ATTACHMENT H

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY GAVIN NEWSOM, *GOVERNOR*

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County of Mendocino
Attn: Julia Acker Krog, Chief Planner
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Ukiah, CA 95482

RE: Comments on July 2019 draft of the County of Mendocino's amendment to the County's certified implementation plan (IP) adding regulations regarding cannabis cultivation and the processing, manufacturing, testing, dispensing, retailing and distributing of cannabis in the coastal zone.

Dear Ms. Acker Krog:

Thank you for the opportunity to comment on a draft of the proposed amendment to the County's IP. The amendment would add two new chapters to the IP: Chapter 20.537 Coastal Cannabis Cultivation Sites and Chapter 20.538 Coastal Cannabis Facilities Code. Comments in this letter or based on the version of the draft amendment presented at the July 2019 Planning Commission hearing.

We appreciate the opportunity to collaborate with the County on the development and review of the subject draft LCP amendment prior to local adoption and transmittal to the Commission to narrow any issues regarding conformance with the Coastal Act and certified land use plan (LUP) that might otherwise need to be addressed during the Commission's hearings on certification of the proposed LCP amendment. Pursuant to Coastal Act §30513, to certify an amendment to the IP, the Commission must find that the IP as amended conforms with, and is adequate to carry out the provisions of the certified LUP.

We understand that the Board of Supervisors will be conducting a hearing on this amendment in early November in the Town of Mendocino. In the interest of maximizing public participation, we strongly encourage the County to alert the public in attendance at the meeting (and others if possible through the County's website and newspaper noticing) that if they want to be notified of the Commission hearings on this amendment, they need to provide their mailing or email addresses to the County.

The most significant LUP consistency issue raised by the subject amendment is protection of agricultural and timber resources. This letter discusses this issue in detail and then provides some additional recommendations, considerations, and requests for clarification. Additionally, throughout the letter we identify information that will be important for the County to provide as part of a future transmittal of the IP amendment for certification by the Commission should the

proposed IP amendment be adopted by the County. These are preliminary Commission staff comments after an initial review of the proposed amendment and are not comprehensive. In addition, as always with policy review, new questions and comments will arise as our initial comments are addressed, new information is received, and the draft LCP amendment language evolves.

1. Agricultural and Timber Resource Protections

The proposed amendment would permit cannabis cultivation in the County's coastal zone on parcels zoned RR (Rural Residential), RMR (Remote Residential), AG (Agricultural), RL (Range Lands), FL (Forest Lands), and TPZ (Timberland Protection). Under the proposed cultivation regulations, cannabis may be cultivated in these districts indoors or outdoors; in native soil or not; and with all natural light, all artificial light, or some combination of the two. The County's July 18, 2019 staff report indicates that staff anticipates that indoor cultivation may be the most common cultivation type pursued on the coast due to the constraints of coastal weather. Our main concern is with cultivation within structures on agricultural lands and timberlands (i.e., in the AG, RL, FL, and TPZ Districts).[1]

Agricultural Resources

Cultivation of cannabis in greenhouses, hoop houses, and other structures is an agricultural use, but it nevertheless raises consistency issues with the agricultural protection provisions of the certified LUP and the Coastal Act. Coastal Act section 30241 mandates that the maximum amount of prime agricultural land be maintained in agricultural production to assure the protection of the areas' agricultural economy and Coastal Act section 30243 requires that the long-term productivity of soils be protected. The County's LUP carries out these policies in part by designating "Agriculture" and "Range Lands" for retention in crop production and livestock grazing, respectively. Growing structures and related development could potentially conflict with the long-term maintenance of prime agricultural land in agricultural production, and impact the long-term productivity of the soil and the long-term viability and flexibility of the agricultural economy inconsistent with these policies.

Cultivation of cannabis in structures does not lend itself to the protection of soils in the same way as open field agriculture and grazing, nor does it provide for maintaining agricultural land in production when containers or hydroponics or other growing techniques are used which do not rely on in-ground cultivation methods. Development associated with indoor cultivation incrementally displaces agricultural land, which could otherwise be put into production, for foundations, footings, utilities, driveways, and other ancillary development. In addition to the cumulative removal of agricultural land from production, structural development covers agricultural soils with hardscape or other surfaces to varying degrees, and may modify the underlying native soils in a manner that no longer allows the soils to be readily competitive with respect to agricultural productivity. In evaluating impacts, factors to consider include the amount

[1] In this section of the letter, when we refer to indoor cultivation, we are referring to crop production within a structure (i.e., we are not using the indoor, outdoor, mixed-light cultivation definitions that distinguish between types of cultivation based on light source, but rather we are defining indoor cultivation based on location within a structure).

of soil permanently covered by structures and appurtenant concrete and pavement; whether the underlying soil is used for growing; and in cases where native soil is not used, whether the structure is capable of being converted to in-soil growing in the future (e.g., by using pots or planks on soil rather than permanent foundations), and whether it is feasible to remove the structure in the future and return to other forms of agriculture. The productivity of the underlying soil and the flexibility to use in-soil growing, or in the future convert to open field agriculture or grazing, should be maintained so that agriculture remains viable in the long-run and can respond as needed to changing market demands, operating costs, etc.

Maintaining a diversity of agricultural products contributes to the health of Mendocino's coastal agricultural economy by providing farmers with the flexibility to respond to market and environmental changes. Indiscriminate expansion of development associated with indoor cultivation could reduce the long-term flexibility of the agricultural economy by building out agricultural and grazing lands with large structures and impervious surfaces, undermining the long-term flexibility of agricultural product types and farming methods. The cost of removal of greenhouses and associated paving may cause return to open field production or grazing to become economically infeasible and thus severely limit agricultural flexibility on indoor cultivation sites.[2] Structural development associated with indoor agriculture may also limit agricultural flexibility on surrounding parcels by increasing assessments on less profitable open field and grazing parcels.

To help us understand the potential impact of indoor cannabis cultivation on long-term agricultural production in the County's coastal zone, please provide information on (as part of your LCP amendment application submittal) the current state of the agricultural economy in the County's coastal zone, including land costs and the types of agriculture present, their intensity, total acreage and relative significance to the agricultural economy, and their reliance on greenhouses and other structural development. As part of your application submittal, please also provide information to help us understand whether greenhouses and other agricultural structures are already a well-established and important component of the agricultural economy in coastal Mendocino County, as well as whether existing greenhouses and agricultural structures are similar to typical structures used in cannabis cultivation, including in terms of reliance on underlying soil, use of natural light, height, bulk, and character.

Proposed Chapter 20.537 attempts to address issues of structural proliferation by limiting the maximum cultivation area (for outdoor, indoor, and mixed-light grows) to 2,500 square feet on parcels 2-5 acres, 5,000 square feet for parcels 5-10 acres, and 10,000 square feet for parcels 10 acres and larger; and limiting the maximum nursery size to 22,000 square feet and only allowing nurseries on parcels 10 acres or larger. Pursuant to the certified LCP, the minimum parcel sizes in the AG and RL Districts are 60 and 160 acres respectively, but it is our understanding that there are a significant number of nonconforming smaller lots in these districts in the coastal zone. To help us understand the potential maximum amount of structural development that could be

[2] To better understand these impacts, it would be helpful to understand the cost and feasibility of removal of typical structures used for cannabis cultivation, and the time required on prime agricultural lands to return compacted soils to prime condition.

permitted on agricultural lands for cannabis cultivation and nursery purposes under the proposed amendment, please provide (as part of your LCP amendment application submittal) an inventory of the number and sizes of AG and RL parcels in the coastal zone, and the corresponding maximum cultivation area under Table 1 of proposed Chapter 20.537.[3]

Coastal Act section 30241 calls for the maintenance in production of the prime land itself, so that agricultural structures which do not use the underlying soils or which do use the soils but involve paving a significant portion of the parcel may not be consistent with section 30241. It could therefore be argued that prime soils should be reserved for agriculture that uses the soil, while greenhouses or nurseries that do not use the soil could just as easily be kept to non-prime or non-productive soil areas. We recommend that the County only allow soil-dependent cultivation on prime lands and prohibit the removal of native prime soil and replacement with manufactured soil. To allow us to better understand the practicality and impact of such a restriction, as part of your application submittal, please provide information on the amount and proportion of agricultural land in Mendocino County's coastal zone that is prime agricultural land.

Although cannabis cultivation is an agricultural use, indoor cultivation can have impacts similar to an industrial use, and many indoor cannabis grows don't rely on native soil or natural light and thus could be situated in industrial areas without loss of productivity. As a result, many coastal counties (Humboldt, Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara) permit cannabis cultivation in industrial districts, providing an alternative space for indoor grows other than productive resource lands. Mendocino County is not proposing any type of cannabis cultivation on industrial lands. To help us understand the feasibility of using industrial lands for the types of grows that have industrial impacts, as part of your application submittal, please provide information on the availability of industrial-zoned and designated lands within the County's coastal zone.

Under proposed Chapter 20.538, the County is also proposing to allow cannabis processing, home manufacturing, retailing, distribution, and microbusinesses as accessory uses and cottage industries on agricultural lands. All cannabis involved in processing, home manufacturing, retailing, and distribution would have to be grown onsite, and the retail and distribution components would be limited to a non-storefront retailer and self-distribution. We believe (we ask for confirmation later in this letter) that on-site physical development associated with these uses would be limited by the home occupation and cottage industry standards in coastal zoning code (CZC) Chapters 20.488 and 20.452, which limit the total area of home occupations and cottage industries to 640 and 1,000 feet respectively, and include a number of other standards to ensure such uses do not alter or disturb the rural nature of the subject property or its surroundings.

We support the limitations proposed, but we are still concerned with overall structural proliferation on agricultural and range lands, given total allowances for structural development in

[3] We will also be interested in information on the number and sizes of RR, RMR, FL and TPZ parcels in the coastal zone to help us understand the potential cumulative impacts of the proposed cultivation regulations and to understand potential structural proliferation on timberlands.

the County's LCP. As discussed above, even structures that are associated with agriculture, such as greenhouses, can harm the long-term productivity of agricultural soils, and the cumulative effect of these structures may encourage urbanization or industrialization of an area. In addition to impacts on agricultural resources, other potential impacts of structural development include impacts on visual quality in coastal viewsheds; groundwater recharge; quality, volume, and rate of stormwater runoff; and adequacy of services (water and septic). The County's certified LCP does include a 10% lot coverage maximum for AG and RL parcels over five acres in size, but does not include any siting or design criteria or other standards to ensure that structural development on agricultural lands minimizes conflict with coastal resource protections. In addition to lot coverage limits, various certified LCPs across the state's coastal zone address the potential adverse impacts of structural development on farmland in a myriad of ways, including requirements for locating development on non-prime and non-productive lands where feasible, clustering structures, and removing abandoned structures. Attachment A includes some relevant examples of agricultural resource protection standards found in certified cannabis amendments of other rural coastal counties. We recommend that the County review these examples and consider adding additional IP standards to minimize the impacts of structures on agricultural resources and other coastal resources; ideally these standards would apply broadly to all structural development on agricultural lands and would not just be limited to structures used for cannabis cultivation.

Timber Resources

Coastal Act section 30243 requires that the long-term productivity of soils and timberlands be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size be limited to providing for necessary timber processing and related facilities. Section 30243 is carried out by the County's LCP in part through the Forest Lands (FL) land use designation (and corresponding FL and TPZ Districts), the intent of which is to designate lands which are suited for and are appropriately retained for the growing, harvesting and production of timber and timber-related products. Pursuant to the certified LUP, (1) no use permit shall be granted for areas designated FL in TPZ until a specific finding has been made that the proposed use is compatible with the growing and harvesting of timber and timber products; and (2) no use permit shall be granted for areas designated FL until a specific finding has been made that the proposed use is compatible with the long term protection of timber resource lands. In addition, LUP Chapter 3.3 indicates that private timberlands in TPZ are assumed by the plan to be committed to management as timberlands, while the remaining timberland acres outside the TPZ must limit conversion to other uses.

The proposed amendment would allow cannabis cultivation (indoor, outdoor, and mixed light) and nurseries in the FL and TPZ Districts. This marks a significant difference from the coastal counties that currently have certified cannabis ordinances (Humboldt, Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara Counties), none of which allow cannabis cultivation on timber resource lands. Proposed section 20.537.025(K) attempts to protect timber resources by prohibiting major vegetation removal for cannabis cultivation if the major vegetation removal includes the removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (Quercus sp.) or Tan Oak (Notholithocarpus

sp.). This proposed regulation severely limits tree removal directly associated with the establishment of a cannabis cultivation site; however, this regulation does not preclude a property owner from growing cannabis in an area where trees where previously removed (such as through a timber harvest plan), preventing their reestablishment. The aforementioned LUP policies protecting the long-term productivity of timberlands and limiting conversion of commercial timberlands apply regardless of whether trees were recently harvested and therefore don't currently exist on a site. Cultivation of cannabis in the soil could temporarily prevent the reestablishment of trees on commercial timberlands, while cultivation sites involving permanent structures, foundations, and associated paving could have long-term impacts (see discussion in the section on agricultural resources above that raises questions about the feasibility of removal of structural development and the potential impacts of structures on underlying soils). We therefore recommend adding additional requirements to ensure that the long-term productivity of soils and timberlands are protected and that cannabis facilities are developed compatible with the commercial growing and harvesting of timber.

2. Other Recommendations and Considerations

A. Proposed ESHA provision: Proposed section 20.537.035(C)(7) indicates that the supplemental environmentally sensitive habitat area (ESHA) application procedures outlined in the certified IP, coastal zoning code (CZC) section 20.532.060 apply if ESHA "has been identified within five hundred feet of the proposed development." We recommend changing the verb phrase "has been identified" to "exists" to clarify that this application requirement applies to development in close proximity to ESHA regardless of whether the nearby ESHA had previously been mapped.

B. Water source/availability requirements: Pursuant to proposed section 20.537.035, all coastal development permit (CDP) applications for cannabis cultivation would be required to "demonstrate there is adequate water to serve the cultivation site pursuant to section 20.516.015(B), unless water will be provided by a mutual water company." The ordinance further specifies, "If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider." The County's certified land use maps delineate water service district areas and LUP Policy 3.8-8 indicates that newly constructed public water supply systems and expansion of existing systems should be designed to serve development consistent with that permitted by the LUP. In addition, LUP Policies 3.8-1 and 3.9-1 and CZC section 20.532.095 together[4] prohibit a CDP from being issued by the County unless an adequate water source exists to serve the property. In its regulatory decisions, the Coastal Commission has routinely interpreted "adequate water supply" to mean an on-site source, such as connection to a community water system, a well, or a spring. The Commission has historically not considered trucked-in water an adequate, reliable water source. Therefore we recommend modifying proposed section 20.537.035 to

[4] LUP Policy 3.9-1 and CZC section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. LUP Policy 3.8-1 and CZC section 20.532.095(A)(2) require, in applicable part, that the granting of any coastal development permit shall be supported by findings which establish that the approved development will be provided with adequate utilities.

clarify (1) that water can only be provided by a mutual water company or community provider through a service connection within the boundaries of the water district served by that provider; and (2) that trucked water is prohibited as a water source.

C. Fencing requirement: Proposed section 20.537.025(H) states that "*all cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area.*" Particularly given that the certified IP does not seem to have strong fencing standards,[5] Commission staff is concerned that the requirement for fencing around outdoor grows may result in visual resource impacts, including blocked public views to and along the ocean and scenic coastal areas, and colors, materials, heights, and amounts of fencing that cumulatively affect the rural character of the setting. For example, fencing on agricultural land on highly scenic coastal terraces could negatively affect the open, uninterrupted appearance of the landscape inconsistent with certified LUP Policy 3.5-4. We recommend that the County add fencing standards/limitations where there may be visual impacts (such as in areas visible from the highway, in highly scenic areas, etc.) to ensure that the required fencing around outdoor grows does not individually or cumulatively degrade the scenic and visual qualities of Mendocino County's coastal zone inconsistent with the visual resource policies of the certified LUP (found in LUP Chapter 3.5). For example, the County could require that fencing be sited and designed to minimize adverse impacts on highly scenic areas, public views of ridgelines, and natural features visible from public roadways or other public viewing areas to the maximum extent feasible through measures such as siting the fencing in a portion of the site that is not publically visible if possible (such as by directly surrounding the cannabis cultivation area with fencing rather than surrounding the entire property). To ensure that the visual impacts of required fencing can be properly evaluated, we also recommend that proposed section 20.537.035 be modified to include a description of the size, height, colors, design, location, and building materials of any proposed fencing as a CDP application requirement for cannabis cultivation.

D. General visual resource impact concerns: In addition to fencing, other construction associated with cannabis operations including but not limited to buildings, security systems, light blocking apparatuses, signs, outdoor lighting fixtures, and vegetation removal have the potential to degrade the scenic and visual qualities of Mendocino County's coastal zone inconsistent with the visual resource policies of the certified LUP. Structural development and lighting associated with heightened security needs and reliance on artificial lighting for growing plants elevates the potential visual resource impacts of cannabis cultivation over many other types of agricultural operations. In particular, cannabis operations that rely on growing indoors have a significant structural component similar to a typical commercial/industrial development, rather than the traditional association of open field agriculture. Proposed Chapter 20.537 includes a number of development standards that help

[5] In a search of the existing IP, the only fencing standards that Commission staff could locate are height requirements for view-obstructing fences found under section 20.444.015(E). These standards limit view-obstructing fences in rear or side years to a maximum height of eight feet and fences in front yards (and any rear or side yards having street frontage) to a maximum height of three and one-half feet. No height limitations are established for fences for the containment of animals, such as barbed wire, chicken wire, hog wire, and similar loose-meshed wire fences or non-view-obscuring fences such as cyclone fences.

limit the visual impact of some of the aforementioned features of commercial cannabis cultivation including limitations on cultivation area, requirements for large setbacks for outdoor and mixed light cultivation, limitations on outdoor lighting and security lighting, and a prohibition on major vegetation removal that includes the removal of a number of common tree species. The existing certified IP also has a visual resource chapter (Chapter 20.504) that includes applicable standards. In addition to these standards, similar to our recommendations for fencing above, we recommend supplementing proposed section 20.537.035 (CDP Application) to explicitly require CDP applications for cannabis cultivation operations to include relevant details on the aforementioned features (buildings, security systems, light blocking apparatuses, signs, outdoor lighting fixtures, and vegetation removal) necessary to evaluate their visual impact from public vantage points.[6] We also recommend supplementing proposed section 20.537.045 (Permit Review Procedure) to explicitly require a visual resource finding in approval of structural development for cannabis cultivation operations to ensure consistency with the visual resource policies of the LUP. Finally, a number of potential regulatory measures for minimizing the impacts of structural development on agricultural resources discussed earlier in this letter such as requiring clustering of structures and removal of abandoned structures also would help reduce visual resource impacts; we therefore recommend the County consider adding these or similar standards not just to protect agricultural and timber resources, but also to ensure that structural development on agricultural, grazing, and timberlands does not individually or cumulatively degrade the scenic and visual qualities of Mendocino County's coastal zone inconsistent with the visual resource policies of the certified LUP.

E. References to Chapter 10A.17: The proposed new IP Chapters 20.537 and 20.538 include many references to an uncertified Chapter 10A.17 (Mendocino Cannabis Cultivation Ordinance) of the zoning code. Proposed new Chapters 20.537 and 20.538 address coastal development permitting of cannabis cultivation and cannabis facilities, while Chapter 10A.17 establishes requirements for a local cannabis cultivation permit issued by the Agricultural Commissioner's Office. Incorporating other uncertified County regulations by reference into the LCP is problematic because the Commission cannot certify by reference local provisions that can change without Commission review. Chapters 20.537 and 20.538 may (1) indicate that a local cultivation permit is required pursuant to the provisions of Chapter 10A.17, and (2) clarify the sequence of permit actions (e.g., section 20.537.020 indicates that a CDP or CDUP must be issued prior to a cultivation permit). However, Chapters 20.537 and 20.538 should include stand-alone definitions, standards, exceptions, etc. for the coastal development permitting process that are not reliant on references to Chapter 10A.17. To this end we recommend the following:

    a. Remove reference to Chapter 10A.17 definitions in proposed sections 20.537.015 and 20.538.015 and instead directly include all applicable definitions directly, including but not limited to "cultivation of cannabis," "indoor cultivation," "mixed light

[6] It is also important to require a lighting plan for indoor and mixed light cultivation to demonstrate compliance with proposed section 20.537.025(E) which requires in part that "all lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process."

cultivation," "outdoor cultivation," and "nursery." We also recommend including any details from the definitions of Type C, C-A, C-B, 1, 1-A, 1-B, 2, 2-A, 2-B, and 4 cultivation included in uncertified section 10A.17.060 that are missing from Table 1 of proposed Chapter 20.537, including the following provisions: (1) cultivation area limits are based on total square footage of plant canopy; (2) Type 4 nursery cultivation involves the cultivation of cannabis nursery stock and/or seed production; and (3) a producer of flowering cannabis plants may maintain an area where they propagate their own immature plants through cloning, seed germination or tissue culture for their own personal use. It is important to note that while the IP should avoid reference to uncertified City code, it is acceptable for Chapters 20.537 and 20.538 to reference each other for definitions to avoid redundancy as both chapters are proposed to be incorporated as part of the certified IP.

b. Include directly into proposed section 20.537.020 (instead of referencing) the permitting exemptions in section 10A.17.030, with the caveat that CDP authorization is required pursuant to Chapter 20.532 if any of the proposed activities constitute development as defined in section 20.308.035(D). Also remove references to section 10A.17.030 in proposed sections 20.537.025(A)(5)(c) and 20.537.025(J).

c. Remove requirements to comply with Chapter 10A.17 from proposed sections on CDP standards, CDP application requirements, exceptions from CDP standards, and CDP permit review procedures [See proposed sections 20.537.040, 20.537.045(A), and 20.538.020(D)(4)(a)]. It should be clear that the requirements of Chapter 20.537 which govern CDP review are separate from the requirements of 10A.17 which govern cultivation permit review.

F. Definitions: The following comments relate to definitions in proposed Chapters 20.537 and 20.538:

a. Please revise the definitions of manufacturing (Level 1 and 2) in proposed Chapter 20.538 to provide additional clarification on what cannabis manufacturing could entail and to distinguish manufacturing from processing (i.e., define the term "manufacture" in the definitions of cannabis manufacturing). In part please clarify that production of cannabis edibles and topicals falls under manufacturing, not processing.[7]

b. Please modify the definition of "legal parcel" in proposed Chapter 20.537 to clarify that parcels created after the effective date of the Coastal Act (or Coastal Zone Conservation Act, if applicable) that did not receive CDP authorization are not legal parcels.

c. Please provide definitions for "non-storefront retailer" [mentioned in proposed sections 20.538.020(D) and (F) and 20.538.030] and "self-distribution" [mentioned in proposed sections 20.538.020(E) and (F) and 20.538.030].

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[7] For example, Monterey County's IP defines cannabis manufacturing as "when raw agricultural product is transformed into a concentrate, an edible product, or a topical product either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis."

d. We recommend removing the definition of "publicly traveled private road" from proposed section 20.538.015 as that term is not otherwise used in the chapter.

e. We recommend aligning the definition of "person" with the Coastal Act definition of "person" as "*any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility, and any federal, state, local government, or special district or an agency thereof.*"

f. We want to point out that the proposed definition of "dwelling unit" is slightly different than the existing definition in the IP glossary (CZC section 20.308.035) that defines dwelling unit as "*a single unit containing complete, independent living facilities for a family, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.*" It is fine to have different definitions that apply to different chapters but we just wanted to make sure that the difference is intentional.

G. Cannabis facilities as accessory uses to a principally permitted use: Proposed sections 20.538.020(A)(2) and (3) would allow a processing facility as an accessory use to a permitted cultivation operation or storefront dispensary; proposed section 20.538.020(B)(3)(a) would allow non-volatile manufacturing as an accessory use (as a home occupation) to cultivation in all zones where cultivation is allowed; proposed sections 20.538.020(D)(3)(a) and (b) would allow a non-storefront retailer as an accessory use to any other cannabis facility or cultivation site in any zoning district; proposed section 20.538.020(E)(3) would allow a self-distribution facility as an accessory use to a cultivation site or other cannabis facility type in any zoning district; and proposed section 20.538.020(F)(7) would allow a microbusiness as an accessory use (as a home occupation) in any zoning district with a permitted cultivation site. We understand and agree with the intent of the proposed regulations to ensure that commercial cannabis activities on rural resource lands are only permissible if they are accessory to (incidental and subordinate to) onsite cultivation including only sourcing cannabis grown onsite. However, we recommend making some modifications to the proposed regulations to ensure that the term "accessory use" is used in a way that is consistent with the County's certified accessory use regulations (Chapter 20.456) which require that accessory uses must be necessarily and customarily associated with and appropriate, incidental and subordinate to, principal permitted uses. To meet the definition of an accessory use as the term is defined in the certified IP, cannabis processing, non-volatile manufacturing, non-storefront retailing, self-distribution, and microbusiness facilities need to be accessory to a principally permitted use. For instance, a cannabis processing facility could be an accessory use to a permitted cannabis cultivation operation in the AG, RL, RR, and RMR Districts where cannabis cultivation is principally permitted, but not in the TPZ or FL Districts where cannabis cultivation is only allowed with a conditional use permit.[8] Please amend the aforementioned sections of proposed Chapter 20.538 to clarify that cannabis processing, non-volatile manufacturing, non-storefront retailing, self-distribution, and microbusiness facilities can only be considered accessory to a cultivation site or other

[8] In the TPZ and FL Districts, while cannabis facilities cannot be an accessory use to cultivation (a conditional use), certain cannabis facilities may be allowed as a home occupation that is an accessory use to a single-family residence (a principally permitted use).

cannabis facility type in zoning districts where cultivation or the other applicable cannabis facility type is a principally permitted use. Additionally, in cases where cannabis facilities are allowed as a home occupation accessory use, the ordinance should clarify that the cannabis facility would be accessory to the use of the premises for residential purposes (i.e., accessory to a principally permitted residential use). Although we recommend changes to ensure consistency with the accessory use provisions of the certified IP, we do recommend that the County continue to require commercial cannabis activities on rural resource lands to be incidental and subordinate to onsite cultivation (regardless of whether those activities qualify as an accessory use for permitting purposes).

H. Permitting for accessory uses: Where a cannabis facility is considered an accessory use to a principally permitted cultivation operation or other cannabis facility type, various sections of proposed Chapter 20.538 indicate that a separate CDP shall not be required for the accessory use [see sections 20.538.020(A)(2); 20.538.020(D)(3)(a) and (b); and 20.538.020(E)(3)]. These sections could be misinterpreted to mean that a CDP is not required regardless of whether the accessory use was included in the CDP for the principally permitted cultivation operation/cannabis facility. We therefore recommend clarifying that accessory uses that constitute development require CDP authorization, but a separate CDP shall not be required if the accessory use was included in the CDP for the principally permitted development. To reduce redundancy, we also recommend removing the language on CDP requirements from the aforementioned proposed subsections of 20.538.020 and instead including one statement at the beginning of proposed section 20.538.020.

I. Internal IP consistency on permitted and conditionally permitted uses: Please address the following discrepancies between the permit requirements of the existing certified IP and proposed Chapter 20.538:

   a. Processing: In a phone call between Commission staff and County staff on September 4, 2019, County staff indicated that cannabis processing falls under the existing agricultural use type "Packing and Processing." Currently, "Packing and Processing: Limited" is a conditional use in the AG, RR, RMR, I, and GI Districts, while "Packing and Processing: General" is a conditional use in the RL, I, and GI Districts. Although "Packing and Processing" is a conditional use in all applicable zoning districts requiring a coastal development use permit (CDU), Table 1 of proposed Chapter 20.538 indicates that cannabis processing would require a CDP (rather than a CDU) in the AG, RR, RMR, RL, I, and GI Districts.[9] Additionally, "Packing and Processing: Limited" is limited to packing or processing of crops grown on the premises, while "Packing and Processing: General" allows packing and processing of crops, animals, or their byproducts regardless of where they were grown. Only "Packing and Processing: Limited" is allowed (with a conditional use permit) in the AG, RR, and RMR Districts, limiting processing in these districts to processing of crops grown on the premises. However, the proposed amendment would allow

[9] Please also note that there is an internal discrepancy within Chapter 20.538 regarding how processing is permitted: While proposed Table 1 indicates that cannabis processing is a principally permitted use, proposed section 20.538.020(A)(1) states that processing facilities "shall be conditionally permitted as a coastal agricultural use type."

cannabis processing in these districts with a CDP regardless of whether the processing involves cannabis grown onsite.

b. Testing: In a phone call between Commission staff and County staff on September 4, 2019, County staff indicated that cannabis testing falls under the existing commercial use type "Research Services." Currently, "Research Services" is a principally permitted use in the G and GI Districts and a conditionally permitted use in the GVMU and GHMU Districts. In contrast, Table 1 of proposed Chapter 20.538 indicates that cannabis testing would require a CDP (rather than a CDU) in the GVMU and GHMU Districts.

c. Distribution: In a phone call between Commission staff and County staff on September 4, 2019, County staff indicated that cannabis distribution falls under the existing commercial use type "Wholesaling, Storage and Distribution." However, proposed section 20.538.020(E)(1) indicates that cannabis distribution is a coastal industrial use type and a coastal agricultural use type. Also, Table 1 of proposed Chapter 20.538 indicates that cannabis distribution would be allowed in the AG District with a CDU, but "Wholesaling, Storage and Distribution" is not a listed use in the AG District.

d. Microbusiness: Under proposed section 20.538.015, a microbusiness is defined as "at least three (3) of the following commercial cannabis activities: (1) cultivation of cannabis on an area ten thousand (10,000) square feet or less, (2) distribution, (3) Manufacturing Level 1 (Non-Volatile), and (4) acting as a licensed retailer/dispensary…" Table 1 of proposed Chapter 20.538 allows microbusinesses as a conditional use in the RV District, but the RV District only allows two of the four commercial cannabis activities listed above (distribution and retail).

J. Principally and conditionally permitted uses: Under proposed subsections 20.538.020(E)(1) and (F)(1), statements are made as to whether different commercial cannabis distribution businesses and microbusinesses are principally permitted or conditionally permitted uses without reference to the applicable zoning districts (e.g., ""Microbusiness, as defined herein, shall be conditionally permitted as a coastal commercial use type"). To clarify that whether a use is principally or conditionally permitted (or allowed at all) depends on the provisions of the underlying zoning district, we recommend modifying these statements to reference Table 1 (e.g., "Microbusiness, as defined herein, shall be conditionally permitted as a coastal commercial use type pursuant to Table 1 of section 20.538.030").

K. Microbusiness as home occupation or cottage industry: For a microbusiness that is permitted as a home occupation or cottage industry, the proposed regulations limit any distribution component of the microbusiness to self-distribution of the microbusiness' own cannabis and cannabis products [proposed sections 20.538.020(F)(8) and 20.538.030(D)]. To ensure that manufacturing is incidental to a cultivation use, we recommend also limiting any manufacturing component of a home occupation or cottage industry microbusiness to manufacturing of cannabis grown onsite.

L. Cultivation of cannabis as an accessory use: Proposed section 20.537.025(A)(5)(b) indicates that cannabis may be cultivated in an accessory structure that is accessory to a legal dwelling

unit, which raises the question of whether cannabis cultivation may be permitted as an accessory use to a principally permitted residence. In a phone call between Commission staff and County staff on September 4, 2019, County staff indicated that cannabis cultivation falls under the "Row and Field Crops" agricultural use type (Section 20.336.040) and is only allowed under proposed Chapter 20.537 as a listed use in the AG, FL, TPZ, RL, RR, and RMR Districts. To avoid confusion, we recommend clarifying that while cannabis cultivation may be permitted in an accessory structure, cannabis cultivation allowed under proposed Chapter 20.537 is not permitted as an accessory use.

M. Coastal development permit requirements: There are a few instances in the proposed regulations where it is indicated that cannabis activities that constitute development may be required to obtain a CDP [see proposed section 20.537.020(A) and Table 1 of proposed Chapter 20.538]. Please rephrase to indicate that a CDP is required for development unless exempt under section 20.532.020 or excluded under the County's categorical exclusion order.

N. Application requirements for cannabis cultivation: Proposed section 20.537.035 provides a list of application requirements for CDPs and CDUs for cannabis cultivation, and also states that the application requirements detailed in existing CZC section 20.532.025 must be adhered to. We recommend that instead of referencing 20.532.025, this section should reference CZC Chapter 20.532 more broadly to capture the supplemental application requirements included in other subsections of that chapter including those supplemental requirements regarding ESHA and geologic hazards.

O. Permitting of multiple manufacturers within one structure: Proposed section 20.538.020(B)(4)(a) indicates that multiple manufacturing facilities may occupy a single structure and operate as a shared facility provided that "*at least one of the manufacturing facilities has obtained a coastal development permit pursuant to this chapter.*" To make it clear that all manufacturing within the structure must have CDP authorization, we recommend editing this statement to clarify that the shared manufacturing facility may be permitted through one CDP.

P. Referencing errors: Please review and address as necessary the following potential referencing errors:

   a. Proposed section 20.538.035(A)(3) references Chapter 20.536.005 for coastal development use permit procedures. However, Chapter 20.536.005 discusses coastal development administrative permits.

   b. Proposed section 20.538.035(A)(2)(b) incorrectly references Section 20.538.025(A) for setback requirements instead of 20.538.025(B). Also, if the setback reduction in proposed section 20.538.035(A)(2)(b) is meant to apply to cannabis facilities permitted with a zoning clearance or coastal development use permit as well as those permitted with a CDP, we recommend moving the setback reduction provisions to a new section 20.538.035(A)(4) or 20.538.035(C) [rather than including the provisions under a section that applies only to CDPs].

3. Other Requests for Clarification and Filing Information

A. Section 10A.17.030 exemptions: Pursuant to proposed section 20.537.020, medical and adult use cannabis cultivation that falls under the exemptions outlined in section 10A.17.030 is not required to obtain a CDP pursuant to Chapter 20.537. Exempt activities include (1) a maximum of 100 square feet of medical cannabis cultivated on a legal parcel by a qualified patient or patients, (2) a maximum of 200 square feet of medical cannabis cultivated on a legal parcel by a primary caregiver or caregivers, and (3) a maximum of six cannabis plants with a total plant canopy not to exceed one hundred square feet on the grounds of a private residence or accessory structure by individuals desiring to cultivate cannabis for adult use. We have a number of questions related to these exemptions:

   a. As part of the County's LCP amendment application submittal, please (1) specify which zoning districts these exempt cannabis cultivation activities are allowed in, and (2) explain how any development involved with these exempt activities is allowed in the applicable zoning districts under the existing certified IP. For instance, would building a structure to grow six cannabis plants constitute an accessory use to a primary residence, would it fall under the enumerated agricultural use type "row and field crops," or would it be permitted through some other means?

   b. As part of the County's LCP amendment application submittal, please clarify whether these exempt cannabis cultivation activities would be allowed on vacant parcels that do not have an existing residence, or in districts where a single-family residence is not a principally permitted use. Section 10A.17.030(C) regarding cultivation for adult use indicates that cultivation must occur on the grounds of a private residence or accessory structure, while section 10A.17.030(B) regarding cultivation by a qualified patient or primary caregiver only seems to require that the cultivation be located on a legal parcel.

   c. As part of the County's LCP amendment application submittal, please clarify whether exempt cannabis cultivation would be restricted to the property owner of the parcel and/or people residing on the parcel where the cannabis is grown. Please also clarify whether multiple people would be allowed to cultivate cannabis under these exemptions on the same parcel (i.e., would multiple 100-square-foot grows be allowed on the same parcel if grown by different individuals or would the total square footage be limited to 100 square feet per legal parcel?).

B. Signage: Signage does not seem to be discussed in proposed Chapters 20.537 or 20.538 except that proposed section 20.538.025(I) states that "*signage associated with permitted cannabis facilities shall meet the applicable requirements set forth in the Mendocino County Coastal Zoning Code for signage and other applicable State regulations.*" The certified IP includes signage regulations in Chapter 20.476 that limit signage for a home occupation or cottage industry to one sign not exceeding two square feet of area, and limit the total square footage of all signs on a lot to forty square feet (or eighty square feet in the absence of free-standing and roof signs). As part of the County's LCP amendment application submittal, please confirm whether this accurately reflects the limits on signage square footage, and please clarify whether this amount of signage is allowed on any lot in any zoning district including for commercial cannabis cultivation operations in the AG, FL, TPZ, RL, RR, and

RMR Districts. Please also clarify whether there are other relevant signage requirements in the certified IP other than in Chapter 20.476.

C. General accessory uses versus home occupations: Proposed Chapter 20.538 would allow cannabis processing, non-storefront retailing, and self-distribution facilities as accessory uses and non-volatile manufacturing and microbusiness facilities as home occupations (a type of accessory use) or cottage industries (a listed conditional use). As part of the County's LCP amendment application submittal, please clarify whether this means that non-volatile manufacturing and microbusiness facilities cannot be permitted as an accessory use other than a home occupation (i.e., do these facilities need to comply with the home occupation standards of certified IP Chapter 20.448 to qualify as accessory uses?). Please also clarify whether this means that no cannabis processing or retailing facilities could be permitted as cottage industries.

D. Cottage industry service standards: The existing certified LUP and IP standards for cottage industries include a requirement that no additional service demands will be created by the use. As part of the County's LCP amendment application submittal, please clarify how the County applies this standard to proposed cottage industries, including what application materials are requested and how compliance is demonstrated.

E. Area of impact: To enable an understanding of the geographic application of the proposed cannabis provisions, as part of the County's application submittal for the LCP amendment, please provide maps highlighting the areas of the County where cannabis activities would be permitted under the proposed amendment. In order for us to understand the visual resource impacts of the proposed cultivation regulations, we would also like to understand the location of parcels in the AG, FL, TPZ, RL, RR, and RMR Districts (where cultivation would be allowed) relative to designated highly scenic areas. Thus we will likely request (as part of the County's LCP amendment application submittal) maps delineating areas where cannabis cultivation would be permitted relative to designated highly scenic areas.

F. Clarification on existing allowances for cannabis activities: As part of the County's application of submittal for the LCP amendment, we will need clarification on whether or not a landowner is currently allowed to undertake cannabis activities as a principal use, accessory use, and/or conditionally permitted use. In other words, we will need to understand which cannabis activities the County would characterize as newly allowed uses that are not now permissible, and which cannabis activities the County would characterize as uses that are permissible now but which the County is proposing to more specifically regulate through its adoption of the proposed IP amendment.[10]

G. Definition of legal parcel. In order to remove an incentive to subdivide parcels to allow more cannabis cultivation area (cultivation area limits are set per parcel), the proposed definition of legal parcel is limited to parcels created prior to January 1, 2016. If subdivision occurs after

[10] This interpretation of whether the proposed amendment is adding new uses or further restricting uses that are already allowed will affect how we notice Commission hearings on the proposed amendment. For LCP amendments that add new restrictions on private property, we are more conservative about mailing notice individually to all affected property owners in the applicable zoning districts.

January 1, 2016, and the created parcels are under separate ownership, please clarify which property owner has the right to cultivate cannabis if any.

H. Water diversions: The proposed regulations allow for stream diversions (including wells that are hydrologically connected to streams) that could affect coastal resources, including the habitat of listed salmonid species. As a result, under the Commission's CEQA obligations for review of the proposed amendment,[11] we may need to ask the County to provide (as part of the County's application submittal) information on the potential impacts of the proposed amendment on demand for stream diversions, and the potential cumulative effects of those diversions on coastal resources. This may include a request for information on typical water demand of cannabis cultivation operations relative to other agricultural uses in the County's coastal zone.

I. Relevant environmental review. Commission staff would appreciate a copy of the Mitigated Negative Declaration prepared for Ordinance No. 4381 for Chapter 10A.17 to better understand environmental issues raised and public comments received concerning cannabis cultivation in Mendocino County.

We appreciate the County's consideration of these preliminary comments and look forward to collaborating with County staff in the interest of advancing through the Commission's IP amendment certification process as smoothly as possible. If you have any questions, please don't hesitate to call me at (707) 826-8950 or email me at Cristin.Kenyon@coastal.ca.gov.

Sincerely,

Cristin Kenyon

Cristin Kenyon
Supervising Analyst

Cc: Jesse Davis, Mendocino County Senior Planner

[11] Because the Secretary for Natural Resources has certified the Commission's LCP program as "functionally equivalent" under CEQA, Mendocino County has not prepared a CEQA document for the proposed amendment. Thus the LCP amendment application submittal must include sufficient environmental information for the Commission to make findings that the substantive requirements of CEQA are complied with. These findings include identification of all potentially significant environmental impacts and consideration of mitigation measures and project alternatives to avoid or minimize those impacts.

Attachment A: Examples from Other Rural Counties

To provide relevant examples of agricultural resource protection standards, we reviewed cannabis amendments certified in other rural coastal counties (Humboldt, Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara Counties) that allow indoor cultivation on at least a portion of their agricultural lands.[12]

To avoid impacts associated with structural proliferation on agricultural lands, the Counties of Monterey, Santa Cruz, and Humboldt limit cannabis cultivation occurring indoors to existing structures, while Santa Barbara County requires that indoor cannabis cultivation be located in existing structures to the maximum extent feasible in order to preserve prime and non-prime agricultural land (Del Norte County has also adopted and transmitted an amendment application that would limit cannabis cultivation to existing structures).[13] To minimize the impacts of structural development on agricultural lands, Santa Barbara County also requires that structures for cannabis cultivation avoid land suitable for agriculture to the maximum extent feasible, be designed to use as little agricultural land as possible, and be clustered with other existing structures to the maximum extent feasible. Humboldt and Santa Barbara Counties' LCPs include requirements to remove greenhouse and greenhouse related development if the structures are abandoned.

To protect soil resources and the long-term productivity of agricultural lands, Monterey County's North County LUP prohibits greenhouses that are not on-site soil-dependent or which degrade soil capabilities on prime and productive agricultural soils in the Agricultural Preservation (CAP) land use designation; and the North County LUP requires uses that are not soil-dependent to be located on the least agriculturally viable areas of parcels in the Agricultural Conservation (AC) land use designation. Humboldt County protects prime soils in part by only allowing cannabis cultivation in the native soil where prime soils are present, and requiring a soil management plan to describe how the native soil on the property is intended to be used as part of the cannabis cultivation operation.

To preserve a diverse agricultural economy, Santa Cruz does not allow commercial cannabis activities in the County's Agricultural Preserve District (such activities are allowed in the County's Agriculture and Commercial Agriculture Districts) in order to protect against a large-scale shift from an existing diverse array of agricultural crops to a single crop-heavy agricultural sector. Humboldt County attempts to maintain a diverse agricultural economy by restricting new open-air commercial cannabis cultivation operations to lands that are at least 20 acres in size with a cultivation size limit not to exceed 1 acre, limiting commercial indoor cultivation to 5,000 square feet within existing, non-residential structures, and prohibiting new outdoor or mixed-light commercial cannabis cultivation on lands designated for exclusive grazing use under the certified LCP.

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[12] We only reviewed the cannabis LCP amendments and Commission findings for certification of those amendments and not all applicable agricultural regulations in these County's LCPs. There are likely other existing provisions in these County's LCPs that also protect agricultural lands from impacts associated with structural development.

[13] San Luis Obispo County's cannabis ordinance does not include any provision for use of existing structures, but SLO County limits the total number of cannabis cultivation operations in the unincorporated portions of the County (including both indoor and outdoor operations) to 141 sites (with an indoor cultivation limit of 22,000 square feet of cumulative canopy area per site).