site as described in *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012) and the 2019 revision to *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private Lands in California* (USFWS 2019) or as recommended by CDFW. Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine presence or absence of northern spotted owl.
- If northern spotted owls are determined to be absent at a minimum of 1.3 miles from the site or as recommended by CDFW, then further mitigation is not required.
- If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal could cause harm to northern spotted owl populations in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

The revised text of Mitigation Measure 3.5-2e on Draft EIR page 3.5-81 now states:

Mitigation Measure 3.5-2e: Conduct Northern Spotted Owl Preconstruction Habitat Suitability Surveys and Determine Presence or Absence of the Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of northern spotted owl from proposed commercial cannabis cultivation sites:

- ▶ To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or habitat suitable for northern spotted owl, removal of old-growth habitat shall be prohibited, as outlined in Mitigation Measure 3.5-4.
- ▶ If the area of proposed new development activities is within habitat suitable for northern spotted owl (e.g., mature forest), and a qualified biologist determines it is within a minimum of 1.3 miles (average species home range) of a known occurrence of northern spotted owl, or as recommended by CDFW, the following measures shall be followed:
 - Before removal of any trees or ground-disturbing activities adjacent or in nesting, roosting, or foraging habitat (e.g., forest clearings) for spotted owl, a qualified

biologist familiar with the species and protocol, shall conduct preconstruction surveys for nests within a minimum 1.3-mile buffer around the site as described in *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012) and the 2019 revision to *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private Lands in California* (USFWS 2019) or as recommended by CDFW. Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine the presence or absence of northern spotted owl.

- If northern spotted owls are determined to be absent at a minimum of 1.3 miles from the site or as recommended by CDFW, then further mitigation is not required.
- If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal, loud noises, or visual stimuli could cause disturbance and harm to northern spotted owls in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

Comment O2-14

“Generator Noise Reduction (MM 3.5-2p)

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer. All generators shall be, at a minimum, equipped with the manufacturer’s specified muffler. Additional measures for noise attenuation may include additional muffler features and/or a structure to enclose the generator designed for sound suppression (MCCR section 10A.17.070(F)(1)).

- MCCR Section 10A.17.070(F)(1) includes the following provision:
 - If a generator is being used pursuant to the conditions set forth in this paragraph, CCBL Holder shall have conducted an analysis of the noise levels produced by the generator at full operational speed, showing compliance with Mendocino County General Plan Policies DE100, 101 and 103. **This analysis shall be performed by an accredited acoustical engineer or using some other mechanism or device as provided for on a list to be prepared and published by the Department.**
- **COMMENT:** Mendocino County has few to no acoustical engineers. It seems out of scale for the DEIR to require that each project engage an acoustical engineer to evaluate the noise levels of generators operated at full operational speed. Manufacturers make these evaluations when they design these pieces of equipment. Why duplicate the effort on a per-generator scale? This is disproportionate to the potential level of impact.
- **COMMENT, ADD LANGUAGE:** Match the language of MCCR Section 10A.17.070(F)(1) by adding “Conformance with these standards shall be confirmed by an acoustical engineer **or using some other mechanism or device as provided for on a list to be prepared and published by Mendocino County.**”

Response O2-14

This comment is directed to provisions of the MCCR and not the project, which consists of proposed licensing actions by DCC. DCC cannot amend the MCCR.

Comment O2-15

“Old-growth habitat (embedded within Sensitive Natural Communities) (MM 3.5-4)

Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied.

- Consider an example of an otherwise compliant project that by necessity must trench a utility line from one non-old growth habitat area to another, for which the only feasible route is through an old-growth habitat area.
- **COMMENT:** Define what alteration of old-growth habitat means. Consider whether potential low-impact activities may be permissible through an old-growth habitat area, such as trenching for utilities. Consider listing examples of low-impact activities that are not expected to alter old-growth habitat.”

Response O2-15

Mitigation Measure 3.5-4 has been edited to include the requested information.

The original text of Mitigation Measure 3.5-4, on Draft EIR page 3.5-101, states:

Mitigation Measure 3.5-4: Identify, Avoid, and Protect Sensitive Natural Communities, Riparian Habitat, and Wetland Vegetation or Provide Compensation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions –Term 10 and 37), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of sensitive natural communities, riparian habitat, old-growth habitat, and other sensitive habitats from proposed commercial cannabis cultivation sites:

- ▶ For new commercial cannabis cultivation uses that could disturb sensitive natural communities or riparian habitat, the application shall include a report prepared by a qualified biologist that summarizes the potential presence of any of these sensitive resources as identified during the biological survey conducted under Mitigation Measure 3.5-1a, including riparian habitat associated with aquatic features, old-growth forests, oak woodlands, special-status fish stream habitats, and sensitive natural communities. Further, the qualified biologist shall perform a protocol-level survey following the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (current version dated March 20, 2018) of the site before the start of new development related to cannabis activities. Sensitive natural communities shall be identified using the best means possible, including keying them out using the most current edition of *A Manual of California Vegetation* (including updated natural communities data at <http://vegetation.cnps.org/>) or referring to relevant reports (e.g., reports found on the VegCAMP website).
- ▶ The report shall include the requirements that all sensitive areas identified above shall be flagged or fenced with brightly visible construction flagging and/or fencing

under the direction of the qualified biologist before development activities begin and that grading, excavation, other ground-disturbing activities, and vegetation removal shall not occur in these areas during development activities. Foot traffic by construction personnel shall also be limited in these areas to prevent the introduction of invasive or weedy species. Periodic inspections during construction shall be conducted by the monitoring biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.

- ▶ If the report documents that site development would affect the bed, bank, channel, or associated riparian habitat subject to CDFW jurisdiction under Fish and Game Code section 1602, a Streambed Alteration Notification shall be submitted to CDFW, pursuant to section 1600 et seq. of the Fish and Game Code. If proposed activities are determined to be subject to CDFW jurisdiction, the applicant shall abide by the conditions of any executed agreement before any ground disturbance.
- ▶ Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied.
- ▶ MCCR section 10A.17.040(K) prohibits the removal of any commercial tree species, as defined by CCR, title 14, section 895.1, for the purpose of developing a commercial cannabis cultivation site, which includes removal of species that make up sensitive natural communities found in Mendocino County, including redwood and California bay, and the removal of any true oak species (*Quercus* spp.) or tan oak. Compliance with this requirement will be provided to DCC.
- ▶ In consultation with DCC and CDFW, applicants shall compensate for permanent loss of riparian habitat at a minimum of a 2:1 ratio through contributions to a CDFW-approved wetland mitigation bank or through the development and implementation of a Compensatory Stream and Riparian Mitigation and Monitoring Plan for creating or restoring in-kind habitat in the surrounding area. If mitigation credits are not available, stream and riparian habitat compensation shall include establishment of riparian vegetation on currently unvegetated bank portions of streams affected by the project and enhancement of riparian habitat through removal of nonnative species, where appropriate, and planting of additional native riparian plants to increase the cover, continuity, and width of the riparian corridor along streams in the site and surrounding areas. Construction activities and compensatory mitigation shall be conducted in accordance with the terms of a streambed alteration agreement, as required under section 1602 of the Fish and Game Code, as well as SWRCB Order WQ 2023-0102-DWQ.

The Compensatory Stream and Riparian Mitigation and Monitoring Plan shall identify:

- compensatory mitigation sites and criteria for selecting these mitigation sites;
- in-kind reference habitats for comparison with compensatory riparian habitats (using performance and success criteria) to document success;
- monitoring protocol, including schedule and annual report requirements (compensatory habitat shall be monitored for a minimum of 5 years from completion of mitigation, or human intervention (including recontouring and grading), or until the success criteria identified in the approved mitigation plan have been met, whichever is longer);

- ecological performance standards, based on the best available science and including specifications for native riparian plant densities, species composition, amount of dead woody vegetation gaps and bare ground, and survivorship; at a minimum, compensatory mitigation planting sites must achieve 80-percent survival of planted riparian trees and shrubs by the end of the 5-year maintenance and monitoring period, or dead and dying trees shall be replaced and monitoring continued until 80-percent survivorship is achieved;
- corrective measures if performance standards are not met;
- responsible parties for monitoring and preparing reports; and
- responsible parties for receiving and reviewing reports and for verifying success or prescribing implementation or corrective actions.

The revised text of Mitigation Measure 3.5-4, on Draft EIR page 3.5-101, now states:

Mitigation Measure 3.5-4: Identify, Avoid, and Protect Sensitive Natural Communities, Riparian Habitat, and Wetland Vegetation or Provide Compensation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions –Term 10 and 37), the DCC shall require provisional licensees requesting to expand their sites to comply with a new license type that allows for a future new larger cannabis cultivation area prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of sensitive natural communities, riparian habitat, old-growth habitat, and other sensitive habitats from proposed commercial cannabis cultivation sites. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

- ▶ For new commercial cannabis cultivation uses that could disturb sensitive natural communities or riparian habitat, the application shall include a report prepared by a qualified biologist that summarizes the potential presence of any of these sensitive resources as identified during the biological survey conducted under Mitigation Measure 3.5-1a, including riparian habitat associated with aquatic features, old-growth forests, oak woodlands, special-status fish stream habitats, and sensitive natural communities. Further, the qualified biologist shall perform a protocol-level survey following the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (current version dated March 20, 2018) of the site before the start of new development related to cannabis activities. Sensitive natural communities shall be identified using the best means possible, including keying them out using the most current edition of *A Manual of California Vegetation* (including updated natural communities data at <http://vegetation.cnps.org/>) or referring to relevant reports (e.g., reports found on the VegCAMP website).
- ▶ The report shall include the requirements that all sensitive areas identified above shall be flagged or fenced with brightly visible construction flagging and/or fencing under the direction of the qualified biologist before development activities begin and that grading, excavation, other ground-disturbing activities, and vegetation removal shall not occur in these areas during development activities. Foot traffic by construction personnel shall also be limited in these areas to prevent the introduction

of invasive or weedy species. Periodic inspections during construction shall be conducted by the monitoring biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.

- ▶ If the report documents that site development would affect the bed, bank, channel, or associated riparian habitat subject to CDFW jurisdiction under Fish and Game Code section 1602, a Streambed Alteration Notification shall be submitted to CDFW, pursuant to section 1600 et seq. of the Fish and Game Code. If proposed activities are determined to be subject to CDFW jurisdiction, the applicant shall abide by the conditions of any executed agreement before any ground disturbance.
- ▶ Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied. “Old-growth habitat alteration” is defined as any tree removal, change in canopy cover, removal of understory vegetation, or impact on the root systems of a tree within old-growth habitat.
- ▶ MCCR section 10A.17.040(K) prohibits the removal of any commercial tree species, as defined by CCR, title 14, section 895.1, including the removal of any true oak species (*Quercus* spp.) or tan oak for the purpose of developing a commercial cannabis cultivation site. This section prohibits the removal of certain tree species that may occur in sensitive natural communities found in Mendocino County. Compliance with this requirement in the form of a memo or report shall be provided to DCC.
- ▶ In consultation with DCC and CDFW, applicants shall compensate for permanent loss of riparian habitat at a minimum of a 2:1 ratio through contributions to a CDFW-approved wetland mitigation bank or through the development and implementation of a Compensatory Stream and Riparian Mitigation and Monitoring Plan for creating or restoring in-kind habitat in the surrounding area. If mitigation credits are not available, stream and riparian habitat compensation shall include establishment of riparian vegetation on currently unvegetated bank portions of streams affected by the project and enhancement of riparian habitat through removal of nonnative species, where appropriate, and planting of additional native riparian plants to increase the cover, continuity, and width of the riparian corridor along streams in the site and surrounding areas. Construction activities and compensatory mitigation shall be conducted in accordance with the terms of a streambed alteration agreement, as required under section 1602 of the Fish and Game Code, as well as SWRCB Order WQ 2023-0102-DWQ.

The Compensatory Stream and Riparian Mitigation and Monitoring Plan shall identify:

- Compensatory mitigation sites and criteria for selecting these mitigation sites;
- In-kind reference habitats for comparison with compensatory riparian habitats (using performance and success criteria) to document success;
- Monitoring protocol, including schedule and annual report requirements (compensatory habitat shall be monitored for a minimum of 5 years from completion of mitigation, or human intervention (including recontouring and grading), or until the success criteria identified in the approved mitigation plan have been met, whichever is longer);
- Ecological performance standards, based on the best available science and including specifications for native riparian plant densities, species composition,

amount of dead woody vegetation gaps and bare ground, and survivorship; at a minimum, compensatory mitigation planting sites must achieve 80-percent survival of planted riparian trees and shrubs by the end of the 5-year maintenance and monitoring period, or dead and dying trees shall be replaced and monitoring continued until 80-percent survivorship is achieved;

- Corrective measures if performance standards are not met;
- Responsible parties for monitoring and preparing reports; and
- Responsible parties for receiving and reviewing reports and for verifying success or prescribing implementation or corrective actions.

Comment O2-16

“E. GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

Again, as we consider potential greenhouse gas emissions and climate change, it is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential. The potential for new on-site natural gas and propane use is thereby already limited in the context of future cannabis operations.

There is no discussion within the document about why on-site natural gas and propane use shall be prohibited; please add and note what exceptions are currently granted.

Many properties in unincorporated Mendocino County rely upon propane and natural gas as supplemental energy sources. These properties utilize on-site tanks, typically 250 gallons to 500 gallons. There must be a provision for natural gas or propane use on properties that 1) are not connected to public utilities, and 2) cannot generate their own solar energy due to siting limitations and vegetative shading.

- **COMMENT: Change Mitigation Measure 3.8-1 to allow for limited use of on-site natural gas and/or propane (delete first bullet point: “Prohibit on-site natural gas or propane use”.**
- With this revision, the Greenhouse Gas Emissions and Climate Change determination will remain “significant and unavoidable.””

Response O2-16

It is acknowledged that this provision of Draft EIR Mitigation Measure 3.8-1 may not be feasible in all circumstances—due to the rural land use conditions of the County and the lack of access to the electric grid or adequate sunlight for solar power due to topography or forest conditions—and would not fully mitigate greenhouse emission impacts. Bullet point three of Mitigation Measure 3.8-1 identifies additional measures that can be implemented if prohibition of the use of natural gas or propane is not feasible. The following edits have been made to Draft EIR Mitigation Measure 3.8-1. This edit would not alter the conclusions of the Draft EIR, and this impact would remain significant and unavoidable.

The original text of Mitigation Measure 3.8-1, on Draft EIR pages 3.8-14 and 3.18-15, states:

Mitigation Measure 3.8-1: Implement On-Site Project Design Features to Demonstrate the Fair Share in Meeting the State's Long-Term GHG Reduction Targets

DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to apply these requirements:

- ▶ Prohibit on-site natural gas or propane use.
- ▶ Implement Tier 2 requirements of the CALGreen Code's EV charging standards.
- ▶ If the aforementioned project design features cannot be feasibly incorporated into the project's design, include other relevant project design characteristics. Examples of measures that could be applied to individual commercial cannabis cultivation sites include, but are not limited to the following:
 - exceeding the requirements of the most recent version of Part 6 of the Title 24 California Building Code (California Energy Code),
 - using low-flow appliances,
 - using Energy Star appliances, and
 - implementing zero net energy buildings.

The revised text of Mitigation Measure 3.8-1, on Draft EIR pages 3.8-14 and 3.8-15, now states:

Mitigation Measure 3.8-1: Implement On-Site Project Design Features to Demonstrate the Fair Share in Meeting the State's Long-Term GHG Reduction Targets

DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to apply these requirements. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023:

- ▶ Prohibit on-site natural gas or propane use when access to the electric grid or adequate solar power generation for the cannabis cultivation site operation is available.
- ▶ Implement Tier 2 requirements of the CALGreen Code's EV charging standards.
- ▶ If the aforementioned project design features cannot be feasibly incorporated into the project's design, include other relevant project design characteristics. Examples of measures that could be applied to individual commercial cannabis cultivation sites include, but are not limited to the following:
 - exceeding the requirements of the most recent version of Part 6 of the Title 24 California Building Code (California Energy Code),
 - using low-flow appliances,
 - using Energy Star appliances, and
 - implementing zero net energy buildings.

Comment O2-17**"F. SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS**

Section 6.2 of the DEIR (Page 6-3) states that “[a]s described for Chapter 3, most of the impacts identified in Chapter 4 would be less than significant or would be reduced to a less-than-significant level with implementation of mitigation. The following impacts would be significant and unavoidable; that is, no feasible mitigation is available to reduce these impacts to a less-than-significant level.”

With the above recommended revisions to the Biology Mitigation Measures, the following discussions will need to be added to Section 6.2:

- **ADD: BIOLOGICAL RESOURCES**

- Potential land use conversion and development from potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and distribution transport-only operations as part of implementation of the project could result in disturbance to or loss of special-status plant species if they are present. ~~Although mitigation (Mitigation Measures 3.5-1a through 3.5-1c) have been recommended to reduce this impact to less than significant~~ would assist in reducing this impact, it is uncertain whether all special-status plant species could be retained. This impact would be significant and unavoidable (Impact 3.5-1).
- Land use conversion and development from potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and distribution transport-only operations as part of implementation of the project could result in impacts on or loss of special-status wildlife species and habitat. ~~Although mitigation (Mitigation Measures 3.5-2a through 3.5-2p) have been recommended to reduce this impact to less than significant~~ would assist in reducing this impact, it is uncertain whether all special-status wildlife species and habitat could be retained. This impact would be **significant and unavoidable** (Impact 3.5-2).”

Response O2-17

Pursuant to CEQA, a determination of significant and unavoidable for an impact would result if the impact cannot be reduced to below the threshold level given reasonably available and feasible mitigation measures. (See State CEQA Guidelines, section 15126.) Reasonably available and feasible mitigation measures are available for this project and included in Draft EIR Section 3.5, “Biological Resources.” These mitigation measures, which include survey requirements and avoidance, are standard, widely recognized measures that are used to address potential impacts to special-status plants, special-status wildlife, and other sensitive resources. Moreover, the mitigation measures are consistent with agency guidance (i.e., measures that a vast majority of cannabis cultivators must already satisfy to address impacts to special-status species under SWRCB Order WQ 2023-0102-DWQ Attachment A) and are proportionate to the environmental impact of commercial cannabis activity. DCC considers the Draft EIR mitigation measures feasible. Therefore, a significant and unavoidable determination for biological resources would not be appropriate. No edits are recommended to the Draft EIR.

Comment O2-18**“G. ALTERNATIVES CONSIDERED BUT NOT EVALUATED FURTHER**

While indisputably reducing potential impacts to resources as compared to the Proposed Project, neither of the considered Alternatives meet the Project Objectives. However, Mendocino County has a long history of illegal cannabis operations. The County currently maintains an estimated 3,850 unlicensed cultivation sites, which legalization has not been able to change. It would be naïve for the State to think that adoption of either of the considered Alternatives would result in less environmental impact than the Proposed Project, even with our recommended revisions.

Alternative 1: No Project Alternative.

Should allowable cannabis cultivation sites be limited to those currently in the licensure program (the 623 provisional licensees and 19 annual licensees), with no capacity for new provisional or annual licenses, this alternative would clearly leave a void that would be filled by illegal operators. This alternative would not allow licensees to relocate their operations. Resources would continue to be impacted.

It is important to note that Mendocino County’s Phase 3 permitting program for new licensees restricts cannabis operations to a small range of zoning districts, with medium & large indoor cultivation focused on Industrial districts, outdoor and mixed light cultivation focused on larger Rural Residential districts (5- and 10-acre zoning), Urban Residential districts (20- and 40-acre zoning) and Agricultural districts (40-acre zoning), with nursery licenses permissible in all aforementioned districts save 5-acre Rural Residential.

Alternative 2: Siting Limitation for Cannabis Cultivation Sites Alternative.

Limiting cannabis cultivation sites to areas outside the Cannabis Priority Watersheds designated by the State Water Resources Control Board does not guarantee cessation of illegal cannabis operations. As per the No Project Alternative, the void would be filled by illegal operators.”

Response O2-18

As identified in Draft EIR Chapter 5, “Alternatives,” CEQA requires the evaluation of a reasonable range of alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. State CEQA Guidelines, section 15126.6(e) requires the specific alternative of “no project” to be evaluated. The purpose of describing and analyzing a no-project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. Alternative 2 would restrict the licensing of new commercial cannabis cultivation sites and associated processing and distribution transport-only uses to land areas in the unincorporated area outside the Cannabis Priority Watersheds designated by SWRCB—Mattole River, Middle South Fork Eel River, East Fork Russian River, Headwaters Russian River, Navarro River, and Dry Creek watersheds—and that have reduced environmental impacts to biological resources and hydrology and water quality compared to the project. This alternative would not apply to the existing 623 provisionally licensed cultivation sites. The reader is also referred to the response to Comment O1-2.

Comment O2-19

“We look forward to the State’s careful consideration of our suggestions for how to most effectively achieve the Project’s Objectives, which we paraphrase are: to promote a robust and economically viable legal cannabis industry in Mendocino County, while minimizing the risks to public health and safety associated with unlicensed commercial cannabis activity; effectively

transitioning qualified existing provisional licenses to annual licenses through a streamlined process; providing a mechanism for future cannabis cultivation applicants to obtain licensure through a streamlined process; ensure that licensed cultivation is conducted in accordance with state and local laws; protects natural and built resources in the County; and minimizes potential adverse effects of cannabis cultivation on the environment.”

Response O2-19

This comment is noted. The reader is referred to the responses to Comments O2-2 through O2-18 that address these comments.

Letter O3 Emerald Law Group

Editte Lerman, Chief Executive Officer

June 24, 2024

Comment O3-1

“We write to express our significant concerns regarding the current California Environmental Quality Act (CEQA) Draft Environmental Impact Report (DEIR) for Mendocino County. It has come to our attention that the DEIR does not adequately consider the impacts on stakeholders like our clients, who are in the process of obtaining State and Local permits but have not yet secured Provisional or Annual licenses.”

Response O3-1

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis operation applications under consideration by DCC, consistent with the requirements of CEQA. The Draft EIR does not propose any alterations to the licensing and permitting process of DCC or Mendocino County. DCC plans to make full use of existing streamlining provided by CEQA, as well as emerging streamlining techniques that may become available later, as applicable. Individual applications for cannabis cultivation operations would be subject to further site-specific environmental review as applicable under CEQA in accordance with State CEQA Guidelines, section 15168(c), “Use with Later Activities.” This section of the guidelines addresses environmental review of projects intended to be addressed in a program for which an EIR was prepared. DCC may determine that the environmental impacts of an individual application are adequately addressed in the EIR and that no further environmental review is required. However, DCC may also determine that an additional focused environmental review is required for an individual applicant. Preparation of a site-specific environmental review document, such as a Negative Declaration or MND, would be required if DCC determines that the individual applicant’s operations would cause a significant environmental impact that was not examined in the EIR or would substantially increase the severity of a previously identified significant impact under State CEQA Guidelines, sections 15162 and 15168(c).

Comment O3-2

“Additionally, we are concerned for stakeholders who are in the process of attempting to obtain and/or maintain Annual and Provisional licenses. As well as those who have yet to apply for a license or commence cultivation but wish to do so. Mendocino County desperately needs an achievable path towards licensing. The fact that there has not been such a reasonably achievable path has hindered applications from ever getting submitted. The proscribed approach does not address or deal adequately with the vast illegal cultivation industry, which could be remedied with a reasonable, and achievable path to licensing. Instead, cultivators face impossible and nearly impossible hurdles for permits and compliance. Some of our clients

have had to sue for writ of mandate just to get an application processed on the county level. I do not believe a single Phase 3 permit was issued to date on either county or state level. This is unacceptable and way more detrimental than the negative implications of sensible overseable operations.”

Response O3-2

Concerns regarding perceived difficulty of licensing with DCC and Mendocino County are noted. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and does not address Mendocino County permitting processes under the MCCR. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment O3-3

“Farms and operators desperately want an opportunity to be compliant. Many have given up due to the lack of licensing opportunity and costs of compliance and as implied the DEIR may permanently make such a path impossible. Making what has been a nearly impossible path towards licensing now actually impossible. Setting up stringent complications forces growers back into the dark shadows of an illegal market that does not make law makers of its citizens better off.”

Response O3-3

Concerns regarding the perceived difficulty with licensing and associated costs are noted. The comment does not specify how the Draft EIR creates further difficulty in licensing. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and includes mitigation measures that are generally tied to compliance with existing commercial cannabis regulations under Division 10 of the Business and Professions Code; CCR, title 4, Division 19; SWRCB Order WQ 2023-0102-DWQ; and the MCCR. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment O3-4

“Those that have applied for both Local and state permits, but have neither, are not considered by the DEIR This failure to consider in DEIR's could have serious implications, including:

1. **Inequitable Treatment:** The failure to include permit applicants who have not yet received Provisional or Annual licenses creates an uneven playing field. Our client and others in similar positions are unfairly disadvantaged, as the DEIR does not recognize thDEIR potential contributions and impacts. Many of these farms have expensed considerable fees and costs to both state and local agencies and for operations. The DEIR does not address a path towards licensing for them other than considering them as brand new applicants, which they are not. Causing even more farms to die before they can even get started by further delaying operations from commencing.”

Response O3-4

Pursuant to Business and Professions Code section 26050.2, DCC may no longer issue provisional cannabis cultivation licenses. DCC may only accept annual cannabis cultivation license applications. The comment does not provide any details related to how the Draft EIR impact analysis results in inequitable treatment of cannabis cultivation license applicants. As described in the Draft EIR, on page 2-13, the Draft EIR impact analysis considers equally the 623 existing commercial cannabis cultivation sites, 23 of which have associated cannabis distribution transport-only operations, within the unincorporated areas of Mendocino County

that hold provisional state licenses and the development potential of up to 1,075 new commercial cultivation licenses, 10 new processing licenses, and 40 distribution transport-only licenses.

Comment O3-5

“2. Incomplete Impact Analysis: An DEIR that does not consider all relevant stakeholders cannot provide a comprehensive analysis of environmental impacts. By excluding those with pending permit applications, but no state annual or provisional license, the report risks failing to estimate the true scope of the project's environmental footprint. Additionally the report fails to consider the number of applications that have resigned due to the state and local failing to provide a path towards licensing and perhaps addressing providing these applicants and other new applicants once the process is properly streamlined and achievable. To date the number of applicants has been stagnant because it is universally known within the farming community that such an effort is futile. This is not adequately considered in the DEIR.”

Response O3-5

The reader is referred to the response to Comment O3-4 regarding consideration of all cannabis cultivation license applicants and the response to Comment O3-1 regarding environmental review streamlining opportunities associated with the EIR. As identified in the Draft EIR, on page 2-13, the estimate of new commercial cannabis cultivation uses is based on the license history for Mendocino County since the inception of the County's cannabis cultivation regulations. Draft EIR Table 3-1 provides future cannabis development assumptions evaluated in the impact analysis about development footprint, buildings, and employment. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to address market conditions associated with licensed commercial cannabis related to economic and regulatory issues, consistent with State CEQA Guidelines, section 15131(a).

Comment O3-6

“3. Regulatory Inconsistencies: State and Local regulatory frameworks should encourage businesses and individuals to comply with permit requirements. By not considering applicants in the permitting process, the DEIR undermines these regulatory efforts and may inadvertently discourage compliance. By not having a reasonable affordable path towards licensing for new applications the same would be true. Particularly in industrial and agricultural zoned properties where the county has encouraged people to invest in cultivation, not having a pathway towards success would be devastating and encourage a prolific black market.”

Response O3-6

The reader is referred to the response to Comment O3-5. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and includes mitigation measures that are generally tied to compliance with the existing commercial cannabis regulatory framework under Division 10 of the Business and Professions Code; CCR, title 4, Division 19; SWRCB Order WQ 2023-0102-DWQ; and the MCCR.

Comment O3-7

“4. Legal and Procedural Deficiencies: CEQA mandates thorough and inclusive environmental review processes. Excluding certain stakeholders from consideration may constitute a procedural flaw, potentially exposing the DEIR and the associated project to

legal challenges. Applicants who have submitted state and local permits but do not have provisional and annual have not been properly notified of these proceedings. Parties who have purchased property in compliant zones and have been awaiting applying have not been properly noticed of the effect implementing the suggestions in the DEIR could have on thDEIR property.”

Response O3-7

In accordance with CEQA and the State CEQA Guidelines, a NOP was released on August 2, 2023, posted on DCC’s website, and distributed to responsible agencies, interested parties and organizations, and private organizations and individuals who could have interest in the project. A virtual scoping meeting was held on August 22, 2023, via the WebEx online meeting platform and telephone conferencing. The purpose of the NOP was to provide notification that an EIR for the Licensing of Commercial Cannabis Cultivation in Mendocino County Project was being prepared and to solicit input on the scope and content of the document. The NOP and responses to the NOP are included in Appendix A of the Draft EIR.

The Notice of Availability (NOA) of the Draft EIR was released on May 3, 2024, posted on DCC’s website, and distributed to responsible agencies, interested parties and organizations, and private organizations and individuals who could have interest in the project as required under CEQA. Additionally, the NOA was advertised in the Mendocino Beacon, Fort Bragg Advocate, Ukiah Daily Journal, and The Willits News newspapers. The NOA was also posted at the Mendocino County Clerk. Virtual public meetings were held on June 4, 2024, and June 20, 2024, to solicit input on the adequacy of the Draft EIR.

Thus, consistent with CEQA and the State CEQA Guidelines, DCC has provided adequate notice and numerous opportunities for the public to provide input in the EIR process to date.

Comment O3-8

“We respectfully request that the DEIR be revised to include and adequately assess the impacts on all stakeholders, including those with pending State and Local permit applications. This adjustment is not only fair but necessary to ensure the DEIR meets CEQA’s rigorous standards for comprehensive environmental review. We do not wish to delay the proceedings and a path towards approval for Provisionals and organizations applying for Annual should happen forthwith and without delay. A common sense approach and applicable exemptions should be considered to be effective immediately to allow for temporary operations while these complicated environmental considerations are finalized.”

Response O3-8

The reader is referred to the response to Comment O3-7. The comment provides no technical information identifying an adequacy issue with the Draft EIR. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC consistent with the requirements of CEQA. Recirculation of the Draft EIR is not recommended.

Comment O3-9

“Perhaps having an interim path towards licensing or having a phased approach towards licensing for New and Pending Annual permits will allow operations to commence as many provisionals have done. Allowing this with an interim compliance requirement and provisional period to exclude environmental disturbances could allow farms to operate. Economic necessity for both the county and the state as well as the operator exist and encourage temporary operations for all applicants. There should be a probationary period for operations rather than a preclusion. This would stimulate the local economy and allow for business

continuity and growth through a cooperative encouraging process. It would further allow operators to avoid economic hardships that come with the delay of operations. This could have significant financial impact to the county and for jobs in our county. There are investment opportunities that could be brought into Mendocino County that are not happening because licensing is stagnant and there is no path towards licensing for new businesses. As partially proposed this DEIR further perpetuates this negative economic impact on the county. This negatively impacts the community as it impacts the economy in a negative fashion. The vast amount of public support for restrictions come from individuals not involved in the legal industry. Many of the complaints are not about licensed operations, but rather merge illegal operations and legal operations into one negative category, and should not be considered.”

Response O3-9

This comment is noted. The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to address market conditions associated with licensed commercial cannabis related to economic and regulatory issues as provided in State CEQA Guidelines, section 15131(a). Recirculation of the Draft EIR is not recommended.

Comment O3-10

“If mitigation measures and robust interim mitigation measures are put in place it is possible to minimize any potential environmental impacts during the temporary operations period. Additionally, there can and is monitoring and reporting requirements that can and are in place that can mitigate any environmental impact.”

Response O3-10

The reader is referred to the response to Comment O3-9. Approval of the project evaluated in the Draft EIR would require the adoption of a mitigation monitoring and reporting program that specifies how mitigation measures are implemented as part of license issuances as required under State CEQA Guidelines, section 15097.

Comment O3-11

“We would appreciate any opportunity possible to discuss our concerns in greater detail and explore possible solutions. Our goal is to ensure that the DEIR is robust, inclusive, and equitable for all affected parties and implemented in as timely a fashion as possible recognizing the stakeholders need for this to happen immediately. As well as recognizing the stakeholders' need for temporary emergency orders to immediately take effect so that businesses can start and continue to operate.”

Response O3-11

No comments regarding the adequacy of the Draft have been provided. However, the request to further discuss concerns is noted. DCC welcomes inquiries related to the state commercial cannabis licensure process and may be reached via email at licensing@cannabis.ca.gov.

Letter O4 Neighborhood Coalition

Nancy and Brantly Richardson, Communication Directors
No Date

Comment O4-1

“The EIR points out many of the significant, non-mitigatable harm from Odor, yet the draft ordinance does not incorporate these findings into sound, defensible policies. Specifically, the setback distances being proposed are inadequate to protect neighboring properties and their

residences from odor as well as other impacts of having a high-risk commercial operation near residences.

The EIR (page 8) acknowledges the odor problem: “Given that detection of cannabis odors cannot be completely eliminated for expansion of existing provisionally licensed and new licensed outdoor and mixed-light commercial cannabis cultivation sites not contained within buildings or greenhouses, **this impact is significant and unavoidable**”.

The EIR (Page 158) outlines Impact # 3.3-3: “Expose a Substantial Number of People to Odors Considered Objectionable and That Have Adverse Effects: The cultivation, processing, and distribution of cannabis by existing provisionally licensed, potentially expanded of existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. **This impact would be significant and unavoidable**”

Response O4-1

As identified in Draft EIR Chapter 2, “Project Description,” the project consists of DCC potential actions to transition some or all 623 provisional licenses to annual licenses (i.e., whether to issue annual licenses to some or all of these provisional licensees) under the state’s commercial cannabis licensing regulations. DCC may also consider other annual licensing actions (e.g., the issuance of new, additional annual cultivation licenses) for future commercial cannabis cultivation within the unincorporated areas of Mendocino County. As described in Draft EIR Section 3.3, commercial cannabis cultivators would be required to meet the County’s odor control standards established in sections 10A.17.040(C) and 10A.17.070(P) of the MCCR. The project does not include an evaluation of the MCCR or amendments to the MCCR. Moreover, the DCC does not have the jurisdiction to alter the MCCR.

Comment O4-2

“The Cannabis Odor Research outlined in the EIR (Page 150+), provides four important points: 1) Cannabis includes **terpenes**, especially myrcene, 2) cannabis compounds have been **detected at 1 to 2 miles distances** (Nevada County 2019 study and Kern County 2017 study), 3) cannabis odors have **not been researched enough** to truly know the health concerns for off-property residential receptors or systemic effects of inhalation of the volatile compounds and 4) Mendocino Code Enforcement has **received odor complaints**.

Ordinance Section 20.242.070 covering the approval of permits for cultivation sites based on the following special findings: Section (C) (3) “The cannabis cultivation **will avoid or minimize odor** and light impact **on residential uses**.”

The draft Ordinance (also referenced in the EIR) acknowledges that limitations are required:

Section 10A.17.040 of the MCCR outlines general limitations of cannabis cultivation operations:

“They include but are not limited to: 1) Location near youth facilities, schools, or parks; 2) Required setbacks from neighboring uses; 3) Emission of objectionable odors;”

“(C) The outdoor, indoor or mixed light cultivation of cannabis **shall not propagate objectionable odors** which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger **the comfort, repose, health, or safety** of any of those persons or the public.”

State law is clear, MAUCRSA § 26011.5 provides:

“The protection of the public shall be the highest priority for the department in exercising licensing, regulatory, and disciplinary functions under this division. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” State nuisance law is also clear: a nuisance as defined in Civil Code § 3479 provides a single property owner with the legal right to sue a neighbor or governing authorities for creating and maintaining a nuisance.

Nuisance is defined in § 3479 of the California Civil Code as (emphasis added): “Anything which is ***injurious to health***, including, but not limited to, the illegal sale of controlled substances, or *is* indecent or ***offensive to the senses***, or an *obstruction to the free use of property*, so as **to interfere with the comfortable enjoyment of life or property**, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.””

Response O4-2

As identified in the response to Comment O4-1, while the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. DCC does not have the jurisdiction to alter the MCCR. It is important to note that the Draft EIR does not conclude that there is not enough research to determine whether cannabis odors present a public health concern. Draft EIR, page 3.3-13 states the following regarding odors and public health:

A review of recent scientific publications identified no studies that evaluated the health effects associated with exposure to cannabis odors. An evidence brief prepared by Public Health Ontario (Public Health Ontario 2018) states that “most substances responsible for odors in the outdoor air are not present at levels that can cause long-term health effects. However, exposure to unpleasant odors may affect an individual’s quality of life and sense of well-being.” This statement was made in reference to odors in general and not cannabis odors in particular. The City of Denver prepared a Cannabis Environmental Best Management Practices document (City of Denver 2018), which states that “the rate of VOC [volatile organic compound] emissions from cannabis cultivation facilities is relatively unknown.... [T]hese VOCs from the cannabis industry typically do not pose a direct threat to human health.” Although research is limited, it is anticipated that the concentration of cannabis odors is not significant enough to create a public health concern for off-property residential receptors.

Comment O4-3

“Finally, the Draft Ordinance proposes setbacks to address these issues which are inconsistent with the EIR and inconsistent with protecting the health and safety of nearby residences:

Section 10A.17.040 General Limitations on Cultivation of Cannabis

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

(A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:

- (1) Within one thousand **(1,000) feet of a youth-oriented facility, a school, or a park** as defined herein that is in existence at the time a CCBL is initially applied for.
- (2) Outdoors or using mixed light within one hundred **(100) feet of any occupied legal residential structure** located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all CCBL applications but shall not apply to renewals of CCBL's originally issued before that date.
- (5) Outdoors or using mixed light within fifty **(50) feet from any adjoining legal parcel** under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all CCBL app”

Response O4-3

The reader is referred to the responses to Comments O4-1 and O4-2. While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. DCC does not have the jurisdiction to alter the MCCR.

Comment O4-4

“**First**, the EIR acknowledges cannabis contains beta-myrcene. Yet it does not point out that this is Prop 65 carcinogen component! We trust this is just an oversight and that it will now be acknowledged as significant risk to both the workers and the nearby residences. Inhalation of volatile carcinogens results in much higher levels throughout the body than from ingestion.”

Response O4-4

The comment is correct that cannabis odors are attributed to terpenes that include beta-myrcene. It is also correct that beta-myrcene is listed as a chemical that causes cancer under Proposition 65. This listing was based on the use of beta-myrcene as a refined component in essential oils to produce aroma and flavor chemicals; as a flavoring agent in food and beverages; and as a fragrance in cosmetics, soaps, and detergents. (Office of Environmental Health Hazard Assessment 2012.) This differs from the natural occurrence and associated concentration of beta-myrcene in cannabis that generates detectable odors near harvest. Buildings in which cannabis is grown (mixed-light and indoor) are required to be equipped with filtered ventilation systems, pursuant to MCCR section 10A.17.070(P). Odors from these facilities can be controlled through the use of active carbon filters, biofilters, plasma ion technology, air filters, and other manufactured odor control/masking substances (e.g., gels and sprays designed to mask odors), consistent with the odor-control performance standards of MCCR section 10A.17.040(C). Impact from outdoor exposure to concentrated cannabis odors near harvest is limited because cannabis odor dissipates over distance and may also be affected by intervening conditions, such as vegetation, topography, meteorological, and wind patterns.

As set forth in CCR, title 27, section 25501, human consumption of a food shall not constitute an “exposure” for purposes of section 25249.6 of the Safe Drinking Water and Toxic Enforcement Act to a listed chemical in food to the extent that the person responsible for the exposure can show that the chemical is naturally occurring in the food. No technical information was provided in the comment to substantiate a public health impact from cannabis odor exposure may occur. Thus, no public health impacts are expected from occasional exposure to cannabis odors.

Comment O4-5

“**Second**, the EIR acknowledges the long distances cannabis chemicals can travel, up to 2 miles in some conditions, yet establishes setbacks at ridiculously shorter distances. 100 ft from residential structures can not protect the “health and safety” of a family from exposure to a carcinogen and certainly can’t allow them to “comfortably” enjoy their property as required by Section 10A.17.040(c) of the MCCR.”

Response O4-5

The reader is referred to the response to Comment O4-4 regarding public health concerns. Page 3.3-20 of the Draft EIR does recognize that while the odor control standards in the MCCR would minimize odor impacts, cannabis odors may not be completely eliminated in all circumstances and may be recognizable or detectable up to approximately 2 miles, depending on topography and meteorology.

Comment O4-6

“**Third**, Section 10A.17.040 General Limitations on Cultivation of Cannabis, apply inconsistent protections to families based on where they happen to be. The ordinance provides at least reasonable protections of 1,000 feet when children and families are at school or at parks. Yet when these same people are at their homes, where they spend substantially more time, they get significantly less protection of only 100 ft. This makes no sense. 100 ft is no protection at all.

Fourth, Section 20.242.060 “New cannabis cultivation sites”, includes item (d) which allows for reductions in setback requirements under certain conditions but does not include a similar provision for conditions when setback should be increased. For example, areas that have become primarily residential in nature need increased setbacks. And any setback distance should be considered a minimum distance but not necessarily the right adequate distance. Such language should be incorporated into the Ordinance to allow the residents and County officials to intervene when necessary.

Fifth, the stated goal of Section 20.242.070 (C) (3) “The cannabis cultivation will avoid or minimize odor and light impact on residential uses” cannot be met at 100-feet.”

Response O4-6

This comment is noted. While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. Draft EIR Impact 3.3-3 concludes that impacts from exposure to objectionable odors from cannabis cultivation uses not contained within buildings or greenhouses would be significant and unavoidable.

Comment O4-7

“Residents in their homes should not be subjected to a foul stench that includes the carcinogen Beta-Myrcene. See “[‘Dead Skunk’ Stench From Marijuana Farms Outrages Californians](#),” New York Times (Dec. 22, 2018); and “[What’s it Like to Live 100 feet from 15,000 Cannabis Plants?](#)” (North Bay Biz, Dec. 4, 2020). The ordinance must require odor from both indoor and outdoor cultivations be sufficiently controlled so as not to pass the parcel boundary. Quantitative, real-time measuring of odor and carcinogens at neighboring parcel lines must be required to demonstrate compliance. We do not believe that residents should be forced to smell cannabis and inhale carcinogens in their homes.” We cannot fathom how the DCC or County of Mendocino could hold a different view.

The rural residents of Mendocino County should not have to put up with foul odors because this is a rural agricultural county. The comparison to odors from animals such as poultry and cows is inapt.”

Response O4-7

This comment is noted. While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. The reader is referred to the response to Comment O4-4 regarding health effects and the response to Comment O4-6 regarding the significant and unavoidable impact conclusion of the Draft EIR regarding odors.

Comment O4-8

“The odors from livestock such as chickens, ducks, and cows are ammonia, hydrogen sulfide, methane, and carbon dioxide.¹ None of these are classified by the State of California as a carcinogen.

¹ Wikipedia, [Manure Management](#).”

Response O4-8

This comment is noted. The reader is referred to the response to Comment O4-4 regarding health effects regarding cannabis odors.

Comment O4-9

“While the proposed cannabis ordinance states that indoor building and greenhouse cultivations must use Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism, it completely fails to require quantitative measurements of odors; it fails to require that filters be properly maintained; and it fails to require odors from indoor and mixed light cultivations be confined to the premises. These measures and protections must be added to the proposed ordinance. For example, one can simply look at the situation in Santa Barbara County, where the odor control measures used by indoor/greenhouse grows were inadequate to protect neighbors, forcing the county back to the drawing board to look at new odor-control requirements. Finally, the current proposed cannabis ordinance is silent on controlling odor from outdoor cultivation. This must be analyzed and appropriate controls including larger setbacks with quantitative monitoring established to have a valid EIR ordinance.”

Response O4-9

While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. Cannabis odor control for buildings through the use of filtration is an effective method of providing odor control. (Trinity Consultants 2019.) MCCR section 10A.17.160 provides for enforcement of licensed commercial cannabis cultivation premises that fail to comply with the odor control performance standards, which could include an administrative process to achieve code compliance or available civil remedies, such as injunctive relief. This project does not include evaluation of the MCCR or amendments to the MCCR.

Comment O4-10

“Proposed Setbacks are Insufficient to Mitigate Problems.

In addition to the need to increase the setbacks specified in the proposed ordinance, the permitting process must include quantitative testing for terpenes (with specified accepted testing methods), such that levels at parcel line are below limit of human detection (10-20 PPB).

Mendocino County has several years of cultivation experiences, including significant lack of compatibility between cannabis operations and sensitive receptors (including residences). Those experiences make it is obvious that 100 feet is insufficient to protect neighboring residents from noxious odors in their yards and homes. Many factors influence odor impacts on neighboring parcels including local topography, wind, and weather conditions affecting distance odor travels, as well as the strain of marijuana being cultivated. There are many documented instances of homes 2,500 feet, 1 mile, 2 miles from a cultivation site being subjected to noxious odors. The permitting process must include a mechanism to determine safe and healthy distances for neighboring residents, and each outdoor permit should include mandatory cannabis odor compliance monitoring and abatement procedures. Each permit must include prompt and effective revocation provisions if the permit setbacks prove to be insufficient and cannot be increased to contain odors to the cultivation property.”

Response O4-10

This comment is noted. While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. As noted in the response to Comment O4-9, the MCCR does include enforcement provisions for cannabis cultivation sites not complying with the requirements of the MCCR. Compliance with MCCR sections 10A.17.040(C), 10A.17.070(P), 10A.17.160, 20.240.070(C), and 20.240.070(D) would provide measures to address and minimize odor impacts, as well as corrective actions for licensed commercial cannabis cultivation sites that routinely generate nuisance odor impacts off-site. However, it is possible that nuisance odor impacts would occur occasionally before abatement for the expansion of existing provisionally licensed and new licensed outdoor and mixed-light commercial cannabis cultivation sites not contained within buildings or greenhouses. There are no feasible mitigation measures for completely avoiding the potential for occasional odor nuisance impacts because there is no reliable method to contain odors on-site under all atmospheric conditions during harvest season. There are no effective mitigation measures to ensure elimination of all cannabis odors. Thus, the Draft EIR determined odor impacts to be significant and unavoidable.

Comment O4-11

“Health and Safety Protections clause should be honored

Section 10A.17.010- Title, Purpose and Intent, states (emphasis added):

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis within the unincorporated areas of Mendocino County in a manner that is consistent with State law and **which promotes the health, safety, and general welfare of the residents** and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, **the needs of neighbors and communities to be protected from public safety and nuisance impacts**, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

The overall guiding intention stated in the ordinance is the health and general welfare of the all the residents of the county, not just the benefits for a few business owners. We urge the DCC and County to strengthen the operational provisions of the Ordinance to assure this overall goal of the health and safety will be achieved.

Thank you for considering and addressing our concerns.”

Response O4-11

This comment is noted. While the Draft EIR describes the existing regulatory framework, including applicable Mendocino County ordinances under the MCCR, this project consists of potential licensing actions by DCC. DCC does not have the jurisdiction to alter the MCCR.

2.3.3 Individuals

Letter I1 Chantal Simonpietri

May 8, 2024

Comment I1-1

“I’m curious if there is a table of the Mitigation measures, apart from what is included in the executive summary?

Something that tables: Impact with identifier number and description, mitigation measure with number and short description, significance after mitigation.

Also, where is the term expansion defined?”

Response I1-1

According to State CEQA Guidelines, section 15097, a mitigation monitoring or reporting program will be prepared and released alongside the Final EIR. Additionally, the term “expansion” is defined by Mendocino County in section 10A.17.020 of the MCCR. The Draft EIR focuses on proposed expansions of existing licensed cannabis cultivation sites that would trigger a new license type.

Letter I2 Evan Mills

June 4, 2024

Comment I2-1

“Thank you for the opportunity to review and provide feedback on this important document. Please take the following comments in the constructive spirit in which they’re offered. It is my hope that they help you improve this document and achieve clear, accurate communication with stakeholders.”

Response I2-1

The comment is introductory in nature and does not address the adequacy of the Draft EIR.

Comment I2-2

“At the highest level, my concerns relate to structural problems with the boundary conditions of the analysis, i.e. what is and isn’t considered. It appears that a number of important emissions sources have been overlooked, along with frequent injection of statements about homes or conventional commercial buildings that are not relevant to the situation with cannabis production and could thus easily be inadvertently misleading. It is unfortunate not to see

references to the rather extensive peer-reviewed literature as well as many excellent reports. Implausible energy use and solid-waste-production assumptions underlying the model-based analysis appear 20- to 30-times lower than indicated in the literature for indoor facilities based on measured data from actual cannabis cultivation facilities as well as other model-based studies. The energy use estimates for outdoor production are 10- to 15-times higher than reported elsewhere. The model thus appears to be unvalidated as to whether it reflects real-world conditions.”

Response I2-2

The comment does not provide a citation for the literature identified in the comment. The Draft EIR provides estimates of the potential emissions associated with indoor and outdoor cultivation using assumptions made in the California Emissions Estimator Model Program (CalEEMod) Version 2022.1. CalEEMod is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, such as DCC, to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects. The assumptions are based on information and data from existing licensed cannabis cultivation sites within Mendocino County (Draft EIR Table 3-1) and default values provided in CalEEMod. The default values within CalEEMod consider data provided by the various California Air Districts to account for local requirements and conditions. Where available, project-specific information was input into CalEEMod in conjunction with default values for construction and operational equipment usage, solid-waste generation, and energy consumption. Because the comment does not provide a citation for the referenced literature, DCC cannot verify the claims made in the comment; no additional response is required.

Comment I2-3

“I imagine that largely similar EIRs are, have been, or will be issued for all other counties in the state. As it would be burdensome to review those, I intend these comments to pertain to identical or analogous parts of those documents.”

Response I2-3

The comment is introductory in nature and does not address the adequacy of the Draft EIR. However, it should be noted that this project is the proposed licensing actions by DCC in Mendocino County and is not associated with any other DCC licensing actions.

Comment I2-4

“System Boundary Issues

Following are general questions and concerns about sources of emissions not included or perhaps not correctly included in the assessment. Some are discussed further in the page-specific notes.”

Response I2-4

The comment is introductory in nature and does not address the adequacy of the Draft EIR.

Comment I2-5

- *Energy uses.* It would be quite helpful to have a clear diagram indicating which uses of energy (and other sources of emissions) are included in the analysis. Within the energy sphere, peripheral energy uses often excluded are curing, processing, refrigerated storage, water purification/recovery, associated non-cultivation spaces (offices), etc. Energy uses. It

would be quite helpful to have a clear diagram indicating which uses of energy (and other sources of emissions) are included in the analysis. Within the energy sphere, peripheral energy uses often excluded are curing, processing, refrigerated storage, water purification/recovery, associated non-cultivation spaces (offices), etc.”

Response I2-5

The modeling prepared for the Draft EIR includes emissions estimates from outdoor, mixed-light, indoor, and nursery cultivation types. The emissions of criteria air pollutants and GHGs associated with energy use for these cultivation types are derived from natural gas or propane usage, which was assumed to occur only within mixed-light, indoor, and nursery cultivation types because these categories of cannabis cultivation could require the use of gas-powered appliances, such as heating, ventilation, and air condition (HVAC) units. GHG emissions related to electricity demand for outdoor, mixed-light, indoor, and nursery cultivation types were also estimated according to the projected electricity usage for each cultivation type. These associated emissions are based on the energy source mix of Pacific Gas and Electric Company (PG&E) available in CalEEMod, scaled to align with the requirements of the Renewable Portfolio Standard. These emissions are disclosed in Draft EIR Tables 3.3-4 and 3.8-2.

Comment I2-6

“● *Non-cultivation processes in these facilities.* Many cannabis cultivation operations also house extraction and processing activities. Extraction is often done with solvents that have unique environmental profiles and impacts, and should be included in the analysis.”

Response I2-6

The comment does not provide specifics regarding the solvents identified, nor does the comment identify the “unique” environmental profile or impact associated with these solvents. The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. Noncultivation cannabis uses are outside the scope of this project and EIR. Notably, Business and Professions Code section 26001(n) defines cultivation as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis,” and does not contemplate the use of solvents during cultivation activities. Because the comment does not provide a citation for the referred solvents or impacts associated with cultivation operations, DCC cannot verify the claims made in the comment, and no additional response is required.

Comment I2-7

“● *Forest carbon displacement.* Analysis for coastal forests suggests carbon releases resulting from replacing young forest with outdoor cannabis cultivation equal up to 65% of one year’s carbon emissions from the cannabis cultivation, i.e. a significant adder.”

Response I2-7

The analysis provided in the Draft EIR is intended to be programmatic in nature. The specific locations of new outdoor cannabis cultivation sites are unknown at this time; rather, the Draft EIR makes a good faith effort to disclose the potential emissions and environmental impacts of future licensed commercial cannabis cultivation sites. While it is foreseeable that an outdoor cannabis cultivation site could result in the loss of carbon sequestration potential of an existing forested area, the exact emissions associated with that loss cannot be estimated and are

considered speculative at this programmatic stage of environmental review. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-8

- “• *Landfill emissions.* It appears that these may be omitted because the county has transfer stations but no official landfills. If so, it seems to be skirting the issue to not count associated methane emissions, or to take credit for carbon sequestration. Clarify.”

Response I2-8

The Draft EIR provides GHG emissions estimates in Table 3.8-2. The emissions associated with solid waste disposal are included in the total emissions estimates presented in Table 3.8-2 by cannabis cultivation type and can be found in Appendix C of the Draft EIR. Fugitive methane emissions from solid waste disposal at landfills are translated into metric tons of carbon dioxide equivalent using the global warming potential for methane in the Intergovernmental Panel on Climate Change’s Fourth Assessment Report; are summed alongside emissions from the energy, mobile, wastewater, and area source sectors; and are accounted for in the emissions modeling prepared for the Draft EIR. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-9

- “• *Trucking emissions.* It appears that only passenger-car and perhaps light truck emissions are included in the analysis. For 71 geographic locations in California evaluated by Summers et al. (2021), trucking represents an 8.4% to 18.9% addition to the direct emissions from energy in cannabis-warehouse facilities (and a far larger fraction for mixed-light or outdoor operations).”

Response I2-9

The modeling prepared for the Draft EIR utilizes the fleet mix provided in CalEEMod for Mendocino County. The fleet mix includes passenger and light-duty trucks, as well as heavy-duty trucks. Therefore, the emissions estimates provided in the Draft EIR include a variety of on-road vehicles associated with the operation of the cannabis cultivation types identified for the project. The analysis in the Draft EIR is programmatic in nature, and the specific number of heavy-duty truck trips for a future licensed commercial cannabis cultivation site is considered speculative at this programmatic stage. As identified in Draft EIR Chapter 2, “Project Description,” and Section 3.0, “Approach to Environmental Analysis,” cannabis cultivation in Mendocino County is rural in nature and consists primarily of outdoor and mixed-light cultivation practices. Draft EIR Appendix B identifies that there are currently only five indoor cannabis cultivation operations that consist of 500 to 5,000 square feet of cannabis canopy. Draft EIR Table 3-1 estimates that in 20 years, the number of indoor cannabis cultivation operations may grow to a total of 11 sites (approximately 1 percent of all commercial cannabis cultivation sites). The MCCR restricts the size of indoor cannabis cultivation sites to 10,000 square feet of cannabis canopy; indoor cannabis cultivation operations of this size are not comparable to indoor cannabis cultivation in warehouse facilities with heavy-duty trucking usage. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-10

- “• *Fugitive HFC emissions.* To ensure accuracy and realism, the report’s stipulated values seem inexplicably low and should be compared to actual data (Canopy Growth 2022).”

Response I2-10

The analysis prepared for the Draft EIR includes emissions from the use of refrigerants R-134a and R-410A, which would be needed to operate refrigerators and freezers, as well as to power commercial HVAC units and heat pumps. These emissions are disclosed for outdoor, indoor, mixed-light, and nursery cultivation types according to an assumed average square footage for future licensed commercial cannabis sites. The emissions are intended to be programmatic using the data from existing cannabis cultivation site operations in Mendocino County and other similar counties that are rural in nature. The exact size and scale of appliances requiring the use of hydrofluorocarbons (HFCs) per cultivation type is speculative at this programmatic stage. As described in the response to Comment I2-9, Mendocino County licensed indoor cannabis cultivation operations are small in number and in size and may not require the extensive use of commercial HVAC units and heat pumps. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-11

“• *Zero Net Energy scenarios.* The report alludes repeatedly to the potential for solar energy to power cannabis facilities. In practice, this would require vastly increased land area at the cultivation location (perhaps 20-times the canopy area) (Mills and Zeramby 2022), and thus those environmental impacts related to markedly expanded land use should logically be included in this report.”

Response I2-11

The comment refers to a 2022 technical study prepared by Mills and Zeramby titled “Energy Use by the Indoor Cannabis Industry: Inconvenient Truths for Producers, Policymakers, and Consumers.” As described in the response to Comment I2-9, Mendocino County licensed indoor cannabis cultivation operations are small in number and size. The majority of commercial cannabis cultivation sites in the County are outdoor and mixed-light cultivation (mixed-light cultivation in Mendocino County often does not utilize permanent buildings)—license types that have substantially less electric demand than indoor cultivation. Draft EIR Table 3-1 estimates the total land area anticipated to be disturbed by future new cannabis cultivation site development, which includes all activities that support cannabis cultivation operations (e.g., solar power, water supply, storage) and consists of approximately 873 acres. This land disturbance was factored into the Draft EIR impact analysis. Mitigation Measure 3.8-1 provides options for future licensed commercial cannabis cultivation sites to reduce GHG emissions. These include implementation of the voluntary Tier 2 requirements of the CALGreen Code as it pertains to EV charging, exceeding the mandatory energy efficiency requirements of the California Energy Code, using low-flow and Energy Star–certified appliances, and designing buildings to be zero net energy. The emissions reductions associated with this suite of measures are not estimated in the Draft EIR because Mitigation Measure 3.8-1 is intended to be implemented according to project-specific information, which is unavailable at this programmatic stage. Although it is foreseeable that application of Mitigation Measure 3.8-1 would be sufficient to reduce the impact to a less-than-significant level, the specific project design features may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis cultivation sites. Because of these uncertainties, cumulative climate change impacts were determined to be significant and unavoidable. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-12

- Indoor environment. Unless legally precluded from the scope of EIRs, indoor environmental pollution should also be evaluated. Cannabis workers (predominantly lower-income and non-white, and thus relevant to this document's efforts to address equity and justice issues) are exposed to a wide range of workplace safety issues (see CalOSHA list: <https://www.dir.ca.gov/dosh/cannabis-industry-health-and-safety.html>), many of which are certainly "environmental", including biogenic VOCs from the plants and non-biogenic VOCs from extraction processes, pesticides, fungicides, etc. See, for example, Samburova et al. (2019) and Wang et al. (2020). Even if not a requirement for EIRs, it is hoped that the State recognizes and considers these factors in assessments of the implications of cannabis policy choices for human health and environment."

Response I2-12

The air quality analysis prepared for the project does not include an analysis of indoor air quality. CEQA does not require that a project look at the environmental impacts of a project on itself. Moreover, the notion that the project would result in significant impacts on indoor air quality on future cannabis workers is based on pure speculation and assumption regarding project construction and materials, health-risk modeling of off-gases, how much ventilation there will be in enclosed areas, and application of an unspecified significance threshold. It is unknown at this time what combination of the aforementioned project-level parameters may be in place that could contribute to degraded indoor air quality; therefore, the Draft EIR does not attempt to estimate concentrations of indoor air pollution as doing so would be considered speculative. CEQA does not require speculation as provided in State CEQA Guidelines section 15145. (See *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*) [where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences].)

The commenter states that workers would incur health effects associated with exposure to dangerous levels of volatile organic compounds (VOCs) (a precursor emission to ground-level ozone) for which Mendocino County is in attainment for the California Ambient Air Quality Standards (CAAQS) and National Ambient Air Quality Standards (NAAQS). As determined by the California Supreme Court in *California Building Industry Association v. Bay Area Air Quality Management District (BAAQMD)* (2015) 62 Cal.4th 369, CEQA reviews the impacts of a project on the environment rather than the effects of the environment on the residents or users of a project. The Court held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project's* impact on the environment—and not the *environment's* impact on the project—that compels an evaluation of how future residents or users could be affected by exacerbated conditions" (*Id.* at p. 377, original italics.) Because Mendocino County is already in attainment for ozone with respect to the NAAQS and CAAQS, the addition of VOCs from project implementation, which are below the applicable thresholds of significance, would not result in the exacerbation of an existing adverse environmental condition. As discussed in the Draft EIR, on page 3.2-15, pesticides used on commercial cannabis cultivation sites are restricted to those with active ingredients that are exempt from residue tolerance requirements and either exempt from registration requirements or registered for a use that is broad enough to include use on commercial cannabis cultivation sites. Some of these pesticides are bacterial-based insect pathogens

(e.g., *Bacillus thuringiensis*) or biofungicides (e.g., *Bacillus subtilis*, *Gliocladium virens*). Active ingredients exempt from registration requirements are mostly food-grade essential oils, such as peppermint oil or rosemary oil. The reader is referred to the response to Comment I2-6 regarding extraction operations in Mendocino County and the response to Comment O4-4 regarding public health and odor impacts.

Comment I2-13

“Page ES-3. The statement:

“Impact 3.8-1: Conflict with an Applicable Plan, Policy, or Regulation Adopted for the Purpose of Reducing the Emissions of Greenhouse Gases” “This impact would be significant and unavoidable (Impact 3.8-1) and cumulatively considerable and significant and unavoidable (CUM-8)”: [emphasis added]

is not defensible if applied equally to all four cultivation practices you define in Appendix C (outdoor, mixed-light, indoor, and nursery). While the impacts are indeed significant, those of indoor and mixed-light facilities are also avoidable in large part by outdoor cultivation. The report should explain why limiting further expansion of this industry to outdoor cultivation as a means to capture enormous environmental benefits is not a viable policy pathway.”

Response I2-13

The reader is referred to the response to Comment I2-11. The project’s potential contribution to climate change is estimated according to the proposed additional cultivation licenses based on cultivation type. These include a variety of cultivation types: indoor, outdoor, mixed-light, and nursery. The emissions estimates presented in Draft EIR Section 3.8, “Greenhouse Gas Emissions and Climate Change,” are based on the cannabis cultivation license types for outdoor, mixed-light, and indoor allowed by Mendocino County under the MCCR and licensed by DCC. As identified in Draft EIR Chapter 2, “Project Description,” the largest commercial cannabis cultivation use allowed by Mendocino County is nursery, with a maximum cannabis canopy of 22,000 square feet. DCC does not have the jurisdiction to alter the range of commercial cannabis cultivation types allowed by Mendocino County under the MCCR. Mitigation Measure 3.8-1 is intended to be applied at the project level and could be implemented for all cultivation types after a project-specific feasibility assessment. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-14

Pages ES-3 and ES-39. I would suggest that some of the mitigation measures proposed for Impact 3.8-1 are not applicable, or are based on flawed reasoning.”

Response I2-14

The comment is introductory in nature. The reader is referred to the responses to Comments I2-15 through I2-21.

Comment I2-15

“• *Prohibit on-site natural gas or propane use:* Per note below on zero net energy, even all-electric buildings cannot be consistent with state goals given grid-based emissions.”

Response I2-15

The California Air Resources Board (CARB) identifies building decarbonization (i.e., fully electric development) as a compliance pathway for local jurisdictions to demonstrate

consistency with long-term statewide GHG targets (i.e., carbon neutrality and an 85-percent reduction from a statewide 1990 GHG inventory by 2045 as mandated by Assembly Bill (AB) 1279). While it is true that all-electric development, at the time of the writing of the Final EIR, would result in indirect emissions of GHG emissions if sourced from a utility that is not yet fully reliant on renewable energy, this policy to decarbonize development is intended to result in an overall decrease in total GHG emissions throughout the state over time as the electrical grid becomes increasingly more renewable to comply with the requirements of the Renewables Portfolio Standard (RPS) and SB 100 (Statutes of 2018 [requiring 100 percent of retail sales to be renewable by 2045]). The decarbonization of buildings is a direct investment for the transition of a fully electric building sector, which would, eventually be powered by 100-percent renewable sources as the requirements of the RPS and SB 100 continue to become more stringent. It is acknowledged that this provision of Draft EIR Mitigation Measure 3.8-1 may not be feasible in all circumstances and would not fully mitigate GHG emission impacts. This acknowledgment is based on the rural land use conditions of the County and the lack of access to the electric grid or adequate sunlight for solar power due to topography or forest conditions. The reader is referred to the response to Comment O2-16 regarding edits to this mitigation measure.

Comment I2-16

“• *Implement Tier 2 requirements for CALGreen EV charging standards:* These appear to apply only to passenger cars, whereas (per Summers et al. 2021) most vehicle emissions associated with cannabis cultivation arise from heavy trucking. For example, in the assessment for Long Beach, CA by Summers et al. (2012) trucking is responsible for 18% as much emissions as the facility itself.”

Response I2-16

The comment is correct that the EV charging requirements of Mitigation Measure 3.8-1 would apply to automobiles and light-duty trucks. This requirement was derived according to direction provided by CARB in Appendix D of the *2022 Scoping Plan to Achieve Carbon Neutrality* (2022 Scoping Plan), which directs local jurisdictions to require compliance with the Tier 2 voluntary standards of the CALGreen Code as it pertains to EV charging. CARB oversees regulations related to emissions from heavy-duty vehicles, including the Advanced Clean Fleets and Advanced Clean Trucks regulations. These regulations would reduce emissions from heavy-duty vehicles through improved fuel efficiency controlled through sales requirements for future benchmark years. Future cultivation operations would be required to comply with the provisions of these regulations depending on fleet size. The approach taken in Mitigation Measure 3.8-1 is aligned with direction from CARB; nevertheless, although it is foreseeable that application of Mitigation Measure 3.8-1 would be sufficient to reduce the impact to a less-than-significant level, the specific project design features may be deemed inappropriate due to economic constraints or the rural nature of future cannabis cultivation sites. Because of these uncertainties, cumulative climate change impacts were determined to be significant and unavoidable. The reader is referred to the response to Comment I2-9 regarding the anticipated extent of heavy-duty truck use.

Comment I2-17

“• *Using low-flow appliances:* This vague wording seems to apply to residential contexts, not cannabis cultivation (or is otherwise *de minimis*). Please clarify.”

Response I2-17

While some cannabis cultivation sites include a caretaker residence that this practice could be applied to, the requirement of Mitigation Measure 3.8-1 to use low-flow appliances is not specific to only residential land use types. Cultivation practices require irrigation of cannabis. The requirement to use low-flow appliances is a comprehensive practice to direct future project applicants to utilize less water through fixtures designed to achieve water savings. This requirement can apply to faucets and toilets, but more broadly, it could apply to irrigation practices, such as drip irrigation systems versus sprinkler systems, which lose water at a faster rate through evapotranspiration. The use of technologies to reduce water consumption would result in a decrease in indirect emissions associated with water and wastewater treatment. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-18

“• *Using Energy Star appliances:* This applies primarily to residential buildings and minor equipment for non-residential buildings. Energy Star also offers “whole-building” benchmarking and rating for ordinary buildings (schools, offices, etc), but to my knowledge they have not developed a system applicable to HVAC, windows, and building envelope measures vastly more energy-intensive cannabis facilities.”

Response I2-18

The comment indirectly states that Energy Star appliances have limited applications to only residential buildings. Energy Star products are available for air-source heat pumps, central air conditioners, light fixtures, windows, water heaters, and insulation and could be purchased and operated for future licensed cannabis cultivation sites. Some cannabis cultivation sites include a caretaker residence for which this requirement could be applied. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-19

“• *Implementing zero net energy buildings:* The literature shows that there is no way to achieve the State’s long-term GHG reduction targets in indoor cannabis facilities, particularly at scale. Roof areas are only ~1/20th that required to self-power with photovoltaics, and existing grid-based renewables capacity is insufficient to meet state targets more broadly, even before adding the tremendous new loads created by indoor or mixed-light cannabis grows (Mills and Zeramby 2022).”

Response I2-19

The Draft EIR does not conclude that implementation of the project (including indoor and mixed-light cannabis cultivation sites) would result in a less-than-significant impact with mitigation. Rather, Draft EIR Mitigation Measure 3.8-1 is recommended and includes various GHG measures that would result in direct and indirect reductions from the operation of future licensed cannabis cultivation sites. The reader is referred to the response to Comment I2-15 for additional information about the electrical grid. The approach taken in Draft EIR Mitigation Measure 3.8-1 is generally aligned with direction from CARB provided in Appendix D, “Local Actions,” of the 2022 Scoping Plan, which directs lead agencies to encourage all-electric and vehicle miles traveled (VMT) -efficient development and the deployment of electric vehicles above the mandatory requirements of the California Building Code; nevertheless, although it is foreseeable that application of Mitigation Measure 3.8-1 would be sufficient to reduce the impact to a less-than-significant level, the specific project design features may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis

cultivation sites. Because of these uncertainties, cumulative climate change impacts are determined to be significant and unavoidable.

Comment I2-20

“Many of these items are similarly referred to elsewhere in the report, e.g. on page 3.8-15.”

Response I2-20

The comment’s reference to the impact analysis associated with Draft EIR Impact 3.8-1 is also provided in Draft EIR Chapter 4, “Cumulative Impacts,” and Chapter 6, “Other CEQA Sections.”

Comment I2-21

“**Page ES-54.** The single listed mitigation for Impact CUM-8 is incorrect. Significant emissions from these facilities are not “unavoidable”. Outdoor cultivation avoids on the order of 95% of direct cultivation emissions, and is shown in multiple peer-reviewed publications (e.g., Zandkarimi et al. 2023) to be able to produce high-potency, high-quality cannabis.”

Response I2-21

The reader is referred to the responses to Comments I2-9 and I2-11.

Comment I2-22

“**Page 3.3-14 and 3.8-9.** In the spirit of transparency, these highly impactful “default” values should be stated and discussed. There are huge uncertainties around these kinds of numbers and many published values are flawed (Mills 2021). My examination of Appendix C appears to have identified some serious issues with the default values being used (see below).”

Response I2-22

The comment is introductory in nature. Responses to detailed comments regarding modeling assumptions and values used are addressed in the responses to Comments I2-23 through I2-55.

Comment I2-23

“**Page 3.6-3.** Invoking on-site solar for homes in this paragraph and in multiple other points in the document (3.8-3, 3.16-11, etc.) is not relevant to cannabis facilities, and is potentially quite misleading.”

Response I2-23

In the Draft EIR, page 3.8-3 references CCR sections that address energy use for residential and nonresidential buildings, while page 3.16-11 simply states that “...homes and businesses in Mendocino County are self-powered through other means, such as solar electricity.” It is unclear what is “misleading” regarding the disclosure of this information in the Draft EIR. Several existing licensed commercial cannabis cultivation sites use solar to power their operations. The modeling in the Draft EIR does not include on-site solar nor are any reductions claimed for on-site solar. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-24

“**Page 3.6-5,** section 16305(b): Deeming “weighted greenhouse-gas intensity” sufficient is not defensible here. While electric utilities in California have done relatively well (compared to other states) in reducing the embodied carbon in electricity, emissions factors remain high, and

rely heavily on nuclear power, which is itself an environmental issue not recognized in this analysis (Mills 2022a).”

Response I2-24

The modeling prepared for the project (Draft EIR Appendix C) relies on the energy mix of PG&E for the assumed first year that future licensed cannabis cultivation sites could become operational. The emissions associated with the electricity provided by PG&E accounts for the reality that PG&E is not yet fully sourced by renewable energy, although the percentage of renewable energy is projected to increase as PG&E continues to comply with the requirements of the RPS and SB 100. The analysis does not attempt to characterize the indirect impacts associated with the use of nuclear power.

Comment I2-25

“In addition, many facilities use direct fuel combustion, which cannot be minimized. If, per page 3.8-11, the vision is to eliminate those fuels and fully electrify, this also not a sufficient solution and not something that the industry will embrace any time soon, particularly for mixed-light facilities where are heavily reliant on natural gas. In addition, there are significant emissions from associated cultivation inputs (industrial CO₂, fertilizers, etc), transportation, processing, and retailing, and waste disposal that are ignored here. In an extensive national assessment by Summers et al. (2021), facility-level energy emissions represent 45% to 71% of total emissions associated with cannabis for the 71 modeled California locations, and many non-facility sources of emissions (e.g. production of extracts) are not included in that analysis.”

Response I2-25

The analysis in Draft EIR Section 3.8, “Greenhouse Gas Emissions and Climate Change,” recognizes that the implementation of this measure may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis cultivation sites. Therefore, cumulative climate change impacts are concluded to be significant and unavoidable. The reader is referred to the response to Comment I2-15 regarding natural gas and propane use.

With respect to cultivation inputs, transportation, processing, retailing, and waste disposal, the modeling performed for the project includes emissions from the assumed number of vehicle trips to and from cultivation sites and solid waste disposal. The model does not attempt to estimate the downstream emissions associated the processing and retail of cannabis products at locations outside the future licensed cannabis cultivation sites and the unincorporated area of the County. To do so would be speculative. CEQA does not require speculation as provided in State CEQA Guidelines Section 15145. (See also *Laurel Heights, supra*, at p. 376 [where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences].) No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-26

“Moreover, it is not credible to allow cultivators to comply by purchasing carbon offsets. The media and scientific literature are full of examples of examples of fraud and ineffectual projects in that industry. It is not clear that the three registries listed are immune from these problems, and more broadly, carbon offsets simply shift emissions elsewhere – they do not address the actual problem and will not ultimately align with the state, national, and global goals for emissions reductions. In the past year, large and small businesses have been rapidly backing

away from the use of offsets, making this an awkward time for the State to be promoting them. According to one recent study, the market has recently shrunk by 61%.”

Response I2-26.

Draft EIR Section 3.8, “Greenhouse Gas Emissions and Climate Change,” does not include requirements to purchase carbon offsets outside of the provisions of section 16305(b) of CCR, title 4, Division 19. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-27

“Page 3.6-10, Table 3.6-2. This table appears to be substantially incorrect and underestimates the energy use. Please see details in comments on Appendix C. Note also that some of the cases developed in Appendix C include natural gas, but this table only lists electricity usage.”

Response I2-27

The comment is introductory in nature. Responses to detailed comments regarding modeling assumptions and values related to energy are addressed in the responses to Comments I2-28 through I2-55.

Comment I2-28

“**Page 3.6-11.** The statement:

“ ... energy consumption associated with the construction and operation of commercial cannabis cultivation sites that would be licensed under the project would not be considered wasteful, inefficient, or unnecessary. This impact would be less than significant.” [emphasis added]

is arguably not defensible. Indoor “warehouse-style” cannabis grows use 100-times the energy of typical warehouses (Mills 2012). It is surely significant that cannabis emits ~2,300-5,200-times its weight in carbon dioxide nationally (2,300-3,500-times in California (Summers et al. 2021)), exceeding that of manufacturing aluminum (the most energy-intensive metal). The carbon emissions are prodigious and the industry has shown little willingness and ability to manage them. This comment also applies to the statement on page 3.8-12, 5-13 and the findings in Table 5-1, page 5-17.”

Response I2-28

The reader is referred to the response to Comment I2-9 regarding the limited number and size of indoor cannabis cultivation sites in the County. Appendix G of the State CEQA Guidelines provides factual inquiries to determine whether a project would result in an adverse energy impact. Appendix G does not, however, provide a numerical threshold for determining whether a project’s additional energy demand would result in the wasteful, unnecessary, or inefficient use of energy. As stated on page 3.6-11 of the Draft EIR, “[a]ll buildings constructed would be built to the California Energy Code in effect at the time of construction, as well as CCR, title 4, section 16305 regarding energy sources that reduce greenhouse gas emissions and section 10A.17.040(D) and 10A.17.070(F) of the MCCR that limits the use of generators. Future cultivation and associated energy expenditure under the project would be similar to those currently in the County.” Because future licensed cannabis cultivation sites would be required to comply with CCR, title 4, section 16305 and would not include energy demand different from existing cannabis operations within the County, future energy demand would not be considered wasteful, inefficient, or unnecessary. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-29

“Page 3.6-11, Impact 3.6.2 (and, by association, Section 3.8.1 with respect to Statewide GHG Emissions Targets). This reasoning is flawed. In practice, the renewable energy availability in California is finite, oversubscribed, and yet far more is needed to reach State goals, even before the cannabis industry is considered. Adding tremendous new electrical demand from cannabis facilities will effectively starve pre-existing sectors (homes, schools, offices, hospitals, etc....) of access to clean power. Consider that diverting a unit of renewable electricity to a cannabis facility deprives ~100 conventional warehouses of an equal amount of finite renewable electricity. It is a zero-sum game, and the state will struggle to meet its climate goals even without considering the rapidly increasing demand of the cannabis industry. While Mendocino County may have no formal renewable energy promotion activities, the State clearly does. There is no conceivable way – at any efficiency or with every cannabis grow rooftop completely arrayed with solar panels – that this industry could comply with the year-2045 goal of carbon neutrality invoked on page 3.8-10.”

Response I2-29

This comment appears to base its statements on the assumption that a significant portion of Mendocino County’s commercial cannabis cultivation would occur from indoor cultivation using warehouse facilities. The reader is referred to the response to Comment I2-9 regarding the limited extent of the number and size of indoor cannabis cultivation sites in the County. Impact 3.6-2 in Section 3.6, “Energy,” addresses whether the project would conflict with plans for renewable energy and energy efficiency. In the absence of a local climate action or sustainability plan, the two most relevant plans are the state’s 2008 Update Energy Action Plan and the 2019 California Energy Efficiency Action Plan. As discussed in Draft EIR Impact 3.6-2, section 10A.17.040(D) of the MCCR requires that indoor and mixed-light cultivation sites not rely on generators as their primary source of energy. New commercial cannabis cultivation sites would also be required to comply with CCR, title 4, section 16305 regarding energy sources that reduce GHG emissions. Compliance with the building code and its increasing requirements related to energy efficiency and prohibition of generators as a regular energy source would align with the 2008 Update Energy Action Plan and the intent of the 2019 California Energy Efficiency Action Plan. Therefore, the project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

Moreover, outside of the individual increase in energy demand associated with future licensed cultivation sites, the state is, and has been, investing substantially in electrical infrastructure and renewable energy resources to meet the electrical demand associated with the decarbonization of the building and mobile source sectors. The increased electrical demand associated with the project is a small fraction of the total electricity demand for Mendocino County and the state. It is reasonable, therefore, that this increase would not be so great that the energy needs for existing development could not be met by PG&E electricity supply.

The state’s energy capacity is expected to increase as a result of a menu of GHG-reducing regulations and policies. To meet the statewide greenhouse gas emissions targets of AB 1279 (Statutes of 2022; [declaring the state policy to achieve net zero greenhouse gas emissions as soon as possible, but no later than 2045, and achieve and maintain net negative greenhouse gas emissions thereafter]), reductions will need to be made from several sectors, including the energy and mobile source sectors. Statewide regulations that apply to this project, such as the light-duty Zero-Emission Vehicle (ZEV) Regulation, Advanced Clean Fleet Regulation, Advanced Clean Transit Regulation, and the Innovative Clean Transit Regulation, aim to achieve GHG reductions from the mobile source sector through the deployment of ZEV and

plug-in hybrid electric vehicles, which would replace vehicles powered by internal combustion engines. In addition, electric utilities are working in coordination with the California Public Utilities Commission (CPUC) to fund infrastructure expansion projects to meet this future demand. The California Energy Commission (CEC) is also working to fund hydrogen stations to increase the hydrogen fueling network for passenger vehicles. CPUC is also responsible for regulating electric power procurement and generation and evaluates the necessity for additional power generation by California utilities in both the short and long term.

Additional electrical energy capacity in the state would be achieved through improved energy efficiency, energy storage, demand response, and generation of renewable resources. For example, the efficiency of new homes is continually improving through triennial updates to Parts 6 and 11 of the Title 24 Building Standards Code (California Energy Code and California Green Building Standards Code), which achieve energy reductions through use of mandatory and prescriptive energy efficiency design features and green building practices. The California Energy Code is also anticipated to trend toward decarbonization, or the elimination of on-site natural gas combustion to power stoves and water heaters, consistent with the findings of the 2018 Integrated Energy Policy Report, which identifies carbonization of the building sector as a major policy shift that will assist the state in meeting its long-term GHG-reduction goals.

Therefore, the nominal increase in electrical demand from implementation of the project would not be substantial such that the state's electrical grid could not meet demand in light of the investments made by CPUC and CEC to ensure that there is sufficient capacity to meet statewide needs. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-30

“Regarding the statement:

“Therefore, the construction and operation of licensed commercial cannabis cultivation sites would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. This impact would be less than significant.””

Response I2-30

The comment does not provide context for this statement. The reader is referred to the response to Comment I2-29.

Comment I2-31

“While indoor cannabis cultivation does not literally conflict with or obstruct state or local plans for renewable energy or energy efficiency, there is a zero-sum game pitting cannabis against other energy-using segments of the California economy. There are finite dollars for these clean technologies, e.g. rebate programs are funded and often are depleted before all wishing to participate are supported.

Moreover, renewable energy systems, while essential, have their own well-documented environmental, social, and cultural impacts and thus it can indeed be deemed “wasteful” if they are developed to serve wasteful uses of energy for which there are viable alternatives. Every cannabis operation established outdoors instead of as an indoor or mixed-light operation reduces these problems materially.”

Response I2-31

The reader is referred to the response to Comment I2-29.

Comment I2-32

“Page 3.8-3. This creates a false sense of security with respect to Building Efficiency Standards achieving adequate emissions reductions. A recent major government- and utility-funded study of mixed-light cannabis facilities (Tiessen et al. 2021) found only a 11.4% “technical potential” energy savings potential in Oregon and 9.6% in Washington (and lower “economic”, i.e. cost-effective, potentials of 8.3% and 6.5%, respectively). This is not nearly enough energy demand reduction to align energy-intensive indoor and mixed-light cultivation with the State’s climate goals.”

Response I2-32

As described in the response to Comment I2-11, mixed-light cultivation in Mendocino County often does not utilize permanent buildings. Commercial mixed-light cannabis cultivation is limited in size to 10,000 square feet of cannabis canopy per parcel under the MCCR. The Draft EIR does not conclude that the emissions associated with future licensed cannabis cultivation sites would align with the state’s long-term climate goals. Rather, the Draft EIR states that “although it is foreseeable that application of Mitigation Measure 3.8-1 would be sufficient to reduce the impact to a less-than-significant level, the specific project design features may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis cultivation sites.” (Draft EIR, page 3.8-15.) Because of these uncertainties, cumulative climate change impacts were determined to be significant and unavoidable. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-33

“Page 3.8-3. As noted above, while on-site solar is normally a very effective method of achieving net-zero building performance, indoor cannabis cultivation is a stubborn exception to the rule. Approximately 20-times an indoor cannabis facility’s roof-area is required to achieve enough electricity production to offset a site’s grid-based energy use. The associated environmental impacts must be considered (land use, soil carbon, etc). To my knowledge, there are no documented examples of highly solarized operations (most are in the 5% range), which presumably reflects a perception in the industry of unaffordability and the extraordinary amounts of land needed. Purchasing 20-times more land than occupied by the building footprint is a non-starter for these businesses, and, in any case, would substantially change the scope of this EIR.”

Response I2-33

The reader is referred to the responses to Comments I2-9 and I2-11 regarding the limited extent and size of commercial indoor cannabis cultivation in the County. The Draft EIR does not include performance criteria or expectations for solar for future licensed cannabis cultivation sites. GHG-reducing measures are recommended in Mitigation Measure 3.8-1; however, the specific project design features may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis cultivation sites. (Draft EIR, page 3.8-15.) Because of these uncertainties, cumulative climate change impacts were determined to be significant and unavoidable. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-34

“Page 3.8-12. References to homes, offices, and retail projects are not relevant to the topic of this report and are thus potentially misleading.”

Response I2-34

The reference to homes, offices, and retail projects on page 3.8-12 of the Draft EIR summarizes the thresholds, as written by the Bay Area Air Quality Management District (BAAQMD), which are applied in the analysis. The Mendocino County Air Quality Management District (MCAQMD) has not adopted thresholds for evaluating climate change impacts in light of the state's most recent legislative mandates (i.e., AB 1279). Accordingly, MCAQMD has issued a recommendation that lead agencies use the adopted BAAQMD CEQA thresholds in Mendocino County (page 3.3-14 of the Draft EIR). Therefore, BAAQMD's GHG thresholds were used to evaluate the project's cumulative contribution to climate change.

BAAQMD's GHG thresholds address VMT and reflect the regional VMT reductions mandated by SB 743. This is provided for context. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-35

“Page 3.8-12. The statement:

“Existing provisionally licensed commercial cannabis cultivation sites transitioning to annual licensure would not be altered through the annual licensing process, so no new construction- or operation-related climate change impacts are expected. Therefore, no impact from construction- or operation-related GHG emissions are associated with existing provisionally licensed sites.” [emphasis added]

does not reflect what happens on the ground. Processes are routinely changed and equipment is routinely swapped out within these facilities. Over time-frames of importance, this includes virtually all energy-using equipment such as lighting and HVAC. Large indoor facilities in Oakland were found to actually increase energy use as they installed more “efficient” but higher output and wattage LED lighting systems (Mills 2022b). Even a change of plant genetics (strain) can have an enormous (factor-of-two) effect on carbon footprint - up or down (Backer et al. 2019).

There is also considerable broader analysis and discussion underway regarding environmental and social conditions (air quality, housing displacement) in areas with intensive warehouse development in California (Barboza 2021).”

Response I2-35

As described in “Master Response 1: Baseline Conditions Used in the Draft EIR,” the existing provisionally licensed commercial cannabis cultivation sites comprise the CEQA baseline for this analysis. The Draft EIR impact analysis and application of mitigation measures focus on the physical impacts that would occur with the proposed cannabis cultivation conditions (e.g., requests for cultivation expansion, triggering the need a different license type and new cannabis cultivation sites). Cannabis cultivation sites are required to comply with CCR, title 4, section 16305 regarding energy sources that reduce GHG emissions. Furthermore, the composition of future licensed cannabis cultivation sites are anticipated to comprise primarily outdoor and mixed-light sites, which do not require permanent buildings. The reader is also referred to the response to Comment I2-29 regarding the state's energy and GHG measures that would apply to future development, transportation, and energy sources.

Comment I2-36

“Page 3.9-9. “Solvents and processing chemicals” are listed as residues found on cannabis products. Many cannabis cultivation operations also house these activities. Extraction is often performed with solvents that have unique environmental profiles and impacts. It does not

appear that this is anticipated or addressed in the analysis. Relevant assessment should be included for workers as well as neighboring populations, both of which are typically non-white and lower-income demographics.”

Response I2-36

Draft EIR page 3.9-9 cites the required constituents that cannabis is tested for prior to manufacturing or sale under CCR, title 4, section 15719 and not a list of what cannabis products contain. The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. Noncultivation cannabis uses are outside the scope of this project and EIR.

Comment I2-37

“**Pages 4-19 to 4-20.** The CalEEMod “black-box” modeling exercise does not disclose underlying assumptions and thus is not particularly useful. See concerns regarding the referenced Appendix C, below.”

Response I2-37

The comment is introductory in nature. Responses to detailed comments regarding modeling are addressed in the responses to Comments I2-40 through I2-55.

Comment I2-38

“**Page 5-13.** The statement:

“ ... the potential expansion of existing provisionally licensed and new licensed commercial cannabis cultivation sites and associated processing and/or distribution transport-only operations would not result in significant project or cumulative impacts on energy use.”

is indefensible. See discussion of previous references to this information.”

Response I2-38

The reader is referred to the responses to Comments I2-28 and I2-29 and Draft EIR, page 4-17.

Comment I2-39

“**Comments on Appendix C: Air Quality, Energy, and Greenhouse Gas Modeling Data**

Much of "Appendix C: Air Quality, Energy, and Greenhouse Gas Modeling Data" is inscrutable, lacking any introduction or orienting text, together with sprawling tables with no underlying documentation. Here are things that impeded my review:”

Response I2-39

The comment is introductory in nature. Responses to detailed comments regarding modeling are addressed in the responses to Comments I2-40 through I2-55.

Comment I2-40

“• Engineering units and quantities are often not provided on the data tables other than the vague headers. E.g., throughout the document are headers reading "Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)" above a

table with 18 columns. What are the units for each column? What does the unconventional notation "CO₂T" stand for ?."

Response I2-40

As described under "Emissions Summary" in Appendix C for each individual CalEEMod run for outdoor, indoor, mixed-light, and nursery cultivation, total emissions of criteria air pollutants and GHGs are presented for maximum daily summer, maximum daily winter, and average daily emissions estimated in pounds per day (lb/day). Annual emissions of criteria air pollutants are presented in tons per year (ton/yr), and annual emissions of GHGs are presented in metric tons per year (MT/yr). The acronym CO₂T stands for total carbon dioxide. As emissions of biogenic carbon dioxide (i.e., emissions that result from materials that are derived from living cells as opposed to fossil fuels) are not anticipated from implementation of the project, only nonbiogenic carbon dioxide emissions were estimated and equal the value shown for CO₂T. The project would not result in the combustion of materials such as vegetable oils, wood, paper, animal fat, or solid waste; therefore, nonbiogenic carbon emissions were not estimated.

These estimates presented in Appendix C are the outputs of data inputted into the CalEEMod model using average square footage for outdoor, indoor, mixed-light, and nursery cultivation using the anticipated number of new licenses that would be issued as a component for the project. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-41

- What do the various "Detailed Report" sections (Outdoor, Indoor, Nursery, etc) physically represent? They're not defined in the Table of Contents and here is no introductory text. Are these workups perhaps modeling "prototypical" sites, are they actual data for particular real locations, or ? I see square-footages, so they are clearly individual buildings of some sort. Are the square-footages gross values, or do they represent the canopy area?"

Response I2-41

The modeling assumptions, including cannabis canopy area, building square footage, and related information used in Appendix C for outdoor, indoor, nursery, and mixed-light cannabis cultivation, were derived from the square footage of new licensed cultivation sites summarized in Draft EIR Table 3-1 and are based on review of existing licensed cannabis cultivation sites in Mendocino County. Under the project, 440 licenses would be provided for outdoor cultivation covering a total of 289 acres, 501 mixed-light covering 596 acres, 11 indoor covering 8 acres, and 123 nursery covering 30 acres. The emissions modeling presented in Draft EIR Appendix C provides estimates of emissions associated with each cultivation type according to an average square footage derived from the maximum number of licenses based on the total acreage allowable under the project. The overlapping emissions of all cannabis cultivation under the project are presented in Chapter 4, "Cumulative Impacts."

Draft EIR Tables 3.3-3 and 3.3-4 summarize the anticipated emissions from the construction and operation of one outdoor, one indoor, one mixed-light, and one nursery future licensed cannabis cultivation site. The discrete emissions from these future sites would not exceed the MCAQMD's significance thresholds (which are reflective of BAAQMD's thresholds of significance; see the response to Comment I2-34). Draft EIR Table 3.8-2 also summarizes the GHG emissions for each license type, and because the project does not incorporate the qualitative measures established by BAAQMD, climate change impacts are found to be potentially significant, and Mitigation Measure 3.8-1 is recommended. While future projects may elect to implement the qualitative measures recommended by BAAQMD, the

feasibility/applicability of these measures to a future licensed cannabis cultivation site cannot be assured at this programmatic level. Therefore, mitigation was recommended. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-42

“• Without presenting cannabis yields corresponding to the energy numbers, there is no way to gauge whether the stipulated facilities are representative or otherwise "in range" with values found in the literature, or to meaningfully scale these numbers up to statewide levels of forecasted cannabis production. The cannabis yield data for these cases should be stated – along with the market projections underlying the stipulated growth in consumption in California – and incorporated into the metrics. It would be prudent to add a scenario for Federal legalization, indicating what would happen to production levels in California were interstate transport to become legal. Since roughly 75% of the cannabis grown in California is in the illicit market, this change would be very impactful.”

Response I2-42

The energy estimates presented in Section 3.6, “Energy,” were derived from the energy expenditure assumed in CalEEMod for outdoor, indoor, mixed-light, and nursery cannabis cultivation types. The estimates are intended to be programmatic and based on the square footage of future licensed cannabis sites assumed under the project as identified in Draft EIR Table 3-1. The regulated cannabis industry in California is currently not experiencing significant growth because sales of cannabis flower (the most popular cannabis product) have dropped from a high of \$214,800,000 in 2021 to \$139,730,000 in 2023. (DCC 2024.) Therefore, in light of this trend in cannabis sales growth, the Draft EIR determined that additional energy from future licensed cannabis cultivation sites would not be substantial in consideration of existing energy usage and potential increases in future energy demand from cannabis. The commenter’s assertion that a scenario that assumes the federal government’s legal perspective on the legality of cannabis cultivation, use, and retail is considered a speculative exercise under CEQA. At the time of the writing of the Draft EIR, the regulatory context that comprises the CEQA baseline acknowledges that cannabis is currently identified as a Schedule 1 controlled substance under the federal Controlled Substance Act. Due to the existing statutory and regulatory setting, no interstate cannabis trade was assumed in the modeling for the project. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-43

“• Fugitive HFC emissions from refrigerants are a non-trivial issue, and I'm glad to see an attempt to include them here. Ambiguity in the table formatting makes it impossible to review this information in that it is unclear whether the values shown are lb/day or MT/yr, as well as to what level of cannabis yield they correspond. No (clear) units are given for the “unmitigated leakage rates” shown (e.g. table on page 49), so one cannot assess their significance. Please be aware of one known report of fugitive emissions by Canopy Growth, at the time the second largest cannabis producer in Canada. Canopy Growth reported 5,118 tonnes CO₂-equivalent per year for 34 tonnes sales (excluding overproduced amounts never reaching market), about half of which was indoor-cultivated (Canopy Growth 2021). This translates roughly to normalized emissions of ~300 kg CO₂e/kg-flower. You should either benchmark your numbers against this or otherwise provide some validation for the numbers assumed. Using this emissions factor, these fugitive emissions represent 11% to 24% of indoor facility’s direct emissions from energy consumption across

the 71 California locations modeled by Summers et al. (2021), which would likely mean a much higher fraction for mixed-light facilities.”

Response I2-43

CalEEMod quantifies refrigerant emissions from leaks during regular operation and routine servicing over the equipment’s lifetime and then derives average annual emissions from the lifetime estimate. The default values within CalEEMod consider data provided by the various California Air Districts to account for local requirements and conditions. The operational leak rate is therefore provided by CalEEMod for the refrigerant assumed according to the land use type selected by the user. Emissions from HFCs, presented in metric tons of carbon dioxide equivalent, are provided in the total emissions estimates in Draft EIR Section 3.8, “Greenhouse Gas Emissions and Climate Change,” for informational purposes. The contribution to climate change from proposed projects by the refrigerant sector is not addressed in BAAQMD’s CEQA Guidelines, which are used to determine whether the project would result in a significant GHG impact (please refer to the response to Comment I2-34). The reader is referred to the response to Comment I2-9 regarding the limited extent of the number and size of indoor cannabis cultivation sites in the County, and the response to Comment I2-11 regarding the typical operation of mixed-light cannabis cultivation, which is limited to 10,000 square feet of cannabis canopy for the Large Mixed-Light (Type 2B) permit type under the MCCR. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-44

“In an attempt to better understand the data in Appendix C, I have extracted floor area, energy use, and solid waste estimates from the document into the following table and calculated normalized indices of energy in terms of kBTU/sf-year and waste generation in terms of lbs/sf-year.”

Response I2-44

The comment is introductory in nature. Responses to detailed comments regarding modeling assumptions and values used are addressed in the responses to Comments I2-45 through I2-54.

Comment I2-45

“The table raises the following questions and observations.

- What is the distinction between these two sets of four facility types (outdoor, mixed-light, indoor, and nursery)? The first set (through PDF page 113) reports only electricity use while the second set reports electricity and natural gas, yet all (with one exception) use the same amount of electricity. This is not plausible. It is not at all realistic to assume that cannabis facilities are all-electric or will be in the near future. Natural gas is particularly common in greenhouses. The investment costs to shift to all-electric are enormous, and with electricity prices rising so steeply in recent years, the cost-benefit argument is increasingly hard to make. In any case, it is not correct that these widely differing facility types would be using the same amounts of energy per square foot. See below for more on this.”

Response I2-45

The modeling provided in Draft EIR Appendix C is intended to be programmatic and based on the total square footage of future licensed cannabis sites. The assumptions made for building natural gas and electricity use were assumed based on the needs of each cannabis cultivation

type (i.e., outdoor, mixed-light, indoor, and nursery). The CalEEMod web page modeling tool does not provide a specific land use type for cannabis cultivation; therefore, the land use type “research and development” was used according to the description of this land use in the CalEEMod 2022.1 Users Guide. Use of the research and development category provides the model with assumptions regarding natural gas and electricity, HFCs, and landscaping equipment use, as well as solid waste and wastewater generation. CalEEMod 2022.1 makes assumptions for research and development with response to light fabrication, which best aligns with the lighting needs of indoor cannabis cultivation. At this programmatic stage, specific assumptions for the amount of natural gas and electricity for each commercial cannabis cultivation site and license type are unknown. According to the approach taken in Draft EIR Section 3.8, “Greenhouse Gas Emissions and Climate Change,” the significance of the project’s contribution to climate change is based on the direction provided by BAAQMD (please refer to the response to Comment I2-34), which includes the following criteria to demonstrate that a project would align with the state’s goal of carbon neutrality by 2045 (Draft EIR, page 3.8-12):

- ▶ The project would not include natural gas appliances or natural gas plumbing (in neither residential nor nonresidential development).
- ▶ Implementing the project would not result in any wasteful, inefficient, or unnecessary energy use as determined by the analysis required under PRC section 21100(b)(3) and section 15126.2(b) of the State CEQA Guidelines.
- ▶ The project would achieve a reduction in project-generated VMT below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted SB 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research (OPR’s) Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - Residential projects: 15 percent below the existing VMT per capita
 - Office projects: 15 percent below the existing VMT per employee
 - Retail projects: no net increase in existing VMT
- ▶ The project would achieve compliance with off-street EV requirements in the most recently adopted version of CALGreen Tier 2.

As stated in the Draft EIR, on page 3.8-14, CCR, title 4, section 16305 requires that indoor, Tier 2 mixed-light and nurseries using Tier 2 lighting commercial cannabis cultivation license holders ensure that electrical power used for cannabis activity meets the average electricity GHG emissions intensity required by their local utility provider pursuant to the California Renewables Portfolio Standard Program in division 1, part 1, chapter 2.3, article 16 (commencing with section 399.11) of the Public Utilities Code. CCR, title 4, section 16305 also requires that if a licensed cultivator’s average weighted GHG emission intensity, as calculated and reported upon license renewal pursuant to CCR, title 4, section 15020, is greater than the local utility provider’s GHG emission intensity, the licensee shall obtain carbon offsets to cover the excess in carbon emissions from the previous annual licensed period. While these requirements provide mitigation for on-site energy use, they do not include provisions that align with the design recommendations of BAAQMD (please refer to the response to Comment I2-34). It is foreseeable that these design requirements could be sufficient to reduce emissions to the degree that additional emissions that do not adhere to BAAQMD’s design features could be offset; however, at this programmatic stage, this cannot be assured at the project level. Additionally, if updates are made to DCC’s regulations that align with BAAQMD’s project

design features (i.e., all-electric development, mandatory EV charging requirements similar to the current CALGreen Code's voluntary Tier 2 requirements), future impacts would be minimized. Nevertheless, because it cannot be assured that future sites would be fully electric or meet the Tier 2 requirements of the CALGreen Code, implementation of the project would result in a significant climate change impact.

Moreover, it is not assumed that all future licensed cannabis cultivation sites would be fully electric or meet the Tier 2 EV charging requirements of the CALGreen Code, and Draft EIR Mitigation Measure 3.8-1 is recommended. As stated in the Draft EIR, on page 3.8-15, "[a]lthough it is foreseeable that application of Mitigation Measure 3.8-1 would be sufficient to reduce the impact to a less-than-significant level, the specific project design features recommended above may be deemed infeasible in the future due to economic constraints or the rural nature of future cannabis cultivation sites. Because of these uncertainties, the impact of the project would be cumulatively considerable and significant and unavoidable." Future licensed cultivation sites that tier from the Program EIR would be subject to compliance with Mitigation Measure 3.8-1, which would partially address GHG emission increases. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-46

“• Energy values are missing for the second instance of “Nursery” facility type.”

Response I2-46

The comment refers to pages 231 through 254 of Draft EIR Appendix C, which details the emissions associated with the construction of a singular nursery cannabis cultivation site. This model run is limited to construction emissions only; therefore, operational energy use is not estimated on these pages. Pages 94 through 96 of Draft EIR Appendix C include operational energy estimates for a singular nursery. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-47

“• All of these sites are given a sub-type as "R&D". Does this mean the facilities being evaluated are not for cultivation uses? This is confusing.”

Response I2-47

The reader is referred to the response to Comment I2-45 regarding the use of the research and development category in CalEEMod. As noted in that response, CalEEMod does not provide a specific land use type for cannabis cultivation; therefore, the land use type “research and development” was used based on the description of this land use in the CalEEMod 2022.1 Users Guide (please see response to Comment I2-45). No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-48

“• Energy data are missing altogether for the second “Nursery” case.”

Response I2-48

The reader is referred to the response to Comment I2-46 regarding the modeling assumptions presented in Draft EIR Appendix C. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-49

“• In dividing the kWh numbers by the square footage numbers, each facility type (outdoor, mixed-light, indoor, and nursery) all result in an energy intensity of 21 kWh/square foot per year (equivalent to 72 kBTU/sf-y) and values including gas are 95 kBTU/sf-y – aside from two apparent errors, noted below. These are implausibly low given that average household energy intensities are 42k BTU/sf-y (EIA 2023). On the other hand, these values are implausibly high for outdoor cultivation. And, on a relative basis, indoor facilities are vastly more energy-intensive than mixed-light facilities, which is also not reflected in the numbers underlying this assessment.”

Response I2-49

The reader is referred to the response to Comment I2-46 for additional information regarding the modeling assumptions made in Draft EIR Appendix C and the significance criteria provided in Appendix G of the State CEQA Guidelines as they pertain to energy consumption. The reader is also referred to the response to Comment I2-9 regarding the limited extent of the number and size of indoor cannabis cultivation sites in the County related to their potential to have significant energy demand. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-50

“For perspective, an estimate from the literature (Mills 2012) puts indoor all-electric facility at 537 kWh/ft²-y (1,832 kBTU/sf-y), while Summers et al. (2021) estimates 582 kWh/ft²-y for electricity, plus substantial amounts for natural gas. Measured data from a collection of 125 indoor cannabis facilities from around the country (some of which are all electric and others use gas as well), average 2,090 kBTU/sf-y (Schimelpfenig 2022). That same source reports an average of 262 kBTU/y for 57 cannabis greenhouses around the country – electricity only; typically substantial gas data for space heating is not included. Another published source reports an average 2.36 kWh/sf-y average electricity use (median 1.5 kWh/sf-y) for 20 outdoor cultivation operations, or about 8 kBTU/sf-y –this about one-ninth to one-twelfth of the values used in Appendix C (NFD 2018). An important caveat is that the last two of these datasets are self-reported samples of convenience and scrutiny of earlier versions suggested that their energy intensity estimates trend low compared to transparently modeled estimates (Mills 2012; Summers et al. 2021).”

Response I2-50

The reader is referred to the response to Comment I2-46 for additional information regarding the modeling assumptions made in Draft EIR Appendix C and the significance criteria provided in Appendix G of the State CEQA Guidelines as they pertain to energy consumption. Neither the state nor Mendocino County has established numerical thresholds for determining whether a project would result in a significant energy impact. The reader is also referred to the response to Comment I2-9 regarding the limited extent of the number and size of indoor cannabis cultivation sites in the County related to their potential to have significant energy demand. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-51

“Other issues with the data:

- Electricity use intensity increases fourfold for the second Outdoor site. This appears to be an error.”

Response I2-51

Pages 120 through 152 of Draft EIR Appendix C, which the commenter refers to, present construction emissions associated with outdoor cultivation. Therefore, the default emissions estimates for energy consumption shown on these pages are not used in the analysis because this model is limited to construction emissions. Operational estimates of outdoor cultivation energy use are presented on pages 10 through 12 of Draft EIR Appendix C. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-52

“o Gas use intensity varies, but in one case (the second Outdoor site) is nearly four-times higher. This appears to be an error.”

Response I2-52

The reader is referred to the response to Comment I2-51 for clarification as to what is presented in Draft EIR Appendix C. The approach is programmatic in nature, and detailed information pertaining to the exact amount of natural gas and electricity for any one future location of an indoor or outdoor cultivation site cannot be known with certainty. The statement made by the commenter suggests that there is an overestimation of natural gas intensity in the model; however, this overestimation would not change the significance determination of the Draft EIR. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-53

“o For the remaining cases, why is an identical amount of energy used for these highly different cultivation processes?”

Response I2-53

The portions of Draft EIR Appendix C the commenter references are the model runs prepared for construction purposes. These operational estimates cited in the comment are not used in the Draft EIR; however, the energy expenditure needed to construct new licensed cannabis cultivation sites is presented in Draft EIR Table 3.6-1. The operational energy demands from operation of new licensed cannabis sites are summarized in Draft EIR Table 3.6-2, which summarizes the outputs presents on pages 2 through 113 of Draft EIR Appendix C. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-54

“• A peer-reviewed analysis by Summers et al. (2021) reports 4.3 lbs/sf-y of dried biomass solid waste from indoor cannabis facilities (see published supporting appendices), which is 30-times higher than the value that appears to be used in Appendix C. Of course there are many additional sources of waste, including artificial or natural growing media, spent lamps, empty packaging, netting, and miscellaneous equipment and supplies. The total amount of waste is easily three or more times that of the biomass alone. If there is not an error in the Appendix C treatment of this topic, explanation should be given for such a wide divergence from the other published values.”

Response I2-54

As stated previously, the approach taken in the Draft EIR is inherently programmatic. The exact amount of solid waste from any one indoor cannabis cultivation facility is unknown at this time and requires a degree of speculation. CEQA does not require speculation (State CEQA

Guidelines, section 15145; see also *Laurel Heights, supra*, at p. 376 [where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences].) The reader is also referred to the response to Comment I2-9 regarding the limited extent of the number and size of indoor cannabis cultivation sites in the County and their potential generation of solid waste compared to the solid waste generated by indoor cannabis cultivation facilities evaluated in the cited study. No edits to the Draft EIR are required in response to this comment, and no additional response is required.

Comment I2-55

“Based on the above, to be useful for policy evaluation the values in Appendix C need to be validated and the underlying assumptions made more transparent.”

Response I2-55

The comment is conclusory in nature. Responses to detailed comments regarding modeling assumptions and values used are addressed in the responses to Comments I2-45 through I2-54.

Letter I3 Dennis Slota

June 17, 2024

Comment I3-1

“1. This DEIR doesn’t mention that the Mendocino County Ordinance specifies that Cannabis security lighting must be on a motion detection basis. Will this oversight be corrected? Why is this not a Statewide requirement for DCC to significantly reduce light pollution and habitat disturbance in the State? Studies have shown that more crime occurs in well-lit areas so the criminal can see what they are doing.”

Response I3-1

This comment is noted. Edits have been made to Impact 3.1-4, on pages 3.1-19 through 3.1-20 of the Draft EIR to include the requested information.

The original text on Draft EIR pages 3.1-19 through 3.1-20 states:

Existing Provisionally Licensed Sites

The use of artificial light in structures at night can emit a glow of light that can disturb adjoining land uses as well as result in impacts to wildfire. All existing provisionally licensed commercial cannabis cultivation types and associated processing and/or distribution transport-only operations can involve the use of outdoor lighting for operations and security. Existing provisionally licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E) would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare (CCR, title 4, section 16304). As a result, light and glare impacts associated with existing provisionally licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they transition to annual licensure. These expanded commercial cannabis cultivation operations features would still be required to comply with MCCR and CCR requirements identified above for lighting. For these reasons, this impact would be less than significant.

New Licensed Sites

As described above for existing provisionally licensed sites, new licensed commercial cannabis cultivation sites and nurseries may use artificial lighting for operations. New licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E) would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304.) As a result, light and glare impacts associated with new licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

Summary

As described above, existing provisionally licensed, potential expansion of existing provisionally licensed, and new licensed commercial cannabis cultivation sites would be required to comply with section 10A.17.040(E) of the MCCR and CCR, title 4, section 16304 that would require shielding of lighting to avoid off-site lighting impacts. For these reasons, the impact related to light and glare would be **less than significant**.

The revised text on Draft EIR pages 3.1-19 through 3.1-20 now states:

Existing Provisionally Licensed Sites

The use of artificial light in structures at night can emit a glow of light that can disturb adjoining land uses as well as result in impacts to wildlife. All existing provisionally licensed commercial cannabis cultivation types and associated processing and/or distribution transport-only operations can involve the use of outdoor lighting for operations and security. Existing provisionally licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E). This requirement would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded and that all security lighting be motion activated. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304) As a result, light and glare impacts associated with existing provisionally licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they transition to annual licensure. These expanded commercial cannabis cultivation

operations features would still be required to comply with MCCR and CCR requirements identified above for lighting. For these reasons, this impact would be less than significant.

New Licensed Sites

As described above for existing provisionally licensed sites, new licensed commercial cannabis cultivation sites and nurseries may use artificial lighting for operations. New licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E). This requirement would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded, and that all security lighting be motion activated. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304) As a result, light and glare impacts associated with new licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

Summary

As described above, existing provisionally licensed sites, potential expansion of existing provisionally licensed sites, and new licensed sites would be required to comply with section 10A.17.040(E) of the MCCR and CCR, title 4, section 16304 that would require shielding of lighting and motion-activated security lighting to avoid off-site lighting impacts. For these reasons, the impact related to light and glare would be **less than significant**.

Comment I3-2

“2. The Mendocino County Cannabis Ordinance references mature canopy of 10,000 SF, except for in a seedlings greenhouse where 22,000 SF is allowed, but with a mature canopy of 10,000 SF. Why does the DEIR indicate 22,000 SF is allowed for mature canopy?”

Response I3-2

Draft EIR Tables 2-2 and 2-3 and Draft EIR pages 3-9, 3.1-15, 3.1-17 through 3.1-19, 3.2-18, 3.9-18, 3.9-21, 3.10-41, 3.10-43, 3.10-44, 3.10-45, 3.16-14, 3.16-16, and 3.16-18 identify that the MCCR limits cannabis cultivation and nursery sites to 22,000 square feet. Specifically, the maximum cannabis canopy is 22,000 square feet for nursery uses, which are considered a cultivation use under DCC licensing requirements. No changes to the Draft EIR are recommended.

Comment I3-3

“3. This DEIR provides a comprehensive list of laws and regulations designed to protect plants, animals, fish, water quality, and the environment, including new regulations on cannabis designed to do the same. However, the DEIR fails to disclose that as the list of laws and regulations has increased dramatically, plants, animals, fish and water quality have all continued to decline, some to extinction and many on the verge of extinction. Words on paper do not protect anything in the environment, if they are not enforced.”

Response I3-3

The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to evaluate the success of state and federal regulations intended to protect special-status species. Draft EIR pages 3.5-16 through 3.5-65 provide a description of current

biological resource conditions of the County, which includes identification of plant and wildlife species identified as rare, threatened, or endangered (Draft EIR Tables 3.5-3 and 3.5-4), as well as sensitive and critical habitats. In addition, the Draft EIR identifies “Cannabis Priority Watersheds” in the County that contain a high concentration of commercial cannabis cultivation and where noncompliant commercial cannabis cultivation have the potential to cause severe environmental impacts. The Draft EIR specifically identifies existing stressors to biological resources in the County, which include unlicensed cannabis cultivation operations and climate change. (Draft EIR pages 3.5-61 through 3.5-65.) Enforcement activities targeting noncompliant cannabis cultivation operations are taken by the County in coordination with other agencies, including DCC, CDFW, SWRCB, and the North Coast Regional Water Quality Control Board.

Comment I3-4

“4. How many Cannabis site inspections have occurred in Mendocino County by the County Cannabis Department from 2018-2023, by year? By DCC? By Fish and Wildlife? By the RWQCB? What percentage is this of licensed Cannabis grows?”

Response I3-4

DCC and other state, County, and local agencies enforce their own statutes and regulations. DCC’s compliance efforts support a compliant legal cannabis market by:

- ▶ Licensing premises that satisfy state requirements.
- ▶ Educating licensees about their responsibilities under their state license.
- ▶ Conducting routine inspections of licensed premises.
- ▶ Investigating alleged violations of commercial cannabis laws.

Requests for DCC records may be submitted via email at publicrecords@cannabis.ca.gov.

CDFW, SWRCB, and the North Coast Regional Water Quality Control Board are primarily responsible for conducting site inspections and enforcement actions associated with natural resources addressed in SWRCB Order WQ 2023-0102-DWQ. Mendocino County, in enforcing the provisions of the MCCR, also conducts inspections and enforcement actions. The extent of these inspections has varied since the conception of the regulated commercial cannabis market. Records of these inspections and enforcement actions are maintained by these agencies. It is recommended that the commenter contact these agencies for further information on inspections and enforcement.

Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I3-5

“5. How many Cannabis enforcement actions have occurred in Mendocino County from 2018 to 2023, by year, by the County Cannabis Department, County Sheriff, DCC, Fish and Wildlife and the RWQCB? What percentage is this of estimated illegal Cannabis grows in Mendocino County?”

Response I3-5

The reader is referred to the response to Comment I3-4.

Comment I3-6

“6. How many water rights violations has the SWRCB and Department of Fish and Wildlife conducted in Mendocino County from 2018-2023, by year? What percentage is this of estimated illegal water diversions?”

Response I3-6

The reader is referred to the response to Comment I3-4.

Comment I3-7

“5. What specific website does the public go to find out the number of Cannabis related inspections that have occurred in Mendocino County by each of the departments listed above? Does each department have a public link showing Cannabis related site investigations? If not, why not?”

Response I3-7

The reader is referred to the response to Comment I3-4.

Comment I3-8

“8. If the answer to question 7 is that each agency has their own dedicated link showing Cannabis related site investigations, why doesn't DCC consolidate all of the above for each County in the State and post it on their website? This will allow the public to evaluate the effectiveness of DCC, Mendocino Cannabis Department, these DEIR mitigations in Mendocino County, and inform all residents throughout the State of actions in their counties.”

Response I3-8

The reader is referred to the response to Comment I3-4.

Comment I3-9

“9. What is the estimated percentage of legal to illegal grows in Mendocino County? Can asset forfeiture and fines help pay for enforcement on illegal grows in Mendocino County? In the other Counties in the State by DCC or other agencies?”

Response I3-9

Estimates regarding the potential extent of illegal cannabis cultivation in Mendocino County are provided in the Draft EIR, on pages 3-2 through 3-7. The Draft EIR estimates that for every licensed cannabis cultivation site, there are approximately six unlicensed cultivation sites. According to this ratio, the unincorporated area of the County could contain roughly 3,850 unlicensed cannabis cultivation sites. (Draft EIR, page 3-2.) The reader is referred to the response to Comment I3-4 regarding enforcement measure activities and results. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I3-10

“10. Why are illegal growers not prompted to enter the legal Cannabis system by enforcement or other measures?”

Response I3-10

Cultivation operations that do not obtain a license from DCC and Mendocino County are considered illegal. Enforcement activities targeting unlicensed or noncompliant cultivation

operations are taken by the County in coordination with other agencies, including DCC, with the intent that such cultivation operations would be brought into compliance with County and state standards or closed. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I3-11

“11. Can enforcement be considered an effective mitigation measure for this EIR?”

Response I3-11

It is unclear what requirements or standards related to enforcement the comment is referring to. MCCR section 10A.17.160 provides for enforcement of licensed commercial cannabis cultivation premises that fail to comply with MCCR standards that could include administrative process to achieve code compliance or available civil remedies, such as injunctive relief. DCC’s licensing process consists of verifying compliance with state cannabis regulations, as well as compliance with any applicable mitigation measures adopted from the Draft EIR. Enforcement activities targeting unlicensed or noncompliant cannabis cultivation operations are taken by the County in coordination with other agencies, including DCC, with the intent that such cultivation operations would be brought into compliance with County and state standards or closed. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I3-12

“12. What is the direct e-mail and telephone number for each agencies' personnel involved in enforcement of this program? Are they all listed on the DCC website for each County in the State so residents can evaluate the effectiveness of the DCC program in their county?”

Response I3-12

The reader is referred to the response to Comment I3-4. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I3-13

“13. Some of the listed Federal, State and Local laws, regulations, ordinances and policies cited as mitigation in this DEIR have been in effect for over 50 years. How many plants, animals, fish and water bodies in Mendocino County have been delisted from the species of concern, threatened, endangered or impaired listings in the last 25 years? How many of the same above have been added to these listings?”

Response I3-13

The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to evaluate the success of local, state, and federal regulations intended to protect special-status species. The reader is referred to the response to Comment I3-3 regarding the current state of biological resources in the County.

Comment I3-14

“14. Given that the listed Federal, State, and Local laws, regulations, ordinances, and policies have proven to be ineffective to protect plants, animals, fish and water bodies from diminishment, what is the basis for this DEIR to claim that the additional words on paper they provide as mitigation will succeed, where all of these other words on paper have failed?”

Response I3-14

The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC and is not intended to evaluate the success of local, state, and federal regulations intended to protect special-status species. The Draft EIR not only identifies statutes and regulations that are applicable to cannabis cultivation, but incorporates mitigation measures to further address potential impacts resulting from DCC's licensing of commercial cannabis cultivation sites. Approval of the project evaluated in the Draft EIR would require the adoption of a mitigation monitoring and reporting program that specifies how mitigation measures are implemented as part of license issuances as required under State CEQA Guidelines, section 15097.

Comment I3-15

"15. Many EIRs provide a monitoring plan to demonstrate to the public that the proposed mitigation measures will occur. The monitoring plans provide timelines, benchmarks, milestones and entities responsible for mitigation measures to assure the public the mitigation measures will be implemented. This DEIR fails to provide such a monitoring plan. What is the monitoring plan for this project? What are the timelines, benchmarks and milestones for the mitigation measures in this DEIR?"

Response I3-15

According to State CEQA Guidelines, section 15097, a mitigation monitoring and reporting program will be prepared and adopted as part of project approval. Timelines, benchmarks, and milestones are stated within the description of each mitigation measure and will be reiterated within the mitigation monitoring or reporting program of the EIR.

Comment I3-16

"16. If the mitigations proposed in this DEIR prove ineffective, what actions will be taken?"

Response I3-16

The mitigation measures identified in the Draft EIR are supported by cited substantial evidence provided in the Draft EIR and the Final EIR. The reader is referred to the response to Comment I3-15 regarding the adoption of the mitigation monitoring program and details on implementation of the mitigation as part of license issuance.

Comment I3-17

"17. This DEIR fails to explicitly state that environmentally superior project is Alternative 2. Is this an oversight?"

Response I3-17

As discussed in Chapter 5, on pages 5-1 through 5-17 of the Draft EIR, Alternative 1 would not result in more impacts than those of the proposed project compared to Alternative 2. Thus, the no-project alternative, Alternative 1, is the environmentally superior alternative, even though Alternative 2 would also have environmental benefit. No changes to the Draft EIR are recommended.

Letter I4 Victor Ruffa

June 20, 2024

Comment I4-1

"Wait what time is this est?"

Response I4-1

This comment is noted. This comment refers to the public meeting on the Draft EIR, which was held on June 20, 2024, at 10:00 a.m.

Letter I5 Laura & Marty Clein, Martyjuana

June 21, 2024

Comment I5-1

“Thank you for the opportunity to share public comments on the Mendocino County cannabis cultivation CEQA EIR (California Environmental Quality Act – Environmental Impact Report). Thank you for taking the lead and doing the work necessary that many of us have been asking for since Prop 64 passed.”

Response I5-1

This comment is introductory in nature and is noted.

Comment I5-2

We have participated in meetings on this issue at the County and State level up to this point. We are not land use experts, and so we must start with our support for the comments made by the Mendocino Cannabis Alliance, Hannah Nelson and the consultants from Wynn Coastal Planning on the technical issues they have identified and we agree with their solutions oriented insights.

Response I5-2

This comment is noted. The reader is referred to the responses to Comment Letters O2 and I6.

Comment I5-3

It has been an incredibly long lag time, local and state programs have had multiple directors and the process many directions. We hope this EIR document finally moves clarity forward for regulators and stakeholders. It's imperative to allow the small farms in our County, who have been operating legally while under unimaginable stress the entire time, to do what the goal this CEQA document outlines: to transition from the legacy Prop 215 medical cannabis farms to the Prop 64 recreational use legal status of annual licenses by the DCC.

Response I5-3

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-4

Our farm dates back to even before the Mendocino County Sheriff's zip tie 9.31 program, the 1st ever regulated cultivation in the America. We've had a County permit since 2017 and a State Temporary, then Provisional license since they became available. We have been inspected countless times by multiple agencies and were recently renewed for our CCBL and our State Provisional license. We also recently got our final LSAA approvals by CDFW. Yet we are still unclear what is left for us to do to qualify for an Annual license with the State.

Response I5-4

This comment is noted. DCC routinely communicates with applicants for annual cultivation licenses regarding outstanding application requirements. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-5

We hope all our bases have been covered between the MND, SSHR, LSAA & other biological reports we have done now that this EIR is concluded. And we hope that any new requirements arising from this EIR are covered by LJAGP grant monies or future funds from the DCC. Those grant monies were already greatly depleted to create this EIR, but have yet to fulfil their designated use, to transition Provisionals to Annuals license. We did not complete an Ap.G, but we also hope for the farms that did, that those reports count toward an annual license as well. It seems we should all be already there, or at least very close to the finish line of the licensing process.

Response I5-5

This comment is noted. The reader is referred to the response to Comment O2-6. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-6

As you know, Mendocino's small farms who entered the original program were told that the requirements of the County were so strict that if we met them, we would be automatically approved for State license. That did not happen. We were also told, repeatedly, for many years, not to worry about CEQA, the County and State would figure it out. We have jumped through every hoop on this always evolving obstacle course of legalization. The few hundred farms that are still operating deserve to continue to grow; in fact we'd argue that exceptions should be made to help boost viable business opportunities to these license holders who have been stymied by the perceived risks and confusions caused by the government's lagging actions.

Response I5-6

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-7

Rather than being destructive to the land as cannabis farming has been often described, we, and many of the phase one outdoor farms, are environmentalists working in tandem with nature. We farm 1 Ok square feet, less than ¼ acre of our 27 acres of pristine mountain landscape. We are 3rd party certified by Sun + Earth and use regenerative practices, including, organic amendments, companion planting, integrated pest management etc. We are also a certified National Wildlife Habitat. We tested our cannabis long before required and have always passed all COAs lab tests because we grow clean cannabis. Through the Mendocino Producers Guild we have created our own best management practices guidelines that farms who are part of this group follow. Cannabis is Agriculture and needs to be treated with parity to other crops, like tomatoes or strawberries or hemp. Please approve the most broad uses in the EIR for existing legal cannabis farms to be able to survive this tumultuous climate.

Response I5-7

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-8

It's good to see the EIR discuss the 23 farms that now self-distribute. It would be good to be able to make allowances for all small farms in our County to self-distribute and to have direct to consumer availability. We need as broad leeway as possible to be reflected in the EIR for the

future viability, not by expanding footprints of our farms, but expanding allowed activities (processing, distro, delivery, etc).

Response I5-8

The comment is noted. Draft EIR Table 3-1 provides future cannabis development assumptions evaluated in the impact analysis about cultivation use type, development footprint, buildings, and employment that can be used to streamline environmental review for future applications requests. The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. This includes the identification of performance standards to address environmental impacts in the Draft EIR mitigation measures rather than project- and site-specific measures to address a wide range of cannabis cultivation operations as provided in State CEQA Guidelines, section 15126.4(a)(1)(B). Individual applications for cannabis cultivation operations would be subject to further site-specific environmental review as applicable under CEQA in accordance with State CEQA Guidelines, section 15168(c), "Use with Later Activities."

Comment I5-9

Since the State is the lead agency, we suggest creating a pilot program for Mendocino County to incorporate aspects of a micro-business license, but design it for rural small farms. This could measurably level the playing field. Through loopholes, the mega farms & multi-state brands, have co-opted and vertically integrated via the micro-business license as an unintended consequence, not its original intent. It's the license type that is often mischaracterized by politicians and regulators as saving small farms. But there are ways to fix it now that would allow small businesses to get ready for Federal legalization and streamline the supply chain that has failed us.

Response I5-9

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. Noncultivation cannabis uses are outside the scope of this project and EIR. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-10

As the recent Origins Council research reported in "The Rural Land Use Trap, Micro-business, Direct Sales and the Future of Craft Cannabis" states,

"The Department of Cannabis Control can immediately facilitate microbusiness licensure and on-farm vertical integration, without further statutory action, by implementing regulatory reforms that remove barriers to the underlying manufacturing, distribution, and retail activities that most affect small, rural farmers. While these reforms in themselves are not a silver bullet solution to enabling microbusiness licensure for small farmers, they can serve as an incremental step that, combined with additional action at the local level, can increase and sustain the relative viability of on-farm vertical integration over time."

Response I5-10

The reader is referred to the response to Comment I5-9. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I5-11

There are changes that could happen right now on these small farms in ways that would not increase their footprint or environmental impacts, and it would increase access to market & profitability. Our present Mendocino Cannabis Department and our current Board of Supervisors are more open than ever to collaboration with the State about creative ways to assist farmers. A pilot program like we've described is one such shift that can be made internally within the agency, without needing to go through the legislature. And can be created with stakeholder input as to what our real needs are based on our experience over these past few years as part of the fledgling cannabis industry. As we watch with horror the downfall of whole towns in our area, like Laytonville and Garberville losing grocery stores and gas stations, we beseech you to help preserve what's left. Let's use this EIR as a springboard. Save our small farms. Save our rural towns. Let's try this in Mendocino County now!

Response I5-11

The reader is referred to the response to Comment I5-9. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Letter I6 Hannah Nelson

June 22, 2024

Comment I6-1

"Thank you for the opportunity to comment. These comments are intended to assist the Department in its analysis of the proposed project. It is critical to bear in mind the stated Project Objectives of the Draft Environmental Impact Report ("DEIR"), with particular emphasis on the portions of those Project Objectives highlighted below:

- Implement the California Department of Cannabis Control's (DCC) cultivation licensure program in the County, in an effort to minimize the public health and safety risks associated with unlicensed commercial cannabis activity, while promoting a robust and economically viable legal cannabis industry in the County;
- Effectively transition qualified existing provisional cannabis cultivation licenses to annual licenses through a streamlined cannabis licensing process to ensure that such provisional cannabis cultivation license holders complete the annual license process by the statutory timeframes identified in Business and Professions Code, section 26050.2;
- Provide a mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process; Ensure that cannabis cultivation by licensees is conducted in accordance with applicable state and local laws related to land conversion, air quality, electricity usage, water usage, water quality, biological resources, agricultural discharges, and similar matters;
- Protect natural and built resources in Mendocino County; and
- Minimize potential adverse effects of cannabis cultivation activities on the environment."

Response I6-1

This comment provides introductory information and is noted.

Comment I6-2

“The Proposed DEIR As Proposed Fails to Accomplish the Project Objectives

With all due respect, the DEIR fails to sufficiently accomplish those Project Objectives. Specific section by section comments follow, but broadly, the current draft, if adopted without modification would likely lead to large numbers of existing cultivators falling out of the regulated system and discourage bringing unregulated cultivation into the regulated licensing system.

Specifically, attempting to apply mitigations to activities prior to the baseline date, giving insufficient consideration to the positive impact licensed cultivation has on the environment as compared to unlicensed cultivation and the specific potential impact of the loss of regulated cultivators in the analysis of determining thresholds of significance, the feasibility of mitigations, and the project alternatives is not just demoralizing to cultivators, but will directly impact the number of licensed cultivators that will be retained. The potential adverse effects of losing an effective means of keeping licensed cultivators in the regulated system and making it feasible for unlicensed cultivators to enter the regulated system is an important consideration when effectuating the Project Objectives.”

Response I6-2

The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR.” As identified in Draft EIR Chapter 2, “Project Description,” the project consists of DCC potential actions to transition some or all 623 provisional licenses to annual licenses (i.e., whether to issue annual licenses to some or all of these provisional licensees). DCC may also consider other annual licensing actions (e.g., the issuance of new, additional annual cultivation licenses) for future commercial cannabis cultivation within the unincorporated areas of Mendocino County. Draft EIR Sections 3.1 through 3.17 identify that the continued operation of existing provisionally licensed commercial cannabis cultivation sites involving no changes to existing operations, including processing and distribution transport-only operations, transitioning to annual licensure would not result in additional impacts to special-status wildlife species and their habitats because operations are not anticipated to be altered through the annual licensing process. Thus, no mitigation measures are required for these sites. However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites may request a proposed cultivation area expansion, triggering the need for a different license type as they transition to annual licensure. These sites would trigger new licensing review and would be subject to compliance with the identified Draft EIR mitigation measures. Future new licensed commercial cannabis cultivation sites would also be subject to compliance with these mitigation measures.

Comment I6-3

“A Statutory Extension For Mendocino County Licensees To Transition To Annual Licensure Is Necessary If The DEIR Is Adopted As Proposed

The most immediately relevant concern is the likelihood that there is little hope, without a statutory extension, to accomplish the proposed mitigations before the termination of the Provisional licensing program. Based on the information contained in the DEIR with respect to the volume of sensitive species and habitat located in Mendocino County, it is probable that a very large percentage of cultivation sites could be implicated. Biological surveys are proposed to be conducted on all sites where expanded activities have occurred since issuance of the Provisional license.¹ If in fact the proposed mitigations, particularly Mitigation 3.5-1a, and 3.5-1b (if required after 3.5-1a) are applied to all licensees that have expanded activities “since

issuance of the provisional license” in addition to those that “may want to expand” prior to annual licensure, there would likely be many hundreds of biological surveys that would need to be conducted by a qualified biologist and likely some hundreds of those would require field studies during specific times of year.

¹ The DEIR treats sites that have had expanded activities or development prior to the Notice of Preparation date the same as those sites that may wish to expand activities prior to issuance of the annual state license. The DEIR repeatedly refers to existing provisional licensees that have made changes “since issuance of their provisional license” and lumps those baseline conditions in with those that will seek to make changes after the Notice of Preparation date and before issuance of their annual licensing. See, 3.1-15, 3.1-17, 3.1-18, 3.1-20, 3.2-16, 3.2-17, 3.3-16, 3.3-19, 3.3-21, 3.4-22, 3.4-25, 3.4-26, 3.4-27, 3.5-68, 3.5-72, 3.5-98, 3.5-100, 3.5-104, 3.5-106, 3.5-109, 3.6-9, 3.6-11, 3.7-19, 3.7-21, 3.7-24, 3.7-25, 3.7-26, 3.8-12, 3.9-18, 3.9-20, 3.9-21, 3.9-23, 3.9-24, 3.10-40, 3.10-43, 3.10-44, 3.11-9, 3.12-17, 3.12-21, 3.12-25, 3.12-27, 3.13-8, 3.14-15, 3.14-17, 3.15-14, 3.15-16, 3.15-19, 3.15-21, 3.16-14, 3.16-16, 3.16-18, 3.17-22, 3.17-24, 3.17-26, 3.17-27. The section below discusses whether application of mitigation measures is applicable to sites that have seen changes or expanded activities prior to the Notice of Preparation date, but the number of potential biological surveys and field studies must be considered based on the Mitigations as proposed in the DEIR.”

Response I6-3

The project does not include a proposed change to state and annual licensing deadlines, which are enumerated in Business and Professions Code section 26050.2. The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR.” The Draft EIR impact analysis and application of mitigation measures focus on physical impacts that would occur with proposed cannabis cultivation conditions (e.g., requests for cultivation expansion triggering the need a different license type and new cannabis cultivation sites) and not conditions that existed as of the release of the NOP on August 2, 2023. For example, Mitigation Measure 3.4-1 (Implement Additional Measures to Protect Historic Resources) specifically applies to new licensed commercial cannabis cultivation sites, whereas Mitigation Measure 3.5-1a (Conduct Preapproval Biological Surveys), which evaluates the potential for special-status species and habitats, specifically applies to areas “within a proposed expanded or new commercial cannabis cultivation sites” and not commercial cannabis cultivation operations that currently exist in compliance with required biological resource protections measures in SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirement and Prohibitions – Terms 4 and 10). This performance standard is also used in Mitigation Measures 3.5-1b, 3.5-1c, and 3.5-2a through 3.5-2p, which are triggered based on the results of the surveys under Mitigation Measure 3.5-1a.

The following edits have been made to mitigation measures below to clarify when the expansion of an existing licensed cultivation site triggers the need to implement the mitigation measure. The reader is referred to the responses to Comments A1-13 and O2-15 for edits to Mitigation Measures 3.5-1a and 3.5-4 that addresses this comment.

On Draft EIR pages 3.5-104 and 3.5-105, edits have been made to Mitigation Measure 3.5-5. The original text of the first paragraph of Mitigation Measure 3.5-5 on Draft EIR pages 3.5-104 and 3.5-105 states:

Mitigation Measure 3.5-5: Identify State or Federally Protected Wetlands and Avoid These Features
As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 1, 10, and 37), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new

annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of state and federally protected wetlands from proposed commercial cannabis cultivation sites:

The revised text of the first paragraph of Mitigation Measure 3.5-5 on Draft EIR pages 3.5-104 and 3.5-105 now states:

Mitigation Measure 3.5-5: Identify State or Federally Protected Wetlands and Avoid These Features
As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 1, 10, and 37), the DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of state and federally protected wetlands from proposed commercial cannabis cultivation sites: . This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

Comment I6-4

“In my experience about 90% of provisional licensees have expanded activities or development in one way or another since issuance of their Provisional license. The vast majority of Provisional cultivation licenses were applied for from 2018-2020 and issued from 2019-2022. Not only was it common for cultivators to slowly and deliberately phase into the total canopy size allowed for under their license, adding drying sheds (especially since state licensure required them to have separate secure storage), solar panels (to replace generators as primary source of power), and other infrastructure over time was not at all uncommon between 2018-2023. Even operators that had only limited, contiguous expansion often had expansion since issuance of their Provisional license. It is true that some sites already have had biological surveys and review under the SSHR process at the local level. However, it is believed that the total number of biological surveys already conducted on the entire site² is a fraction of those that would need them if the Mitigation measures were adopted as proposed.

² Some licensees had biological surveys conducted as part of their Lake and Streambed Alteration agreement process. However, often those surveys were often limited to the location of the culverts, bridges, or onstream ponds at issue and did not assess the location of the cultivation activities and development.”

Response I6-4

The reader is referred to the response to Comment I6-3.

Comment I6-5

“The DEIR asserts there are 623 Provisional licenses in Mendocino County. Even if only two-thirds of them needed biological surveys and only half of the total still needed field studies,³ it is hard to envision how all of those would be completed in the time left under the provisional licensing program given the time of year constraints.

³ In my experience about 80% of the files reviewed under the local SSHR program are required to conduct a biological survey and field studies. While one would hope that those studies would have been conducted already, the delay of grant funding that was intended to be used for those purposes prevented many applicants from being able to complete them.”

Response I6-5

The reader is referred to the response to Comment I6-3.

Comment I6-6

“While not within the power of the Lead agency to extend the statutory deadline, the DEIR has the obligation to consider these issues both as a marker of feasibility of the Mitigation measures proposed and in the context of evaluating the impacts of the potential for losing so many Provisional licensees. An analysis of the number of potential biological studies, including field studies, and the required timing of field studies would render those impacts non-speculative. That information can reasonably be assessed given the mapping and other data available to the lead agency.”

Response I6-6

The reader is referred to the response to Comment I6-3.

Comment I6-7

“The DEIR Improperly Fails To Include Activity Prior To Notice of Preparation Date In Baseline”

As stated above, the DEIR repeatedly includes expanded activities and development of Provisional licensees that occurred prior to the Notice of Preparation (“NOP”) date in the same category as those that may want to expand prior to transition to an annual license. Specifically, the DEIR addresses Provisional licensee expansion that has occurred “since issuance of their Provisional license.”⁴ Unless the issuance of the Provisional license was after the NOP date, the inclusion of this category of licensee activity and development is improper and the application of proposed Mitigations to those licensees, which are more properly included in the baseline, should not occur. The activities or development prior to the NOP date should be included in the baseline. The outcome of the analysis when comparing project impacts to the baseline may result in a change of findings in some impact sections from Potentially Significant or Significant to Less Than Significant.

⁴ See, 3.1-15, 3.1-17, 3.1-18, 3.1-20, 3.2-16, 3.2-17, 3.3-16, 3.3-19, 3.3-21, 3.4-22, 3.4-25, 3.4-26, 3.4-27, 3.5-68, 3.5-72, 3.5-98, 3.5-100, 3.5-104, 3.5-106, 3.5-109, 3.6-9, 3.6-11, 3.7-19, 3.7-21, 3.7-24, 3.7-25, 3.7-26, 3.8-12, 3.9-18, 3.9-20, 3.9-21, 3.9-23, 3.9-24, 3.10-40, 3.10-43, 3.10-44, 3.11-9, 3.12-17, 3.12-21, 3.12-25, 3.12-27, 3.13-8, 3.14-15, 3.14-17, 3.15-14, 3.15-16, 3.15-19, 3.15-21, 3.16-14, 3.16-16, 3.16-18, 3.17-22, 3.17-24, 3.17-26, 3.17-27.”

Response I6-7

The reader is referred to the response to Comment I6-3 and “Master Response 1: Baseline Conditions Used in the Draft EIR.” The reader is also referred to the response to Comment O2-16 regarding edits to Mitigation Measure 3.8-1 to clarify their application to existing licensed cannabis cultivation sites.

In the Draft EIR, on page 3.17-24, edits have been made to Mitigation Measure 3.17-2a.

The original text of Mitigation Measure 3.17-2a on Draft EIR page 3.17-24 states:

Mitigation Measure 3.17-2a: Implement Fire Prevention Measures for New Electrical Infrastructure

The DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to place new electrical power lines to the premises underground, if feasible. If electric infrastructure cannot be placed underground, fuel breaks along

power lines and any stand-alone electrical facilities in a manner that would avoid ignition of adjacent vegetation to the satisfaction of Mendocino County, local fire protection agency, and/or CAL FIRE.

The revised text of Mitigation Measure 3.17-2a on Draft EIR page 3.17-24 now states:

Mitigation Measure 3.17-2a: Implement Fire Prevention Measures for New Electrical Infrastructure

The DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to place new electrical power lines to the premises underground, if feasible. If electric infrastructure cannot be placed underground, fuel breaks along power lines and any stand-alone electrical facilities in a manner that would avoid ignition of adjacent vegetation to the satisfaction of Mendocino County, local fire protection agency, and/or CAL FIRE. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

In the Draft EIR, on page 3.17-24, edits have been made to Mitigation Measure 3.17-2b.

The original text of the first paragraph of Mitigation Measure 3.17-2b on Draft EIR page 3.17-24 states:

Mitigation Measure 3.17-2b: Implement Fire Prevention Measures for On-Site Construction

The DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to prepare and implement a fire protection plan that includes the following provisions:

The revised text of the first paragraph of Mitigation Measure 3.17-2b on Draft EIR page 3.17-24 now states:

Mitigation Measure 3.17-2b: Implement Fire Prevention Measures for On-Site Construction

The DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to prepare and implement a fire protection plan that includes the following provisions: This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

Comment I6-8

"The date of the baseline conditions is generally the date of the NOP. Title 14 California Code of Regulations⁵ §15125 (a)(1) in part reads:

Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.

The same subsection in fact allows for defining existing conditions by referencing historic conditions or conditions that exist when the project becomes operational. 14 CCR §15125 (a)(2), sets forth when future conditions beyond the date of the project may be used. No provision exempts actual conditions prior to the NOP date from inclusion in the baseline

information. 14 CCR §15125 (a)(3) excludes hypothetical conditions that might be allowed but have not actually occurred.

⁵ Hereafter, Title 14 of the California Code of Regulations will be abbreviated to 14 CCR.”

Response I6-8

The reader is referred to the responses to Comments I6-3 and I6-7 and “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment I6-9

“Here, expansion of activities or development prior to the NOP date are not hypothetical, but expansion that Provisional licensees MAY want to make but haven’t prior to annual licensure are. The two categories (those that have already expanded activities prior to the NOP date versus those that may wish to prior to the implementation of the project (annual licensure), must be treated differently. The former must be included in the baseline conditions and the analysis must take those conditions into account when conducting the analysis of comparing the baseline to the project impacts.”

Response I6-9

The reader is referred to the responses to Comments I6-3 and I6-7 and “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment I6-10

“The importance of establishing the correct baseline is well articulated in the Association of Environmental Professionals CEQA Portal Topic Paper on Baseline and Environmental Setting⁶

Establishing an appropriate baseline is essential, because an inappropriately defined baseline can cause the impacts of the project either to be under-reported or over-reported. A considerable number of CEQA documents have been litigated over the choice of a baseline for a given project, and many CEQA documents have been invalidated for the use of an inappropriate baseline (see *Important Cases* below).

AEP CEQA Portal Topic Paper, Baseline and Environmental Setting, P.1

The AEP CEQA Portal paper goes on to explain how deviations from the use of the NOP date to establish the baseline may be appropriate. Those include either inclusion of historical occupancy and multi-year averages in the baseline, the inclusion of conditions after the NOP date where a lapse in time from the NOP date until the study occurred, and the use of “future baselines” under certain circumstances. None of the scenarios involves EXCLUSION of an existing condition from the baseline.

Here, with respect to existing Provisional license holders, the “project” is to transition the licensee into an annual license. The impacts of this project must be analyzed in comparison to the baseline conditions, which include the expansion of activity and development since issuance of Provisional licenses until the NOP date.

⁶ <https://ceqaportal.org/tp/Baseline%20and%20Environmental%20Setting%20Topic%20Paper%2008-23-16.pdf>”

Response I6-10

The reader is referred to the responses to Comments I6-3 and I6-7 and “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment I6-11**“Inclusion of Unregulated Cultivation Is Proper But Not Sufficiently Analyzed**

The DEIR rightfully includes unregulated cultivation activities as part of the baseline (DEIR, pages 3-2 – 3-8). In fact, the DEIR provides substantial evidence that there might be 3850 unregulated cultivation sites in Mendocino County (DEIR P.3-2). Despite this specific and substantially supported evidence, most sections of the DEIR analysis, the inclusion of unregulated cannabis cultivation is only mentioned in a cursory manner if it is mentioned at all.”

Response I6-11

The Draft EIR discloses the existence of unlicensed cannabis cultivation sites in the County and available information of the environmental impacts of these sites. (See Draft EIR, pages 3-2 through 3-8, 3.5-61, 3.10-37, 4-3, and 4-4.) Although the Draft EIR acknowledges the adverse environmental effects of continued illegal cannabis operations as part of the environmental baseline condition because they are existing (and illegal), they are not considered part of the project, which consists of DCC potential actions to transition some or all 623 provisional licenses to annual licenses. In this context, they would not result in environmental effects associated with the project that would need to be mitigated.

Comment I6-12

“In one section, Diversion of Surface Water, it is explicitly stated that unregulated cannabis cultivation and its impacts on diversion of surface water are well documented (DEIR, 3.10-44), but no analysis of the comparison of the baseline including this existing condition is conducted. While the findings in this section found no impact of existing provisional license holders that have not expanded and a less than significant impact of those that have or want to as well as for future licensed sites due to adherence to regulations and due to the county’s cultivation size limitations, it is a good example of how the analysis failed to take into consideration even “well documented” impacts of unregulated cannabis cultivation.”

Response I6-12

Pages 3.10-34 through 3.10-37 of the Draft EIR describe in sufficient detail for a program EIR the existing impacts on Mendocino County watershed from unregulated cannabis cultivation activities on waterways that are impaired and the designation of Cannabis Priority Watersheds, which consist of the Mattole River, Middle South Fork Eel River, East Fork Russian River, Headwaters Russian River, Navarro River, and Dry Creek watersheds. As described on Draft EIR page 3.10-35, a Cannabis Priority Watershed may also meet some or all of the following criteria (SWRCB 2021):

- ▶ Contains or supports critical habitat for terrestrial or aquatic species;
- ▶ Contains water courses with low-flow conditions where water levels recede or are at risk of receding into the “danger zone” for aquatic life (survival-level flows at which aquatic habitat and species will be harmed);
- ▶ Contains a critical water supply, where excessive water use or diversions present unreasonable stress or pose a significant threat to long-term and sustainable water use;
- ▶ Is the subject of complaints that allege commercial cannabis cultivation that contributes to or causes natural resources violations or that affects senior water right holders;
- ▶ Is part of past or ongoing restoration efforts;
- ▶ Is listed under CWA section 303(d) as an impaired water body;

- ▶ Contains a surface water body listed as a fully appropriated stream; or
- ▶ Contains a water body designated as a “Wild and Scenic River” pursuant to Public Resources Code (PRC) section 5093.

As documented in Draft EIR Section 3.10, “Hydrology and Water Quality,” compliance with the numeric flow standards under SWRCB Order WQ 2023-0102-DWQ ensures that individual and cumulative effects of water diversions and discharges associated with commercial cannabis cultivation do not affect instream flows necessary for fish spawning, migration, and rearing for endangered anadromous salmonids and flows needed to maintain natural flow variability. The effectiveness of compliance with numeric flow standards, associated curtailment of water diversions during flow periods, and the use of water storage is supported by research conducted by the UC Berkeley Cannabis Research Center of 91 watersheds in Humboldt and Mendocino Counties. This research identified that licensed cannabis cultivation sites generated substantially less impact on watershed flow conditions than unlicensed cannabis cultivation sites, as well as residential uses, and consist of 1 to 4 percent of available surface water flows in watersheds evaluated depending on the extent of water storage used (Dillis et al. 2024). The comment provides no technical information or analysis that counters this analysis and impact conclusions related to the project.

Comment I6-13

“Likewise, the DEIR outlines impacts that use of rotenticides and insecticides on unregulated cultivation sites has on fishers and other carnivores but concludes that due to adherence to regulations, there would be a less than significant impact to those species but goes on to find a potentially significant impact due to “[p]otential expansion” because of the potential for tree or vegetation removal (DEIR pp.3.5-87- 88). If a proper analysis of the baseline conditions were utilized, including sites that had expanded prior to the NOP date and unregulated sites, would the comparison of this project result in a different level of significance.”

Response I6-13

The reader is referred to the responses to Comments I6-3, I6-7, and I6-11 and “Master Response 1: Baseline Conditions Used in the Draft EIR.” As described in the Draft EIR impact analysis on pages 3.5-86 through 3.5-87, potential significant impacts identified for these species are based on potential habitat loss from new disturbance associated with new or expanded cannabis cultivation uses that may occur from licensing actions by DCC. The comment provides no technical information or analysis that counters this analysis or the impact conclusions related to the project.

Comment I6-14

“In the context of the sections analyzing cumulative impacts, the DEIR finds that the extent of the environmental impact of unregulated cannabis cultivation was too speculative⁷ despite specific substantially supported evidence regarding how many unregulated sites there are, available mapping that could determine sizes of those sites, and other studies and articles that have “well documented” the impacts.

⁷ DEIR, 4-4”

Response I6-14

The comment mischaracterizes the discussion in the Draft EIR, on page 4-4. As identified in the text below from the Draft EIR, on page 4-4, the Draft EIR does consider the current extent of unregulated cannabis cultivation uses but concludes that the extent of continued (future) unregulated cannabis cultivation is speculative (i.e., unknown).

As discussed in Sections 3.1 through 3.17, historic and ongoing unlicensed/illegal cannabis cultivation practices have resulted in damage to streams and wildlife. Unlicensed cannabis cultivation operations on public and private lands have led to illegal water diversions, unpermitted removal of sensitive vegetation, and direct mortality to protected species from exposure to rodenticides and insecticides. In addition, these practices (e.g., clearing trees, grading, and constructing roads) have been conducted in a manner that causes large amounts of sediment to flow into streams during rains. The unlicensed cannabis cultivators have also discharged pesticides, fertilizers, fuels, trash, and human waste around the sites that then washes into waters of the state. Furthermore, year-round diversion of flows by unlicensed cannabis cultivation operations may have caused adverse effects on stream flows in some areas of the County that impacts anadromous fish species that need certain minimum depths in order to travel upstream to spawn. Water quality–related constituents of concern associated with cannabis cultivation discharges include nitrogen, pathogens (represented by coliform bacteria), phosphorus, salinity, and turbidity. Water quality can be affected by excessive use of fertilizer, soil amendments, or other sources.

Cultivation operations that do not obtain licensing from DCC and Mendocino County are considered illegal. While unlicensed/illegal cannabis cultivation operations would likely continue to occur in the County, the details on the full extent of the environmental effects of existing unlicensed/illegal cannabis operations are considered speculative and not assessed in this evaluation of cumulative impacts. Notably, enforcement activities targeting unlicensed cultivation operations are taken by the County in coordination with other agencies, including DCC, with the intent that such cultivation operations would be brought into compliance with County and state standards or closed.

It is not currently known how continued enforcement activities and licensing efforts will impact the extent of future conditions of unregulated cannabis cultivation uses. The comment provides no technical information or analysis that counters this conclusion.

Comment I6-15

“Just as it is unknown without a correct analysis if the findings of significance would change if expanded activities and development prior to the NOP date in the baseline conditions had not been improperly excluded from the baseline, it is not known whether the inclusion of a full analysis of the comparison of the baseline conditions, including unregulated cultivation sites would change the findings of significance. To the extent that those findings might be different, it is important to properly define the baseline and thoroughly conduct the comparative analysis.”

Response I6-15

The reader is referred to the responses to Comments I6-3, I6-7, I6-11, and I6-14 and “Master Response 1: Baseline Conditions Used in the Draft EIR.” The Draft EIR impact conclusions (with modifications to the mitigation measures identified in the Final EIR) are considered by DCC to be accurate and in compliance with CEQA.

Comment I6-16**“Some Of The Proposed Mitigations Are Infeasible**

14 CCR §15126.4 requires the proposed mitigations to be feasible. 14 CCR §15364 defines feasible:

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Mitigation measures 3.5-1a and 3.5-1b, as applied to existing Provisional licensees are infeasible given the end of the Provisional licensing program and the amount of time it will take to conduct the number of studies that are likely to be needed. Additionally, unless those studies are fully paid for by the state, the economic reality render them infeasible. Even if the funding is provided, the amount of time it might take after the EIR is final to contract with the qualified biologists if directly contracting with them, or the amount of time to have the funds flow through the local jurisdiction to the cultivators to pay for the studies, together with the amount of time needed to conduct the studies is insufficient to feasibly accomplish completion of those studies prior to the end of the Provisional licensing program, based on prior DCC, local jurisdiction, and other agencies’ contracting timelines.

While the regulations allow a project to move forward when there has been incorporation of mitigations and other measures to avoid or substantially lessen each significant adverse environmental effect identified, 14 CCR §15091 identifies the findings that must be made. As one of the possible alternatives, 14 CCR §15091(a)(3) explicitly provides for a finding that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”

Here, the current legal framework, without a statutory change, render the mitigations infeasible as applied to existing Provisional license holders. Even if the mitigations can be satisfied as to some of the current Provisional license holders, the evaluation must be conducted under the presumption that such requirements (mitigations) will apply to all similarly situated Provisional licensees.

At the very least, Mitigation measures 3.5-1a and 3.5-1b as applied to Provisional license holders who have already expanded activities or development prior to the NOP date, or that received authorization from the Department and local agencies to make those changes after the NOP date but prior to the publication of this DEIR, are infeasible under the definition provided in 14 CCR §15364 based on that authorization as a legal factor.

Specifically, building permits have been issued and licensing site plans have been approved in applications or amendments. It is reasonable to require studies when expansion has not occurred or has not been included in plans, permits and licenses that have been approved with those expansions. However, the legal consideration of reliance on authorizations that did occur is certainly a consideration as a legal factor impacting feasibility.

For all of these reasons, a finding that any Potentially Significant or Significant impacts of the cannabis cultivation of those that already are licensed, and operating are Significant but Unavoidable is warranted.”

Response I6-16

The reader is referred to the responses to Comments I6-3 and O2-6. DCC considers these mitigation measures feasible and necessary to address both new proposed cannabis

cultivation sites and proposed expansion of existing provisionally licensed cannabis cultivation sites that propose to expand their cultivation activities prior to their transition to annual licensure. The mitigation measures are consistent with agency guidance (i.e., measures that a vast majority of cannabis cultivators must already satisfy to address impacts to special-status species under SWRCB Order WQ 2023-0102-DWQ Attachment A) and are proportionate to the environmental impact of commercial cannabis activity.

Comment I6-17

“As a separate matter, Mitigation 3.5-p should align with 10A.17.070 (F)(1) which does not require an accredited acoustical engineer analysis but as the DEIR correctly indicates, can be done using some other mechanism or device.⁸ Additionally, the portion of Mitigation Measure 3.8-1 that prohibits onsite natural gas or propane use⁹, should, at a minimum, be modified to exempt sites that share existing natural gas or propane sources with residential use of such existing facilities.

⁸ DEIR, 3.5-13 correctly lists the ordinance requirements but the proposed Mitigation Measure 3.5-p listed at DEIR, 3.5-95, fails to incorporate the allowance for means of demonstrating adherence to the standard other than requiring an acoustic engineer.

⁹ DEIR, 3.8-15.”

Response I6-17

The reader is referred to the response to Comment O2-16 regarding changes to Draft EIR Mitigation Measure 3.8-1 regarding natural gas and propane use.

In the Draft EIR, on page 3.5-95, edits have been made to the first bullet point of Mitigation Measure 3.5-2p. The original text of the first bullet point of Mitigation Measure 3.5-2p on Draft EIR page 3.5-95 states:

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer. All generators shall be, at a minimum, equipped with the manufacturer’s specified muffler. Additional measures for noise attenuation may include additional muffler features and/or a structure to enclose the generator designed for sound suppression (MCCR section 10A.17.070(F)(1)). The following additional noise performance standards shall apply to generator use for sites within 0.25 mile of habitat determined to be suitable for northern spotted owl or marbled murrelet by a qualified biologist:

The revised text of the first bullet point of Mitigation Measure 3.17-2b on Draft EIR page 3.17-95 now states:

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer or some other mechanism or device acceptable to Mendocino County. All generators shall be, at a minimum, equipped with the manufacturer’s specified muffler. Additional measures for noise attenuation may include additional muffler features or a structure to enclose the generator designed for sound suppression. (MCCR section 10A.17.070(F)(1)) The following additional noise performance standards

shall apply to generator use for sites within 0.25 miles of habitat determined to be suitable for northern spotted owl or marbled murrelet by a qualified biologist:

Comment I6-18

“The Lead Agency May Find That Unavoidable Adverse Environmental Effects Are Acceptable Without Applying Mitigation Measures To The Transition Of Current Provisional Licensees To Annual Licenses And A Statement of Overriding Considerations Should Be Included In The Notice of Determination”

14 CCR §15093 mandates that the lead agency balances the benefits of a project against any unavoidable environmental risks to the environment:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Here, given the feasibility problems articulated above, it is appropriate to consider removal of the mitigation measures in 3.5-1a and 1b **as they are proposed to be applied to existing Provisional license holders**, or at least to those that have received building permits, or authorization after licensing or application or amendment submission and still approve the project.

The loss of those regulated cultivators would likely result in catastrophic abandonment of environmental protections currently in place on those sites, if not through the actions or inactions of current licensees, then through the forced abandonment or sale of those properties if licensure is lost and there is no viable small business income source. The issue is so significant, a County Supervisor has brought forward an Agenda Item to the Mendocino County Board of Supervisors General Government Committee Meeting to emphasize the problem.¹⁰

The loss of economic, cultural and social value of the remaining licensed cultivators would be catastrophic to not only the many hundreds of Provisionally licensed cultivators and their families, but to the broader business community and to the County tax base as well. In many public hearings related to the County's commercial cannabis licensing and taxation, members of the business community have stressed the importance of retaining the existing small cultivators in the county.

One need only look to the economic devastation that has already occurred in the Laytonville area, with the loss of so many non-cannabis businesses, including basic services such as grocery stores, properties for sale (and price reductions) to understand the economic and cultural importance of cannabis cultivation. While it is true that some of the devastation is a result to the shuttering of both unregulated and previously licensed cultivators, it is undeniable that this community can ill afford to lose additional businesses, such as those that are currently licensed as Provisional licensees. The county has received millions of dollars per year in tax revenue. While the total tax revenue has decreased based on both loss of licensed cultivators, and a temporary reduction in the tax imposed, one need only to look to the County's budget deficit to see that the loss of the revenue that does come from licensed activity would compound a budget crisis.

Socially, the family-based farm is a hallmark of Mendocino County. The local licensing structure severely limits the total cultivation allowed as compared with many other jurisdictions. Additionally, many of these small farmers practice organic and sustainable cultivation methods that go far beyond the licensing requirements.

The benefit of ensuring that adherence to requirements to obtain building permits and obtain approval of site expansions is meaningful and should be preserved and considered. If such approvals are meaningless with respect to the application of infeasible Mitigation measures, erosion of the adherence to regulations may proliferate. Here, Mitigation Measures 3.5-1a and 3.51b should not be applied to Provisional license holders that already received building permits and other approvals for expanded activities and development on their site.

In the case of Provisional license holders, or at least to those that have received building permits, or authorization after licensing or application or amendment submission, a finding that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of those proposed projects outweigh the unavoidable adverse environmental effects, and the lead agency should make a finding that the adverse environmental effects are "acceptable" without the need to require those mitigation measures.

¹⁰ 6/26/24 Mendocino County Board of Supervisors General Government Committee Agenda Item 2c: Discussion and Possible Action Regarding Illegal Cannabis Cultivation Sites within Unincorporated Areas of Mendocino County, Potential Environmental Impacts, and the Need for Property Owners to Prioritize Cleanup Efforts (Sponsor: Supervisor McGourty)."

Response I6-18

The reader is referred to the responses to Comments I6-3, I6-11, and I6-14. Pursuant to CEQA, a determination of significant and unavoidable for an impact would result if the impact cannot be reduced to below the threshold level given reasonably available and feasible mitigation measures. Reasonably available and feasible mitigation measures are available for this project and included in Section 3.5, "Biological Resources," of the Draft EIR. The Draft EIR mitigation measures are feasible, consistent with existing resource agency guidance (i.e., measures that a vast majority of cannabis cultivators must already satisfy to address impacts to special-status species under SWRCB Order WQ 2023-0102-DWQ Attachment A), and proportionate to the potential environmental impact of commercial cannabis cultivation activity. Therefore, a significant and unavoidable determination for biological resources would not be appropriate. No changes to the Draft EIR impact conclusions are recommended.

Comment I6-19**“Neither Alternative 1 Nor Alternative 2 Should Be Adopted**

Without doubt, four out of the six Project Objectives involve maximizing retention of current licensees and allowance of future licensure of cannabis cultivation in Mendocino County. Arguably, the remaining two objectives are also achieved through feasibly preserving current and future licensure.

It is in fact important for the Department to consider Alternatives to the Project. California Public Resource Code § 21002, 14 CCR §15126.6. However, two factors relevant to this project are important for the Department to consider when deciding whether the proposed alternatives should be adopted. Both feasibility of the alternative and whether the alternative would achieve most of the project’s objectives are necessary to consider even if a proposed alternative might avoid or substantially lessen the significant effects of the project. 14 CCR §15126.6(a).

It is because a ban on commercial cannabis cultivation was determined to not feasibly achieve most of the project objectives that it was considered and rejected for further evaluation.¹¹ The law and rationale for that decision was well articulated in the DEIR:

Alternatives that fail to meet the fundamental project purpose need not be addressed in detail in the EIR (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165– 1167)... The decision maker(s), for example, may conclude that a particular alternative is infeasible (i.e., undesirable) from a policy standpoint and may reject an alternative on that basis provided the decision maker(s) adopts a finding, supported by substantial evidence, to that effect and provided that such a finding reflects a reasonable balancing of the relevant economic, environmental, social, and other considerations supported by substantial evidence (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 998).

DEIR, 5-4 – 5-5.

Alternative 1, the No Project Alternative, could preserve Project Objective two and **portions** of some of the other Project Objectives **IF** continued licensure of existing Provisional licensees was feasible and did not contain infeasible mitigation measures, but would completely eliminate the third Project objective. It is likely that given that only portions of most of the Project Objective would be met, and the consideration of the infeasibility of proposed Mitigation Measures as stated in the sections above, it is not possible to conclude that most of the Project Objectives will be met by adoption of Alternative 1.

Likewise, after balancing “the relevant economic, environmental, social, and other considerations” of not just keeping current Provisional license holders in the regulated system but encouraging the continued transition of unregulated cultivators to enter licensure as a means of fulfilling greater environmental protections, and greater economic, and social benefits, the Department should reject this alternative.

An elimination of future licensure would not only prevent unlicensed operations from entering the more environmentally protective conditions of licensure but would completely prevent current licensees from obtaining a different license type going forward.¹² Small Mendocino County Cultivators who had to shut down due to the market crash and other factors that were not a reflection of their environmental stewardship or adherence to regulations, would be unable to reenter the licensing system.

It is also important to factor in the fact that Mendocino County has restricted the allowable zoning and has placed additional requirements (water availability studies) on all Phase 3 license applicants. Any future state license applicants for sites not already in the licensing systems would be required to apply for a Phase 3 local license. The result is that no resource land zoning is allowed for future cultivation. When balancing these relevant economic, environmental, social, and other considerations, it is appropriate for the Department to approve the Project and reject Alternative 1.

The analysis of the potential of future licenses is flawed. As a result, the Project cannot be properly weighed against this alternative. The DEIR states “Historic County licensing data indicates that implementation of the project (i.e., streamlining the annual licensing process) could result in a development potential of up to 1,075 new commercial cultivation licenses...”¹³

There is a serious question of whether the assumptions regarding the quantity of reasonably foreseeable cannabis cultivation applications are correct. The DIER asserts 1075 reasonably foreseeable cannabis cultivation applications is assumed based on the total license applications submitted in Mendocino County since 2017 and allocated the type of license applications in accordance with the types of state licenses held. However, the license application numbers in 2017 and 2018 at the local level included Phase 1 applicants. As stated above, only Phase 3 applicants may apply and many of the potential locations are no longer eligible. Further, Appendix B reflects that vast majority of state licenses were applied for in 2018- 2021. In fact, only 35 cultivation licenses applied for in 2022 or 2023 as listed in Appendix B.

Given all these factors, the Department should reject Alternative 1 and allow the project to move forward.

¹¹ DEIR, 5-5.

¹² It is acknowledged that currently, the Department has implemented SB 833, which allows for a one-time change of expiration date, allows a licensee to enter a limited operations status, and allows a reduced license size change while retaining the ability to return to the original license size. However, these options do not allow a change in cultivation style. For example, a Mixed Light Cultivator may not change to a Mixed Light operation or vice versa without applying for a new license. Any new license change of cultivation style would require a new annual license application and therefore under this proposed alternative, be impossible.

¹³ DEIR, 2-3.”

Response I6-19

The comment’s support for the Draft EIR’s conclusions associated with the consideration of a ban on commercial cannabis cultivation alternative not being feasible is noted. The information regarding the feasibility of Alternative 1 (No Project Alternative) is noted. State CEQA Guidelines, section 15126.6(e) requires the specific alternative of “no project” to be evaluated. The purpose of describing and analyzing a no-project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. DCC will need to make findings under State CEQA Guidelines, section 15091 regarding the ultimate feasibility of this alternative as part of project approval.

As noted in the comment, the Draft EIR impact analysis (Draft EIR pages 3-9 through 3-11) for future new cannabis cultivation sites assumes future cannabis cultivation application requests over the next 20 years would consist of up to 1,075 new cultivation licenses, 10 new processing licenses, and 40 distribution transport-only licenses based on the maximum extent of license requests that Mendocino County has received since 2017, the current composition

of cultivation sites/operations licensed by DCC, state-licensed cannabis operations in other rural communities with similar rural land use characteristics (e.g., Humboldt and Trinity Counties), available cannabis application data, and other published information regarding cannabis operations. Page 3-9 of the Draft EIR acknowledges that the future of cannabis cultivation operations in Mendocino County may vary from what is assumed because commercial cannabis business is market-driven and guided by unpredictable economic and regulatory forces.

Comment I6-20

“With respect to Alternative 2, current law already prevents issuance of a state license if there is substantial evidence that the cultivation is causing significant adverse impacts on the environment in a watershed. California Business & Professions Code § 26060 (a)(2). Therefore, whether it is an “impacted” watershed or not, no new license can be issued if substantial evidence supports a finding that the cultivation is having a significant adverse impact on the watershed. In this sense, Alternative 2 is not really an alternative.

If the proposal is to go further than existing law and to eliminate the requirement that there be substantial evidence that the cultivation is in fact having an adverse impact and to prevent issuance in an impacted watershed even if there is no such substantial evidence, then each of the arguments listed above apply and on balance, the Department should reject Alternative 2.”

Response I6-20

The comment is correct in regard to the potential of future new cannabis cultivation being prohibited in designated Cannabis Priority Watersheds. Pursuant to Business and Professions Code section 26060(a)(1), if SWRCB or CDFW notifies DCC in writing that commercial cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, DCC shall not issue new licenses or increase the total number of plant identifiers within that watershed or area while the moratorium is in effect. However, this statute has not been implemented to date in these watersheds. DCC will need to make findings under State CEQA Guidelines, section 15091 regarding the ultimate feasibility of this alternative as part of project approval.

Comment I6-21

“Adding expanded activities and development prior to the NOP date to the baseline as existing conditions to be weighed against project impacts should occur. Also, as stated above, the assumptions regarding future cannabis cultivation licensing applications and potential should be reexamined considering the Phase 3 zoning and other restrictions and timing of the bulk of the prior state applications for current licenses and applications at the County were existing legacy cultivators and not new cultivation sites. In addition, the following factual items should be corrected:”

Response I6-21

The reader is referred to the responses to Comments I6-7 through I6-18. Responses to comments related to factual items in the Draft EIR are responded to in the responses to Comments I6-22 through I6-25.

Comment I6-22

“1. Mendocino County Code Section 10A.17 no longer requires fencing. While it is true that fencing is desirable by the licensee for security and attractive nuisance reasons, it is no longer a requirement of 10A.17.”

Response I6-22

While changes to the MCCR that occurred in March 2024 after release of the NOP did remove some fencing requirements, a fencing requirement for cultivation sites was added under an exemption. (See MCCR section 10A.17.040(L).)

In the Draft EIR, edits have been made to pages 3.1-4 and 3.1-5.

The original text on Draft EIR pages 3.1-4 and 3.1-5 states:

- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or Cannabis Cultivation Business License (CCBL) Holder (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and their location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

The revised text on Draft EIR pages 3.1-4 and 3.1-5 now states:

- (H) All commercial cannabis grown in Mendocino County shall be secured by the required security measures found in CCR, title 4, Division 19, as amended from time to time.

- (L) All cannabis grown in Mendocino County pursuant to an exemption provided for in section 10A.17.030 (excluding indoor cultivation or otherwise cultivated in a secure structure) must be within a secure fence that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section, or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth, except shade cloth may be used on the inside of the fence.

Comment I6-23

“2. Waterboard rules for setbacks from wetlands is only 50’ if the cultivator was enrolled in a prior Regional Waterboard Order, such as that which was in place for the region in which Mendocino sits and that many of the current Provisional licensees were enrolled in.”

Response I6-23

It is assumed that the comment’s reference to “Waterboard rules” is the SWRCB Order WQ 2023-0102-DWQ. This provision is identified in the notes of Draft EIR Table 3.5-1.

Comment I6-24

“3. It may simply be the way that the text is formatted that gives the impression that Watershed assessments are required of all Phase 1 applicants, but in fact, only Phase 1 applicants that relocate and that are not in AG zoning.”

Response I6-24

Page 3.10-25 of the Draft EIR identifies that the watershed assessment primarily applies to Phase 3 applicants under MCCR section 10A.17.080(C).

Comment I6-25

"4. The MCCR setback requirements for applications received prior to 1/1/20 were 50' from the property line and 100' from a neighboring occupied legal residence. Applications received after 1/1/20 require 100' and 200' respectively to those sensitive receptors.¹⁴

¹⁴ DEIR, 3.12-21 suggests only the greater setbacks apply to all existing cultivation. Existing cultivation that was applied for after January 1, 2020 would need to meet the greater setbacks in accordance with the MCD Policy Memo dated 8/3/23, but applications before 1/1/20 would not.

<https://www.mendocinocounty.gov/home/showpublisheddocument/59849/638267621234000000>"

Response I6-25

Page 3.3-22 of the Draft EIR characterizes these setbacks and other setback requirements identified in the MCCR.

Comment I6-26

"It is excellent that an EIR study has finally been conducted for Mendocino County cannabis cultivation. I appreciate the immense amount of work that this entailed and the state funding that was provided to have it done. The issues raised in this comment letter are not meant to disparage the drafters but are intended to ensure a proper review and analysis are considered for the final draft adopted.

Thank you for your careful consideration of these issues and for your hard work in getting us to this point."

Response I6-26

This comment is conclusory in nature and is noted.

Letter I7 Tamara

June 24, 2024

Comment I7-1

"Please consider how drastically reduced the current impact today's volume of cultivation, microbusiness, manufacturing, and distribution is compared to the large volume of only a few years ago when the original Mendocino ordinance was written. Should we not have used the inception of the Mendocino ordinance as a baseline date?"

Response I7-1

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. Noncultivation cannabis uses are outside the scope of this project and EIR. The reader is referred to "Master Response 1: Baseline Conditions Used in the Draft EIR" regarding comments on baseline.

Comment I7-2

"Also please note the estimated ratio of 6 unlicensed cultivation to every one that is regulated. This limits the ability of any policies that follow to regulate and protect the environment since most cultivators are not participating in the regulated market. Currently licensed operators are generally some of the most environmentally sensitive actors. Please understand that additional red tape or imposed criteria may lead to the failure of businesses trying to follow regulations while most other businesses are not leading to loss of tax revenue for the county and state."

Response I7-2

The Draft EIR addresses the physical environmental impacts of the licensing actions of DCC. The Draft EIR acknowledges the adverse environmental effects of continued illegal cannabis operations as part of the environmental baseline condition described in EIR Sections 3.1 through 3.17. However, such continued illegal cannabis operations are not considered part of the project, which consists of DCC potential actions to transition some or all 623 provisional licenses to annual licenses. In this context, they would not result in environmental effects associated with the project that would need to be mitigated.

Comment I7-3

“Please consider the micro businesses that we have been operating on our land since before proposition 64. When considering land use please allow the most space possible for all small cultivators to transition to micro business license holders reflecting the use types that they have exercised for decades. There should be no additional impact to transition a licence from cultivation to micro business licence.”

Response I7-3

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis cultivation operation applications under consideration by DCC, consistent with the requirements of CEQA. Noncultivation cannabis uses are outside the scope of this project and EIR. The reader is referred to the response to Comment I7-2. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I7-4

“Finally, please consider adding verbiage to reflect the agricultural nature is cannabis cultivation. Cannabis is agriculture. Right to farm should apply.”

Response I7-4

Pages 2-2 through 2-6 of the Draft EIR describe how cannabis is grown, whereas pages 3.2-15 through 3.2-17 provide analysis of how the commercial cannabis cultivation process involves the same practices as other agricultural products generated currently in the County. The Mendocino County Policies and Procedures for Agricultural Preserves and Williamson Act Contracts identify commercial cannabis cultivation as compatible with qualifying agricultural uses (see Draft EIR page 3.2-15). The Right to Farm Ordinance is under the jurisdiction of Mendocino County, not DCC. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment I7-5

“In summary please:

- consider a start date for analysis at the inception of the Mendocino county ordinance
- limit additional restrictions and compliance for good operators in the regulated market
- ensure Microbusiness licences for current cultivation licencees do not trigger additional CEQA review
- add language affirming the rightful agricultural status of cannabis cultivation.”

Response I7-5

The reader is referred to the responses to Comments I7-1 through I7-4. This comment is noted.

Public Meeting PM1 June 4, 2024

Public meeting comments were transcribed from audio recordings and may be incomplete or inaccurate due to inaudible passages, spelling errors, or transcription errors.

Comment PM1-1

Sorry, I don't know it. It keeps asking me to raise my hand. So there's a couple of items we'd like to point during this verbal comments, but we will be also submitting written comments with more detailed analysis that we feel is important for this EIR process.

Response PM1-1

This comment is noted. Responses to the Mendocino Cannabis Alliance (MCA) written comments are responded to under Letter O2 above.

Comment PM1-2

Some priorities that we see here at the MCA is that you need to ensure that the EIR is efficiently transitions people from provisional licenses to annual licenses with a very streamlined process. You know to provide a mechanism for future cannabis cultivation license applicants to obtain annual licenses through a streamlined cannabis licensing process. If the site specific review requirements and the proposed mitigations which are not feasible or adopted from this draft EIR in order to achieve the objective of transitioning people from our provisional to annual license, there'll be a need for a statutory change to the deadline to meet the requirements. It just won't be possible for people to do these things in time with some of the proposed requirements that are being put set forth here.

Response PM1-2

As identified in Draft EIR Chapter 2, "Project Description," the project consists of DCC potential actions to transition some or all 623 provisional licenses to annual licenses (i.e., whether to issue annual licenses to some or all of these provisional licensees). DCC may also consider other annual licensing actions (e.g., the issuance of new, additional annual cultivation licenses) for future commercial cannabis cultivation within the unincorporated areas of Mendocino County. The project evaluated in the Draft EIR does not include a proposed change to state annual licensing deadlines, which are enumerated in Business and Professions Code section 25050.2. The reader is referred to the responses to Comments O2-3 and O2-5 regarding the consideration of existing provisionally licensed sites and streamlining.

Comment PM1-3

As stated by the project objectives, these goals are the main priorities and objectives. These goals, although our other objectives are also just as important. These ones in particular will help to mitigate impacts by keeping people in the licensing system and help toward accomplishing the other listed objectives.

Response PM1-3

This comment is noted.

Comment PM1-4

Another item that we feel is extremely important is the baseline look back date should be the notice of the preparation date which was August 2, 2023. The EIR here is proposing mitigations be required before that baseline date in certain instances improperly before the NOP date. You know, some of these things were cannot conducted, you know during the cursor, you know which couldn't be considered now.

And what the baseline means is ensure that the existing conditions including non-licensed are accurately depicted by looking at a license or a new license and hearing to regulated system that can act as mitigation.

Response PM1-4

The reader is referred to the responses to Comments O2-3 and O2-5 and "Master Response 1: Baseline Conditions Used in the Draft EIR."

Comment PM1-5

And as far as the mitigations or measures need to be achievable and feasible so that the determination of insignificant and unavoidable determinations are maximized. There needs to be specific guidelines to make determinations. Are the mitigations feasible? Are they cost? Are they doable time wise? Are they, do they allow enough time for people to even hire contractors to accomplish these goals? A lot of mitigations can only be done during certain times of year. And being that we're just starting this draft EIR now and it's not even finalized, it might be difficult for people to even get this accomplished by the proposed date of, you know, January 1st of next year.

Response PM1-5

The reader is referred to the responses to Comments O2-6 and I6-3.

Comment PM1-6

When people when they have to start renewing their licenses have to make sure you have to be able to do that to a state annual rather than no longer be able to do a provisional, which is also another reason why we feel there need to be a change in the statutory change.

Response PM1-6

This comment is noted. The reader is also referred to the response to Comment PM1-2.

Comment PM1-7

One last point is applying mitigations before the NOP or after NOP or for future, you know for people that did changes after the NOP or for future sites. It is unreasonable to study what has already been done. For people who are who have done projects before this NOP date, changes made after the NOP date or for future mitigations required or not feasible to get people from provisional state and annual.

Response PM1-7

The Draft EIR impact analysis and application of mitigation measures focus on physical impacts that would occur with proposed cannabis cultivation conditions (e.g., requests for cultivation expansion triggering the need a different license type and new cannabis cultivation sites) and not conditions that existed as of release of the NOP on August 2, 2023. For example, Mitigation Measure 3.4-1 (Implement Additional Measures to Protect Historic Resources) specifically applies to new licensed commercial cannabis cultivation sites, whereas Mitigation Measure 3.5-1a (Conduct Preapproval Biological Surveys), which evaluates the

potential for special-status species and habitats, specifically applies to areas “within a proposed expanded or new commercial cannabis cultivation sites” and not commercial cannabis cultivation operations that currently exist in compliance with required biological resource protections measures in SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirement and Prohibitions – Terms 4 and 10). This performance standard is also used in Mitigation Measures 3.5-1b, 3.5-1c, and 3.5-2a through 3.5-2p, which may be triggered based on the results of Mitigation Measure 3.5-1a. The reader is referred to the response to Comment I6-3 for edits made to Draft EIR mitigation measures to clarify implementation.

Comment PM1-8

There could be more feasible BMP best management practices or alternatives that are as effective as suggested. The requirements provisional licenses obtained for provisional license seem to be minimized suggesting some of the mitigations. In order for provisional license holders to meet some of the suggested mitigations, it will be necessary for a statutory change to the deadline to meet requirements. Thank you.

Response PM1-8

The comment provides no specific examples of “more feasible best management practices or alternatives” that could be used in place of the Draft EIR mitigation measures. DCC considers the Draft EIR mitigation measures feasible as proposed and modified in the Final EIR. The project evaluated in the Draft EIR does not include a proposed change to state annual licensing deadlines, which are enumerated in Business and Professions Code section 26050.2.

Comment PM1-9

Good. Just wasn't sure. Thank you very much for this opportunity. Following the last speaker, we'd like to drill down just a little bit more. For many of us who remain with provisional licenses and we've lost over half of those people for primarily economic reasons and bars that were impossible to reach particularly for very small or heritage cultivators. And we are small heritage cultivators.

So what we would like to suggest is that in as much as many of us have practiced regenerative farming for all of our crops, cannabis as well as fruits, vegetables, etcetera, and in every way practiced very best practices keeping abreast of newer ways to protect the soil, the air, etcetera, growing in the sun, not using energy unwisely.

Response PM1-9

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-10

We would like to suggest that there be a provision made that farmers could submit an affidavit outlining in detail of their practices going back as far as they go, back some five years, many 10 to 20 years or more, and have that be considered when we're looking at mitigation. That's needed because as the previous speaker mentioned, most of us are completely unable to hire outside entities to do biological surveys, etcetera. But we do have the generational knowledge and we'd like to be able to submit documentation via affidavit to be considered as we move from provisional to annual. Thank you.

Response PM1-10

This comment is noted. CEQA requires the evaluation of impacts on the existing environment and does not factor historic land practices in evaluating future impacts of a proposed action (e.g., construction and operation of a new cannabis cultivation site).

Comment PM1-11

I want to reiterate first that the baseline date or the look back date, really needs to be the notice of preparation date to have a variety of different dates based on when various different cultivators and farmers obtained their provisional license dates that spans back until 2018. So over the last six years, just as a matter of logistics and processing, it needs to be one universal date, especially given all of the changes that have happened with regulations and the general tumultuous nature of the industry through this legalization process. So very important that the baseline date is the NOP date of August 2, 2023.

Response PM1-11

The reader is referred to the responses to Comments O2-3 and O2-5 and “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment PM1-12

One of the purposes of the EIR is to provide a streamline process both for transitioning the provisional current provisional licensees to annual licenses as well as for future, future licenses. Excuse me, we think, I think that the EIR is missing the mark on streamlining. Many of the mitigation measures create problems as far as timing and cost, as was also mentioned by previous commenters.

Response PM1-12

The reader is referred to the responses to Comments O2-5 and O2-6.

Comment PM1-13

I understand that this time is to comment on the adequacy of the EIR, but that goes hand in hand with the Department of Cannabis Controls efforts and what they will or will not be able to do in helping to fund these biological studies and mitigation measures, biological studies that will inform individual mitigation members on different farms. So we really need to look back and really take to heart the streamlining nature of the purpose of this EIR.

Response PM1-13

The reader is referred to the responses to Comments O2-5 and O2-6.

Comment PM1-14

As also mentioned before, the mitigations need to be achievable and proportionate. The definition of feasibility is the standard degree of being easily or conveniently done. What this is setting up as far as timing in tandem with the current deadlines of the provisional license system is not feasible. It is not easily or conveniently done based on cost, timing, and other factors.

Response PM1-14

The reader is referred to the responses to Comments O2-5 and O2-6.

Comment PM1-15

I think that it would be important to also establish some allocation in the EIR for a substantially in conformance relative to when a farm wants to expand that there is a certain area, not thank you, but there is a relative area that is properly addressed by mitigation measures or whatever it is so that small changes as farmers adapt with each season, each year with this annual crop that they would be able to work within that footprint.

Response PM1-15

As identified in the Draft EIR, on pages 3-9 through 3-11, the impact analysis programmatically considers the expansion of cannabis cultivation in Mendocino County. It would be speculative to specify to what extent an existing licensed cannabis cultivation site expands prior to issuance of an annual license. Thus, this type of analysis was not conducted consistent with State CEQA Guidelines, section 15145.

Comment PM1-16

Lastly, one of the other objectives was to make sure that cultivation is conducted in accordance with the laws. In order to do that, this still needs to be streamlined more and made feasible so that you do not make the program so difficult good operators can't get permitted. Thank you very much.

Response PM1-16

The reader is referred to the response to Comment O2-5.

Comment PM1-17

Hi, thank you. My name is Amy Wynn, I'm calling in from Wind Coastal Planning and Biology in Fort Bragg, And thank you very much for preparing this draft EIR. So overall, I'd like for the preparers and the state to keep in mind that this particular cohort of applicants are really the cream of the crop. They are the best of the best and they are not the gross violators that typically envisioned when people think about, you know, illegal cannabis growth. So please do keep that in mind as we endeavor to bring these folks to from provisional to annual in a streamline process. I agree that this draft EIR is the, you know, misses the mark of.

Response PM1-17

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-18

Meeting that streamlined process goal of the project and I do have some recommendations for how it might be able to be more adequately meet that goal, which does include the pot that please when it comes to biological resources include a or change the potential impacts from no impact to or less than significant to significant and unavoidable.

Response PM1-18

This comment introduces the recommendations, which are included in the following comments. The comment is noted.

Comment PM1-19

Specifically for resources that are run to automatic denial if they cannot be avoided, there are some opportunities where best management practices can be utilized to either avoid or minimize impacts as typical mitigation measures.

Response PM1-19

This comment introduces the recommendations included in the following comments. The comment is noted.

Comment PM1-20

Specifically for special status plant species, California red legged frog, western pond turtle and state and federally protected wetlands, there should be the ability to utilize these best management practice impact avoidance measures for these species so that even though there might be a potential for those for those items to be impacted, the potential is minimal. So while you can't say that there will be a less than significant impact, the draft EIR should know that they are significant and unavoidable in order to bring this specific cohort of operators to full licensure.

Response PM1-20

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-21

Also to allow for compensation as other types of development such as you know, other agricultural types of development might be able to utilize.

Response PM1-21

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-22

So new topic generator noise reduction. Mendocino County has very few, if any acoustical engineers working within our county. We recommend that the state or the county provide a list of the most frequently used generators and their design noise levels at full operational speed and note which ones of those generators meet the requirements to commercial tree species.

Response PM1-22

This comment is directed to provisions of the MCCR and not the project, which consists of proposed licensing actions by DCC. DCC cannot amend the MCCR.

Comment PM1-23

Is there an opportunity through this draft EIR to make a recommendation to this county that 10A.17 be revised to allow for some minimal impact to commercial tree species?

Response PM1-23

The project does not include evaluation of the MCCR or amendments to the MCCR. The MCCR is under the jurisdiction of Mendocino County, not DCC. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-24

And lastly, old growth habitat. Please define what constitutes altering old growth habitat. Do does trenching for utility lines constitute alteration or putting in a driveway or shed? Thank you.

Response PM1-24

The reader is referred to the response to Comment O2-15.

Comment PM1-25

This is Hannah Nelson, and I would like to make numerous comments regarding the adequacy of this draft. EIR as previous speakers indicated, the goals some of the goals that were enunciated are not adequately being reflected in the analysis, specifically leading to a serious consideration of analyzing whether or not a statutory extension for the provisional licensing team for Mendocino County cultivators and operators may be necessary.

Response PM1-25

The reader is referred to the response to Comment I6-2.

Comment PM1-26

Specifically, some of the issues in the draft EIR regarding the baseline are quite concerned. First, as several speakers indicated previously, while the draft EIR acknowledges that both non regulated and regulated cannabis make up the baseline, the draft EIR in its later portions when dealing with issues of mitigations, tries to use a date that is not the notice preparation date, which is in fact the accurate legal baseline date that must be used.

In fact, it refers to looking to apply mitigations from the time that individuals had received or licensees and initially received their state provisional license. That is an inaccurate legal standard. There is no authority for applying mitigations to pre baseline dates. There is case law of instances where a delay between the notice of preparation and the study itself may require a different date, but not prior to the base. I'm sorry, the notice of preparation in terms of applying mitigations to activities that have occurred before that.

Response PM1-26

The reader is referred to the responses to Comments I6-3 and I6-7 and "Master Response 1: Baseline Conditions Used in the Draft EIR."

Comment PM1-27

Additionally, I believe that the utilization of the existing baseline was inadequate in terms of comparison. I'm sorry, comparing the impacts of the existing

Response PM1-27

The reader is referred to the responses to Comments I6-3 and I6-7 and "Master Response 1: Baseline Conditions Used in the Draft EIR."

Comment PM1-28

Thank you activities with respect to both lawful and unlawful cultivation and its impact on whether or not there was a less than significant impact, potentially significant impact or significant impact, which then in turn affects the mitigations. I have several other topics and I'll raise my hand again. Thank you.

Response PM1-28

The reader is referred to the responses to Comments I6-3, I6-7, and I6-11 through I6-14 and "Master Response 1: Baseline Conditions Used in the Draft EIR."

Comment PM1-29

Hello, hello. This is Meghan Durbin, land use consultant in Mendocino County. Again, seeing as there are not, there does not seem to be a line for comments, I'm going to expand on my earlier comments, the first being the baseline date. What my comments were referring to. Is

that just aside from the legality or aside from the appropriateness, the inappropriateness of using the date of provisional licensing being issued?

The simply the feasibility of being able to for the Department of Cannabis Control and any other agencies to review and process the transition of the provisional in licenses to annual licenses with a variety of different start dates is problematic. This process for these farmers who have been trying to do their best to do right, by the way, the world of the law and what is changing in our in the industry have been waiting very patiently and have been through a very convoluted complex roller coaster of the process. So a simple thing such as setting the baseline date as the NOP date, August 2 of 2023, I could feel it's very important in making sure that the streamlining can actually be achieved in this.

Response PM1-29

The reader is referred to “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Comment PM1-30

In regard to the streamlining, many of the biological studies that are part and parcel of the mitigation measures or would prompt the mitigation measures, it need to happen in particular blooming seasons throughout the year, through the spring and the summer, early and late spring and summer.

Response PM1-30

The comment provided background information for the following comment and is noted.

Comment PM1-31

With the way that the provisional licensing dates are right now that they will go, that the whole mechanism will go away as of December 31, 2025, that is problematic seeing as we are already in a blooming season for this year that would push over to the next year.

Response PM1-31

The reader is referred to the responses to Comments O2-3 and O2-5 and “Master Response 1: Baseline Conditions Used in the Draft EIR.”

Protocol-level surveys for special-status plant surveys must be completed during the blooming period for the species in question because there is often no other way to identify these species unless they are blooming. If these species are not identified properly, they cannot be avoided, and impacts on these species cannot be reduced, pursuant to Draft EIR Mitigation Measure 3.5-1b or pursuant to requirements of CEQA and CDFW. Without another effective way to identify these species, Mitigation Measure 3.5-1b is the most prudent and reasonable approach to avoid impacts on special-status plant species.

Comment PM1-32

And there are 623, I believe, provisional licenses in Mendocino County that we need to be transitioned purely as a matter of logistics and the capacity of consultants to do the biological studies, to finish the reports and determine the mitigation members for the farmers to be able to afford any of these efforts and then for any mitigation.

Response PM1-32

The reader is referred to the responses to Comments O2-3, O2-5, I6-3, and I6-7.

Comment PM1-33

Thank you. The timing just is not sufficient as everything stands right now. So inherently with the way that this is set up currently, there is a lack of streamlining. And that's a problem because that is one of the key goals of this programmatic EIR. Thank you. I will raise my hand again. Thank you.

Response PM1-33

This comment is noted. The reader is referred to the responses to Comments O2-3, O2-5, I6-3, and I6-7.

Comment PM1-34

This is Hannah Nelson again. And moving on to the topic of utilization of the ability to find under Section 15091, either it's, I'm sorry, I keep getting interrupted by a recording on the Webex. The EIR does not utilize the ability.

The draft EIR does not utilize sufficiently the ability to find, under Section 15091 either a significant and unavoidable impact or infeasibility of various mitigations suggested. Request that a better analysis of the significant and unavoidable impacts, particularly with respect to losing licensed operators, should the project not go forward or the project go forward in a manner in which the mitigations are infeasible under Section 15091.

One subject in a three specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report. Those, of course, are the specific items which can be referred to in findings of finding either significant and unavoidable impact or that mitigations are infeasible.

Response PM1-34

The reader is referred to the responses to Comments I6-3, I6-11, I6-14, and I6-18.

Comment PM1-35

Additionally, Section 15364 defines feasible is capable of being able to be accomplished in a successful manner within a reasonable period of time taking into account the economic, environmental, legal, social and technological factors.

So we believe that this the draft EIR does not leverage the existing factual information has not really analyzed the economic and social subject factors particularly of losing these licensees. If this is not able to, if people are not able to be transitioned and quite frankly, even if future licensing is not permitted.

Response PM1-35

The reader is referred to the responses to Comments I6-3, I6-11, I6-14, and I6-18.

Comment PM1-36

Additionally, Speaking of not permitted, some of sure some of the alternatives have not been adequately flushed out and additional alternatives not explored. The two alternatives listed do not take into account the factors that I described above, including alternative mitigations and alternative modes of processing annual applications pursuant to a statutory extension.

Response PM1-36

The comment provides no suggested EIR alternatives that should be evaluated, so no additional response on this issue can be provided. The reader is referred to the responses to Comments I6-19 and I6-20.

Comment PM1-37

I'm sorry that we have so few members of the public commenting, but I'm grateful that you're allowing us to comment more than once because this is dense and we appreciate the work you've done in order to, to, to, you know, some more recommendations for helping this document meet its goals for the state effectively transitioning provisionals to annuals in a streamlined process.

Response PM1-37

The reader is referred to the response to Comment O2-5.

Comment PM1-38

I think that it's important for the mitigation measures to also consider that with this being an annual crop where the regulations and interpretations of regulations continue to change, where the annual can be shaded out by trees that are nearby.

I think it's important for the mitigation measures to, to, to utilize substantially in conformance as a tool and for to, to, to recommend that analysis, analyze building envelopes, operational envelopes rather than very, very specific footprints as an annual means to, you know, like as the operations needs to change in its footprint year after year. There really needs to be the ability to allow for substantial conformance within a building envelope that has been addressed by any sort of resource impacts analysis. So please, please do consider including that throughout the mitigation measures as a tool for.

Response PM1-38

The Draft EIR is a Program EIR that broadly evaluates countywide impacts and streamlines the environmental review and consideration of future cannabis operation applications under consideration by DCC, consistent with the requirements of CEQA. This includes the identification of performance standards to address environmental impacts in the Draft EIR mitigation measures rather than project- and site-specific measures to address a wide range of cannabis cultivation operations as provided in State CEQA Guidelines, section 15126.4(a)(1)(B). Individual applications for cannabis cultivation operations would be subject to further site-specific environmental review as applicable under CEQA in accordance with State CEQA Guidelines, section 15168(c), "Use with Later Activities."

Comment PM1-39

So as I spoke earlier about some potential biological impacts that I would like for you to consider being significant and unavoidable. And otherwise we will not be able to meet the goal of transitioning people to annual and especially not in a streamlined manner.

For instance, for the California red legged frog, with the work that we do here on the coast of Mendocino County, there's a significant portion of the South Coast where we are all within the potential migration route of the California red legged frog because they moved from aquatic, aquatic resource to aquatic resource over up to 1.7 miles.

We do not anywhere in this well, there's a little bit of space in this county where we actually have a have room where we're more than 1.7 miles between aquatic features. Therefore,

anyone that is proposing develop proposing an operation or has an operation that needs to transition that's within the range of California red legged frog will need to be denied. In this case, significant and unavoidable utilizing best management practices is a tool that really should be considered. And I'll speak again later.

Response PM1-39

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-40

Thank you. Hello Meghan Durbin again, Wind, coastal planning and biology. There are a number of mitigation measures in the biological mitigation measures that include verbiage stating that the permit shall be denied. This is problematic in many ways, especially for this level of an EIR. And I know that this feeds in with the local regulations, but I don't believe that there should be any reference anywhere in the EIR about something being flat out denied.

There are various different things that can mitigation measures that can be established. These are not different protected species or biological resources that we are unfamiliar with or have not interacted with and found suitable mitigation measures for on a variety of different projects throughout the county. So there should be no caveat for a project or an application being denied. And in relation to that, if it is at all possible, there should be some addressing or some reference in the EIR about the adaptability of the EIR as future local regulations change.

Response PM1-40

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-41

It is common knowledge that our local regulations can otherwise known as 10A-17 are broken and they're not fitting and there are some really problematic issues within those ordinances.

Response PM1-41

This comment provides introductory information for the following comment and is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-42

We are a small rural county. It is a major lift to change ordinances unfortunately, but this is something that will need to be changed in the future and however there is any way to make this EIR adaptable. Obviously, no one can tell the future, but to make some adaptation for as with local regulations, change is really important to make this again streamlined and feasible for both the existing provisional licensees looking to transfer transition to annual as well as the future licensees so that we can continue to support this industry in our region. Thank you.

Response PM1-42

The project does not include evaluation of the MCCR or amendments to the MCCR. DCC does not have the authority to amend the MCCR. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-43

Thank you for calling on me once again. This is Hannah Nelson and us coastal gals here are just riffing back and forth. So let's stay on the issue of mitigation measures as both Megan and Amy have been discussing.

Response PM1-43

This comment is introductory in nature and is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-44

According to the CEQA Portal topic paper on mitigations measures, really the mitigation measures not only seek to avoid the impact altogether, but they could just minimize the impact by limiting its degree or magnitude or rectify the impact by repairing, rehabilitating or restoring. Or reduce or eliminate the impact over time through actions that preserve or maintain the resource or compensate for the impact.

And I think that both Amy and Megan have alluded to instances where perhaps a thorough examination of compensatory actions and offsets or alternatives, both in terms of best management practices and other issues have not necessarily been explored in detail as they should be in the draft EIR.

Response PM1-44

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-45

Additionally, when imposing mitigations, lead agencies must ensure that there is a Nexus in a rough proportionality between the measures and the significant impacts of the project according to CEQA guidelines, Section 15166, I'm sorry, 126.4 and that has been upheld by case law.

Response PM1-45

The impact analysis in the Draft EIR provides the technical support of the extent of potential impacts from commercial cannabis cultivation uses and mitigation measures to address these impacts consistent with the requirements of State CEQA Guidelines, section 15126.4(a).

Comment PM1-46

In addition to, as mentioned earlier, that all mitigation must be feasible and fully enforceable and all feasible mitigation must be imposed by lead agencies. So I think that with respect to the issue of feasibility, we have a situation particularly as it's applied and this relates back down to the NOP date where the draft EIR is proposing mitigations be applied to activity that's already occurred just as a logical consideration.

There's no way to actually mitigate something that's already occurred and actually should be considered part of the baseline. With that said, for those activities that have not yet occurred, a sensible approach and an important approach is to still make sure that the mitigations are feasible. And once again, referring to my prior comment regarding the factors that can be looked at in terms of the economic, social and other factors.

Response PM1-46

The reader is referred to the responses to Comments O2-5, I6-3, and I6-7.

Comment PM1-47

Additionally, really we're looking at what whether or not the environmental impact of not licensing folks given and, and certainly the draft does refer to other regulations, but a thorough analysis of the impacts being reduced and findings of less than significance and or mitigations already having been imposed on the program really needs to be more carefully looked at.

Response PM1-47

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-48

Thank you Amy Wynn again with wind coastal planning and biology. And I believe this will be my last. I believe I'll get on my points and with this one and I want to continue with the California red legged frog example.

In the coastal zone, we are able to utilize impact avoidance measures for our projects for the California red legged frog, which include onsite inspections for the frog, contractor training, calling Fish and Wildlife. If the frog is found on the construction site when you're moving materials. So that those kinds of impact avoidance measures are used all the time on the Southern California coast in the range of California Lake red legged frog and can be transitioned to this this use type as well.

Response PM1-48

The reader is referred to the responses to Comments O2-9, O2-10, O2-11, and O2-12.

Comment PM1-49

Two questions. Northern spotted owl, if the Northern spotted owl habitat is not being removed, why would a commercial cannabis cultivation site not be permitted? And then my last question is relative to propane use.

Response PM1-49

The reader is referred to the response to Comment O2-13.

Comment PM1-50

I understand the state has prohibition on using propane and I'm wondering about the use of onsite propane tanks remote Mendocino County which almost everybody is in remote resident around Mendocino County. We need to be able to utilize propane when we are not connected to Public Utilities and when we cannot generate our own solar energy due to citing limitations of vegetative shading. Wondering if the state's energy and building code regulations allow for new on site propane tanks typically are two and 250 to 500 gallon tanks. You know, is that something that we can use? We understand that backup generators can use diesel or biodiesel, but do the state regulations that I understand go beyond the cannabis?

Do they allow for onsite natural gas and propane when a property is not connected to Public Utilities and cannot generate their own solar energy due to siding limitations? Believe that does it for me. Thank you very much.

Response PM1-50

The reader is referred to the response to Comment O2-16.

Comment PM1-51

Hello, Meghan Durbin again. I believe this is also my last comment. As far as a more specific adequacy of the EIR, there are a number of places in Chapter 3 under environmental impacts and mitigation measures. Of course, there are certain information that is applicable to various different aspects of this section and often it talks about that the Mendocino County cannabis regulations limit commercial cannabis cultivation and nursery sites to 22,000 square feet.

I believe that this sentence is a little bit misleading because as far as I know, only nurseries can be 22,000 square feet. As typical as cultivation, I can be a maximum of 10,000 square feet if you have the right zoning and the right parcel size. So I just feel on the topic of adequacy, this is a little bit misleading because as I understand it, our jurisdiction is one of the places with the smallest Max cultivation canopy and that is really telling.

Response PM1-51

The reader is referred to the response to Comment O1-11.

Comment PM1-52

However it is, I believe that that information is very telling as to the state of the industry in our county, what is going on in the regulatory setting and how drastically important it is for the streamlining to be achieved. Mendocino is world renowned for the cannabis that is grown here, and it has been for decades, long before legalization.

But unfortunately, all of our farmers and other entrepreneurs and folks who want to bring economic growth to this county, their hands are completely tied because the farmers are just barely able to survive as they go through this complicated, convoluted process wherein they're not even barely able to think about how they could expand, how we could start to promote agrotourism.

There is a need and a demand. People want to come to our county for the scenic beauty and for the cannabis. They want to be involved with that.

If we can sort out these regulatory issues, we will free all of our farmers, all of our dedicated residents who want to do right by this, this very specific cohort who has been trying to stay in when, as the previous comments are mentioned, actually 2/3 of the original applications have dropped out. There is only about 30 to 40% remaining. And there's a lot of opportunity for economic growth through this, but not as long as they are shackled by the current regulatory situation. Thank you very much for your time today.

Response PM1-52

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-53

Hello, thank you once again. This is Hannah Nelson. Two last points. One is I would ask that the reviewers really scour every section of the DEIR for inclusion of the specific context of the ongoing cultivation that has occurred under licensure.

So the existing provisional licensees and at particular have actually conducted their activities under licensure for all of these years, both at the local and the state level.

And the activities that they have engaged in have been continually approved through renewals, through science amendment approvals, through modifications at the local level, through whatever means necessary. And I don't think that the draft EIR really mentions the context of the impact of the existing already approved activity that has occurred and that no further requirements were enunciated as being relevant, including additional new mitigation so many years after the fact.

Response PM1-53

The Draft EIR is a Program EIR that broadly describes existing licensed and unlicensed cannabis cultivation activities in Mendocino County, evaluates countywide impacts from

licensing actions, and streamlines the environmental review and consideration of future cannabis operation applications under consideration by DCC, consistent with the requirements of CEQA. The existing extent of licensed cannabis cultivation operations are identified in Draft EIR Chapter 2, "Project Description," and Draft EIR Appendix B.

Comment PM1-54

Secondly, with respect to mitigations, I hope that the reviewers can narrowly tailor each suggested potential mitigation that is in fact necessary or desirable once a funding has been made. Particularly, here's an example, there are a lot of assumptions regarding construction activities and the amount of construction and the type of equipment that might be used.

And while I think it's useful to include and be over expensive in the amount of potential instruction when evaluating the impacts, I do think when it comes to applying specific mitigations in this context and in other topic areas that it's important to narrowly tailor the mitigation to the actual impact in that instance.

So for example, requiring somebody to conduct a vibrational study if they're not going to be thank you, if they're not going to be utilizing any equipment in the installation of their constructions that has any vibrational activity would just cause an unnecessary mitigation to be applied to them. So I hope that the review of each mitigation as it's implemented to each specific site specific review is narrowly tailored. Thank you.

Response PM1-54

The comment does not refer to specific Draft EIR mitigation measures that should be narrowed, but appears to refer to Draft EIR Mitigation Measure 3.12-2. This mitigation measure only applies to construction activities within 110 feet of an off-site occupied residence or other sensitive receptor. If no construction activities occur within this distance or at all, then implementation of Mitigation Measure 3.12-2 is not required. DCC considers the Draft EIR mitigation measures feasible and necessary to address both new proposed cannabis cultivation sites and provisional licensees who propose to expand their cultivation activities as they transition to annual licensure. It is important to note that requests for proposed new and expanded licenses for cultivation are required to comply with biological resource protections measures in SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirement and Prohibitions – Terms 4 and 10), which several Draft EIR mitigation measures address.

Comment PM1-55

Hello, thank you so much. This is Susan again, and thank you for this opportunity to take a second bite of the apple.

As climate factors and water availability or, you know, continue to change, obviously we need to alter and improve our practices on our farms.

However, we are a remote county and so we request that the state codify us being able to use electronic images and videos rather than repeated visits. Too much gas, too expensive, not necessary in this day and age.

Response PM1-55

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-56

We also would like to see an appeal process where we can share what we're doing in terms of best practice rather than being penalized because we don't exactly match what is in the EIR.

Because again, as climate continues to change and farmers see this first before anybody else, we are on top of it. We are aware of the changes that are needed. And sometimes the EIR can be a bit punitive and we need to expand a little bit and take a look at what individual farmers and cultivators are doing.

Response PM1-56

The Draft EIR mitigation measures establish performance standards that provide flexibility for cannabis cultivation sites to comply with under a range of circumstances and land use conditions. No edits to the Draft EIR mitigation measures are recommended.

Comment PM1-57

So thank you again for this opportunity and look forward to working with the state and having them finally understand that we are individuals that many of us have farmed for decades and we're on top of best practices and we want to share that with the state. Thank you.

Response PM1-57

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-58

Apologize in advance, I had trouble signing on. So I may have, this may have been covered, but in general, I think some of these mitigation measures are kind of overly broad. And I just have concern that that the sites are looked at individually when we're talking about this transitioning and also new license licensees. And I'm going to give you an example that probably doesn't apply to very many people, but it could. ES-9 is talking about protecting historic resources and it's calling for a study done by an architectural historian. So that type of a professional would be very difficult to find in Mendocino County. And there's some, there's others that refer to these kinds of professionals that may or may not be available to us.

Response PM1-58

The reader is referred to the response to Comment PM1-38 regarding use of performance standards in the Draft EIR mitigation measures rather than project- and site-specific measures to address environmental impacts. Draft EIR Mitigation Measure 3.4-1 (Implement Additional Measures to Protect Historic Resources) applies to proposed new cannabis cultivation sites.

Comment PM1-59

That's one thing. But the sense of just tightening it up a little bit and not making things so over broad that it's going to kick people out of the program who have really been striving to do this right. What's happening is you're encouraging the unlicensed grows because they can't survive in the licensed world. And I think we don't want to do that. That's one thing.

Response PM1-59

The reader is referred to the response to Comment PM1-58.

Comment PM1-60

And the other thing about the greenhouse emissions, I think we have to be really careful in that as well because these are small farmers that are striving to keep all that reduction in mind

when they're building out their cultivation sites. And I think that again, we have to be careful about being over broad in these mitigation measures.

Response PM1-60

Greenhouse gas emissions and climate change are addressed in Draft EIR Section 3.8, "Greenhouse Emissions and Climate Change." The reader is referred to the response to Comment PM1-58.

Comment PM1-61

And I guess I was putting too much stuff in the chat because with my chat disappeared, but I will make comments in writing before the 17th. So thank you. That's all I have.

Response PM1-61

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-62

Hi, this is Amy Wynn. I didn't realize that my hand was still up. So I, my, I don't really have another comment except that I really, I want to reiterate what, what some of the more recent commenters have said about this. You know, keep in mind this cohort, they're the best of the best. These are the people that are minimizing their impacts and when, when I, when I request that the, that the EIR, the final EIR change the, the significance level for some of these resources to significant and unavoidable the impact, the potential impacts will still be quite, quite, quite small.

It's just to allow us to utilize some of these more common impact avoidance measures to allow us to utilize compensation, allow us to utilize behavioral changes to minimize impacts. But where there might be a, a minor impact.

However, if we don't have an efficient path towards final licensure for this cohort and it will simply encourage the illegal operators to, to expand and to take over the space that's left by the good behavior behaviors vacating their spaces.

So in that instance, there will be great impact. So I encourage that we all do everything we can to keep this cohort in the game and get them to their final licensure and as streamlined and process as possible. They're the best of the best. The impacts will be in a mole. We just need to find a way to let them do it. Thank you very much. And I, how do I lower my hand?

Response PM1-62

The reader is referred to the responses to Comments O2-9 and O2-17.

Comment PM1-63

Oh, hey, thank you. Thanks for hanging in there with me. I couldn't figure out how to make it work. Yeah. I'd like to comment a little bit on the setbacks that they're being proposed and things like that. You're talking about the 1,000 feet from schools and parks, but yet the only, you know, 50 to 100 feet from residence. And obviously the people who are at the schools in the parks, the families, the kids, they spend a lot more time at their homes. I think, I think I think they deserve the same protection that at their home or more than at the schools and parks.

Response PM1-63

This comment is noted. The setbacks identified by the comment are identified within the MCCR; the project is proposed licensing actions by DCC and is not associated with any Mendocino County actions related to the MCCR.

Comment PM1-64

I comment like to comment on the older issue there too. There's some comments about it being unavoidable smell. One way to avoid is to make sure there's enough distance between them and residents and businesses and things like that. I don't understand how they're going to how you take care of the issue with and myrcene, which is a Prop 65 chemical found in cannabis odor. And that's something that has to should be avoided or the from a health and safety perspective, the people should be protected. So I hope you can address that. And again, one of the mitigations may be distance. Thanks a lot.

Response PM1-64

The reader is referred to the responses to Comments O4-2, O4-4, O4-5, and O4-10.

Comment PM1-65

Hello, Hannah Nelson one last time. I think First off, I just want to express some gratitude for the difficulty that you all as administrators of this particular Webex session are having to encounter, and your explained patience and kindness towards people who are having difficulty is greatly appreciated.

I would, however, like if there could be an announcement regarding how the public comment period is going to be more meaningfully undertaking, given the technological difficulties and the fact that so many people in rural areas cannot call in. They had to do an online thing and there and they were kind of shut up from that.

I know that some people have gotten in, but I think that it would be important to have some public announcement with respect to how full and robust meaningful public comment period is going to occur given the technological difficulties. But again, great appreciation for the kindness that you've shown and the patients and I'm so sorry that you've had to endure that. Thank you very much.

And yes, if you check on the website, we couldn't really make an announcement during this time frame because we were trying to, we get the opportunity for the folks, about 20-7 people that are on this call. So we do have a, a, a plan in place. If you check the website, we're going to post it this afternoon to ensure that we get everybody's comment on this important issue. So thank you very much.

Response PM1-65

The comment period was extended to June 24, 2024, and a second public meeting was held on June 20, 2024, on the Draft EIR.

Comment PM1-66

Hello, this is Susan. Thank you for this opportunity. And as there can be too many more callers, I appreciate being able to weigh in one last time. I'm going to briefly reference an article in this weekend's New York Times. We have lost more family farms in America than ever in America, way more than the dust ball in the 30s. We are just hemorrhaging small family farms.

And please state of California, be aware that whatever the iconic images of the pot farmer, you know, maybe from the past, many, many of us are family farms, small family farms. We are part of a very, very small cohort that is left in the United States. And so we really appreciate that as you go forward, please be flexible in how interpretations are arrived at and allow us to share our knowledge with you. Many of us are second generation and they are third generation farmers as well that are still hanging on, counting on the state to help them go from provisional to annual. So thank you very much.

Response PM1-66

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM1-67

This is a question I don't know if you can answer it or not, but after this these comments are made. What happens with these comments does is do you guys take them back and do what with them And then is there going to be another draft released or what happens? That's my that's a question. If you can answer it, I'd really appreciate it. Thank you.

Response PM1-67

Comments received on the Draft EIR in writing and at the public meetings are responded to in the Final EIR.

Public Meeting PM2 June 20, 2024

Public meeting comments were transcribed from audio recordings and may be incomplete or inaccurate due to inaudible passages or transcription errors.

Comment PM2-1

Hi. Sorry, this is Editte Lerman. I just wanted to inquire if I'm understanding properly that all of the Gray area is going to make it cannabis prohibited from being cultivated in those areas. And then if that's the case for licenses that already exist in those areas, that would be potentially would, would they lose their licenses, I guess is my question. And also there's entire like cities and counties that are included in that, or maybe not entire counties, but entire areas like Potter Valley and Redwood Valley. And so I'm, I'm just concerned about that. Thank you.

Response PM2-1

The Draft EIR does not include any proposed prohibitions on the locations of where cannabis cultivation can occur in the unincorporated area of Mendocino County. The allowed locations for commercial cannabis cultivation are regulated by Mendocino County under the MCCR.

Comment PM2-2

Hi, sorry looking at what I'm seeing as alternative one in the DCC Mendo cultivation DEIR meeting 6.20.24 14 out of 18 it says alternative one: No project continued operation of existing provisional and annual license commercial cannabis cultivation sites and associated distribution uses in Mendocino County. However, no new annual licenses. That doesn't really make sense.

If your intention is that people who have provisional will be able to get annuals, and especially folks in Mendocino County that have already applied for annual licenses but haven't received them. I think those people should definitely still get their license. Some of them are years and years into attempting to get that license.

And to say no new annual licenses implies that provisional licenses can't convert to annual licenses, that people who have already applied for annual licenses but don't have them yet, which is the majority of the license holders in Mendocino County. There's too much ambiguity with that language and it should get changed. Thank you.

Response PM2-2

As identified in Draft EIR Chapter 5, "Alternatives," CEQA requires the evaluation of a reasonable range of alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. State CEQA Guidelines, section 15126.6(e) requires the specific alternative of "no project" to be evaluated. The purpose of describing and analyzing a no-project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.

Comment PM2-3

Hello. I really didn't have a question. I'm just listening in, but I don't hear anybody speaking. So I'm, I'm just kind of pushing buttons here to see what's going on. So, I guess there is something going on, but I haven't heard anybody speak yet.

Response PM2-3

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM2-4

Also I happen to be a property owner in Mendocino County and I guess I came really late to the game with all the hurdles to buy a multi-million dollar piece of property and planning to build cannabis businesses.

Response PM2-4

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM2-5

But with the burdens that are being put before me, I thought my understanding was that this report was going to make it so that we could actually move forward in the permitting process and that the county would issue it. But it, it just seems like there's so many burdens we're, we're never going to be able to move forward. And I, I don't understand it. And I'm really interested in a nursery cultivation permit. And there's four, only four licensed annual licenses for the nursery permits in Mendocino County with like 63 approximately nursery licenses, maybe even less than that.

So even less than 10% of the operating nurseries in Mendocino County are even having annual light or have annual licenses versus provisional. And so this report, my understanding of it is that we're not going to be able to move forward with our property because the burdens are too high. Only four nurseries in Mendocino will be able to operate as there's no plan to continue issuing provisional licenses in the near future. And this just seems untenable. And then I have to look at our clients of our business who have been fighting for months, year and years and they have no path forward to licensing. And I just think this is unreasonable. Thank you.

Response PM2-5

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM2-6

Hello. My name is Tiffany Kowalski and I am a prospective employee of cannabis businesses and also a client of Emerald Law Group. And I have watched your bureaucratic government stand in the way of process of progress in this county for years. And I think that it is no less than gatekeeping something that should be easier.

I see other government programs doing handouts and trying to make it easier for businesses to start in this county. And I don't see you guys doing that. I see you constantly putting up one hurdle and another and making it really impossible for the common man who's bringing this plant here for medicine for people and making it impossible for them to actually do that because you're too busy trying to collect your profits.

Removing your ability, like the responsibility of the county to provide environmental like claims towards getting our properties actually able to be up and functioning to your standards is, is making it even more difficult and it will remove that much more people if the point of this industry is not to just continue making it harder and harder for people to succeed.

You've watched mom and pop grows constantly be shut down and completely ruined families who have been in this industry for decades, and you should be offering people help and easier ways for them to access this to make it more realistic for them to start their businesses because otherwise all you're going to be doing is ending them. Thank you.

Response PM2-6

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

Comment PM2-7

Hi, this is Leon Acosta again with the Emerald Law Group. And I was just looking at the numbers and basically for the, if you look on the Cannabis Control Department's dashboard of financial numbers, they're saying that in the time period they're showing, which I believe is a year, that \$32 million worth of clones have been sold in the state of California. And I was looking in Calaveras County about a week or two ago and there was an illegal bust of a nursery that has doing 30 that was doing \$10 million a year worth of clone sales.

So, you know, it's no joke or no, no like hidden fact that almost every report that you read, whether you're looking at the comments section for this report here and the Mendocino County Sheriff's Department is saying that there's so many illegal cultivations going on.

Well, why? Because legal cultivators can't even start, you know, to start for any of these cultivation, for any of these cannabis products that are being sold like big pens or edibles or anything like that. It starts with the cannabis plant.

So that starts with the nursery. And if nurseries can't get licensed, how can we ever get rid of the illegal market? I mean, it seems like this agency is just asking the illegal market to flourish more and more. And that's my comment.

Response PM2-7

This comment is noted. Because this comment does not raise an issue with the analysis in the Draft EIR, no additional response is required.

3 REVISIONS TO THE DRAFT EIR

This chapter presents specific text changes made to the Draft EIR since its publication and public review. The changes are presented in the order in which they appear in the original Draft EIR and are identified by the Draft EIR page number.

The information contained within this chapter clarifies and expands on information in the Draft EIR and does not constitute “significant new information” requiring recirculation. (Public Resources Code section 21092.1; CEQA Guidelines, section 15088.5.)

EXECUTIVE SUMMARY

In the Draft EIR, edits have been made to pages ES-8 and ES-54.

The original text on Draft EIR page ES-8 under Impact 3.3-3 states:

The cultivation, processing, and distribution of cannabis by existing provisionally licensed, potentially expanded of existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. This impact would be significant and unavoidable.

The revised text on Draft EIR page ES-8 under Impact 3.3-3 now states:

The cultivation, processing, and distribution of cannabis by potentially expanded existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. This impact would be significant and unavoidable.

The original text on Draft EIR page ES-54 states:

Impact CUM-9: Contribution to Cumulative Hazardous and Hazardous Material Impacts

The revised text on Draft EIR page ES-54 now states:

Impact CUM-9: Contribution to Cumulative Hazards and Hazardous Material Impacts

CHAPTER 3, “APPROACH TO THE ENVIRONMENTAL ANALYSIS”

To provide clarification, the following text on pages 3-2 of the Draft EIR has been revised.

The original text in the first sentence of the first paragraph on Draft EIR page 3-2 states:

For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review.

The revised text in the first sentence of the first paragraph on Draft EIR page 3-2 now states:

For the purposes of this Draft EIR, the description of the baseline conditions includes commercial cannabis cultivation sites that are locally authorized by Mendocino County and continue to operate under provisional licenses from the state while completing project-specific environmental review as of the publication of the Notice of Preparation, August 2, 2023.

SECTION 3.1, “AESTHETICS”

In the Draft EIR, edits have been made to pages 3.1-4 and 3.1-5.

The original text on Draft EIR pages 3.1-4 and 3.1-5 states:

- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or Cannabis Cultivation Business License (CCBL) Holder (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and their location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

The revised text on Draft EIR pages 3.1-4 and 3.1-5 now states:

- (H) All commercial cannabis grown in Mendocino County shall be secured by the required security measures found in CCR, title 4, Division 19, as amended from time to time.

- (L) All cannabis grown in Mendocino County pursuant to an exemption provided for in section 10A.17.030 (excluding indoor cultivation or otherwise cultivated in a secure structure) must be within a secure fence that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section, or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth, except shade cloth may be used on the inside of the fence.

Impact 3.1-4, on pages 3.1-19 through 3.1-20 of the Draft EIR, has been edited to include the requested information.

The original text on Draft EIR pages 3.1-19 through 3.1-20 states:

Existing Provisionally Licensed Sites

The use of artificial light in structures at night can emit a glow of light that can disturb adjoining land uses as well as result in impacts to wildfire. All existing provisionally licensed commercial cannabis cultivation types and associated processing and/or distribution transport-only operations can involve the use of outdoor lighting for operations and security. Existing provisionally licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E) would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare (CCR, title 4, section 16304.) As a result, light and glare impacts associated with existing provisionally licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they

transition to annual licensure. These expanded commercial cannabis cultivation operations features would still be required to comply with MCCR and CCR requirements identified above for lighting. For these reasons, this impact would be less than significant.

New Licensed Sites

As described above for existing provisionally licensed sites, new licensed commercial cannabis cultivation sites and nurseries may use artificial lighting for operations. New licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E) would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304.) As a result, light and glare impacts associated with new licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

Summary

As described above, existing provisionally licensed, potential expansion of existing provisionally licensed, and new licensed commercial cannabis cultivation sites would be required to comply with section 10A.17.040(E) of the MCCR and CCR, title 4, section 16304 that would require shielding of lighting to avoid off-site lighting impacts. For these reasons, the impact related to light and glare would be **less than significant**.

The revised text on Draft EIR pages 3.1-19 through 3.1-20 now states:

Existing Provisionally Licensed Sites

The use of artificial light in structures at night can emit a glow of light that can disturb adjoining land uses as well as result in impacts to wildlife. All existing provisionally licensed commercial cannabis cultivation types and associated processing and/or distribution transport-only operations can involve the use of outdoor lighting for operations and security. Existing provisionally licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E). This requirement would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded and that all security lighting be motion activated. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304) As a result, light and glare impacts associated with existing provisionally licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

However, it is anticipated that some of the existing provisionally licensed commercial cannabis cultivation sites have expanded their cultivation activities since issuance of their provisional license or will propose to expand their cultivation activities as they transition to annual licensure. These expanded commercial cannabis cultivation operations features would still be required to comply with MCCR and CCR requirements identified above for lighting. For these reasons, this impact would be less than significant.

New Licensed Sites

As described above for existing provisionally licensed sites, new licensed commercial cannabis cultivation sites and nurseries may use artificial lighting for operations. New licensed commercial cannabis cultivation sites would continue to be required to comply with MCCR section 10A.17.040(E). This requirement would ensure that cultivation operations using artificial lighting shall be fully contained within structures or otherwise be shielded, and that all security lighting be motion activated. Compliance with the annual license would also require that outdoor lights used for safety or security purposes for cultivation sites are shielded and downward facing as well as cultivation artificial lighting is shielded from sunset to sunrise to reduce nighttime glare. (CCR, title 4, section 16304) As a result, light and glare impacts associated with new licensed commercial cannabis cultivation sites would not be expected to occur. Therefore, this impact would be less than significant.

Summary

As described above, existing provisionally licensed sites, potential expansion of existing provisionally licensed sites, and new licensed sites would be required to comply with section 10A.17.040(E) of the MCCR and CCR, title 4, section 16304 that would require shielding of lighting and motion-activated security lighting to avoid off-site lighting impacts. For these reasons, the impact related to light and glare would be **less than significant**.

SECTION 3.3, “AIR QUALITY”

In the Draft EIR, on page 3.3-20, edits have been made to Impact 3.3-3.

The original text on Draft EIR page 3.3-20 under Impact 3.3-3 states:

The cultivation, processing, and distribution of cannabis by existing provisionally licensed, potentially expanded of existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. This impact would be significant and unavoidable.

The revised text on Draft EIR page 3.3-20 under Impact 3.3-3 now states:

The cultivation, processing, and distribution of cannabis by potentially expanded existing provisionally licensed, and new licensed commercial cannabis cultivation sites could generate objectionable odors with adverse effects for residents and other sensitive land uses. This impact would be significant and unavoidable.

SECTION 3.5, “BIOLOGICAL RESOURCES”

In the Draft EIR, on page 3.5-43, edits have been made to the description of the State Listing Status for burrowing owl in Table 3.5-4 to reflect its recent change as a State Candidate for Listing.

The original text on the State Listing Status of burrowing owl in Table 3.5-4 on Draft EIR page 3.5-43 states:

SSC

The revised text on the State Listing Status of burrowing owl in Table 3.5-4 on Draft EIR page 3.5-43 now states:

SSC, SC

In the Draft EIR, on page 3.5-76, edits have been made to the description for burrowing owl to reflect its recent change as a State Candidate for Listing.

The original text on Draft EIR page 3.5-76 states:

Nesting Raptors (Excluding Northern Spotted Owl)

The County contains nesting habitat and many known nesting occurrences for several raptor species, including American peregrine falcon, bald eagle, burrowing owl, golden eagle, northern goshawk, northern harrier, and white-tailed kite. Bald eagle, golden eagle, and white-tailed kite are fully protected under the Fish and Game Code. Bald eagle is also listed as endangered under CESA. Bald and golden eagles are also protected under the Bald and Golden Eagle Protection Act. Burrowing owl, northern goshawk, and northern harrier are CDFW species of special concern. Nesting habitat suitable for these species includes trees, snags, cliffs, burrows, marshes, grasslands, and human-made structures (e.g., utility poles). Additionally, other raptor species (e.g., red-tailed hawk, red-shouldered hawk, osprey (*Pandion haliaetus*)) could nest in Mendocino County; these species and their nests are protected by the Fish and Game Code.

The revised text on Draft EIR page 3.5-76 now states:

Nesting Raptors (Excluding Northern Spotted Owl)

The County contains nesting habitat and many known nesting occurrences for several raptor species, including American peregrine falcon, bald eagle, burrowing owl, golden eagle, northern goshawk, northern harrier, and white-tailed kite. Bald eagle, golden eagle, and white-tailed kite are fully protected under the Fish and Game Code. Bald eagle is also listed as endangered under CESA. Bald and golden eagles are also protected under the Bald and Golden Eagle Protection Act. Burrowing owl, northern goshawk, and northern harrier are CDFW species of special concern. Burrowing owl is also a candidate for listing under CESA. Nesting habitat suitable for these species includes trees, snags, cliffs, burrows, marshes, grasslands, and human-made structures (e.g., utility poles). Additionally, other raptor species (e.g., red-tailed hawk, red-shouldered hawk, osprey (*Pandion haliaetus*)) could nest in Mendocino County; these species and their nests are protected by the Fish and Game Code.

In the Draft EIR, on page 3.5-69, edits have been made to Mitigation Measure 3.5-1a.

The original text of Mitigation Measure 3.5-1a on Draft EIR page 3.5-69 states:

Mitigation Measure 3.5-1a: Conduct Preapproval Biological Surveys

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirements and Prohibitions – Term 4 and 10 and MCCR 10A.17.100(A)(2)), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following technical information. It shall be used to determine whether there is potential for special-status plant species, special-status wildlife species, or sensitive habitats identified in this Program EIR to be present within a proposed expanded or new commercial cannabis cultivation sites seeking a license from DCC.

- ▶ Before approval of any application for commercial cannabis operations, a biological survey shall be conducted by a qualified biologist. The survey area shall include the proposed expanded or new commercial cannabis cultivation sites, including areas of anticipated construction and ground disturbance, as well as staging areas, areas of anticipated light or noise impact, ingress and egress routes, and utility routes. The survey area shall be large enough to encompass areas subject to both direct and indirect impacts. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plants, special-status wildlife, and sensitive habitats identified as having potential to occur in the County. The biologist shall provide a letter report to the project applicant and DCC with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur in the proposed development area. At a minimum, the letter report shall include:
 - date, time, and weather conditions if a reconnaissance survey is conducted as part of the biological survey;
 - a description and explanation of whether the site conditions are considered typical or atypical, if a reconnaissance survey is conducted as part of the biological survey;
 - a map depicting the proposed development area and the unique, rare, and special-status species, sensitive habitats, or sensitive natural communities found;
 - a vegetation map of the proposed development area using the National Vegetation Classification System (e.g., A Manual of California Vegetation) and an associated table, including acreage of vegetation types that could be adversely affected by project implementation;
 - a special-status species table generated from review of the CNDDDB, the California Native Plant Society Inventory of Rare and Endangered Plants, lists maintained by USFWS, and the most recent, best-available range information for special-status species;
 - a description of survey methods and any protocols utilized during the survey; and
 - a list of common and special-status species and habitats observed in the proposed development area.

- ▶ If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures identified in the ordinance.
 - If special-status species or sensitive habitats are present or have the potential to be present, the letter report will include a discussion of potential direct and indirect impacts on these resources, and the appropriate biological resource protection measures identified in Mitigation Measures 3.5-1b, 3.5-1c, 3.5-2a through 3.5-2o, 3.5-4a, 3.5-4b, 3.5-5, and 3.5-6b shall be implemented.

The revised text of Mitigation Measure 3.5-1a on Draft EIR page 3.5-69 now states:

Mitigation Measure 3.5-1a: Conduct Preapproval Biological Surveys

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A: General Requirements and Prohibitions – Term 4 and 10 and MCCR 10A.17.100(A)(2)), the DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following technical information. It shall be used to determine whether there is potential for special-status plant species, special-status wildlife species, or sensitive habitats identified in this Program EIR to be present within a proposed expanded or new commercial cannabis cultivation sites seeking a license from DCC. This mitigation measure and Mitigation Measures 3.5-2a through 3.5-2p do not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

- ▶ Before approval of any application for commercial cannabis operations, a biological survey shall be conducted by a qualified biologist. A qualified biologist would, at a minimum:
 - Hold a bachelor's or advanced degree in wildlife biology, botany, ecology, forestry, or other relevant degree from an accredited university;
 - Have at least 2 years of field experience in the biology and natural history of local plant, fish, and wildlife resources present in the region surrounding the cannabis cultivation site;
 - Be knowledgeable in relevant species life histories and ecology;
 - Be able to correctly identify relevant species and habitats;
 - Be knowledgeable about survey protocols;
 - Be knowledgeable about state and federal laws regarding the protection of special-status species; and
 - Have experience with CDFW's California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS).
- ▶ The survey area shall include the proposed expanded or new commercial cannabis cultivation sites, including areas of anticipated construction and ground disturbance, as well as staging areas, areas of anticipated light or noise impact, ingress and egress routes, and utility routes. The survey area shall be large enough to encompass areas subject to both direct and indirect impacts. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plants, special-status wildlife, and sensitive habitats identified as having

potential to occur in the County. The biologist shall provide a letter report to the project applicant and DCC with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur in the proposed development area. DCC staff will review the letter report and conclusions and determine whether the evidence provided to support the conclusions is sufficient. At a minimum, the letter report shall include:

- Date, time, and weather conditions;
 - A description and explanation of whether the site conditions are considered typical or atypical;
 - A map depicting the proposed development area and the unique, rare, and special-status species, sensitive habitats, or sensitive natural communities found;
 - A vegetation map of the proposed development area using the National Vegetation Classification System (e.g., A Manual of California Vegetation) and an associated table, including acreage of vegetation types that could be adversely affected by project implementation;
 - A special-status species table generated from review of the CNDDDB, the California Native Plant Society Inventory of Rare and Endangered Plants, lists maintained by USFWS, and the most recent, best-available range information for special-status species;
 - A description of survey methods and any protocols utilized during the survey; and
 - A list of common and special-status species and habitats observed in the proposed development area.
- ▶ If the biological survey identifies no potential for special-status plants, special-status wildlife, or sensitive habitats to occur, the applicant shall not be subject to any additional biological resource protection measures identified in the ordinance.
 - ▶ If special-status species or sensitive habitats are present or have the potential to be present, the letter report will include a discussion of potential direct and indirect impacts on these resources, and the appropriate biological resource protection measures identified in Mitigation Measures 3.5-1b, 3.5-1c, 3.5-2a through 3.5-2o, 3.5-4a, 3.5-4b, 3.5-5, and 3.5-6b shall be implemented.

In the Draft EIR, on pages 3.5-70 and 3.5-71, edits have been made to Mitigation Measure 3.5-1b and impact conclusions.

The original text of Mitigation Measure 3.5-1b and the impact conclusion states:

Mitigation Measure 3.5-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following information should special-status plant species are determined to have potential to be present on the proposed commercial cannabis cultivation sites:

- ▶ During the blooming period for the special-status plant species with potential to occur on the site, a qualified botanist shall conduct protocol-level surveys for special-status plants in all proposed disturbance areas following survey methods from the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018a).
- ▶ If special-status plants are not identified, the botanist shall document the findings in a letter report to the applicant, DCC, and CDFW, and no further mitigation shall be required.
- ▶ If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial cannabis cultivation site improvements that shall be reflected in application materials to DCC. If the special-status plant species cannot be avoided, the application shall be denied.

Significance after Mitigation

Implementation of Mitigation Measures 3.5-1a, 3.5-1b, and 3.5-1c would reduce significant impacts on special-status plants to a **less-than-significant** level because it would require applicants to identify and avoid special-status plants and would prevent the spread of invasive weeds by removal of existing populations on-site and inspecting machinery. These mitigation measures are consistent with the requirements of Attachment A (Section 1, General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ.

The revised text of Mitigation Measure 3.5-1b and the impact conclusion on Draft EIR pages 3.5-70 and 3.5-71 now states:

Mitigation Measure 3.5-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide the following information should special-status plant species be determined to have potential to be present on the proposed commercial cannabis cultivation sites:

- ▶ During the blooming period for the special-status plant species with potential to occur on the site, a qualified botanist shall conduct protocol-level surveys for special-status plants in all proposed disturbance areas following survey methods from the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018a). A qualified botanist would, at a minimum:
 - Hold a bachelor's or advanced degree in biology, botany, ecology, forestry, or other relevant degree from an accredited university;
 - Have at least 2 years of field experience in the biology and natural history of local plant, fish, and wildlife resources present in the region surrounding the cannabis cultivation site;
 - Be knowledgeable about plant taxonomy;

- Be familiar with plants of the region, including special-status plants and sensitive natural communities;
 - Have experience conducting floristic botanical field surveys as described in the CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, or experience conducting such botanical field surveys under the direction of an experienced botanical field surveyor;
 - Be familiar with the California Manual of Vegetation (Sawyer et al. 2009 or current version, including updated natural communities data at <http://vegetation.cnps.org/>); and
 - Be familiar with federal, state, and local statutes and regulations related to plants and plant collecting.
- ▶ If special-status plants are not identified, the botanist shall document the findings in a letter report to the applicant, DCC, and CDFW, and no further mitigation shall be required.
- ▶ If special-status plant species are found, the qualified botanist shall consult with CDFW to designate a no-disturbance buffer and/or redesign of the commercial cannabis cultivation site improvements that shall be reflected in application materials to DCC. If special-status plants cannot be avoided, then the applicant shall consult with CDFW to determine if an incidental take permit should be obtained (i.e., for special-status species listed under CESA) or if compensatory mitigation would be required. Impacts on special-status plant species would be mitigated such that there would be no net loss of occupied habitat or individuals. Mitigation measures shall include, at a minimum, preserving and enhancing existing populations, establishing populations through seed collection or transplantation from the site that is to be affected, and restoring or creating habitat in sufficient quantities to achieve no net loss of occupied habitat or individuals. Habitat and individual plants lost shall be mitigated at a minimum 1:1 ratio, considering acreage, as well as function and value. Success criteria for preserved and compensatory populations will include the following conditions:
- The extent of occupied area and plant density (number of plants per unit area) in compensatory populations will be equal to or greater than the affected occupied habitat.
 - Compensatory and preserved populations will be self-producing. Populations will be considered self-producing when:
 - Plants reestablish annually for a minimum of 5 years with no human intervention, such as supplemental seeding; and
 - Reestablished and preserved habitats contain an occupied area and flower density comparable to existing occupied habitat areas in similar habitat types in the project vicinity.
 - If off-site mitigation includes dedication of conservation easements, purchase of mitigation credits, or other off-site conservation measures, the details of these measures will be included in the mitigation plan, including information on responsible parties for long-term management, conservation easement holders, long-term management requirements, success criteria such as those

listed above, and other details, as appropriate to target the preservation of long-term viable populations.

- ▶ Any mitigation plan for unavoidable impacts on special-status plants must be reviewed and approved by DCC and CDFW.

Significance after Mitigation

Implementation of Mitigation Measures 3.5-1a, 3.5-1b, and 3.5-1c would reduce significant impacts on special-status plants to a **less-than-significant** level because it would require applicants to identify special-status plants and, dependent upon the special-status plants' listing status, either avoid, obtain an incidental take permit (i.e., for CESA-listed species), or compensate for impacts, and prevent the spread of invasive weeds by removal of existing populations on-site and inspecting machinery. These mitigation measures are consistent with the requirements of Attachment A (Section 1, General Requirements and Prohibitions) of SWRCB Order WQ 2023-0102-DWQ.

In the Draft EIR, on page 3.5-70, edits have been made to Mitigation Measure 3.5-1c.

The original text of Mitigation Measure 3.5-1c on Draft EIR page 3.5-71 states:

Mitigation Measure 3.5-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 11), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide documentation that the following measures will be implemented:

- ▶ The application shall include identification of invasive plant species that occur on the site and where they are located. The application shall identify specific measures to be employed for the removal of invasive species and on-site management practices.
- ▶ Invasive plant species (defined above in the impact discussion) shall be removed from the site to the extent feasible, using measures appropriate to the species. For example, species that cannot easily reroot, resprout, or disperse seeds may be left on site in a debris pile. Species that resprout readily (e.g., English ivy) or disperse seeds (e.g., pampas grass) should be hauled off-site and disposed of appropriately at a landfill site. A qualified botanist shall determine the appropriate percent cover of invasive species to remove for the site and what type of restoration plantings will be appropriate for the site.
- ▶ The site shall be monitored annually to ensure successful removal and prevention of new infestations of invasive species.
- ▶ Heavy equipment and other machinery shall be inspected for the presence of invasive species before on-site use, and shall be cleaned before entering the site, to reduce the risk of introducing invasive plant species.

The revised text of Mitigation Measure 3.5-1c on Draft EIR page 3.5-71 now states:

Mitigation Measure 3.5-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant and Animal Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 11), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to provide documentation that the following measures will be implemented:

- ▶ The application shall include identification of invasive plant species that occur on the site and where they are located. The application shall identify specific measures to be employed for the removal of invasive species and on-site management practices.
- ▶ Invasive plant species (defined above in the impact discussion) shall be removed from the site to the extent feasible, using measures appropriate to the species. For example, species that cannot easily reroot, resprout, or disperse seeds may be left on site in a debris pile. Species that resprout readily (e.g., English ivy) or disperse seeds (e.g., pampas grass) should be hauled off-site and disposed of appropriately at a landfill site. A qualified botanist shall determine the appropriate percent cover of invasive species to remove for the site and what type of restoration plantings will be appropriate for the site.
- ▶ The site shall be monitored by a qualified botanist annually for 3 years or until the following success criteria are met, whichever is longer.
- ▶ Cover of existing invasive plants has either decreased or remained unchanged, there are no new infestations of invasive plants that existed on the site before project implementation, and there are no new invasive plant species that were not present onsite before project implementation.
- ▶ Heavy equipment and other machinery shall be inspected for the presence of invasive species before on-site use, and shall be cleaned before entering the site, to reduce the risk of introducing invasive plant species.
- ▶ No nonnative fish species shall be introduced into ponds on project sites. This measure does not apply to any activities conducted pursuant to the California Health and Safety Code, including mosquito control activities conducted by local vector control agencies.
- ▶ If storage ponds would be constructed, the applicant shall hire a qualified biologist to prepare an aquatic invasive species management plan, which will include details regarding monitoring for aquatic invasive species, including bullfrogs (*Lithobates catesbeianus*) and appropriate measures for preventing establishment of these species and controlling invasive species populations. The aquatic invasive species management plan shall be reviewed and approved by DCC prior to construction of stock ponds.

In the Draft EIR, on page 3.5-80, edits have been made to Mitigation Measure 3.5-2e.

The original text of Mitigation Measure 3.5-2e on Draft EIR page 3.5-81 states:

Mitigation Measure 3.5-2e: Conduct Northern Spotted Owl Preconstruction Habitat Suitability Surveys and Determine Presence or Absence of the Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of northern spotted owl from proposed commercial cannabis cultivation sites:

- ▶ To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or habitat suitable for northern spotted owl, removal of old-growth habitat shall be prohibited, as outlined in Mitigation Measure 3.5-4a.
- ▶ If the area of proposed new development activities is within habitat suitable for northern spotted owl (e.g., mature forest), and a qualified biologist determines it is within a minimum of 1.3 miles (average species home range) of a known occurrence of northern spotted owl, or as recommended by CDFW, the following measures shall be followed:
 - Before removal of any trees or ground-disturbing activities adjacent or in nesting, roosting, or foraging habitat (e.g., forest clearings) for spotted owl, a qualified biologist familiar with the species and protocol, shall conduct preconstruction surveys for nests within a minimum 1.3-mile buffer around the site as described in *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012) and the 2019 revision to *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private Lands in California* (USFWS 2019) or as recommended by CDFW. Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine presence or absence of northern spotted owl.
 - If northern spotted owls are determined to be absent at a minimum of 1.3 miles from the site or as recommended by CDFW, then further mitigation is not required.
 - If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal could cause harm to northern spotted owl populations in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

The revised text of Mitigation Measure 3.5-2e on Draft EIR page 3.5-81 now states:

Mitigation Measure 3.5-2e: Conduct Northern Spotted Owl Preconstruction Habitat Suitability Surveys and Determine Presence or Absence of the Species

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 4 and 10), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of northern spotted owl from proposed commercial cannabis cultivation sites:

- ▶ To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or habitat suitable for northern spotted owl, removal of old-growth habitat shall be prohibited, as outlined in Mitigation Measure 3.5-4.
- ▶ If the area of proposed new development activities is within habitat suitable for northern spotted owl (e.g., mature forest), and a qualified biologist determines it is within a minimum of 1.3 miles (average species home range) of a known occurrence of northern spotted owl, or as recommended by CDFW, the following measures shall be followed:
 - Before removal of any trees or ground-disturbing activities adjacent or in nesting, roosting, or foraging habitat (e.g., forest clearings) for spotted owl, a qualified biologist familiar with the species and protocol, shall conduct preconstruction surveys for nests within a minimum 1.3-mile buffer around the site as described in *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012) and the 2019 revision to *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private Lands in California* (USFWS 2019) or as recommended by CDFW. Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine the presence or absence of northern spotted owl.
 - If northern spotted owls are determined to be absent at a minimum of 1.3 miles from the site or as recommended by CDFW, then further mitigation is not required.
 - If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, then it is presumed that habitat removal, loud noises, or visual stimuli could cause disturbance and harm to northern spotted owls in the area and could result in direct take of northern spotted owls. If northern spotted owls are determined to be present within a minimum of 1.3 miles of the site or as recommended by CDFW, proposed commercial cannabis cultivation activities shall not be permitted.

In the Draft EIR, on page 3.5-95, edits have been made to the first bullet point of Mitigation Measure 3.5-2p.

The original text of the first bullet point of Mitigation Measure 3.5-2p on Draft EIR page 3.5-95 states:

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler. Additional measures for noise attenuation may include additional muffler features and/or a structure to enclose the generator designed for sound suppression (MCCR section 10A.17.070(F)(1)). The following additional noise performance standards shall apply to generator use for sites within 0.25 mile of habitat determined to be suitable for northern spotted owl or marbled murrelet by a qualified biologist:

The revised text of the first bullet point of Mitigation Measure 3.5-2p on Draft EIR page 3.5-95 now states:

The operation of generators at full operational speed shall meet the noise level standards as set forth in the MCCR and the Mendocino County General Plan policies DE100, 101, and 103. Conformance with these standards shall be confirmed by an acoustical engineer or some other mechanism or device acceptable to Mendocino County. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler. Additional measures for noise attenuation may include additional muffler features or a structure to enclose the generator designed for sound suppression. (MCCR section 10A.17.070(F)(1)) The following additional noise performance standards shall apply to generator use for sites within 0.25 miles of habitat determined to be suitable for northern spotted owl or marbled murrelet by a qualified biologist:

In the Draft EIR, on page 3.5-101, edits have been made to Mitigation Measure 3.5-4.

The original text of Mitigation Measure 3.5-4, on Draft EIR page 3.5-101, states:

Mitigation Measure 3.5-4: Identify, Avoid, and Protect Sensitive Natural Communities, Riparian Habitat, and Wetland Vegetation or Provide Compensation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions –Term 10 and 37), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of sensitive natural communities, riparian habitat, old-growth habitat, and other sensitive habitats from proposed commercial cannabis cultivation sites:

- ▶ For new commercial cannabis cultivation uses that could disturb sensitive natural communities or riparian habitat, the application shall include a report prepared by a qualified biologist that summarizes the potential presence of any of these sensitive resources as identified during the biological survey conducted under Mitigation Measure 3.5-1a, including riparian habitat associated with aquatic features, old-growth forests, oak woodlands, special-status fish stream habitats, and sensitive natural communities. Further, the qualified biologist shall perform a protocol-level

survey following the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (current version dated March 20, 2018) of the site before the start of new development related to cannabis activities. Sensitive natural communities shall be identified using the best means possible, including keying them out using the most current edition of *A Manual of California Vegetation* (including updated natural communities data at <http://vegetation.cnps.org/>) or referring to relevant reports (e.g., reports found on the VegCAMP website).

- ▶ The report shall include the requirements that all sensitive areas identified above shall be flagged or fenced with brightly visible construction flagging and/or fencing under the direction of the qualified biologist before development activities begin and that grading, excavation, other ground-disturbing activities, and vegetation removal shall not occur in these areas during development activities. Foot traffic by construction personnel shall also be limited in these areas to prevent the introduction of invasive or weedy species. Periodic inspections during construction shall be conducted by the monitoring biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.
- ▶ If the report documents that site development would affect the bed, bank, channel, or associated riparian habitat subject to CDFW jurisdiction under Fish and Game Code section 1602, a Streambed Alteration Notification shall be submitted to CDFW, pursuant to section 1600 et seq. of the Fish and Game Code. If proposed activities are determined to be subject to CDFW jurisdiction, the applicant shall abide by the conditions of any executed agreement before any ground disturbance.
- ▶ Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied.
- ▶ MCCR section 10A.17.040(K) prohibits the removal of any commercial tree species, as defined by CCR, title 14, section 895.1, for the purpose of developing a commercial cannabis cultivation site, which includes removal of species that make up sensitive natural communities found in Mendocino County, including redwood and California bay, and the removal of any true oak species (*Quercus* spp.) or tan oak. Compliance with this requirement will be provided to DCC.
- ▶ In consultation with DCC and CDFW, applicants shall compensate for permanent loss of riparian habitat at a minimum of a 2:1 ratio through contributions to a CDFW-approved wetland mitigation bank or through the development and implementation of a Compensatory Stream and Riparian Mitigation and Monitoring Plan for creating or restoring in-kind habitat in the surrounding area. If mitigation credits are not available, stream and riparian habitat compensation shall include establishment of riparian vegetation on currently unvegetated bank portions of streams affected by the project and enhancement of riparian habitat through removal of nonnative species, where appropriate, and planting of additional native riparian plants to increase the cover, continuity, and width of the riparian corridor along streams in the site and surrounding areas. Construction activities and compensatory mitigation shall be conducted in accordance with the terms of a streambed alteration agreement, as required under section 1602 of the Fish and Game Code, as well as SWRCB Order WQ 2023-0102-DWQ.

- ▶ The Compensatory Stream and Riparian Mitigation and Monitoring Plan shall identify:
 - compensatory mitigation sites and criteria for selecting these mitigation sites;
 - in-kind reference habitats for comparison with compensatory riparian habitats (using performance and success criteria) to document success;
 - monitoring protocol, including schedule and annual report requirements (compensatory habitat shall be monitored for a minimum of 5 years from completion of mitigation, or human intervention (including recontouring and grading), or until the success criteria identified in the approved mitigation plan have been met, whichever is longer);
 - ecological performance standards, based on the best available science and including specifications for native riparian plant densities, species composition, amount of dead woody vegetation gaps and bare ground, and survivorship; at a minimum, compensatory mitigation planting sites must achieve 80-percent survival of planted riparian trees and shrubs by the end of the 5-year maintenance and monitoring period, or dead and dying trees shall be replaced and monitoring continued until 80-percent survivorship is achieved;
 - corrective measures if performance standards are not met;
 - responsible parties for monitoring and preparing reports; and
 - responsible parties for receiving and reviewing reports and for verifying success or prescribing implementation or corrective actions.

The revised text of Mitigation Measure 3.5-4, on Draft EIR page 3.5-101, now states:

Mitigation Measure 3.5-4: Identify, Avoid, and Protect Sensitive Natural Communities, Riparian Habitat, and Wetland Vegetation or Provide Compensation

As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions –Term 10 and 37), the DCC shall require provisional licensees requesting to expand their sites to comply with a new license type that allows for a future new larger cannabis cultivation area prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of sensitive natural communities, riparian habitat, old-growth habitat, and other sensitive habitats from proposed commercial cannabis cultivation sites. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

- ▶ For new commercial cannabis cultivation uses that could disturb sensitive natural communities or riparian habitat, the application shall include a report prepared by a qualified biologist that summarizes the potential presence of any of these sensitive resources as identified during the biological survey conducted under Mitigation Measure 3.5-1a, including riparian habitat associated with aquatic features, old-growth forests, oak woodlands, special-status fish stream habitats, and sensitive natural communities. Further, the qualified biologist shall perform a protocol-level survey following the CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (current

version dated March 20, 2018) of the site before the start of new development related to cannabis activities. Sensitive natural communities shall be identified using the best means possible, including keying them out using the most current edition of A Manual of California Vegetation (including updated natural communities data at <http://vegetation.cnps.org/>) or referring to relevant reports (e.g., reports found on the VegCAMP website).

- ▶ The report shall include the requirements that all sensitive areas identified above shall be flagged or fenced with brightly visible construction flagging and/or fencing under the direction of the qualified biologist before development activities begin and that grading, excavation, other ground-disturbing activities, and vegetation removal shall not occur in these areas during development activities. Foot traffic by construction personnel shall also be limited in these areas to prevent the introduction of invasive or weedy species. Periodic inspections during construction shall be conducted by the monitoring biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.
- ▶ If the report documents that site development would affect the bed, bank, channel, or associated riparian habitat subject to CDFW jurisdiction under Fish and Game Code section 1602, a Streambed Alteration Notification shall be submitted to CDFW, pursuant to section 1600 et seq. of the Fish and Game Code. If proposed activities are determined to be subject to CDFW jurisdiction, the applicant shall abide by the conditions of any executed agreement before any ground disturbance.
- ▶ Old-growth habitat identified shall be avoided. Applications proposing to alter old-growth habitat shall be denied. "Old-growth habitat alteration" is defined as any tree removal, change in canopy cover, removal of understory vegetation, or impact on the root systems of a tree within old-growth habitat.
- ▶ MCCR section 10A.17.040(K) prohibits the removal of any commercial tree species, as defined by CCR, title 14, section 895.1, including the removal of any true oak species (*Quercus* spp.) or tan oak for the purpose of developing a commercial cannabis cultivation site. This section prohibits the removal of certain tree species that may occur in sensitive natural communities found in Mendocino County. Compliance with this requirement in the form of a memo or report shall be provided to DCC.
- ▶ In consultation with DCC and CDFW, applicants shall compensate for permanent loss of riparian habitat at a minimum of a 2:1 ratio through contributions to a CDFW-approved wetland mitigation bank or through the development and implementation of a Compensatory Stream and Riparian Mitigation and Monitoring Plan for creating or restoring in-kind habitat in the surrounding area. If mitigation credits are not available, stream and riparian habitat compensation shall include establishment of riparian vegetation on currently unvegetated bank portions of streams affected by the project and enhancement of riparian habitat through removal of nonnative species, where appropriate, and planting of additional native riparian plants to increase the cover, continuity, and width of the riparian corridor along streams in the site and surrounding areas. Construction activities and compensatory mitigation shall be conducted in accordance with the terms of a streambed alteration agreement, as required under section 1602 of the Fish and Game Code, as well as SWRCB Order WQ 2023-0102-DWQ.

The Compensatory Stream and Riparian Mitigation and Monitoring Plan shall identify:

- Compensatory mitigation sites and criteria for selecting these mitigation sites;
- In-kind reference habitats for comparison with compensatory riparian habitats (using performance and success criteria) to document success;
- Monitoring protocol, including schedule and annual report requirements (compensatory habitat shall be monitored for a minimum of 5 years from completion of mitigation, or human intervention (including recontouring and grading), or until the success criteria identified in the approved mitigation plan have been met, whichever is longer);
- Ecological performance standards, based on the best available science and including specifications for native riparian plant densities, species composition, amount of dead woody vegetation gaps and bare ground, and survivorship; at a minimum, compensatory mitigation planting sites must achieve 80-percent survival of planted riparian trees and shrubs by the end of the 5-year maintenance and monitoring period, or dead and dying trees shall be replaced and monitoring continued until 80-percent survivorship is achieved;
- Corrective measures if performance standards are not met;
- Responsible parties for monitoring and preparing reports; and
- Responsible parties for receiving and reviewing reports and for verifying success or prescribing implementation or corrective actions.

In the Draft EIR, on page 3.5-104, edits have been made to Mitigation Measure 3.5-5.

The original text of the first paragraph of Mitigation Measure 3.5-5 on Draft EIR pages 3.5-104 and 3.5-105 states:

Mitigation Measure 3.5-5: Identify State or Federally Protected Wetlands and Avoid These Features
As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 1, 10, and 37), the DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of state and federally protected wetlands from proposed commercial cannabis cultivation sites:

The revised text of the first paragraph of Mitigation Measure 3.5-5 on Draft EIR pages 3.5-104 and 3.5-105 now states:

Mitigation Measure 3.5-5: Identify State or Federally Protected Wetlands and Avoid These Features
As part of compliance with SWRCB Order WQ 2023-0102-DWQ (Attachment A, Section 1, General Requirements and Prohibitions – Term 1, 10, and 37), the DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to demonstrate compliance with the following measures for the protection of state and federally protected wetlands from proposed commercial

cannabis cultivation sites. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

SECTION 3.8, “GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE”

In the Draft EIR, on pages 3.8-14 and 3.8-15, edits have been made to Mitigation Measure 3.8-1.

The original text of Mitigation Measure 3.8-1, on Draft EIR pages 3.8-14 and 3.18-15, states:

Mitigation Measure 3.8-1: Implement On-Site Project Design Features to Demonstrate the Fair Share in Meeting the State’s Long-Term GHG Reduction Targets

DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to apply these requirements:

- ▶ Prohibit on-site natural gas or propane use.
- ▶ Implement Tier 2 requirements of the CALGreen Code’s EV charging standards.
- ▶ If the aforementioned project design features cannot be feasibly incorporated into the project’s design, include other relevant project design characteristics. Examples of measures that could be applied to individual commercial cannabis cultivation sites include, but are not limited to the following:
 - exceeding the requirements of the most recent version of Part 6 of the Title 24 California Building Code (California Energy Code),
 - using low-flow appliances,
 - using Energy Star appliances, and
 - implementing zero net energy buildings.

The revised text of Mitigation Measure 3.8-1, on Draft EIR pages 3.8-14 and 3.8-15, now states:

Mitigation Measure 3.8-1: Implement On-Site Project Design Features to Demonstrate the Fair Share in Meeting the State’s Long-Term GHG Reduction Targets

DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to apply these requirements. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023:

- ▶ Prohibit on-site natural gas or propane use when access to the electric grid or adequate solar power generation for the cannabis cultivation site operation is available.
- ▶ Implement Tier 2 requirements of the CALGreen Code’s EV charging standards.
- ▶ If the aforementioned project design features cannot be feasibly incorporated into the project’s design, include other relevant project design characteristics. Examples

of measures that could be applied to individual commercial cannabis cultivation sites include, but are not limited to the following:

- exceeding the requirements of the most recent version of Part 6 of the Title 24 California Building Code (California Energy Code),
- using low-flow appliances,
- using Energy Star appliances, and
- implementing zero net energy buildings.

SECTION 3.17, “WILDFIRE”

In the Draft EIR, on page 3.17-24, edits have been made to Mitigation Measure 3.17-2a.

The original text of Mitigation Measure 3.17-2a on Draft EIR page 3.17-24 states:

Mitigation Measure 3.17-2a: Implement Fire Prevention Measures for New Electrical Infrastructure

The DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to place new electrical power lines to the premises underground, if feasible. If electric infrastructure cannot be placed underground, fuel breaks along power lines and any stand-alone electrical facilities in a manner that would avoid ignition of adjacent vegetation to the satisfaction of Mendocino County, local fire protection agency, and/or CAL FIRE.

The revised text of Mitigation Measure 3.17-2a on Draft EIR page 3.17-24 now states:

Mitigation Measure 3.17-2a: Implement Fire Prevention Measures for New Electrical Infrastructure

The DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to place new electrical power lines to the premises underground, if feasible. If electric infrastructure cannot be placed underground, fuel breaks along power lines and any stand-alone electrical facilities in a manner that would avoid ignition of adjacent vegetation to the satisfaction of Mendocino County, local fire protection agency, and/or CAL FIRE. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

In the Draft EIR, on page 3.17-24, edits have been made to Mitigation Measure 3.17-2b.

The original text of the first paragraph of Mitigation Measure 3.17-2b on Draft EIR page 3.17-24 states:

Mitigation Measure 3.17-2b: Implement Fire Prevention Measures for On-Site Construction

The DCC shall require provisional licensees requesting to expand their sites prior to transitioning to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to prepare and implement a fire protection plan that includes the following provisions:

The revised text of the first paragraph of Mitigation Measure 3.17-2b on Draft EIR page 3.17-24 now states:

Mitigation Measure 3.17-2b: Implement Fire Prevention Measures for On-Site Construction

The DCC shall require provisional licensees who propose to expand their cultivation activities prior to their transition to annual licensure, new annual license applicants for commercial cannabis cultivation, and new annual license applicants for associated processing and distribution uses to prepare and implement a fire protection plan that includes the following provisions. This mitigation measure does not apply to cannabis cultivation operations on licensed sites that existed prior to August 2, 2023.

CHAPTER 4, “CUMULATIVE IMPACTS”

In the Draft EIR, on page 4-20, edits have been made to Impact CUM-9.

The original text of Impact CUM-9 on Draft EIR page 4-20 states:

Impact CUM-9: Contribution to Cumulative Hazardous and Hazardous Material Impacts

The revised text of Impact CUM-9 on Draft EIR page 4-20 now states:

Impact CUM-9: Contribution to Cumulative Hazards and Hazardous Material Impacts

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