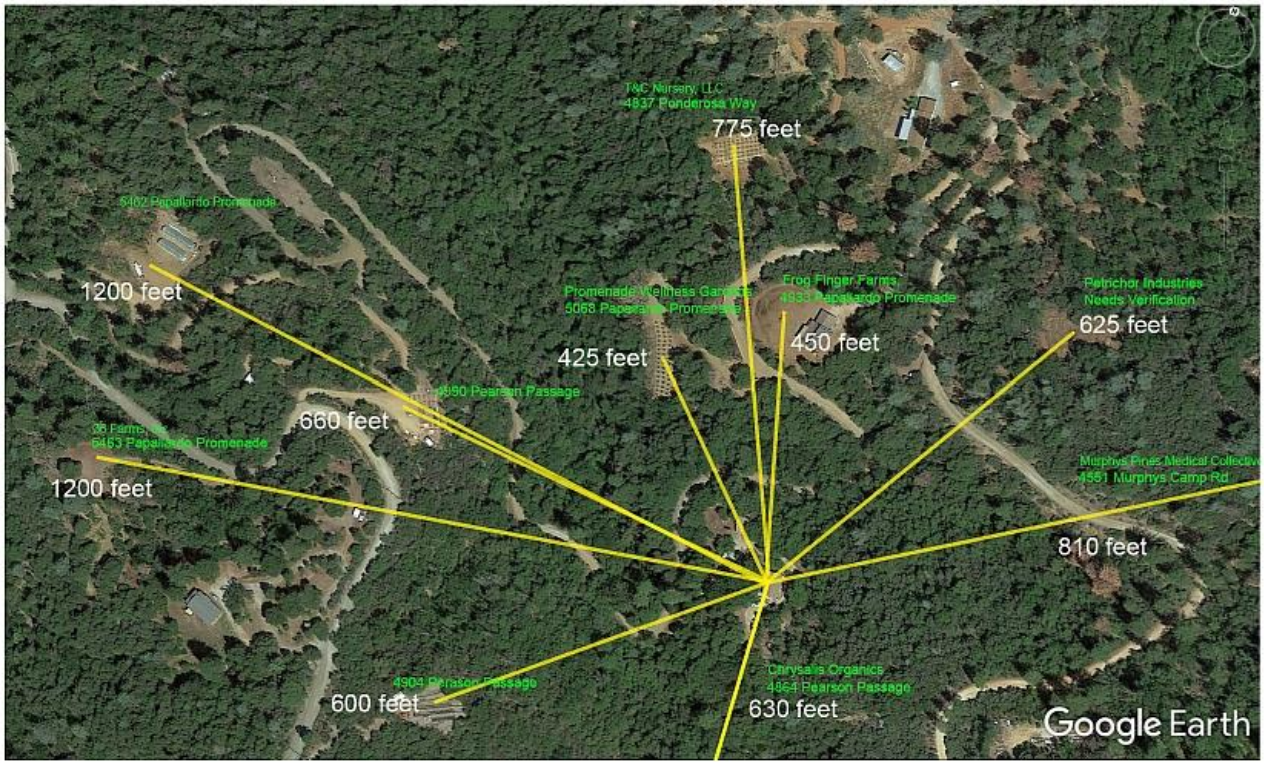
Comments on the Draft Environmental Impact Report Medical Cannabis Cultivation and Commerce Ordinance Project



This map shows how one residence is surrounded by 10 cannabis grows.

Submitted by
The Calaveras Planning Coalition
June 14, 2017

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June 14, 2017

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RE: Comments on the Medical Cannabis Cultivation and Commerce Ordinance DEIR

Dear Sir:

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition (CPC).

As you know, the CPC is a partnership of member organizations, groups, and individuals. Its mission is to promote public participation in sensible land use and resource planning, ensuring a healthy human, natural, and economic environment.

I. Summary of Improvements needed in the Final EIR.

Before the County makes the final decision on this project, we encourage the County to make the following improvements in the Final EIR:

1. In the introduction, either substantiate the claims regarding the insignificance of selected impacts, or analyze those impacts in Chapter 3.

2. In the project description section, clearly identify the aspects of the proposed project that may result in significant impacts, and provide a copy of the ordinance in the Final EIR appendices.

3. In the aesthetics, land use planning, and noise sections; acknowledge the potentially significant impacts and mitigate them. We provide mitigation options for your convenient consideration.

4. In the alternatives section, make a better effort to quantitatively compare those impacts subject to objective estimation. Before a ban alternative is selected, thoroughly address the issues of implementation funding, institutional capacity, and the need for smooth transition to the ban.

By and large these are not overwhelming tasks. Completing these tasks is well worth the effort to avoid a successful legal challenge on CEQA grounds. Under these circumstances, an ounce of prevention is worth a pound of cure.

II. This is a "both and" not an "either or" decision.

The proposed project would provide insufficient regulation of commercial cannabis grows in Calaveras County, as would one alternative. Another alternative would try to ban commercial cannabis grows. To date, both the community and the CPC have been divided by debates over these two approaches.

However, this decision need not represent a choice between ineffectively banning or poorly regulating commercial cannabis grows. Ultimately, the County needs to ban commercial cannabis grows in those places and under those circumstances where commercial grows should be banned (e.g. in some residential areas, on small parcels, where converting forest lands, etc.) That ban needs to be effectively enforced. Penalties for violation of that ban need to be sufficient to deter such violations. **In addition**, the County may also chose to regulate commercial cannabis grows in areas and in numbers that provide the most benefits, cause the least harm, and are within the institutional capacity of the County to manage. Thus, this need not be an "either or" decision. When it comes commercial cannabis grows, there is a place for both bans and regulations.

III. Zoning answers the questions: Who, What, When, Where and How?

In preparing to adopt a zoning ordinance, it is useful for the Board of Supervisors to remember what a zoning ordinance does. A zoning ordinance regarding commercial cannabis will determine **who** is eligible to operate a commercial grow. We would hope that only the most reputable people would be allowed to operate a business entrusted with so much responsibility for regulatory compliance. A zoning ordinance regarding commercial cannabis could determine **what** can be done (i.e. growing, processing, distributing) in any particular zone in the county. One would hope that the Supervisors would be very selective about where they would allow activities with such a strong potential for adverse impacts and nuisances. A zoning ordinance regarding commercial cannabis could identify **when** activities are allowed. Generally speaking, the closer that disruptive operations are to neighbors, the more restrictive the time limitations on operations. A zoning ordinance regarding commercial cannabis could identify **where** operations are allowed. Under these circumstances, isolation of the potential nuisance on large parcels with lengthy setbacks may be effective. Finally, a zoning ordinance regarding commercial cannabis could determine **how** (under what circumstances) operations are allowed. The ordinance could impose all sorts of conditions regarding the grading of the land, the use of chemicals, the style of lighting, visual screening, in order to promote public health, safety, and welfare. The ordinance can specify **how many** cannabis grows can be effectively managed given the County's implementation staff, on Planning Director, one Planning Commission, etc. Or, the zoning ordinance could designate a separate public official and a separate appeals board to meet the additional demand created by commercial cannabis regulation. The ordinance can specify **how much** permit registration will cost. That fee can be low to encourage registration and cover only

registration costs. Or, that fee can be higher to cover later inspection costs, but with the disadvantage that it discourages registration.

IV. Conditions on use permits can ensure that individual operations protect health, safety, welfare, peace and morals.

Conditions on use permits can be an effective tool to ensure that individual operations do not compromise public health, safety, welfare, peace or morals. Sometimes, unique operations in unique places require custom conditions. When it comes to land use regulation in Calaveras County, one size does not fit all.

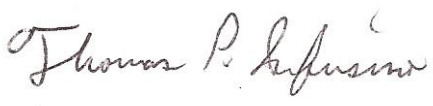
V. Please accept feasible mitigation measures.

Written comments on the DEIR, and hours of public testimony before the Board of Supervisors, have resulted in many proposals to mitigate the adverse impacts that could result from a commercial cannabis ordinance. **Do not casually disregard these suggestions**. You must consider potentially feasible measures. You must adopt feasible mitigation suggestions. And, you must explain why you reject other suggestions as infeasible. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1), 15088, subd. (c).) As the California Supreme Court has repeatedly said, "The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account." (*Laurel Heights I*, 47 Cal.3d at pp. 391-392; quoted in *Vineyard*, 40 Cal.4th at p. 449; quoted in *Banning Ranch Conservancy v. City of Newport Beach*, p. 26.)

VI. Please provide detailed responses to valid concerns.

Both the public and public officials have raised the issues of funding for implementation and the sufficiency of the County's institutional capacity. These are valid concerns that will undoubtedly determine the mitigation effectiveness of any zoning ordinance, regardless of whether it is a ban, a regulation, or a combination of both. Unless there is sufficient funding for enforcement, a ban will not protect the human or the natural environment. Unless there are enough people to process permits, inspect grows, issue/deny permits, mediate neighborhood disputes, and hear appeals; then regulations will not protect the human or the natural environment. **Do not tersely disregard these concerns.** In April, the California Supreme Court issued its unanimous decision in the CEQA case of *Banning Rach Conservancy v. City of Newport Beach.* In that case, both the public and public officials had asked the City the same questions "early and often". The court ruled that the City "owed them a response." (*Banning*, p. 27.) It is just that simple.

Sincerely,



Thomas P. Infusino, Facilitator

Calaveras Planning Coalition

P.S. Please provide notice of the availability of the Final EIR to all those on the attached list of contributors to these comments.

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Section 1 Introduction

Potential impacts Not Adequately Evaluated

"The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." (CEQA Guidelines, sec. 15064, subd. (b).) An agency must produce rigorous analysis and concrete substantial evidence to support a determination that the project's impacts are insignificant. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692.) "Argument, **speculation, unsubstantiated opinion**, or narrative evidence which is clearly erroneous or inaccurate … does not constitute substantial evidence." (CEQA Guidelines, sec. 15384, emphasis added.)

At least seven CEQA resource impacts have not been analyzed adequately. **The DEIR states the following resources would not experience any significant environmental impacts from the project, and did not do a detailed analysis**:

- Agriculture and Forestry
- Geology & Soils
- Hazards/ Materials
- Mineral Resources
- Public Services
- Recreation
- Utilities/ Service Systems

Chapter 1 Introduction, 1.2 Scope of Environmental Analysis (pg. 1-2 through 1-5) does not adequately substantiate reasons for excluding the above resource impacts and is based on these questionable assumptions:

- The explanation **uses registration application data from the urgency ordinance (UO) to estimate project impacts—"doubling the acreage is a fair estimate."** This is already a significant increase in acreage, plus the proposed ordinance is more permissive (no minimum parcel sizes) than the UO, so there could be an even greater increase. Additionally, the County has a poor record of "anticipating" the number of applications. 100-200 applications were anticipated in 2016 but the County received nearly 1,000 applications. The DEIR can't conclude "no significant impacts" based on dubious assumptions and estimates with no detailed analysis.

- The Geology and Soils, and Hazards and Hazardous Materials explanations **assume full compliance with County and State standards and BMPs, and regular inspection and enforcement**. This is unrealistic. All development under the project will not comply in all resource areas and locations, especially with the severe shortage of County and State resources and personnel to do cannabis inspections and enforcement.

- The Mineral Resource explanation assumes no impacts because development "**would permit grading of up to a half-acre for commercial cultivation", but the proposed**

ordinance has no limits on the size of areas that may be graded at a project site. The county has seen very large areas of grading done for various purposes in addition to cultivation, including new buildings and new roads, as a result of commercial cannabis operations. Total areas graded have often been much larger than 1/2 acre.

- The Public Services explanation **assumes anticipated revenues will offset the costs of increased demand for public services. No data was provided to support this statement.** An EIR is inadequate if it simply ignores or assumes a solution to the problem. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

  All costs of the increase in services due to the project, including possible costs for additional facilities to house new services, need to be provided, analyzed, referenced, and evaluated to determine the potential public service impacts. Substantial evidence is also needed to support the "anticipated revenue" that offsets the costs.

The aforementioned resource impacts have not been completely and adequately evaluated due to questionable assumptions, and a lack of detailed information and quantitative analysis for these missing CEQA sections.

Section 2. Project Description

I. "Proposed Ordinance" Project Unclear

"An accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193, [139 Cal.Rptr. 396].) "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e. the 'no project' alternative) and weigh other alternatives in the balance." (Id. at pp. 192-193.) A "curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (Id. at pp. 197-198.) An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. *(El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4th 1591.)

The DEIR proposed project "Medical Cannabis Cultivation and Commerce Ordinance" is not clear. People are confused. Many think the DEIR evaluates the County's existing cannabis Urgency Ordinance or evaluates the proposed Ban Ordinance. Is it one of those ordinances, or a draft ordinance similar to the existing Urgency Ordinance? The DEIR does not make this clear. The Project Description does not make this clear.

Evidence:

a) **The text of the proposed "Medical Cannabis Cultivation and Commerce Ordinance" is not included in the DEIR**, in References, or in Appendices, **and is not clearly identified or easily found on the County website**.

DEIR Introduction Chapter 1 (pg. 1-1) calls the project "proposed Medical Cannabis Cultivation and Commerce Ordinance" and says "a copy of the draft ordinance is available on the Planning Department's website." But there is nothing called "Medical Cannabis Cultivation and Commerce Ordinance" there, either with the CEQA - DEIR documents at the top of the Medical Cannabis web page, or below. **If you scroll down the entire Medical Cannabis web page, you eventually find three cannabis ordinances**. Immediately below the DEIR documents box is the "Draft Cannabis Ban Ordinance." After scrolling past Inspections information, you find the "Medical Cannabis Cultivation Urgency Ordinance." Then if you keep searching down the page, past more cannabis-related informational postings, at the very bottom of the page is a heading called "Permanent Medical Cannabis Ordinance - DRAFT ORDINANCE - DRAFT CALAVERAS COUNTY CODE REGARDING CULTIVATION AND COMMERCIAL USES INVOLVING MEDICAL CANNABIS." **None of these match the project name in the DEIR**. We had to email the Planning Director to determine which ordinance the DEIR was referring to and evaluating.

b) **The Project Description does not adequately describe the Project.**

Chapter 2 Project Description also does not include the proposed ordinance text, and 2.5 Description of the Proposed Ordinance is **vague, with few ordinance details. For example, there is no information whether the ordinance includes minimum parcel sizes.** You have to find the ordinance first and search through it to discover **the proposed ordinance does not include any requirements for minimum parcel sizes**. This is a glaring omission in the project description, and should have been made clear. Is the lack of a minimum parcel size in the proposed ordinance even acknowledged and analyzed in the DEIR? This lack of specificity would allow cannabis cultivation on **very** small residential RR and U-zoned parcels. There are hundreds of RR-0.5 parcels in Rancho Calaveras alone—how many small RR and U-zoned parcels are there in all of Calaveras County--thousands?

Please fix the DEIR. Include the full text of the proposed ordinance. Include details in the Project Description, including the lack of minimum parcel sizes. Ensure this lack of minimum parcel sizes was made clear to consultants and analyzed in the DEIR.

II. Proposed Project Outdated and Unrealistic

According to Calaveras County Planning Director Maurer, the DEIR proposed ordinance was prepared in December 2015 and **released in February 2016, over 15 months ago**. This February 2016 draft ordinance was then modified substantially before being adopted by Calaveras County as the 'Medical Cannabis Cultivation Urgency Ordinance' in May 2016: 2-acre minimum parcel sizes were added, 30-foot setbacks were increased to 75 feet, and many other requirements were added or strengthened. **These changes were made to the draft ordinance to protect the public and the environment. Improvements to the draft ordinance increased restrictions, made the ordinance more realistic, and reduced negative impacts.**

Why weren't these improvements even addressed in the DEIR? At least the addition of minimal parcel sizes and the setback increases should have been incorporated into the proposed ordinance for evaluation in the DEIR project. **Why are we even looking at an obviously inferior and outdated draft ordinance?**

Often DEIR commenters are concerned when an agency produces a "straw man" alternative that reduces impacts, but is incapable of meeting agency objectives. Such alternatives are quickly dismissed in favor of the agency's preferred project. In this instance, the County has produced a "straw man" project, which the County can easily dismiss in favor of its ban alternative. What people deserve under CEQA is a project and alternatives that inform the decision-making process, not ones that dictate a foregone conclusion as the outcome.

Please address why we are evaluating an outdated and unrealistic Project. The proposed cannabis cultivation ordinance with no minimum parcel size is completely unrealistic. **The idea of allowing commercial cannabis cultivation on thousands of very small RR residential parcels with only a 30 foot setback is a non-starter.**

Section 3.1 Aesthetics

We have concerns with certain DEIR impact analysis statements and conclusions in Section 3.1 Aesthetics. Our concerns and questions follow the Environmental Checklist below.

> CEQA Environmental Checklist Factors for Aesthetics:
>
> I. AESTHETICS -- Would the project:
> a) Have a substantial adverse effect on a scenic vista?
> b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
> c) Substantially degrade the existing visual character or quality of the site and its surroundings?
> d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Impact 3.1-1 Scenic Resources and Mitigation Measure—Concerns

CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

The DEIR analysis found significant impacts to "designated scenic resources" from cannabis-related operations "located in close proximity" (pg 3.1-6), and suggested Mitigation Measure 3.1-1, requiring a 1,000 foot cannabis cultivation setback from designated resources. **Thank you—this is a good idea**.

We have a concern with scope and application of the mitigation, however. The "County-designated scenic resources" listed are: the Mokelumne Coast to Crest Trail, Ebbetts Pass, Calaveras Big Trees State Park, and the Stanislaus National Forest. We are concerned about other public Calaveras County scenic resources not "designated" and listed. There are many other key public recreational sites in Calaveras County with major scenic resources and views of private lands. Trails in these areas are often adjacent to private property, and sometimes are on easements through private property. **What about New Hogan Reservoir, the Arnold Rim Trail, BLM lands, New Melones Reservoir, and other public lands—will their scenic resources and views be protected in any way from negative cannabis impacts?** The DEIR is not clear whether they would fall under the 1,000-foot setback requirement from any sensitive use. Will the setback apply to cannabis grows near in public parks? If they are not "sensitive uses", they should be designated by the County as scenic resources so the 1,000-foot setback would apply. **Please address and mitigate cannabis ordinance aesthetic impacts to all significant public recreational areas with scenic resources in Calaveras.**

Impact 3.1-2 Visual Character—Cannabis-Related Construction Concerns

An agency must produce rigorous analysis and concrete substantial evidence to support a determination that the project's impacts are insignificant. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692.)

We disagree strongly with the DEIR conclusion that new cannabis operations "would not substantially alter the aesthetic of the surrounding environment" and "No mitigation is required." (pg. 3.1-8). As section 3.1-2 states, the surrounding environment has "high quality rural character and views tend to be sensitive to changes in the landscape..." (pg. 3.1-7). This is relevant, because "the significance of an activity may vary with the setting" and because "an activity which may not be significant in an urban area may be significant in a rural area." (Guidelines, § 15064, subd. (b); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1026.)

Certain **cannabis-related cultivation impacts from constructions** will be **permanent and highly visible** from adjacent properties and roadways, and can be **very unattractive**—certainly not natural or rural in character. **Examples: 1) 8-foot tall screen fences made of light-colored or metal panels, and 2) large, multiple plastic "hoop house" greenhouses.** See photos below.

Visual impacts & blight from cannabis-related construction

Cannabis screen fencing

Cannabis screen fencing

Cannabis hoop houses

Cannabis screen fencing

8-foot tall ugly fences and large plastic hoop houses are not normally found in rural residential or agricultural areas in Calaveras County. These screen fences and hoop houses are allowed with only a 30 foot setback from property lines. Many will be highly visible from nearby locations, including adjacent neighbors, local roadways, and public highways used by tourists and visitors to Calaveras County.

View of cannabis fence from Hwy. 26 (distance: 260 feet)

View of cannabis fence from neighbor's driveway (distance: 115 feet)

These highly-visible cannabis-related constructions are **not natural** to the environment; **not consistent** with other development; **not "similar** to historical agricultural uses in the County"; **will introduce** structural elements that detract from a rural setting; and **will interrupt** visual patterns and **reduce** the intactness of views. **Allowing more of these cannabis-related constructions has the potential for significant negative impacts to views and tourism, and will potentially degrade the existing visual character of the community and the County**.

Suggested Mitigation Measures:

- The ordinance should **better define enclosures required and prohibit this type of ugly solid screen fencing**. Require natural wood or other fencing in natural earth or forest colors.
- **Require vegetative screening** (shrubs, trees) of solid fencing and hoop houses from public view.
- Set **larger minimum parcel size requirements** and **increase setback requirements** for fencing and greenhouses to at least 200 feet

Impact 3.1-3 New Source of Light or Glare and Mitigation Measure 3.1-3

We appreciate the recognition of potential light pollution impacts from new sources of light and glare, and the addition of Mitigation Measure 3.1-3:

> "All lighting provided in conjunction with facility security or cultivation activities shall be installed, directed, and shielded to confine all direct rays of light within the boundaries of such facilities."

Our concern with this and other mitigations proposed is that enforcement would likely be very difficult. The county could not possibly check on all operations all the time, so it would be up to neighbors to make a report of violations. Some resident might have some hesitation to do that when there are grows that are guarded by people with guns and dogs.

Also, we are concerned the analysis and mitigation does not cover overall site light intensity, or indirect light glowing up into the sky. **This could result in potential negative impacts from light trespass into dark night skies, which are highly valued in rural Calaveras County.** In neighborhoods that are away from town boundaries, where night is truly dark, grow lights, especially on a hill that many can see, do adversely impact the experience of residents.

Finally, it's not enough to shield the top of outdoor lighting. It must also be shielded on the sides to prevent horizontal glare which not only adds to neighborhood disturbances, it can also be a safety hazard for local roadway traffic.

We suggest incorporating wording in the lighting mitigation measure similar to the paragraph below, taken from the people's initiative Measure D:

> "3. Cultivators using supplemental artificial lighting in greenhouses or outdoor gardens **shall take measures to prevent artificial light from being directed into the sky** or towards adjacent property owners including, if necessary, **placing opaque covering over the cultivation site**. All **outdoor lighting shall be shielded to prevent light trespass into the night sky** and glare onto adjoining properties, road rights-of-way, and easements." (emphasis added.)

Section 3.2 Air Quality & GHG Emission

These comments focus on two aspects of the EIR's presentation concerning greenhouse gas emissions:

1) An overlooked impact and its possible mitigation
2) The feasibility of the mitigations proposed

These comments also address concerns regarding odor impacts.

An overlooked impact

Impact 3.3-3 (p. ES-2) says: "Implementation of the proposed project could result in disturbance or removal of natural land cover, through vegetation removal or grading which could result in the degradation or removal of sensitive natural communities." The opening of this section includes this impact among those considered "significant and unavoidable; that is, no feasible mitigation is available to reduce the project's impacts to a less-than-significant level."

The vegetation removal and grading seriously harm the existing soil on a site. Moreover, many sites seem to keep the ground cleared of vegetation as they grow the plants in containers; that is, the surround is kept bare. The EIR does not address the GHG implications of soil disturbance, beyond mention of the vegetation removal. Various studies indicate that between 30% and 50% of the carbon held on a site is actually sequestered in the soil. Massive disturbance to the soil releases carbon over and above what the vegetation removal causes. And leaving the soil exposed continues the carbon release, even as it – as the report acknowledges – also creates conditions for erosion and sedimentation. [A good source of soil carbon information is www.marincarbonproject]

There is a mitigation for the bare soil, if not for the GHG releases at the time of grading and vegetation removal, and that is to require the planting of ground cover on all cleared areas on a site. That would be a simple, inexpensive and positive action against the continued release of GHGs. CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

The feasibility of mitigations proposed

The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." *(Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 422 & 409 fn. 12.) "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR" (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420.).

Impact 3.2-3 (p. ES-5): “Construction and operation of grow sites permitted under the proposed ordinance would result in a net increase in GHG emissions. This would be a cumulatively considerable contribution to climate change.”

The State has passed a series of measures to reduce GHG levels. The ARB’s proposed 2017 Climate Change Scoping Plan Update “…includes recommendations about how GHGs associated with proposed projects should be evaluated under CEQA. Specifically, it recommends that achieving ‘no net increase’ in GHG emissions is the correct overall objective of proposals evaluated under CEQA if conformity with an applicable local GHG reduction plan cannot be demonstrated.” (p. 3.2-4)

The EIR acknowledges that there will be increases of GHG emissions under the proposed ordinance. There is no way to aim at “conformity with a local GHG reduction plan” because “Calaveras County has not developed a climate action plan or similar GHG emissions reductions plan for GHG emission-generating activity in its jurisdiction.” (p. 3.2-6)

It is not clear that there is any baseline inventory of GHGs for the County. Therefore, that throws into question the first proposed mitigation measure, 3.2-3 (p. ES-5), which calls for “a reduction in annual GHG emissions equivalent to a one-time offset of 17.2 metric tons of CO2e for construction-related emissions and an offset of 5.9 metric tons of CO2e/year for operational emissions or a reduction equivalent to the construction and annual operational GHG emissions associated with the specific cultivation site, as calculated using an ARB-accepted model/technique.”

Questions:

- A reduction from what baseline? Table 3.2-8 (p. 3.2-19) provides annual levels of GHGs from grow sites. These numbers are estimates based on modeling, not based on actual monitoring that has been done. Moreover, these are overall estimates. How would they be applied with regard to “annual operational GHG emissions associated with [a]… specific cultivation site”?
- How is that reduction to be measured? Who applies the ARB-accepted model, the County, the grower?
- This measuring is to occur every year. The County, in over a year, has not had the personnel even to certify overall approval for the 750+ grows that have applied for it, let alone to measure GHG emissions.

The implementation of this proposed mitigation relies on two measures (p. ES-5):

> 3.2-2 1. installation of photovoltaic panels to provide power on site, and
>
> 3.2-2 2. purchasing of offset credits from an approved registry, with documentation to be provided to the Planning Department every year.

Mitigation measure 3.2-2 (p. 3.2-18) also calls for prohibiting the use of fossil fuel-powered outdoor equipment at grow sites and processing facilities. “This requirement applies to all off-road equipment including, but not limited to, utility vehicles, tractors, and trimmers. Electric or human-powered versions of these equipment [sic] can be used.”

So the mitigations proposed would involve substantial investments, beyond those for preparation and cultivation, on the part of growers: installation of solar panels, purchase of carbon offsets, and purchase of electric powered vehicles for everything except transportation to and from the site. And all these requirements, presumably, would be monitored by the County.

These mitigations, if enacted, would certainly reduce the GHG emissions from cannabis cultivation, but their financial and manpower feasibility is very questionable. It is unlikely that many growers would be able to afford them. It is also questionable whether the County could afford the manpower to monitor compliance. The danger is that these proposed mitigations would satisfy the requirement for an ordinance to pass muster, but then would then be unlikely to happen on the ground. Public agencies must consider such economic factors in determining whether mitigation measures are feasible. (CEQA Guidelines, sec. 15131, subd. (c).) Please include such a consideration in the Final EIR, or in a separate document.

Impact 3.2-4: Exposure of people to objectionable odors.

A neighbor’s exposure to the odor of cannabis as it is grown and harvested depends a great deal on the siting of the grow in relation to its neighbor. One neighbor of ours (with three young children) has a lot that sits almost directly above a large growing site. The odor is very strong there. Our lot is around a corner from both of those lots, and we do not smell it at all.

While we support Mitigation Measure 3.2-4b, mechanisms to control the objectionable odors, we find it very difficult to believe many growers would actually take this on unless they were reported and forced to do so. Enforcement seems rather overwhelming for a small county.

Finally, if a person can ‘smell’ it, what is the ‘it’ they’re smelling? Are they smelling gases or particulates that are harmful to the human respiratory system? If so, how much is too much? Is the source substantially contributing to a cumulative impact?

Section 3.3 Biological Resources

I. Problems with Mitigation Measure 3.3-1: Minimum Size of Commercial Cannabis Activities

Mitigation Measure 3.3-1: Minimum Size of Commercial Cannabis Activities (DEIR pg. 3.3-35) amends the proposed ordinance to "**require a minimum site size of 1,000 square feet**" for any commercial cultivation activities. The *intention* of the mitigation measure is to reduce potential impacts to Biological Resources, Archaeological/ Historical/ Cultural Resources, and Hydrology & Water Quality. The *theory* is that by requiring all commercial cannabis applicants to comply with the Central Valley RWQCB (Water Board) Regulatory Program Order R5-2015-0113, all impacts would be "fully mitigated" (DEIR Table ES-1 and Impact Analysis, Mitigation Measure 3.3-1 pg. 3.3-35). **The problem is, this is theoretical compliance, not actual compliance. This is deferral of mitigation, not actual mitigation**.

First, as noted in our subsequent comments on Hydrology and Water Quality, **the County plans to grant cultivation permits based only on an NOI application "filing"** with the Regional Water Board to demonstrate enrollment (DEIR pg. 2-8). Permits will not be dependent upon actual completion of the Water Board NOI application review process, actual approval, or actual compliance with the Order. **Once cultivation permits are granted by the County, the applicant will commence with development of the site, clearing and grading, and will begin cannabis cultivation. It may be months before the Water Board is able to process the NOI application and review studies and site management plans. The site may not even be eligible for the Regulatory Program. In the meantime, potentially significant impacts may have already occurred to the site and resources.**

Second, as also stated above (see quote from Planning Director Maurer), **the Water Board is overwhelmed with statewide cannabis grow applications**. Additionally, Calaveras County Supervisor Dennis Mills stated at the May 30, 2017, Board of Supervisors Cannabis Study Session, that while he was on the Calaveras County Water District board in April 2016, he talked to members of the Water Board at a CCWD meeting, "**where they admit that they were incapable of performing the inspections and enforcement that was needed**."

It is highly unlikely (if not impossible) that Water Board representatives will be personally visiting Calaveras County's hundreds (or thousands, depending on how many permits are ultimately approved) of commercial cannabis operations to ensure full compliance with Central Valley RWQCB Order R5-2015-0113. **Without inspection, monitoring, oversight, and enforcement of commercial cannabis grows by the Water Board, there is no assurance potentially significant negative impacts to Biological Resources, Archaeological/ Historical/ Cultural Resources, and Hydrology & Water Quality will not occur.**

II. Chemical Use

The public, decision-makers, and DEIR authors seem concerned about the adverse effects of chemicals used in commercial cannabis operations. If it is so, please explain in the Final EIR

how cannabis cultivation is more detrimental to biological resources than other agricultural operation such as almonds or grapes. Does the cannabis industry use highly detrimental products that are not used in other agricultural endeavors? Does the cannabis industry detrimentally misuse legal product (or use illegal products) in a greater amount than the rest of the agricultural operations? Does a greater proportion of those in the cannabis industry misuse or illegally use detrimental products relative to the rest of those in agriculture? What is the basis for these claims?

Section 3.5 Hydrology and Water Quality

I. Problems with Proposed Regulatory Actions Involving the CVRWQCB

Under **2.5.2 Outdoor Commercial Cannabis Cultivation,** 'Proposed Regulatory Actions' (DEIR, pg. 2-7), outdoor commercial applicants would be required to provide listed information to the County Planning Department before a certificate or permit is granted to cultivate.

One of the required items **for cultivation sites greater than 1,000 square feet** is "a copy of the Notice of Intent...and other documents filed with the Central Valley RWQCB demonstrating enrollment in its Cannabis Cultivation Waste Discharge Regulatory Program..." (pg. 2-8). The County has previously accepted an applicant's Notice of Intent (NOI) filed with the Central Valley RWQCB (Water Board), as sufficient documentation to issue cannabis cultivation permits.

The problem with this approach is that **mere acceptance of an NOI application by the Water Board is not evidence** of: 1) a complete application (including any reports or plans that may be required), 2) eligibility of the NOI application or project site, 3) actual completion of the Water Board Regulatory Program review process, or 4) actual compliance with the regulatory program or mitigations required by the Water Board.

According to Calaveras County Planning Director Maurer on May 25, 2017, "The Water Board is overwhelmed and consultants are overbooked. The Water Board was accepting applications with the understanding that studies would follow...plans are coming in after the fact" (2016-651 Cannabis Appeal staff report and planning staff testimony, Planning Commission meeting May 25, 2017). The Water Board has been **accepting** NOI applications, and then **months later** finding an application is **incomplete** (e.g. biological & cultural studies and/or Site Management Plans needed), or issuing a "**Notice of Non-Eligibility**" due to surface waters within 100 feet of the project. The County Planning Department accepted cannabis grow applications as complete based on NOI applications filed with the Water Board by a September 7, 2016, but the Water Board did not respond to the above 2016-651 NOI application as "incomplete" until January 2017.

In the meantime, cannabis site development, grading, and cultivation ensued, based on nothing more than a filed NOI application, which was eventually rejected by the Water Board.

Conclusion: **Filing documents and enrolling in a program does not equal NOI application completion, eligibility, or actual project review or program compliance.** A filed NOI with the Water Board is not adequate information on which to base issuance of a certificate or permit for cannabis cultivation.

II. Impact 3.5-3: Groundwater supply impacts.

Those of us that depend on wells for our water source are always anxious about new development. Since the sites are required to have on-site water (I know some that do not...thus

the water trucks on our road all summer) and the cultivation is so water intensive, there is concern about area wells going dry. Where we are, it hasn't happened yet, but I have heard of areas where it has. (Mickey Williamson, Personal Observation.)

Once again, we support Mitigation Measure 3.5-3, Groundwater monitoring requirements, but we seriously question the ability of growers to comply and the county to enforce.

Section 3.6 Land Use and Planning

An agency must produce rigorous analysis and concrete substantial evidence to support a determination that the project's impacts are insignificant. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692.) Furthermore, CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

We strongly disagree with the DEIR conclusions of "less than significant" project impacts to Land Use and Planning and "No mitigation is required" (DEIR pgs. ES-10, 3.6-4, and 3.6-5). Proposed regulations, certificate, and permitting requirements in the proposed "Medical Cannabis Cultivation and Commerce" ordinance are **too permissive and weak** to prevent land use conflicts and public nuisances. **The permitting requirements in the proposed ordinance are MORE LAX than the existing cannabis Urgency Ordinance**. The DEIR proposed ordinance contains **no minimum parcel sizes**, **allows a 25% canopy area,** and **only requires 30 foot property line setbacks.** <u>These "requirements" would allow 5,000 sq. ft. commercial cannabis cultivation on 1/2-acre residential lots and 10,000 sq. ft grows on 1-acre lots, which are not currently allowed under the urgency ordinance</u>. A 30 foot setback from a neighbor is useless to mitigate land use conflicts and nuisance impacts from large cannabis activities. Residents or children with asthma or COPD do not fall into the 1,000 foot buffer requirement under "sensitive uses." <u>This greater permissiveness would create huge conflicts and public nuisances</u>.

The existing, *stricter* Urgency Ordinance (UO), with its 2-acre minimum parcel size, 15% canopy limit, and 75 foot property line setback requirement, has already caused great environmental havoc in Calaveras County, including adverse impacts to Land Use and Planning. The *stricter* UO *already* generated 740 commercial cannabis registration applications in June 2016 (which still are not processed or inspected) and issued temporary grow permits, which allowed hundreds of cannabis farms to operate in residential subdivisions. The County does not have the resources to oversee and regulate the existing grow problems. Since its passage May 10, 2016, the cannabis urgency ordinance has led to many land use conflicts and incompatibilities, public nuisances, land use conversions, alterations of existing land uses, division of established residential subdivision communities, and has created conflicts with policies of the existing Calaveras County General Plan and Special Plans. **The DEIR's proposed ordinance is <u>worse</u> than the UO. Because it is <u>more lax</u> than the Urgency Ordinance, the proposed DEIR ordinance <u>would allow even more</u> cannabis applications, larger cannabis grows, on even smaller residential parcels, with miniscule property line setbacks. <u>This seriously flawed ordinance and DEIR is a recipe for disaster, and must be corrected</u>.**

CEQA Environmental Checklist Factors for Land Use and Planning

X. LAND USE AND PLANNING. Would the project:

a) Physically divide an established community?

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

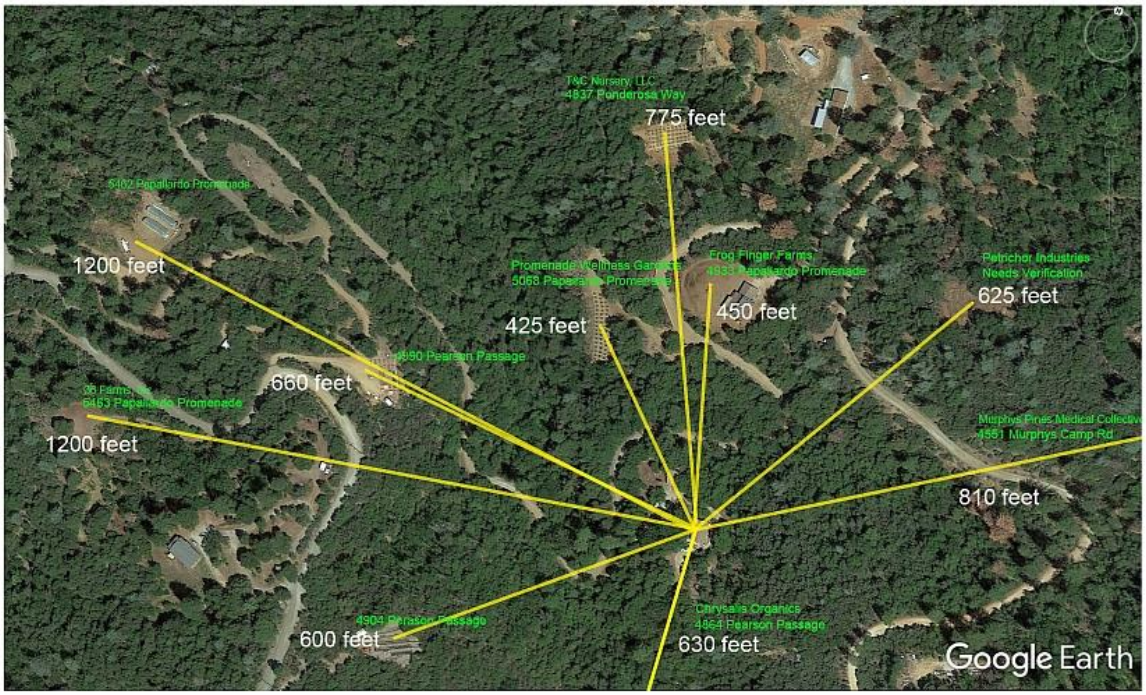
Evidence of Potentially Significant Impacts

a) **Division of established communities.**

Yes, there would be potentially significant impacts. The proposed cannabis ordinance will divide established residential subdivision communities. Impacts of the commercial cannabis farm ordinance include physically removing trees, clearing, excavating, terracing and grading large areas of residential zoned lands for commercial cannabis grows, roads, and structures, and setting up commercial, mostly non-residential operations in residential areas, **thus physically dividing established residential subdivision neighborhoods into residential and non-residential uses**. In addition to the physical impacts, **Commercial Farms are often not inhabited by the residential property owners, further dividing an established residential community**. In these cases, there are no permanent "neighbors" anymore, just business managers.

In fact, these community divisions have already occurred in some subdivisions as a result of the Urgency Ordinance and its allowance of commercial cannabis farms in residential zones. One example is Murphys Pines, an RR-5 zoned subdivision which has been physically divided by commercial cannabis farms, with residences surrounded by commercial grows. From the 'Murphys Pines Cannabis Blog'[1], "*My father is the only resident on his street (everyone else is commercial marijuana growers now), so we're a little alone and outnumbered locally*." See below Murphys Pines photos and captions from the Murphys Pines Cannabis Blog.

[1] https://murphyspines.wordpress.com/



"Google Earth Map (May, 2016). *This map (still the same in 2017) shows how close my father's place is to 10 growers."*

"Five Commercial Cannabis Farms showing How the Land is Cleared. *This is taken just above a private residence (not shown) directly next to these farms.* ***Note:*** *the houses in this picture are commercial growing properties not inhabited by the owners/growers."*

In addition to the physical division of communities, cannabis grows (especially when there is more than one site) can certainly change the character of a neighborhood completely. "I am witnessing that where I live. When I used to walk our road in the mornings, everyone who passed was someone I knew….I had met them, knew where they lived, saw them at meetings. Now, whether walking or driving, I rarely know the people passing. They speed on the road, the do not do our traditional wave and greeting. People are afraid to go for walks because of armed guards at sites during the growing season." (Mickey Williamson, Personal Observation.) Such social impacts (disruption of

neighborhood character) can be used to evaluate the significance of the physical impacts (development of grows in residential neighborhoods). (CEQA Guidelines, sec. 15131, subd. (b).)

b) Conflicts with Calaveras County General Plan, Special Plans, & Zoning

Yes, the proposed cannabis ordinance would generate potentially significant impacts through land use conflicts with Special Plans, the Calaveras County General Plan, and Zoning Ordinance land use conversions and conflicts.

I. Special Plan Conflicts

The proposed "Medical Cannabis Cultivation and Commerce" ordinance, allowing commercial cannabis activities on any RR-zoned parcel, **directly conflicts with the existing Rancho Calaveras Special Plan prohibiting commercial uses in the Planning Area, and regulating Rural Home Business**. The Rancho Special Plan is part of the Calaveras County General Plan. See Chapter 3.0 Commercial Land Uses, pages 5-6, in the Rancho Calaveras Special Plan. The Plan specifically prohibits commercial land uses and operations and states "**commercial use would conflict with existing single family residences**."

The Special Plan allows a **low-intensity "Rural Home Business" subordinate to the residential uses of the site that** "shall not cause any hazards, traffic noise, dust, or change in physical appearance that would detract from, conflict with, or endanger the surrounding residential area." A large, outdoor commercial cannabis operation with seasonal high-volume traffic, noise, dust, workers coming and going, odors, and changes in physical appearance would detract from, conflict with, and endanger surrounding residences. At the May 30, 2017, Calaveras County Board of Supervisor meeting, County Sheriff Rick DiBasilio discussed problems with the current cannabis ordinance (see County meeting video at approx. 45 min. in). The Sheriff stated there were problems with zoning and minimum parcel size--that there was supposedly a 2-acre minimum, but that **people in Rancho Calaveras were growing commercial cannabis on less-than-two-acre lots "consumed with marijuana**." He later listed "Negative Affects to the Community", which included *firearms, aggressive animals, threats to neighbors, odor, noise, pesticide/herbicide use, dust, and damage to roads*. **Commercial cannabis cultivation and commerce does not meet the Special Plan's requirement for a low-intensity Rural Home Business that "shall not cause any hazards, traffic noise, dust, or change in physical appearance that would detract from, conflict with, or endanger the surrounding residential area."**

Rancho contains hundreds of 3+ acre RR-zoned residential parcels. The 25% canopy limit would allow 22,000 sq. ft commercial cannabis grows on all of these parcels with only a 30-ft. setback (this is a very bad idea). And since the proposed ordinance has no minimum parcel size, the ordinance would also allow cannabis grows on the thousands of

1/2 and 1 acre parcels in Rancho (this is a terrible idea). **Theoretically, all 3,600 RR lots in Rancho could be potential commercial cannabis grows, which would be a major land use conflict with existing single family homes and the Rancho Calaveras Special Plan**.

II. General Plan Land Use Chapter Conflicts

Businesses in the Home, Residential Subdivisions, and Rural Home Industry

From the General Plan Land Use Chapter 6, section 6.0 Businesses in the Home:

> **"6.0 Businesses in the Home**
>
> A significant number of the business licenses issued each year in Calaveras County are for businesses in the home. The County Zoning Code recognized several types of home businesses, and provides standards to **ensure compatibility between home business activity and the character of the surrounding neighborhood. All home businesses must be secondary to residential property uses. Business activity of greater intensity than the Zoning Code allows for home businesses may be appropriately located in the Rural Home Industry or other commercial or industrial zone**.
>
> **Residential Occupations** are suited for residential areas with predominately small parcels. They are typically service oriented businesses or offices which do not require customer or client traffic to the home, rarely require a sign, generally cause no change to the exterior appearance of the home, and **do not generate traffic above normal levels for single family residences.**
>
> **Rural Home Businesses** are suited for **larger parcels typically found in rural and resource areas**, which permit greater latitude in the operation of a business in the home. **Larger parcel sizes provide a buffer between neighboring residences, reducing the potential for nuisances to arise. The greater the separation between a rural home business and an adjacent residence, the less likelihood of incompatibility**. [emphasis added]

Followed by this Policy and Implementation Measure:

> Policy II-21A: Review proposed businesses in the home for **subservience to residential use and compatibility with neighboring uses**.
>
> Implementation Measure II-21A-1: Utilize the County Zoning Code **to impose standards for businesses in the home based on factors including parcel size**, hours of operation, noise, **odor**, **dust, traffic**, waste disposal, and outdoor storage needs. [emphasis added]

Commercial cannabis operations in residential subdivisions conflict with the primary land use of the property, which is residential. Commercial cannabis

cultivation operations are not subservient to residential use and are not compatible with neighboring uses due to odor, traffic, dust, light, noise, and other nuisances. Commercial cannabis cultivation operations in subdivisions are conversions of land use from predominantly residential to residential mixed with commercial/ industrial/ ag uses. The Commercial Cannabis Cultivation ordinance also conflicts with many (if not most) existing residential subdivision CC&Rs, which prohibit commercial operations within their subdivisions. **The proposed ordinance creates a significant potential for land use conflicts, conversions, nuisances, and litigation**. See above a) section photos from the Murphys Pines subdivision, showing residential parcels now surrounded by the conversion of multiple residential parcels to commercial cannabis farms.

Even though the proposed ordinance requires a permanent dwelling inhabited by a permanent resident, there is no way to realistically oversee or enforce this "permanent basis" provision. There are already an unmanageable number of registration applications and sites to inspect, with no way to tell who's a permanent resident, and the proposed ordinance would allow even more grows. Many cannabis farms are non-residential part of the year—growers and workers are there only during the growing season and owners do not live on-site. Residents living next door know this. From the Murphys Pines Cannabis Blog with photos, "*Most cannabis-growing locations shown are non-residential — they are commercial cannabis farms not inhabited by the owner or renter of the property. Most are unattended except for growing and harvesting*." Cannabis farms not inhabited by owners or renters year-round are non-residential, which conflicts with GP Policy II-21A "**Review proposed businesses in the home for subservience to residential use** and compatibility with neighboring uses."

Address General Plan Land Use Chapter 6, 4.0 Industrial Areas, **4.2 Rural Home Industries**, Policy II-19A **"Require conditional use permits for all Rural Home Industries.**" This policy is mentioned on pg. 3.6-2 of the DEIR, but application to the proposed cannabis ordinance is not explained. Wouldn't the Conditional Use Permit (CUP) requirement for Rural Home Industries apply to Commercial Cannabis Cultivation, Manufacturing, and Testing? This is not analyzed or applied in the DEIR. In DEIR Table 2-2 and Table 2-3, CUPs are not required for *any* Cannabis Cultivation Type except Nursery, and there is no Rural Home Industry (RM) zone listed anywhere.

RM-zoned parcels do exist in Calaveras County. Calaveras County Code Chapter 17.32 - RURAL HOME INDUSTRY (RM) ZONE, 17.32.010* describes the Purpose, Permitted uses, Conditional Uses with a CUP, performance and site development standards, and more.

> ***17.32.010 – Purpose**.
> **"**Rural home industries are small-scale industries which are secondary to the principal residential use of the property. These industries may process, fabricate or manufacture goods or commodities, but not those which are hazardous or produce excessive noise, dust or traffic. RM zones may be considered on parcels where the consistent residential zone is A1, AP, GF, TP, RA or RR. No RM zone shall be approved without a finding that the use is compatible with neighboring properties."

The DEIR should address the County's Rural Home Industries policies. **Consider applying the Rural Home Industries general plan policy to the ordinance and commercial cannabis operations.** Many commercial cannabis operations could fit into the following general plan 4.2 section's description, with its policies to mitigate impacts:

> "The rural home industry zone provides a basis for small scale industry that is larger than a Rural Home Business in terms of employees, traffic generation, and operations, yet small enough to be compatible with a rural residential lifestyle. A key factor separating a Rural Home Industry from a traditional industrial use is that the owner resides on the same property as the business. A Rural Home Industry is a secondary use to the primary residential use of the parcel. The business must also be compatible with residential uses on adjoining parcels."

Policy II-19A and 19B **requiring a CUP** and evaluation on a case-by-case basis, and Implementation Measure II-19B-1 would go a long way towards preventing land use conflicts:

> Implementation Measure II-19B-1: Consider applications for Rural Home Industries on a case-by-case basis utilizing all of the following criteria:
> • The subject property is five acres or larger;
> • The proposed Rural Home Industry does not have the potential to become a nuisance;
> • The business owner resides on the subject property on a full-time, permanent basis;
> • The subject property has frontage and access onto a state highway or any public road meeting county road improvement standards for its functional service classification;
> • The road serving the subject property is either publicly maintained or included in a special district or mandatory maintenance association;
> • The proposed Rural Home Industry complies with all county, state and federal laws relating to health and safety.

III. Zoning Land Use Conversions and Conflicts

Commercial cannabis farms could have potentially significant land use impacts from **conversions of land use through zoning changes**. Zoning Amendment applications have been submitted recently requesting changes—one from RR to RA and the other from REC to A1—that facilitate cannabis grows. **These zoning amendments change the land use focus from primarily Residential or Recreational to Mixed Use Residential with Agricultural and Commercial.** One request was *clearly* to facilitate a cannabis farm, as stated, "for future cannabis cultivation" (staff report for 2016-103 ZA REC to A1, O'Steen, approved October 2016 Planning Commission). Another request from RR to RA was not identified for cannabis cultivation, instead saying "for future agricultural uses", but the parcel was already growing cannabis inside two greenhouses, and the zone

change facilitated both agricultural expansion and future cannabis grows, thus converting a primarily residential-zoned parcel to a parcel with mixed residential and commercial agriculture (2017-006 ZA RR-5 to RA, Richardson, approved May 25, 2017 Planning Commission).

Additionally, **approving Zoning Amendments for the purposes of commercial cannabis and commerce or industrial uses not related to cannabis could lead to community planning and land use zoning conflicts and incompatibilities**. See below Caltrans concerns expressed about land use and zoning (May 2, 2016, NOP comment letter from Caltrans, DEIR Appendix A).

> "**Community planning and the coordination of land use** and transportation may be affected by **coupling decisions about medical cannabis to approvals of Zoning Amendments intended to permit other economically vital uses**.
>
> Adoption of the Cultivation Ordinance would present the potential for approving industrial zoning adjacent to land uses and in transportation contexts that may be **compatible with cannabis cultivation but incompatible with other permitted industrial uses**. Also, the approval of any **Zoning Amendments proposed for industrial uses not related to cannabis may be affected by concerns about potential future cannabis cultivation**. Because of the wide variety of commercial and industrial uses permitted in M4 zoning and the widely varying transportation needs of those uses, **the use of M4 for cultivation should be very carefully considered**." -- Caltrans NOP comment letter, May 2, 2016

MITIGATION MEASURES SUGGESTED FOR LAND USE & PLANNING

Amend the proposed "Medical Cannabis Cultivation and Commerce" ordinance:

- Exclude commercial cultivation in all Rural Residential (RR) zoned parcels and in the Rancho Calaveras Special Plan Area
- Exclude ALL residential subdivisions from commercial cultivation
- Set minimum parcel sizes for outdoor commercial cultivation: 10-acre minimums for zoning clearance certificates (ZCC) and administrative use permits (AUP); 5-acre minimums ONLY considered with a CUP & environmental review.
- Require a CUP for commercial cultivation in Residential Agriculture (RA) zones.
- Remove the "25% of parcel size" canopy area limit; stick to the specific maximum square footage commercial license limits set in Table 2-2 and 2-3.
- The Project proposes 30 foot property line setbacks for cultivation and the Urgency Ordinance currently has a 75 foot setback. 75 feet has not been enough to prevent land use conflicts and public nuisances. We recommend *at least* 200-500 foot property line setbacks for cultivation, depending on the type of license and size of the grow (the larger the grow, the greater the setback).
- Consider including the Rural Home Industry (RM) zone.

- Carefully review Zoning Amendment requests for potential land use conversion impacts & conflicts.

Section 3.7 Noise

Impact 3.7-2. Long-term non-transportation operation noise.

I do not find any mention of the use of generators at grow sites in this analysis. It has been my experience that some growers do use generators as their power source, either all the time or some of the time. There are growing areas that are not connected to an external power source. In a residential neighborhood, say of 5-acre lots, where residents are used to hearing no source of constant noise, this is a significant impact.

One of the faults that seems apparent in the DEIR is the focus (perhaps necessarily) on the overall picture of impacts to the county without looking at what it might mean for individuals and neighborhoods. Nevertheless, when approving projects that are general in nature, agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442.).

Therefore, we propose the following mitigation measure: Require that any generator used for more than 30 minutes at a time be housed in a sound-proof structure so that the noise is not heard on neighboring properties.

Impact 3.7-3: Long term traffic noise levels

Again, the assessment here addresses added traffic and noise on state and county roads within the county. There is no mention of neighborhood roads, but many of the growers are located on such roads. I live in a rural residential subdivision of approximately 40 lots, occupied by older retired people and young families. We know of 7-10 grow sites now in our neighborhood; some have applied for permits and some have not. These grows have made a significant impact in our lives and on our roads. Several of these grows are on parcels that were not previously occupied, so they have added traffic simply by being here. But it is not just the owner traffic. These sites have added huge soil trucks, water trucks, and many worker trucks to our very fragile, one-lane, dirt roads. Our homeowner dues barely allow us to do work on the road every few years. Now the roads need work every year. There is an assumption in the section on traffic that workers would likely carpool as they move from grow to grow. I walk our road. The other day four vehicles in caravan came in, two large pickups with trailers, and two smaller pickups, each with one driver and no riders. They were obviously together and going to the same place. Even if each owner is paying the dues for his/her lot, they are creating much more use than the rest of the residents. The traffic noise is an issue for us. I live at the end of the main road and we used to be able to count the number of vehicles that went by every day. Now there are too many and that does add noise to the day, especially as the workers tend to drive much faster than our posted speed limit.

Suggested mitigation: Bans cultivation (except for personal use) in Rural Residential.

Section 3.9 Transportation/Circulation

REGIONAL (Pg.3.9-2)

> **Comment**: The 2016 RTP is discussed as though it exists. As of Sun., May 14, 2917, there is no document available to review. We have been waiting for the draft to be released. The EIR statements are misleading and should be corrected. CCOG has stated that the 2016 RTP will be available this spring.

Planned Transportation Improvements The Circulation Element in the General Plans for each of the jurisdictions in the project area (Calaveras County and the City of Angels Camp) provide lists of roadway improvements anticipated to be needed in each jurisdiction. However, the current Calaveras County general plan was last updated in 1996 and the County has initiated an update to the general plan. The adopted RTP, a cooperative effort between the CCOG, County of Calaveras, City of Angels Camp, Caltrans, and residents of Calaveras, will guide transportation investments in Calaveras County over the next 25 years (2010 – 2035). Additionally, the RTP is consistent with the RTIP and the ITIP, and includes involvement and outreach to the general public as well as the Native Tribal Governments within the County (CCOG 2012). **This document identifies a range of improvements to address existing and future transportation deficiencies** including: intersection improvements; improvements that better balance roadway use between motorized vehicles, transit, bicycles, and pedestrians; and safety improvements. Some local roadway improvement plans for the City of Angels Camp also include widening and realignment, road rehabilitation and reconstruction, intersection improvements and bridge reconstruction. (Pg. 3.9-9, emphasis added)

> **Comment**: The 2012 Draft RTP (PG 110) states, "The RTP recognizes that transportation needs exist beyond available revenues. These 'unfunded' projects reflect improvements and associated operations, maintenance, and rehabilitation that require funding outside anticipated revenues. The projects are included in Appendix 4M. **Total estimated cost of unconstrained projects is approximately <u>$672 million."</u>** (emphasis added.)
>
> **This economic information is the "800 pound gorilla in the room". This is a new Board of Supervisors making the decisions on this EIR. Please add this pertinent baseline information to assist them in making an informed decision.**

Local (PG 3.9-2)

Comment: While the 1996 General Plan does have Goals, Policies and Implementation Measures regarding county roads, no Road Impact Mitigation Fees were charged of developers until 2004, after citizen driven litigation. Those fees are not adequate and have not been updated in a timely manner. If the county had matching funds, Calaveras County could use those matching funds to accelerate State level funding and thereby improve our 4 State Highways and maintain and improve existing levels of service on county roads. As an example, the SR 12/26 intersection was recently improved with the help of County RIM Fees.

The following news article excerpt confirms the need to discuss economics, when discussing roads, projects, and a **ban.**

"County officials reported this week that the county's inability to move forward on the projects jeopardizes future federal funding for other projects here and raises the prospect that the county might have to repay as much as $740,619 in federal grant funding that it has already spent.

The biggest problem: the county does not have the approximately $10 million needed to pay its share to finish the projects. As a result, it will likely never receive almost $57 million in federal funding.

A grim-faced Calaveras Board of Supervisors voted unanimously Tuesday to "deobligate" funding for projects.

"I sit here very embarrassed," said Board of Supervisors Chairwoman Debbie Ponte. Ponte noted that although the board over the years had approved the various projects, members were caught unaware that the county had bitten off more projects than it could deliver". (Millions in road projects on hold/ Calaveras Enterprise/ Dana Nichols/ May 30, 2014, emphasis added.)

Comment: While the setting material on traffic acknowledges policy from the existing General Plan (Policy III-2C: Require that private roads be constructed to standards adequate to meet the needs of the parcels they serve) there does not seem to be further mention of private roads in relation to cannabis grows. But in our county, these private roads are a crucial factor in transportation to or from grow sites. "Our one lane dirt road is adequate (barely) for residential needs but not for added commercial activity." (Mickey Williamson, Personal Observation) This is another reason for not allowing grows in rural residential areas.

EXISTING BIKE AND PEDESTRIAN FACILITIES (Pg.3.9-9)

Comment: The Arnold Rural Livable Community-Based Mobility Plan has not been adopted and has no EIR according to the 2012 RTP, pg.16.

While the county has several plans on the shelf, several have not been adopted. To hold these up as documents demonstrating an acceptable level of planning is misleading. The baseline isn't as it might seem. Please correct the information in the Final EIR.

From 2005 MSR, Calaveras County LAFCO, Page lll-2, emphasis added:

> ***Calaveras County roads are very unforgiving and many are also no longer safe for the motorist or pedestrian or bicyclist or first responders. LOS figures do not reflect that danger. We may look like a rural county but along with a 45,000+ population we have a growing tourist industry which brings 10, 20 or maybe 30 thousand people on a weekend to travel these unsafe roads. Accident rates are a measure of the level of safety on county roads.***

The County had the 55th worst ranking out of the State's counties in deaths due to motor vehicle crashes. The County had the 53rd worst ranking in alcohol involved fatal and injury motor vehicle crashes.

All of the above information was written before the Butte Fire and the 2016/2017 winter storms. The fire and clean-up caused more damage to roads in the fire footprint. Add to all this the extraordinary number of beetle-killed trees and the road damage done and yet to be done during tree removal over a huge area of county land. The county is still compiling the road damage from this past winter.

Does any current data exist to inform decision makers of how deep the county financial hole is after all these events? Won't we need a path out of this hole before we accept that we might be digging the hole deeper? Both a ban and regulated cultivation have the potential to worsen the situation, but with regulation we will at least have some additional funds to lessen the burden. Any additional traffic has a higher than usual impact when that traffic is going on roads that are currently in such a bad state. No project is not a viable option, we are not what we have been, too much has already happened—there is no going back. We have to find a better, more open future for Calaveras County.

References:

2012 RTP

http://calacog.org/wp-content/uploads/tom-pdf-manager/493_FinalRTP_2012CalaverasRTP_wExecAppend.pdf

Millions in road projects on hold/ Calaveras Enterprise/ Dana Nichols/ May 30, 2014

http://www.calaverasenterprise.com/news/article_c4b42ed4-e789-11e3-b01c-0019bb2963f4.html

Joyce Techel, Personal Observation

"My name is Joyce Techel and I have been a property owner and a business operator in Calaveras County since 1974. I have been concerned about the poor roads and development in Calaveras County since the early 80's, when the population was around 15,000. The county allowed growth without instituting the necessary funding to maintain and advance the road system, which brings us to the situation we are facing today – do we ban cannabis or regulate? I am stunned that today we are faced with a network of roads that is so challenged that there is no clear answer. I would select regulation of cannabis. I want the growing out in the open (not figuratively driven underground), located in properly zoned areas, and I want the cultivation heavily regulated and taxed to the maximum allowed. We need to be able to fund the public services and maintain and improve, if possible, our roads."

Section 6 Project Alternatives

I. A full range of reasonable Alternatives is needed for the proposed Medical Cannabis Ordinance Project EIR.

"The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking." (CEQA Guidelines, sec. 15126.6 subd. (f).)

CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. An inadequate discussion of alternatives in an EIR is an abuse of discretion. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 730-737.)

"An EIR is required to 'ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.' (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197 [132 Cal.Rptr. 377, 553 P.2d 537].) Therefore, '[a]n EIR must "[d]escribe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives."' (Guidelines, § 15126, subd. (d).) The discussion must 'focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. (Guidelines, § 15126, subd. (d)(3).)' (*Kings County Farm Bureau, supra,* 221 Cal.App.3d at p. 733.)" (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872-873.)

An EIR is supposed to contain a full spectrum of Alternatives, not just one extreme (the Project) and the other (the Ban), with just one other simplistic choice (Reduced Zoning Alternative). The proposed ordinance Project is not acceptable. <u>The 3 Alternatives presented in the DEIR have not explored a full range of reasonable options for mitigating all possible impacts while meeting the goals of the project.</u>

The selection of a cannabis regulation ordinance will have significant impacts on Calaveras County's future. This is a complex issue, with many problems to be solved. Many solutions, modifications, and alternative ordinance ideas offered by both the public and the Planning Director (1/31/17 Board Study Session) have been left out of DEIR Alternatives. Alternatives that further limit operations and reduce Project impacts to an even greater extent are possible. **In order to mitigate all possible impacts plus meet the goals of the project, there needs to be a full range of Alternatives in the EIR to consider.**

The Project

The proposed ordinance Project, allowing commercial cannabis activities in residential areas with no minimum parcel sizes, and only a 30 foot setback, would have significant negative impacts to Calaveras County and **is unacceptable**. The proposed mitigation to increase the setback to 75 feet (the distance currently in the unsatisfactory Urgency Ordinance) is not enough. Assessing County Road Impact Mitigation fees will not mitigate damage to private roads in residential subdivisions.

Alternative 1 – No Project

Just because the county decides to 'do nothing', does not mean there will be no future commercial cultivation activities and that existing grows would either be abandoned or repurposed. Illegal grows will continue. This type of assumption was made in the second paragraph (Pg 6-3), again under "Air Quality/Greenhouse Gas Emissions" (Pg 6-4) and under "Cultural Resources" (Pg 6-4). **Please reconsider these assumptions in the Final EIR.**

Also, Alternative 1 seems like an invitation to the chaos we had before the Urgency Ordinance. "Let's just ignore the problem and get on with it." Everyone would have to know this is a truly bad idea.

Alternative 2—Ban on Cannabis Operations

Alternative 2 proposes to ban all commercial cannabis operations.

But post Butte Fire and Urgency Ordinance we have huge numbers of growers. Aerial imagery has identified **over 500 unregistered cultivation sites**. At the May 30, 2017, Board of Supervisors Cannabis Study Session, Sheriff Rick DiBasilio stated there are "**600 known unregistered grows and more we can't see**." We do not see how a ban would cause them all to just pack up and leave. It would likely drive some deeper into hiding, or invite them to beef up their security with more guns and dogs. The Ban Alternative 2 Environmental Analysis admits illegal cannabis-related activity and operations are likely to occur in spite of the ban and states, "***A potential outcome of a ban...could be the elimination of a source of funding for monitoring and control of illegal activities related to cannabis*** *(the application fee and the Measure C canopy tax).*" (pg. 6-6).

Illegal cannabis grows are responsible for the worst environmental degradations, including illegal pesticides / death of wildlife, trash, illegal sewage, water and soil contamination, water theft and impoundment, and destruction of forest lands. We don't see that those who do leave would be eager to clean up their site before they left. This would leave the county with a HUGE enforcement issue and totally uncertain sources of funding for that. **The ban's elimination of two major funding sources to control the adverse effects of illegal cannabis activities is likely to result in levels of significant impacts not sufficiently disclosed in the DEIR**.

Public agencies must consider economic factors in determining whether alternatives are feasible to reduce or avoid the significant effects on the environment identified in the EIR. (CEQA Guidelines, sec. 15131, subd. (c).) Ultimately the County will have to determine if Alternative 2 is financially feasible. "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs of lost profitability are sufficiently severe as to render it impractical to proceed with the project." "In the absence of such comparative data and analysis, no meaningful conclusions regarding the feasibility of the alternative could have been reached." (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181: See also *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-599; *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656.) Economic feasibility can be assessed in the Final EIR, or in a record document other than the EIR. This analysis is part of the lead agency's duty to review, analyze, and discuss alternatives in good faith. (*Preservation Action Council v. City of San Jose (*2006) 141 Cal.App.4th 1336.)

Thus, detailed economic analysis is needed to identify both the costs and the revenue sources associated with implementing Alternative 2. The costs of implementing alternative 2 in the near-term and the long-term need to be estimated. If the necessary revenue will come in part from enforcement penalties, that income needs to be estimated in the near-term and the long-term. If the revenue will come in part from grants, the potential sources, the probability of funding, and the likely amounts need to be identified for the near-term and the long-term. Please provide this information in the Final EIR.

Section 6.5 Environmentally Superior Alternative, states "*Of the alternatives identified above, Alternative 2 would be the environmentally superior alternative, assuming full compliance*." There are at least two problems with this "environmentally superior" statement. First, what is the statement based on? There is **no quantified evidence given to show Alternative 2 is environmentally superior**. In fact, immediately above the statement, Table 6-1 shows environmental impacts of Alternative 2 and Alternative 3 to be identical. (pg.6-12). Second, **"assuming full compliance" conflicts with statements in Section 6.5**: "the length of time and/or feasibility to restore properties to pre-existing conditions is not known" (pg. 6-5), "the level of compliance is uncertain" (pg. 6-6), and "Under partial compliance, the impacts to hydrology and water quality could be reduced in some locations, and increased in others." (pg.6-8). **Please fix these flaws in the Alternative 2 analysis and the 6.5 Environmentally Superior Alternative conclusion.**

Just because no new commercial cannabis would be allowed under Alternative 2, that does not result in the "cessation of commercial cannabis operations currently allowed under the urgency ordinance and would require the restoration of existing sites to pre-existing conditions"…."at property owners expense" as stated in the DEIR. Those whose grows have been eradicated may just walk away from the devastated land. Law-abiding growers may go out of business and sell their land, but the purchasers may start illegal grows.

Additionally, please include the proposed Draft Cannabis Ban Ordinance in the EIR appendices.

Alternative 3—Reduced Zones / 25% Reduced Operations

Alternative 3 is presented as a 25% reduction in cannabis operations scenario. This is an improvement over the proposed Project, but we were disappointed that it **made only one change** to the proposed ordinance—**eliminating RR zones**. "*Based on the percentage of applications received under the urgency ordinance for commercial cannabis operations within property zoned RR**, it is assumed this alternative would reduce the potential for commercial cannabis operations within the County by approximately 25%.***" Even if this percentage is accurate, it is not enough. There were over 740 commercial cannabis registration applications received last year. Hundreds more new applications are likely following adoption of a permanent ordinance. **75% of this is too many!** The number of cannabis applications and grow sites in the county continues to overwhelm the planning department, code compliance, the sheriff, and is causing tremendous problems, with impacts to residents. **We believe a 25% reduction in cannabis operations is not enough**. **Additional Alternatives should be presented that offer further restrictions & reductions in the number of potential cannabis grows** (we have suggested more Alternative ideas below).

Additionally, the 25% assumption is not supported by any data in the DEIR.

"A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (*People v. County of Kern (*5th Dist. 1974) 39 Cal.App.3d 830, 841-842, quoting *Silva v. Lynn* (1st Cir. 1973) 482 F.2d 1282, 1285.)

A possible source for the number of RR commercial applications is the County's "Cannabis Cultivation Registration Public Record Information" list, so we looked at the most recent December 2016 list posted on the Planning Department website. We highlighted all the commercial cannabis registrations, then listed and counted them by Zoning. Our numbers from the County's registration list did not match the DEIR's estimate of 25% for RR-zoned operations. We found 14% of commercial registrations listed in RR zoning (106 out of 757 commercial applications). See the Table below.

December 2016 Commercial Cannabis Registration Count by Zone

Zoning	*No. Commercial Applications*	*Percentage of Total*
Unknown (blank)	497	66 %
RR	106	14 %
U	83	11 %

RA	36	5 %
A1 / AP	28	4 %
M/ GF/ T	7	<1 %
Total	757	100 %

This discrepancy may be because the County has a more current list—we don't know. **There is no footnote or citation telling us the DEIR source, and no data or numbers are given to support the assumption of a reduction in cannabis operations by 25%**. Is 25% accurate? Is it accurate enough to base selection of a project Alternative on? **Statements, estimates, and assumptions need to be based on data**. A clearly inadequate or unsupported study will be entitled to no judicial deference. *(State Water Resources Control Board Cases* **(**App. 3 Dist. 2006) 136 Cal.App.4th 674.)

Additional Alternatives Needed

The cannabis situation in Calaveras County is very complex, with many problems to be solved. We have learned from this past year's experiences under the Cannabis Urgency Ordinance what works and what doesn't work. We need an ordinance that helps us fix all possible problems. None of the Alternatives in the DEIR do this.

We need an Alternative with full regulations that are MUCH more restrictive than the urgency ordinance or Alternative 3—and that provides funding to reduce ALL cannabis-related adverse impacts (which have yet to be provided in the EIR). We suggest adding more Alternatives to the EIR that incorporate public and agency suggestions to reduce the number of cannabis grows and to reduce potential negative impacts to the environment and residents**. Additional Alternatives should offer increased reduction and regulation of cannabis activities.**

If Alternative 3 aims for 25% reduction in proposed cannabis operations, why not aim for more reduction? The real question is how many commercial cannabis operations can Calaveras County realistically manage? Consider processing paperwork in all departments, inspection and oversight of operations, compliance, taxation, complaints, appeals, and enforcement. How many permits can the County handle? **The number of cannabis operations the County can adequately handle needs to be considered—is it 10, 100, or 1000? Set a realistic goal.**

The following are two possible Alternatives, ordered by severity of restrictions and conditions. The ideas suggested are meant to be food for thought and flexible—mix and match, depending on the goal and the percent reduction desired**. The ideas below for Alternatives *could help* make a workable ordinance that meets Project goals and mitigates impacts.**

Alternative 4—More Restrictive

For commercial cannabis cultivation:

- Remove all RR zones
- Allow RA zones only with a 10 acre min. for outdoor cultivation, 5 acre minimum for indoor cultivation, plus CUP/ CEQA review
- Allow U (Unclassified) zones only with a Zoning Amendment & CEQA review. "U" is not acceptable zoning for commercial cannabis cultivation or operations.[1]
- Remove all lands inside Community Centers / Community Plan Areas unless on public water and inside green houses with odor filters
- Increase outdoor cultivation setbacks to at least 200 feet
- No night lighting at all allowed in residential areas
- Allow cannabis cultivation and manufacturing in Industrial zones only inside greenhouses and buildings with filters for odor control and a 200 foot minimum setback from adjacent residential land uses
- Allow only organic cannabis grow operations (certified by the State), which would reduce or eliminate harmful impacts to wildlife, water quality, and public health.
- Allow in A1, AP, and GF zones only with 10 acre minimum
- All operations to pay RIM fees, but only allow commercial grows on publicly-maintained state highways or public county roads—no operations allowed on CSA / CSD or private subdivision roads (not covered in the RIM program)
- Include tree preservation and mitigation plans in permitting requirements

Alternative 5—Most Restrictive

In addition to Alternative 4 restrictions above, for commercial cannabis cultivation:

- Remove all RA zones
- Allow in A1, AP, and GF zones only with 50-acre minimum parcel size
- Increase property line setbacks to 500 feet or more
- Allow only one cannabis grow permit per Registrant; no multiple parcels
- Allow only one cannabis grow permit per Property Owner; no multiple parcels
- Require cannabis businesses be owned by the Resident of the business
- Limit the total number of permitted cannabis grows in Calaveras County to what the county can actually manage (and support this number with data)

II. Lack of Footnotes or Citations & Unquantified Impact Analyses

CEQA requires that findings be made for each significant effect identified in the EIR: (1) mitigation has been adopted, (2) the agency lacks jurisdiction to make the changes but others should, and/or (3) specific economic, social, technological, or other considerations make mitigation or alternatives infeasible. (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; See also *County of San Diego v. Grossmont-*

[1] From County Code Chapter 17.10 – Unclassified Zone: **17.10.010 - Purpose.**
The U zone is intended to apply to lands until more precise zoning is adopted. Any projects for which a use permit or subdivision approval is required shall be accompanied by an application for rezoning from the U to a specific zone.

Cuyamaca Community College District (2006) 141 Cal.App.4th 86.) These findings must be supported by substantial evidence in the record. "Argument, **speculation**, **unsubstantiated opinion**, or narrative evidence which is clearly erroneous or inaccurate … does not constitute substantial evidence." (CEQA Guidelines, sec. 15384, emphasis added.) "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (People v. County of Kern (5th Dist. 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting Silva v. Lynn (1st Cir. 1973) 482 F.2d 1282, 1285.) A clearly inadequate or unsupported study will be entitled to no judicial deference. *(State Water Resources Control Board Cases* **(**App. 3 Dist. 2006) 136 Cal.App.4th 674.)

A lead agency can conveniently provide substantial evidence by properly citing supporting documentation in the EIR. "The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR." (CEQA Guidelines, sec. 15148.)

Unfortunately, there are no footnotes anywhere in the DEIR. Alleged statements of fact made without footnotes or citations given are merely unsubstantiated opinions or speculation; not substantial evidence. The DEIR also fails to quantified impacts for comparison. Analyses without reference material or quantified data lack the substantial evidence needed to support required CEQA findings of fact.

Here are two examples, both in Chapter 6 Alternatives:

1) As noted above, Section 6.3.3 "Reduced Zoning Designations" (Alternative 3), states an **assumption that this Alternative would reduce commercial cannabis operations by 25%**: "*Based on the percentage of applications received under the urgency ordinance for commercial cannabis operations within property zoned RR, it is assumed this alternative would reduce the potential for commercial cannabis operations within the County by approximately 25%*." **But no footnote, reference, or actual numbers of RR-zoned applications compared to other zones are given**.

A possible source for the number of RR commercial applications is the County's "Cannabis Cultivation Registration Public Record Information" list, so we looked at the most recent list from December 2016. We highlighted all the commercial cannabis registrations, then listed and counted them by Zoning. **Our numbers from this county registration data did not match the DEIR's estimate of 25% for RR-zoned operations. We found that 14% of commercial registrations were listed in RR zoning (106 out of 757 commercial applications).**

This discrepancy may be because the County has a more current list, we don't know. **There is no footnote or citation telling us the source, and no data or numbers are given to support the assumption of a reduction in cannabis operations by 25%**. Is

25% accurate? Is it accurate enough to base selection of a project alternative on? **Statements, estimates, and assumptions need to be based on data**.

2) Section 6.4, Comparison of Alternatives, consists of a Table: "*Table 6-1 summarizes the environmental analyses provided above for the project alternatives*." If you look at the table, in the three columns comparing impacts of the 3 Alternatives, **you find no quantified numbers—just the symbols "<", ">", and "=**", evidently representing a reduction, increase, or no change in impacts from the Project. **This Alternatives analysis and Comparison chart is not quantified in any meaningful way.** In fact, the Alternative 2 column and the Alternative 3 column have identical symbols, leading to the conclusion that the environmental impacts of Alternative 2 and Alternative 3 are identical. Is this correct? **The Table needs quantified data, references, and analysis.**

In fact, the lack of quantitative analysis in section 6.4 Table 6-1 has already created a conflict with the conclusion in section 6.5 Environmentally Superior Alternative, "*Of the alternatives identified above, Alternative 2 (Ban on Commercial Cannabis Operations) would be the environmentally superior alternative...*" **There is absolutely no evidence or data given to support that conclusion, which conflicts with the Table.**

"The courts have favored specificity and use of detail in EIRs." (*Whitman v. Board of Supervisors* (2d Dist. 1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866].) In *Whitman*, the Court found that the discussion of cumulative impacts lacked "even a minimal degree of specificity or detail" and was "utterly devoid of any reasoned analysis." The document relied on unquantified and undefined terms such as "increased traffic" and "minor increase in air emissions". Greater than and less than symbols are similarly vague, and do not provide decision-makers with sufficient information to make a rational decision among alternatives. The answers to the key questions about the alternatives (How much greater of an impact does it have? How much less of an impact does it have?) are missing from the DEIR. "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 712.)