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Via Electronic Mail

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Re: Comments on Humboldt County Growers Alliance's Response to Draft Impartial Analysis of Humboldt Cannabis Reform Initiative

Dear Ms. Duke:

Thank you for your October 5, 2023 letter inviting the proponents of the Humboldt Cannabis Reform Initiative (the "Initiative") to comment on the Humboldt County Growers Alliance's comments on and proposed changes to the County's draft impartial analysis of the Initiative (the "Growers' Letter"). The Initiative's proponents stand by their September 30, 2023 comments on and proposed revisions to the impartial analysis, and nothing in the additional comments below should be read as contradicting or withdrawing those prior comments.

As detailed below, most of the Growers Alliance's comments are based on misinterpretations and misrepresentations of the Initiative that are unsupported by its clear text, purpose, and intent. These misinterpretations and misrepresentations are false and misleading and should not be incorporated into the County's impartial analysis. Indeed, with the exception of a typographical error in the title of the Initiative, none of the Growers Alliance's requested changes to the impartial analysis is justified. County Counsel should correct the typographical error and reject all other changes suggested by the Growers Alliance.

Purported “Factual Inaccuracies”

1. Title of Initiative: We agree that the impartial analysis should use the correct title of the Initiative, which is “Humboldt Cannabis Reform Initiative.”

2. Permit modifications and references to addressing harm caused by “large-scale cannabis cultivation”: The Growers Alliance cites a statement in the Planning Department’s “Analysis” to the effect that the Initiative would discourage “existing permit holders from modifying their permits in any way,” including by “adding infrastructure intended for environmental protections or modifications of activities.” Growers’ Letter at 2. The Growers Alliance further quotes the Planning Department as stating that “[t]hese restrictions affect the smallest of farms permitted in Humboldt County.” *Id.* These statements are objectively incorrect. Nothing in the Initiative prevents existing permit holders with a permitted cultivation area of less than 10,000 square feet from modifying or expanding their operations, provided the expanded operation otherwise meets the requirements of Policy CC-P2. And nothing in the Initiative prevents “modifications of activities.” For existing permit holders with more than 10,000 square feet of cultivation, the Initiative prevents further “expansion,” which is defined as an increase in cultivation area, water usage, or resource usage.

To the extent the Growers Alliance generally objects to the use of the term “large-scale” in the impartial analysis, its objections are meritless. The Initiative reflects a policy judgment that given Humboldt County’s geography, sensitive environmental resources, and history, cultivation in excess of 10,000 square feet should be considered “large-scale.” There is nothing untrue or misleading about describing it as such in an impartial analysis.

3. Multiple permits: The Growers Alliance claims the Initiative “clearly disallows multiple permits in all cultivation contexts.” Growers’ Letter at 3. This is objectively false. Policy CC-P5 does not affect existing permits *at all*. Nor does Policy CC-P5 affect any permits other than cannabis cultivation permits as defined in the Initiative. Policy CC-P5’s restrictions apply only to cannabis cultivation permits that are approved after the Initiative’s effective date. Accordingly, existing permittees may continue to hold multiple permits to the extent allowed by County ordinances, and may even add a new permit approved after the Initiative’s effective date without triggering any limitation under the Initiative. To suggest otherwise is false and misleading.

The Growers Alliance is also wrong to suggest that Initiative Policy CC-P2(b) prohibits processing permits. It does not. The clear effect of Policy CC-P2(b) is to

prohibit new and expanded applications for indoor and mixed-light tier 2 cultivation. Policy CC-P2 must be read in light of Goal CC-G2, which confirms the policy’s scope and effect.

Moreover, the Initiative adopts the CCLUO’s definition of “commercial cannabis cultivation.” That means any processing-related activities that fall within the definition of “commercial cannabis cultivation” can be permitted, along with activities related to cultivation itself, in a single permit. Nothing in the current ordinance prohibits this; indeed, the ordinance envisions that “[o]utdoor and mixed-light cultivation activities, on-site processing, and nurseries may be permitted with a coastal development permit and special permit, use permit, or zoning clearance certificate....” County Code § 313-55.4.6, see also § 314-55.4.6. The Initiative does not categorically prohibit processing permits.

4. Category 4 road standards: The Growers Alliance continues to misrepresent the Initiative’s provisions regarding applicant self-certification of compliance with Category 4 road standards. Policy CC-P13 and the County Code amendments in Initiative Sections 4.A.4 and 5.C simply require an engineer’s verification—rather than allowing applicant self-certification—when an applicant claims that a road without a centerline stripe meets Category 4 standards. The Initiative does not change *anything* in the current ordinances with respect to whether a particular operation or permit is subject to Category 4 road standards in the first place. The Initiative leaves all provisions governing applicability of Category 4 standards (including current exceptions) undisturbed. Again, the Initiative merely requires an engineer’s report to substantiate an applicant’s claim that a particular road meets the standard. Any other description of the Initiative’s effect in this respect would be objectively false and misleading.

5. Increase in water storage: The Growers Alliance claims “no provision in HCRI requires any increase in water storage.” Growers’ Letter at 3-4. This is false. Initiative Standard CC-2 expressly requires the County to order an increase in water storage, or a decrease in cultivation area, if the County determines that water storage is inadequate.

The Growers Alliance also claims that the County already exercises similar authority “under its current policy” and suggests that HCRI therefore “cannot be said to create any new policy consequence.” *Id.* at 4. Again, the Growers Alliance is wrong. The Initiative does not leave the adequacy of water storage to the County’s discretion as a matter of “current policy.” Rather, the Initiative incorporates a new, mandatory requirement for adequate water storage into the County’s General Plan. Future modification of the requirement would be subject to voter approval. These are obviously “new policy consequence[s].” The impartial analysis should make clear that the Initiative

adds new, enforceable requirements regarding adequate water storage, including increases in water storage where necessary, to the County's General Plan.

6. Studies of new wells: As with its comments regarding water storage, the Growers Alliance is wrong in claiming that the Initiative's hydrologic study requirement "does not create any new policy outcome." (*Id.* at 4.) Initiative Standard CC-S1 affirmatively requires a hydrologic study demonstrating that new wells proposed for use in cultivation will not reduce instream flows, otherwise adversely affect watercourses or springs, or adversely affect other existing wells. The Growers Alliance again claims "that requirement already exists under state and County policy." Again, however, the Initiative does not leave this to the County's policy discretion, but rather adds a new, mandatory requirement to the County's General Plan that cannot be repealed without a vote of the people. This is certainly a "new policy outcome" that may be reflected in the impartial analysis.

The Growers Alliance further suggests that the Initiative has no effect due to Executive Order N-7-22.¹ But the Executive Order is not duplicative of or coterminous with the Initiative. The Executive Order states only that the County may not issue a permit for a new groundwater well "without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure."² The Executive Order does not specify how the County should make these determinations. The Initiative, in contrast, requires a hydrologic study prepared by a qualified expert. Moreover, the Initiative requires the expert hydrologic study to demonstrate that wells proposed for use in cultivation will not affect instream flows, watercourses, or springs, not just existing wells. The Initiative creates a "new policy outcome" well beyond Executive Order N-7-22.

7. Permit renewal: We refer County Counsel to our September 30, 2023 comments addressing permit renewals and inspections. As stated in that letter, the Initiative does not create a new permit renewal requirement or process. With that exception, the statement to which the Growers Alliance objects is neither untrue nor misleading. Initiative Policy CC-P4(a) clearly requires on-site, in-person inspections on no more than 24 hours' notice. Beyond that, the Growers Alliance's opinions as to which

¹ The Growers Alliance's reference to the Planning Department's conclusion that water "diversions" are "heavily regulated" is beside the point. Wells are not "diversions."

² Executive Order N-7-22, § 9(b) (March 28, 2022), at <https://www.gov.ca.gov/wp-content/uploads/2022/03/March-2022-Drought-EO.pdf>.

portions of Policy CC-P4 are “most impactful” are just that—opinions—and need not be reflected in the County’s impartial analysis.

8. Date of adoption of local laws: The County’s ordinances governing commercial cannabis cultivation (as opposed to cultivation for medical use) were adopted after passage of Proposition 64 in 2016. The Initiative addresses only commercial cannabis cultivation. No changes are necessary in response to this comment.

Regulatory Background

The Growers Alliance argues that the impartial analysis must discuss the “extensive regulatory environment” governing cannabis cultivation in the County. (Growers Letter at 5.) Yet the Growers’ proposed additions to the impartial analysis do not meaningfully explain that context. Rather, the Growers seemingly want the impartial analysis to imply that cannabis cultivation is already heavily regulated—suggesting that the Initiative is therefore unnecessary. Such an implication has no place in an impartial analysis.

Purportedly Derogatory Terms

We have no objection to replacing references to “marijuana” with “cannabis.” That said, the Growers Alliance provides no evidence that the colloquial term “grow” is somehow derogatory. Indeed, the organization calls itself an alliance of “Growers.” It would be odd for a trade association to choose a derogatory name for its members.

Responses to the Growers Alliance’s Specific Proposed Revisions

- *“The measure would . . . place restrictions on the ‘expansion’ of existing permitted sites, defined in the initiative as an increase in the ‘number or size of any structures used in connection with cultivation.’”*

This proposed language is both false and misleading and should not be incorporated into the impartial analysis for several reasons. First, the initiative does not place any restrictions on the “expansion” of existing permitted sites that are smaller than 10,000 square feet and use only outdoor and mixed-light cultivation methods. (Policy CC-P2.) Second, the proposed change misrepresents the Initiative’s definition of “expanded” use. The Initiative defines “expanded” narrowly as “an increase in the size, intensity, or resource usage of commercial cannabis cultivation activities.” Third, none of the “examples” of “restricted expansion” enumerated in the Growers Alliance’s suggested changes appear in the Initiative. Rather, the Initiative states that examples of “expanded” uses include increases in “cultivation area, water usage, energy usage, or the

number or size of any structures used in connection with cultivation.” The Growers Alliance’s suggested changes are objectively false.

Moreover, as the Initiative’s proponents have repeatedly explained to the County, nothing in the Initiative prohibits existing permittees from making modifications that *reduce* the intensity or resource usage of cultivation activities. Such an interpretation of the Initiative would be contrary to its environmentally protective purposes and is therefore precluded under the Initiative’s plain text. Initiative Section 9 (“This Initiative shall be broadly construed to achieve its purpose.”).

- *“Most existing permitted cultivation sites would be rendered legally-nonconforming under the initiative’s provisions.”*

As we pointed out in our September 30, 2023 letter, nothing in the Initiative designates existing permitted cultivation sites “legally nonconforming.” The use of that term in the impartial analysis would be inaccurate and misleading.

- *“Cultivators could not hold multiple permits.”*

As explained above, this assertion is objectively false. Existing cultivators could continue to hold multiple permits to the extent allowed by the County’s ordinances. Limitations would apply only to multiple new permits issued after the effective date of the Initiative. Moreover, any limitations would apply only to “commercial cannabis cultivation” permits, not to “distribution, farmstand sales, and tourism.”

- *“Currently, the CMMLUO does not include Category 4 road standards.”*

As drafted, this assertion is opaque and uninformative. Moreover, the CMMLUO (Ordinance 2559) was repealed by Ordinance 2599. To the extent any existing permits continue to be governed by the CMMLUO alone, the Initiative would not impose any new substantive requirement regarding Category 4 road standards. In general, please see our September 30, 2023 comments and our further comments above regarding the extremely limited effect of the Initiative regarding Category 4 road standards. Any assertion that the Initiative imposes new Category 4 road standards on permits that otherwise would not be subject to such standards is objectively false.

- *The Initiative “will require yearly renewal of permits.”*

As explained in our letters regarding the Planning Department’s analysis and our September 30, 2023 letter on the draft impartial analysis, the County’s existing ordinance already requires yearly renewal of permits, insofar as permits expire annually unless

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renewed following an inspection. County Code §§ 313-55.4.5.6, 314-55.4.5.6. This effect should not be attributed to the Initiative.

- *The Initiative will “extend the forbearance period”*

As drafted, the suggested language does not explain what the “forbearance period” is, and is therefore uninformative.

Thank you for your consideration of these additional comments. Please feel free to contact me with any questions.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

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