SHUTE, MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

KEVIN P. BUNDY
Attorney
bundy@smwlaw.com

April 20, 2023

Via Electronic Mail Only

Steve Madrone, Chair, and Members
Board of Supervisors
Humboldt County
825 5th Street
Eureka, CA 95501
E-mail: smadrone@co.humboldt.ca.us
rbohn@co.humboldt.ca.us
mbushnell@co.humboldt.ca.us
mike.wilson@co.humboldt.ca.us
narroyo@co.humboldt.ca.us

John Ford
Director
Humboldt County Planning and Building Dept.
3015 H Street
Eureka, CA 95501
E-Mail: jford@co.humboldt.ca.us

Re: Errors and Mischaracterizations in the "Humboldt Cannabis Reform Initiative Analysis and Recommendations" Prepared for the Humboldt County Board of Supervisors

Dear Chair Madrone, Director Ford, and Members of the Board:

Our firm represents the proponents of the Humboldt Cannabis Reform Initiative. We have reviewed the "Humboldt Cannabis Reform Initiative Analysis and Recommendations" prepared by the Humboldt County Building and Building Department on March 7, 2023 (the "Analysis"). As discussed in detail below, the Analysis contains a number of factual errors, mischaracterizations, and misinterpretations regarding the intent and effect of the Humboldt Cannabis Reform Initiative (the "Initiative").

This memorandum does not attempt to refute every misstatement or mischaracterization in the Analysis, but rather focuses on certain inaccuracies and misinterpretations that appear to have caused the most concern. In particular:

• The Initiative is not intended to prevent existing cultivators from improving the environmental footprint of their operations, such as by installing water storage

or solar panels. The Analysis adopts an extreme interpretation that contradicts the Initiative's environmentally protective purposes and intent—even though the Initiative itself states that it must be interpreted consistent with its purposes.

• **The Initiative authorizes the County to adopt implementing regulations—without a vote of the people—to further its purposes.** To the extent the County truly believes the Initiative is ambiguous as to whether water storage or solar panels would be prohibited, it could adopt an implementing ordinance making clear such additions further the Initiative's environmentally protective purposes.

• **The Initiative does not add a new permit renewal requirement or process.** Under the County's existing ordinance, cultivation permits *already* expire automatically after one year unless renewed. The Initiative simply requires an on-site inspection and resolution of legitimate complaints prior to permit renewal.

• **The Initiative does not prohibit cultivators from obtaining dispensary, bed-and-breakfast, or tourism permits.** The Initiative applies only to *commercial cannabis cultivation* permits. It has no effect on any other type of permit. Nor does it prohibit the County from addressing multiple on-site activities in a single permit, to the extent permitted by state law.

• **The Initiative does not require any existing cultivators to upgrade their roads to Category 4 standards.** The Initiative makes only one road-related change: when a permit applicant claims a road meets Category 4 standards, the applicant must provide a licensed engineer's report to back up that claim. The Initiative does not change anything else in the existing ordinance governing road standards or applicable exceptions.

• **The Initiative codifies a number of things the County says it's already doing.** The Analysis claims that the Planning Department, as a matter of "practice," is already requiring several things the Initiative also would require (such as phasing out generator usage, providing hydrologic studies in connection with proposed wells, requiring renewable energy, and holding public hearings on Special Permits). The Initiative would provide legal support for and consistency in these practices rather than leaving them entirely to the discretion of Planning Department staff.

These and other issues are addressed in further detail below.

I. Initiative Purpose and Interpretation

The County's Analysis, as well as statements by Planning Director John Ford and

Supervisors at the March 7 hearing, adopt extreme interpretations of certain Initiative provisions that run directly counter to its purpose. This is inappropriate.

The Initiative's purposes and goals are clear: (1) to protect Humboldt County's environment from impacts of cannabis cultivation, particularly water usage and energy consumption; (2) to protect Humboldt County's historic small-scale, high quality cannabis industry against threats from larger-scale operations.

The Analysis nonetheless interprets the Initiative as *precluding* changes to existing operations that are intended to make cultivation more environmentally protective. The Initiative itself precludes such interpretations. Section 9 of the Initiative states that it "shall be broadly construed to achieve its purpose." Interpretations that conflict with the Initiative's purposes are thus improper.

The Initiative also authorizes the County to adopt implementing "ordinances, guidelines, rules, and/or regulations" to "further the purposes" of the Initiative. (Initiative § 7.F.) To the extent the County believes there are ambiguities that need to be addressed, the Initiative allows for further legislation without a vote of the people to accomplish this, provided the legislation "furthers the purposes" of the Initiative.

II. The Analysis Mischaracterizes the Initiative's Findings and Intent

A. Purportedly "false" and "misleading" statements

The Analysis states that "assertions" in the Initiative's findings are "misleading or false." (Analysis at 2.) Yet none of the statements specifically identified as "false" in the Analysis actually appears in the Initiative's text. Indeed, the only purportedly "false" statements the Analysis identifies are the County's own inferences and mischaracterizations of the Initiative.[1] Ultimately, the Analysis simply expresses disagreement with the Initiative's findings. Planning Department staff may hold the

[1] See, for example, Analysis at 8 ("[Finding 3] *infers* large new cultivators are dominating the permits being obtained in Humboldt County and this is not true. . . . Finding 4 *infers* that every cannabis operation is filled with adverse impacts that are not being addressed. This is simply not true."), 13 (claiming "the *assumption* behind [the] finding" that large-scale cannabis cultivation contributes to strain on water resources is "false"), 19 (arguing—falsely—that the Initiative "*infers* notices are not provided for all discretionary projects and that is not true"). None of these inferences or assumptions actually appears in the text of the Initiative.

opinion that the Initiative is unnecessary or unwise as a policy matter, but staff's mere disagreement with the Initiative does not make its findings false or misleading.

B. Definition of "large-scale" cultivation operations

The 10,000 square foot limitation in the Initiative is not "arbitrary," as the Analysis claims (Analysis at 16), but drawn directly from state regulations. Ten thousand square feet is the threshold between "small" and "medium" cultivation licenses under state regulations. (Cal. Code Regs., tit. 4, § 16201(c), (d).) This threshold is consistent with the Initiative's express goal of promoting small-scale cultivation. References in the Initiative to "larger-scale" and "large-scale" operations are in contrast to the operations that the State of California considers "small," not to the tiny minority of grows over one acre in Humboldt County or mega-grows in other parts of the state referenced in the Analysis. (Analysis at 2.)

Context, history, and geography are important in evaluating which operations are smaller or larger in scale. Many historic and current cultivation operations in Humboldt County are in rural residential areas, near watercourses, and down long dirt roads. The majority of current permitted sites in Humboldt County are less than 10,000 square feet. (Analysis at 4 [Table 1].) Humboldt County is not Riverside County, or even Santa Barbara County. The Analysis quibbles with where the Initiative draws the line between large and small operations, but in the local context, the line itself is permissible for the voters to draw.

C. Codification of existing County "practices"

The Analysis argues that several of the Initiative's findings are inaccurate, and suggests that the Initiative is unnecessary, because the County is already requiring certain environmental protections as a matter of "practice" or in permit conditions. For example, the Analysis claims "current practice" and standard "project conditions" already require:

(a) phasing out generator usage (Analysis at 14, 17, 21);

(b) use of renewable energy for mixed light and indoor cultivation (*id.* at 17);

(c) holding public hearings for Special Permits (rather than waiving hearings) (*id.* at 12, 20); and

(d) requiring a hydrologic analysis for proposed wells (*id.* at 14, 20).

The Initiative would codify provisions addressing these issues rather than leaving them entirely to the discretion of the Planning Department. Codification not only ensures consistency in application of standards but also protects the County against challenges from applicants who may not accept a condition that is not required by the County's current Ordinance.[2]

III. "Legally Nonconforming" Uses and Definition of "Expanded" Use

The Analysis claims that the Initiative would render a significant number of existing farms "non-conforming." (Analysis at 15.) From this, the Analysis concludes that existing cultivators "would not be allowed to improve their facilities," "make changes to adapt to the evolving industry," "make changes and continue to cultivate under their existing permit," or "add facilities that would make the operation more efficient or more environmentally friendly." (*Id.* at 15, 16.) These conclusions are inaccurate and misleading.

First, the Initiative would not force someone to reduce the size of their cultivation area just because they need a discretionary permit for something unrelated to cultivation. Initiative Policy CC-P2 applies only to an "application for a permit, permit modification, or zoning clearance *for new or expanded commercial cannabis cultivation*." Policy CC-P2 does not apply to anything unrelated to commercial cannabis cultivation. Nothing in the Initiative renders an entire parcel, or every existing use on that parcel, non-conforming.

Second, the Initiative's limitations apply only to "new" and "expanded" uses. The clear intent of these provisions is to allow existing farms to continue operating, but not to expand the amount of cultivation, energy usage, or water usage.

The Analysis advances a literal interpretation of "expanded" uses that would perversely preclude efforts to reduce energy and water usage in cannabis cultivation. This interpretation—which focuses on water storage tanks and solar panels—runs directly counter to the express purpose and goals of the Initiative. This is incorrect and impermissible. Section 9 of the Initiative states that it "shall be broadly construed to achieve its purpose." The text of the Initiative itself forecloses interpretations that would

[2] References to the "Ordinance" in this memorandum refer collectively to provisions of the Commercial Medical Marijuana Land Use Ordinance ("CMMLUO") and the Commercial Cannabis Land Use Ordinance ("CCLUO") codified at sections 313-55.4 and 314-55.4 of the Humboldt County Code.

defeat its purpose.

The Initiative's stated purpose is "to promote environmentally responsible cultivation practices and support watershed health for residents, property owners, and ecosystems." (Initiative § 1.A.) To this end, the Initiative aims to reduce reliance on surface and groundwater extraction and to ensure adequate water storage. (See Initiative § (10); Goal CC-G4; Policies CC-P10 and CC-P11; Standard CC-S2.) The Initiative also aims to reduce energy usage and eliminate reliance on generators. (Initiative § 1.C(6), (11); Goal CC-G7; Policies CC-P2 and CC-P12; Standard CC-S3.) The interpretation advanced in the Analysis—that the addition of water tanks and solar panels to an existing, permitted grow, without any other change, as an impermissible "expansion"—contravenes these clear purposes.

To the extent the County still believes clarification on this point is necessary, Section 7.F of the Initiative allows the Board of Supervisors to adopt implementing ordinances "to further the purposes" of the Initiative without a vote of the people. In my opinion, an implementing ordinance changing the definition of "structure" in the Zoning Ordinance to allow for installation of water tanks and solar panels on existing, permitted cultivation sites would be consistent with, and would further the purposes of, the Initiative.

Finally, assertions in the Analysis regarding the Initiative's effect on existing mixed light and indoor cultivation are incorrect. The Analysis claims the Initiative would "make *all* existing mixed light and indoor cultivation permits non-conforming." (Analysis at 16.) This assertion, however, is based on how the County *currently* defines mixed-light and indoor cultivation. (*Id.*) The Initiative contains *different* definitions of "Indoor" and "Mixed Light" cultivation (drawn from state regulations) that would supersede the County's current definition. (Initiative at p. 8.) Under the Initiative's definitions, existing operations using "Mixed-Light tier 1" cultivation—which includes operations using light deprivation and artificial lighting not exceeding six watts per square foot—will not become "non-conforming." Mixed-Light tier 1 cultivation also will be allowed in new and expanded operations. (Initiative Policy CC-P2(b).)

IV. Permit Renewal

The intent of the Initiative is to allow currently permitted operations to continue—and to be renewed—unless they are expanded. The only changes the Initiative makes to permit renewal are to require on-site, in-person inspections (rather than "remote" inspections, "desk reviews," or self-certification of compliance by permittees), correction

of violations, and investigation of legitimate complaints. (Policy CC-P4.)

Any suggestion in the Analysis that the *Initiative* imposes a *new* one-year expiration date or "renewal" requirement (Analysis at 17) is false. The one-year expiration date and annual renewal requirements *are already in existing law*. The Ordinance currently provides that permits "shall terminate" or "expire" one year after the date of issuance. (County Code §§ 313-55.4.5.6, 314-55.4.5.6.) Policy CC-P3 would simply add these existing requirements to the General Plan.

The Ordinance also currently provides that permits cannot be "renewed" unless an annual compliance inspection is conducted. (County Code §§ 313-55.4.5.6, 314-55.4.5.6.) Policy CC-P4 tightens inspection and complaint resolution requirements. But the only change the Initiative makes to these sections of the Ordinance is to add the words "on-site, in person" before "annual compliance inspection." (Initiative §§ 4.A.1 and 5.A, amending County Code §§ 313-55.4.5.6, 314-55.4.5.6.) The Analysis faults the Initiative for failing to describe the renewal process—but to the extent the County lacks a process for renewals, that is a flaw in the existing Ordinance, not in the Initiative. Indeed, the Analysis concedes as much. (Analysis at 17 ["The existing zoning ordinance does not have a renewal provision"].)

The Analysis suggests that the Initiative is ambiguous as to whether permit renewals would be treated as new applications. There is no ambiguity. Policy CC-P2 states that "[t]he limitations in this Policy CC-P2 shall not apply to an application for renewal of an existing permit or zoning clearance that does not propose or involve any expanded use." This makes clear that to the extent the County treats a permit renewal request (without any expanded use) as an application, Policy CC-P2 will not apply except as specified.

Policies CC-P3 and CC-P4, along with corresponding revisions to the Ordinance in Initiative sections 4 and 5, also are perfectly clear about what changes are and are not being made in the Initiative. Except as expressly provided, the Initiative does not dictate what process the County must follow in renewing permits.

V. Multiple Permits

The Initiative addresses commercial cannabis cultivation permits, not bed-and-breakfast permits or dispensary permits or tourism permits. This is plain from the language of Policy CC-P5, which explicitly references "permit[s] for commercial cannabis cultivation." Later references to a "permit" in the same sentence are also to

permits for commercial cannabis cultivation. The Initiative's limitation on multiple permits thus applies only to commercial cannabis cultivation permits, not other types of permits.

Again, the Initiative's provisions must be understood in the context of its purposes. Those purposes do not include interpreting the Initiative in a way that defeats its objectives. Those objectives include promoting and protecting the County's traditional, small-scale cannabis cultivation practices. To the extent bed-and-breakfast permits or tourism permits or dispensary permits are consistent with those objectives, the Initiative should not be interpreted as interfering with or precluding issuance of those permits.

The Initiative does not purport to override state law. State law may require separate licenses for cultivation and nurseries, but nothing in the Initiative would prevent the County from addressing cultivation, nurseries, processing, and other on-site activities in a single permit. To the extent any changes to the existing Ordinance are necessary to combine permits, the Board of Supervisors could adopt those changes without a vote of the people, provided they are consistent with the policies and purposes of the Initiative.

The Initiative is not ambiguous on this point. However, under Section 7.F., the Board of Supervisors could address any perceived ambiguity in an implementing ordinance designed to further the Initiative's core purpose of promoting a small-scale, high-quality, environmentally sustainable cannabis industry.

VI. Category 4 Roads

A. The Initiative does not impose a new Category 4 road standard.

The Analysis claims the Initiative would require new and expanded cultivation sites to be located on a Category 4 road. (Analysis at 21.) But this is not a new or different requirement. The Ordinance *already requires* that "[u]nless otherwise specified, roads providing access to [cultivation] parcel(s) or premises must meet or exceed the Category 4 road standard (or same practical effect)." (County Code §§ 313-55.4.12.1.8.2, 314-55.4.12.1.8.2.)

The current Ordinance allows applicants themselves to make a determination as to whether their roads meet Category 4 standards. Many applicants are not qualified to make that determination. The Initiative requires a qualified engineer to determine Category 4 compliance where compliance with the standard is already required. The Initiative *does*

not change the applicability of the standard and *does not affect* any existing exceptions to the Category 4 road standard requirement in the current Ordinance.

B. There is no inconsistency between the Initiative's General Plan and Ordinance amendments.

The Analysis claims there is an inconsistency between Initiative Policy CC-P13 and the Initiative's amendments to the Ordinance. (Analysis at 22.) This is incorrect.

The Analysis misconstrues Policy CC-P13. The Analysis claims the policy "says all roads must be a category 4 road (or same practical effect)," while the Initiative's amendments to the Ordinance only require review by a licensed engineer. (Analysis at 22.) But Policy CC-P13 is clear: "a licensed engineer's report shall be required to support a conclusion that the road meets or exceeds the Category 4 standard." (Initiative at p. 13.) The Initiative's amendments to the Ordinance require exactly the same thing. (Initiative at pp. 26, 28.) There is no inconsistency.

Accordingly, the statement in the Analysis that "the provision to allow roads of less than a category 4 standard would need to be removed" from the Ordinance to address the inconsistency (Analysis at 22) is false. Other conclusions in this portion of the Analysis that depend on this false statement are similarly inaccurate.

C. Applicants are already providing engineer's reports.

The Analysis states that "[m]ost road evaluations accompanying projects presented to the Planning Commission and Zoning Administrator are currently utilizing road evaluations prepared by licensed engineers." (Analysis at 6.) Thus the County concedes that "most" applicants are already doing what the Initiative would require for new and expanded permits.

Suggestions in the Analysis that retaining an engineer always would be cost-prohibitive are therefore misleading. Once again, the Initiative would simply codify and support a common-sense practice that the County admits is already occurring.

VII. Public Notice and Discretionary Review

The Analysis claims that additional public notice and expanded discretionary review are unnecessary. Sponsors and supporters of the Initiative—many of whom feel they have not received adequate notice of proposed cultivation projects or a full opportunity to participate in the process—disagree with the County's assessment.

Despite its objections, the Analysis concedes these provisions may have little practical consequence. The Analysis admits that discretionary review and public notice "will not really matter for new permits, because few are expected." (Analysis at 24.) The Analysis also claims these provisions will affect existing cultivators by forcing permit renewals to go through discretionary review (*id.*); however, this conclusion flows from the County's misunderstanding of the Initiative's permit renewal provisions.

A. Additional public notice is warranted.

The Analysis states that everyone who needs to be notified of proposed projects is already being notified and that the County even goes beyond minimum legal requirements in "controversial" cases. (Analysis at 19, 23.) The Initiative's sponsors, however, have heard from numerous community members who strongly feel that the County's current approach is inadequate.

In a large, rural county like Humboldt, notice to property owners 300 or 500 feet from the cultivation parcel boundary may reach only those owners immediately adjacent to the parcel. Commercial cannabis operations, however, can and do affect residents beyond immediately adjacent parcels, including residents sharing a road or water source with a cultivation site or who live downstream. Moreover, given the area's rugged topography, cultivation operations may be visible or audible across far greater distances.

Initiative Standard CC-S4 adopts reasonable requirements intended to provide public notice to everyone who may be affected by a cultivation project, not just immediately adjacent property owners.

B. Public hearings should not be waived.

The Initiative also enhances public participation by ensuring that the County actually holds public hearings on discretionary permit applications. (Policy CC-P9; Initiative §§ 4.A.2, 5.B.) The Analysis claims the County is already holding public hearings on all Special Permits and Conditional Use Permits anyway "[a]s a matter of practice and to ensure full transparency." (Analysis at 12.) To the extent this is true, the Initiative would codify this "practice."

The Analysis complains that this portion of the Initiative "gives a false impression that the County waives public hearing requirements." (Analysis at 20.) But it is the *Analysis* that gives a false impression; the County Code clearly authorizes the County to waive public hearings. (County Code § 312-9.2.)

C. Additional discretionary review is appropriate.

The Initiative would require discretionary review of applications for new and expanded permits with a cultivation area greater than 3,000 feet.

The Analysis claims discretionary review would be required to "add water storage improvements" at sites between 3,000 and 10,000 square feet. (Analysis at 19.) However, as discussed above, it is unnecessary and improper to interpret "water storage improvements" that decrease resource usage as "expanded" operations under the Initiative. In contrast, to the extent that applicants truly seek to expand the intensity or resource usage of their operations at this size, the sponsors of the Initiative feel that discretionary review is appropriate.

The Analysis also claims this requirement would "create a large burden on County staff" (Analysis at 19), but then concedes that it "will not really matter for new permits, because few are expected." (Analysis at 24.) The Analysis does not provide any evidence as to how many applications to expand existing grows between 3,000 and 10,000 square feet can be expected in coming years. Absent such evidence, claims in the Analysis regarding an additional burden on staff appear to be mere speculation.

VIII. Instream Flows, Diversions and Wells

The Analysis professes confusion as to the purpose of Policy CC-P10, which requires the County to confirm that wells proposed for use in cultivation will not reduce instream flows, adversely affect watercourses or springs, or adversely affect another party's well. (Analysis at 20.) It is not clear why the County would be confused about this. Policy CC-P10 is straightforward. The policy also must be understood in the context of Standard CC-S1, which requires a hydrologic study demonstrating compliance with the requirements of Policy CC-P10 in support of a cultivation permit application. To the extent the County is already requiring hydrologic studies as a matter of "practice" or is taking other steps to accomplish these goals, as the Analysis suggests (see Analysis at 14, 20), the Initiative would simply codify and support those practices.

The Analysis also argues that the Initiative's groundwater protection measures are unnecessary because *average per-acre* groundwater recharge in Humboldt County is high, even during drought years. (Analysis at 6.) The argument is disingenuous. Average groundwater recharge per acre across the entire county reveals nothing about whether a particular proposed well, in a particular location, is likely to affect nearby streams, springs, or wells. The Initiative requires analysis of concrete hydrological problems

related to actual cultivation operations.

Finally, the Analysis disagrees with the Initiative's extension of the "forbearance period" for water diversion. (Analysis at 20.) The Initiative's sponsors and supporters feel that given ample (and unrefuted) evidence of streams and even major rivers going dry in recent years, additional caution is necessary regarding diversions in late summer and autumn.

IX. Coordination with Other Agencies

The Analysis claims that the County is already coordinating with state wildlife and water quality agencies. (Analysis at 18-19.) As an example, the Analysis cites the "referral process" in County Code section 312-6.1.3, which requires the County to "refer copies" of permit applications to other agencies. Such a referral, however, also must "include notification that, if the [Planning] Department does not receive a response within (10) working days, the Department will assume that no recommendations or comments are forthcoming."

The lack of a requirement for meaningful coordination among agencies is not a "false narrative." (Analysis at 19.) In the judgment of the Initiative's sponsors and supporters, merely sending copies of documents to overburdened state agencies with a 10-day deadline for responses—after which the County need do nothing further to ensure agencies' concerns are addressed—falls well short of "coordination."

X. Political Reform Act Limitations

The County's errors are not limited to the Analysis itself. The misstatements and misrepresentations in the Analysis prompted additional comments from both Supervisors and Planning Department staff at the March 7, 2023 Board of Supervisors meeting. Many of these further statements were inaccurate, and some were patently inflammatory.[3]

[3] For example, Supervisor Rex Bohn stated that the Initiative "just doesn't put a nail in the coffin, it digs the hole, names the cemetery and puts everybody in it in a mass grave." Isabella Vanderheiden, *Humboldt County Cannabis Farmers Blast 'Misleading' Ballot Initiative That Would Impose New Restrictions on Cultivators; Supervisors Form an Ad Hoc Committee to Work on Alternatives*, Lost Coast Outpost (March 8, 2023), at https://lostcoastoutpost.com/2023/mar/8/humboldt-county-cannabis-farmers-blast-
(footnote continued on next page)

The Analysis and accompanying statements made at the March 7 Board of Supervisors meeting are not neutral and fair presentations of relevant facts. Rather, they appear intended to influence and undercut public support for the Initiative—in other words, to take part in the political campaign surrounding the Initiative in advance of the March 2024 election. Accordingly, any efforts or expenditures made by the County to disseminate the Analysis or its flawed conclusions could violate the Political Reform Act.

The Supreme Court has long recognized that spending public funds on informational materials that fail to provide fair and accurate information about a proposed ballot measure can constitute impermissible political advocacy. Materials prepared at public expense must be limited to "fair presentation" of "all relevant facts" and cannot be used "to promote a partisan position in an election campaign." (*Stanson v. Mott* (1976) 17 Cal.3d 206, 209-10, 220.) Materials of this nature can cross the line even where they do not use words of express advocacy. (*Id.*; see also *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 40 ["argumentative or inflammatory rhetoric" in informational materials prepared by a public agency is an indicator of improper and unconstitutional advocacy].)

Fair Political Practices Commission ("FPPC") regulations and advice letters reflect these same limitations by imposing reporting and disclosure requirements for any "payment of public moneys" by local agencies that are "made in connection with a communication to the public that … taken as a whole and in context, unambiguously urges a particular result in an election." (Cal. Code Regs., tit. 2, § 18420.1(a).) "A communication unambiguously urges a particular result in an election if … [w]hen *considering the style, tenor, and timing* of the communication, it can be reasonably characterized as campaign material *and is not a fair presentation of facts serving only an informational purpose*." (*Id.*, § 18420.1(b) (emphasis added).) "[P]ayments of public moneys" encompass both direct and indirect expenditures; indirect expenditures include "payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants." (*Id.*, 18420.1(c).)

As discussed in detail above, the Analysis does not fairly present all relevant facts. Rather, it contains numerous statements of opinion, advances interpretations of the Initiative that run counter to its purpose, and generally casts the Initiative in the most negative light possible. Moreover, the style and tenor of the Analysis are predominantly

---

misleading/. At the same meeting, Planning Director Ford stated that "[Permit holders] could not install new water tanks, they could not install the solar facilities; a lot of potential environmental enhancements would not be able to be installed [under this initiative]." *Id.*

argumentative. For example, a good portion of the Analysis is devoted to arguing with the Initiative's findings, claiming that the Initiative is unnecessary because the County is already doing a good job of regulating cannabis cultivation. (Analysis at 3-4 [claiming "Permitting Success"], 7-10 [disputing findings].) The Analysis also indulges in inflammatory rhetoric, claiming that assertions in the Initiative's findings are "misleading or false." (Analysis at 2.) Again, as discussed above, the only purportedly "false" statements the Analysis identifies *are not statements in the Initiative, but rather the County's own negative inferences and mischaracterizations*. Finally, the Analysis offers extreme interpretations of the Initiative that run counter to the Initiative's express purposes.

Therefore, taking into account "the style, tenor, and timing" of the Analysis, the County's use of public funds to disseminate the report or its inaccurate conclusions could constitute an "independent expenditure" under Government Code section 82031, triggering the reporting and disclosure requirements set forth in Government Code section 85500. Failure to comply with these reporting and disclosure requirements would violate the Political Reform Act.

XI. Conclusion

The Initiative's proponents understand that these are difficult times economically for legal cultivators in Humboldt County. Indeed, the Analysis itself acknowledges that factors other than local regulation are the primary cause of cultivators' difficulties: "Small cultivators have found it increasingly difficult to sell their product for what it costs to produce. This is partly due to oversupply at the state level and control over who has shelf space at the retail level." (Analysis at 3.) The Analysis also concedes that Humboldt cultivators "are competing in a state-wide market which is producing more cannabis than the market can currently absorb. This is not a Humboldt County exclusive issue." (Analysis at 7.)

The conclusions in the Analysis may well have been influenced or motivated by these economic concerns. However understandable those concerns may be, the pervasive misstatements, mischaracterizations, and misinterpretations of the Initiative advanced in the Analysis create a strong impression that the Analysis was not intended to provide neutral, balanced factual information to the public, but rather to influence public opinion on a ballot measure that will soon come before the County's voters.

We therefore respectfully request that the County either withdraw the Analysis or promptly correct the errors therein and refrain from using any public resources to further

disseminate its inaccurate conclusions.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Kevin P. Bundy

cc: Kathy Hayes, Clerk of the Board (via email: khayes@co.humboldt.ca.us)
Scott A. Miles, Interim County Counsel (via email: countycounsel@co.humboldt.ca.us)

1627410.3