August 4, 2015

California Cannabis Voice Humboldt
520 E Street, Suite 19
Eureka, CA 95501

Re: Comments on Draft Ordinance

Dear California Cannabis Voice Humboldt,

Please find our attached comments on the draft cannabis regulation. EPIC appreciates CCVH's willingness and efforts to bring the cannabis industry into the regulatory light. In light of the potential risks, your work is laudable. That said, EPIC remains concerned that the proposed ordinance does not adequately address environmental concerns. Similarly, we appreciate the public comment period CCVH has provided. However, this public comment period does not replace the more rigorous public participation requirements and protections afforded by state law. We are concerned that an initiative bypasses important processes, namely environmental impact review pursuant to the California Environmental Quality Act, which are critical to ensuring that we as a society take a hard look at the consequences of a contemplated action.

To be an effective regulation of the cannabis industry, EPIC believes the CCVH ordinance must:

- **End the “Green Rush”:** An effective regulation would stop the proliferation of new grows, minimize the impact of existing operations, and mitigate remaining environmental impacts. While we are encouraged by some provisions within the CCVH ordinance, more can still be done to end the Green Rush.
- **Stop Dry-Weather Water Diversions:** Dry-weather water diversions associated with cannabis production are one of the chief threats to endangered salmon and steelheads along the North Coast. An effective regulation would prohibit water withdrawals/diversions and require adequate water storage.
- **Prohibit the Use of Pesticides and Rodenticides:** Toxicants associated with cannabis production have been linked to the decline of rare/endangered species, including coho salmon, northern spotted owl, and Pacific fisher. The North Coast
cannabis producers should lead the nation and prohibit the use of all registered pesticides and rodenticides.

- **Halt the Conversion of Forestland:** Our forests are in danger. Conversion of forestlands and the fragmentation of forests with roads is a major threat. The Green Rush has caused mass conversion of forestlands and development into once large blocks of habitat. EPIC is concerned the CCVH ordinance will not slow or stop forest conversion; rather, the CCVH ordinance will likely increase forest fragmentation and conversion.

- **Impose Reasonable Caps on Operations:** One issue which touches many other issues addressed above is the size of allowable operations. Farm size impacts water usage/demand on local waterbodies, affects market dynamics which shape the Green Rush, and influences the development of forestlands.

For the sake of clarity, in our comments, issues are marked as either a “Major Comment,” indicating a significant or substantive issue or question, or “Minor Comment,” indicating a less pressing but still important matter. This is a somewhat imprecise method, however we felt it was important to make it clear the issues we felt were most pressing.

We look forward working together in the future to ensure that the cannabis industry comes into the regulatory light in such a manner that both benefits both farmers and the environment. Should you have any questions about anything contained in this letter, please do not hesitate to contact me at tom@wildcalifornia.org or (707) 822-711.

Sincerely,

Thomas Wheeler  
Program and Legal Coordinator

Cc: Virginia Bass, Ryan Sundberg, Mark Lovelace
Comments on Draft Ordinance

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Section 3: Findings and Declarations

Minor Comment: Please include more explicit findings concerning the social and environmental impacts of unregulated cannabis farming. For example, “the unregulated farming of cannabis in Humboldt County has resulted in significant environmental degradation, including water diversions, damming of spring and seeps, inappropriate application of pesticides, sedimentation from improper land grading and construction, and the conversion of forests to farms.”

Section 4:

Major Comment: EPIC is concerned that the definition of “cannabis,” in particular the language “the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed or resin” might encourage or
legalize the production of butane “honey oil.” In either Section 4 or another area of the ordinance, please explicitly state that butane extraction is expressly prohibited. We have seen too many examples of the dangers of butane extraction.¹

Section 6:

Major Comment: We raise the same concern as in Section 4 concerning hash oil production.

Section 8

249-3

Minor Concern: Use of Agricultural Commissioner as enforcement arm: EPIC understands that CCVH would like cannabis production to be viewed as any other form of agriculture, the choice of the Department of Agriculture and the Agricultural Commissioner as the enforcement arm is concerning. The Agricultural Commissioner is not known for vigorous enforcement and so the choice of the Commissioner is concerning as it can be interpreted as a subtle move to avoid enforcement. That said, with adequate funding and a charge from the public to rigorously enforce the law, EPIC believes that this may be a viable choice for enforcement.

Major Concern: EPIC has multiple major concerns with the term “lawful sources of water adequate for the cultivation area, in light of the irrigation methods and water conservation measures employed.”

1. Trucked Water: Transporting water is not a sustainable water solution. We are deeply concerned about the transfer of water between watersheds, the impacts of heavy water trucks on the county’s road system, the carbon emitted by water truck deliveries, and water theft and diversions associated with an unregulated bulk water system.² Please clearly state that trucked water is not a lawful and/or adequate water source.

² Water theft thought to be associated with water trucks has generated substantial media interest. See http://america.aljazeera.com/articles/2014/11/21/california-waterthieves.html (”Maybe so, but the North San Juan Fire Protection District in Nevada County, which had 8,000 gallons of water stolen from one station in early August, is taking no chances. The fire department has placed combination locks on its water valves, which slows fire response by about 30 seconds but protects the department’s water supply.”); https://news.vice.com/article/the-marijuana-green-rush-is-worsening-californias-water-wars (“People shut down their grow operations, bought water trucks and have changed from growing to supplying water to the other growers,’ Chip Perry, a consultant for medical marijuana company MC2, told NBC News.”); http://www.northcoastjournal.com/humboldt/humboldt-growers-bad-reputation/Content?oid=2355473 “(Two days later, a maintenance worker at Bridgeville Elementary School discovered that thieves had drained the school’s 20,000-gallon water tank, forcing
2. Water Storage: To the maximum extent allowable under state law, the ordinance should require water storage or proof of connection to established water district with sufficient supply to ensure other domestic uses are first met. Insofar as the ordinance requires compliance with the Regional Water Board waiver, water storage is mandatory under Tier 1 but not under Tier 2, which requires that water withdrawals not cumulatively impact the watershed. As EPIC stated in its comments to the Water Board, from our long experience evaluating cumulative impacts in the forestry setting, it is notoriously hard to perform a cumulative impacts analysis correctly. The ordinance, as it appears to rely on the flawed waiver to ensure that impacts to waterbodies from diversions/withdrawals are not significant, thus does not protect water quality impacts from diversions/withdrawals.

3. Determining Adequacy: The ordinance requires lawful sources of water adequate for the cultivation area, however fails to define or articulate how to determine adequacy. This will pose a challenge for enforcement. Many variables influence water consumption/water needs. These include practices within the grower’s control, such as choice of irrigation method or desired plant size. Other factors, such as wind speed, ambient air temperature, humidity, etc, also influence plant water needs. Furthermore, determining adequacy is particularly difficult early in the season. Because site audits will need to occur throughout the year, as opposed to just near harvest time, site auditors will have other challenges. For example, a site auditor might visit before the forbearance period imposed by the Regional Board waiver; if the grower has not filled her storage tanks, but still has an opportunity to do so, how is the auditor supposed to determine adequacy. Determining what is adequate is a large task and the ordinance does not provide clarity in that assignment.

Major Concern: “Cultivation and operation plan”: 249-3(3) requires a cultivation and operation plan but does not define or demonstrate what these plans might look like. Much of the enforcement appears to be related to such a plan. For example, if an enforcement agent were to do the annual site visit early in the season, the enforcement agent would be forced to rely on the cultivation plan to ensure things such as adequate water storage for the area under cultivation.

Minor Concern: 24 hour notice period: EPIC has some concerns with the 24 hour notice period. A farm not otherwise in compliance may hide significant evidence during the notice period.

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the campus to close. This kind of theft isn't rare. Residents of Weott recently awoke to loud banging sounds in the night because someone was draining water from the community's hillside tanks so rapidly it was creating suction in their pipes. Recently, volunteer firefighters in Honeydew had to remove the handle from the station's pump to deter thieves. And virtually every week lately the Sheriff's Office raids a grow that's been siphoning water from streams or rivers, leveling hillsides and scattering pesticides."
http://lostcoastoutpost.com/2014/sep/25/shelter-cove-water/ ("In order to steal the 146,802 gallons of water reported taken from a Shelter Cove vacation residence recently, a thief would have had to turn the tap 'full open 12 hours a day for 30 days,' said Philip Young, general manager of Shelter Cove's Resort Improvement District [RID]. The alleged theft which occurred between July 29 and August 29 appears to have occurred at a faucet outside the home."
period, such as removing withdrawal pipes, topping-off water tanks, and hiding banned pesticides. That said, EPIC recognizes that other businesses have a similar notice period and that rigorous enforcement efforts will likely spot bad actors.

Major Concern: EPIC urges CCVH to ban harmful chemicals associated with cannabis production. First, EPIC notes that the application of pesticides for marijuana production is illegal pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which prohibits “off-label” uses of pesticides. As no pesticides have cannabis production as an accepted use, the use of pesticides is de-facto prohibited and would not be permitted as “banned” under the CCVH ordinance. However, in the case that other pesticides used on similarly consumed products, such as tobacco are approved, EPIC is concerned that the CCVH ordinance would allow such pesticides. Furthermore, it is unclear whether application of rodenticide is prohibited under FIFRA and the ordinance. As has been shown, rodenticide associated with cannabis production has been found in fatal quantities in Pacific fishers, a candidate species under the federal and state Endangered Species Act. While typically associated with trespass cannabis production, the Pacific fisher’s range overlaps private cannabis operations where rodenticide has been found. Please explicitly forbid the use of rodenticide in cannabis production.

Minor Concern: “Security plan,” as used in 249-3(8), is not defined. Please define what constitutes a security plan. Other cannabis regulations, such as those developed in Washington State and Colorado, may provide a reasonable example of regulatory language.

249-4: Annual Inspections

Major Concern: We appreciate the annual inspection and certification of cultivation sites. If the Agricultural Commissioner fails to inspect a site, however, what are the consequences? If a funding ordinance does not pass and the agency remains radically understaffed or if conflicts arise, as they are likely to do, and the agency does not have sufficient staff to

249-5: Regulations

Minor Concern: While we appreciate that the Agricultural Commissioner has the authority to promulgate regulations to effectuate this ordinance, EPIC has concerns about this section, namely that the Agricultural Commissioner will not promulgate regulations. There are a number of undefined provisions in this ordinance. Insofar as possible, please attempt to define terms and program features as specifically as possible.

Section 9: Consistency with General Plan

Major Concern: We are concerned about tying the future hands of the Board to effectively regulate cannabis production in the state. Furthermore, we are concerned with the
potential conflict between this section and Section 14 which allows the Board of Supervisors to amend this ordinance. We recommend that this section be removed.

Section 10:

178.1: Area under Cultivation

EPIC has numerous concerns with this section of the ordinance. In short, we believe that the land use categories are too large, may not provide relief from further proliferation of farms associated with the “green rush,” and are inconsistent with other proposed regulations.

EPIC offers a number of major concerns and recommendations of ways to improve this section of the ordinance:

1. Make regulation based on the area around discrete cultivation sites, not plant canopy. First, defining cultivation areas as the perimeter around discrete cultivation sites would be easier for the Agricultural Commissioner to enforce; plant canopy would be nearly impossible. By using the area around discrete cultivation sites, the Department could perform site audits at nearly anytime of the use. The Agricultural Commissioner would be able to simply measure an area of ground instead of making estimates at plant sizes and plant amounts to make a guess at final canopy size. This should give greater clarity to both the farm and the regulator as cleared area is a more objective standard to enforce. If based on canopy size, it would be difficult for an inspector to determine future plant growth early in the season. If an inspector were to visit a farm in June, the inspector would be forced to make a guess at future plant growth. This subjectivity does not benefit the inspector, whose job is made harder by having to take into account various factors which influence future plant growth, but also the farmer. The farmer is subject to the whims and discretion of the site auditor. Operations occurring near the cutoff lines—likely a high number, given the incentive to maximize production while still remaining in a lower regulatory tier—are especially at risk. Estimates off by a few hundred sq. feet are likely and could result in needless violations, placing operations at risk for corrective action. Second, canopy size encourages more spread out operations. If based on canopy size, there is an incentive to spread plants further apart to ensure that each plant receives the maximum amount of light. As Supervisor Lovelace pointed out at the Board of Supervisors meeting at which CCVH presented the draft ordinance, an operation of plants at 10,000 sq. ft., if spaced reasonably apart, could easily cover 2 full acres. EPIC is concerned about the physical size of operations, especially in forested landscapes. Canopy size based regulation would only encourage greater forest fragmentation. Third, basing the system on the perimeter around discrete cultivation sites makes the ordinance...
consistent with the proposed Water Board waiver. EPIC believes that consistency between regulations will help with issues of compliance.

2. **Revise Categories:** EPIC recommends the following categories, as consistent with the Water Board’s proposed waiver:

<table>
<thead>
<tr>
<th>Current CCVH Ordinance</th>
<th>Recommendation</th>
<th>Rationale</th>
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</thead>
<tbody>
<tr>
<td>&gt;600 sq. ft. of canopy space</td>
<td>&gt; 600 sq. ft. of cultivation area defined by the perimeter around each discrete cultivation site</td>
<td>Defining cultivation area as the cleared space around discrete cultivation sites provides a clearer guideline for enforcement, both for the farmer and for the regulatory agency. Furthermore, as &gt;600 sq. ft. is exempt from the ordinance, there needs to be a way to remotely ensure that these small operations are below 600 sq. ft. By using cleared space as opposed to canopy space, aerial photography/GoogleEarth may be used by enforcement agencies to ensure compliance.</td>
</tr>
<tr>
<td>Over 600 sq. ft. but not more than 6,000 sq ft. measured by canopy size. Ministerial permit for existing operations; conditional use permit for new operations</td>
<td>Over 600 sq. ft. but not more than 5,000 sq. ft. of cultivation area defined by the perimeter around each discrete cultivation site. Ministerial permit for community members at time of enactment; conditional use permit after one year of operation.</td>
<td>It is important to maintain consistency between the proposed ordinance and the Regional Water Quality Control Board’s WDR waiver. According to the proposed waiver, Tier 1 sites are those less than 5,000 sq. ft, as measured by the perimeter around each site. We appreciate and encourage keeping the one year window for compliance and requiring a conditional use permit for those who fail to become permitted within one year.</td>
</tr>
<tr>
<td>More than 6,000 sq. ft. but no more than 10,000 sq. ft. measured by canopy size. Ministerial permit for</td>
<td>&gt;5,000 sq. ft. of cultivation area defined by the perimeter around each discrete cultivation site</td>
<td>EPIC recommends that conditional use permits be required for all operations greater than 5,000 sq. ft.</td>
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</tbody>
</table>
3. **Limiting parcels already used for cannabis cultivation:** The draft ordinance uses prior cannabis operations as a functional way to stop and/or the “green rush.” While we appreciate the use of sideboards, particularly those that favor members of our community over outsiders moving to Humboldt County to “get rich and get out,” as we have too frequently seen, we are concerned about excluding other members of the community who currently do not grow cannabis but may be well situated for production and may further the intent to create a productive network of small growers. We have heard from numerous small landowners, such as farmers of other agricultural products, who would like to add small scale cannabis production to their diverse operations if there was a regulated and safe way. We feel that excluding these individuals is unfair. Furthermore, as EPIC is concerned about forest conversion and fragmentation, we value cannabis production be accomplished on zoned agricultural lands and we believe language differentiating between “parcels not actively used for cannabis cultivation” hinders the effectuation of this value. EPIC recommends deleting language differentiating between prior cannabis cultivators and other local landowners.

4. **Lawful/Adequate Water:** The language concerning “existing, lawfully permitted and functioning on site well” provides some clarification for the earlier issue of defining what is “lawful” and “adequate” water. However, that term still needs to be defined with more clarity. Further, the use of an otherwise lawful and permitted onsite well does not mean that there won’t be issues related to impacts to watersheds, hence the importance of conditional use permits for large operations and ministerial permits for only smaller operations.

5. **Application within One Year:** Please clarify this section As EPIC reads it, after one year, if a site has not applied, they must be permitted through a conditional use permit only. If this reading is correct, EPIC supports this provision. We feel that this should adequately cap growth of marijuana grows within the industry. That said, as we expressed above, we are concerned about individuals who apply for but do not meet the requirements within two years. These individuals should be treated as if they had never submitted a ministerial permit in the first place and also be subject to the conditional use permit process after one year.
Major Concern: As you are aware, EPIC has previously expressed our concern with this section. If it is not removed, EPIC will actively oppose the CCVH ordinance. Furthermore, should the ordinance pass, EPIC will file litigation against the County to challenge this section of the ordinance.

To recap, in 1976 the State passed the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act. The Taxation Reform Act created, among other things, “timberland preserve zones” or TPZ, where timberland was the “highest and best use of the land.” Govt. Code 51110. Govt. Code 51115 states that TPZ areas “shall be zoned so as to restrict their use to growing and harvesting timber and to compatible uses. The growing and harvesting of timber on those parcels shall be regulated solely pursuant to state statutes and regulations.” Counties were given a limited role in determining what constituted a compatible use; Govt. Code 51111 states that the Board of Supervisors, “[o]n or before October 1, 1976,…shall adopt a list and a detailed description of additional compatible uses for parcels zoned as timberland production.” Note, the statutory language does not say that the Board may later amend the list of compatible uses. Whether the County retained that authority past October 1, 1976 is an open question.

In 1982, the Legislature amended the law regarding TPZ lands. The Timberland Productivity Act first changed the name of this zoning category from “timberland preserve zones” to “timberland production zones” to clarify that these areas are meant for working forests. Govt. Code § 51103. Second, the Act defined “compatible uses” to mean “any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber.” Govt. Code § 51104(h). The Act also contained a non-exhaustive list of activities which were compatible uses; notably among them was “grazing” but not other forms of agriculture. See Govt. Code § 51104(h)(5). This suggests that grazing, but perhaps not other forms of agriculture, are valid compatible uses. This further suggests that other forms of agriculture, which are seemingly permitted pursuant to Humboldt County Code defining compatible uses

Cannabis, an extremely high-value crop with multiple possible rotations per year, is not a compatible use with growing and harvesting timber. First, cannabis operations have already driven up the price of timberland within the County. For example, Santuary Forest was forced to overpay for timberlands left degraded by “Buddhaville,” the infamous cannabis operation along border of Mendocino County and Humboldt County, because cannabis operations had driven up the price of the land. In talks with Humboldt Redwood Company and Green Diamond Resource Company, both Mike Jani and Gary Rynearson have expressed concerns that inflated timberland prices will make it more difficult to both acquire additional forestlands and to retain their current holdings if land values exceed standing timber values on the land. Second, as we point out in our MyWord editorial, cannabis farming and timberland production simply do not fit together: “It’s simple: trees provide shade, marijuana plants need light.” While a bit of a simplification of the problem, the point still stands. To effectively grow cannabis, timberlands often need to be converted.
EPIC urges CCVH to remove this section of the ordinance. If this section is not removed, EPIC will actively oppose the ordinance, and if passed, will file litigation against the County.

Chapter 7

817.6

Minor concern: Numerous terms and words are unclear and could benefit from definition or further clarification. For example, what qualifies as “proof” of lawful water sources? What is a “Plan of Operation”?

817-14:

EPIC appreciates the inclusion of this provision.

Other Recommendations:
Make Ordinance Contingent on Enforcement Funding

EPIC highly believes that the ordinance should only take effect if there is adequate money for enforcement of the ordinance. Currently, there are a number of regulations which would purportedly apply to cannabis operations. However, due to a lack of enforcement, these regulations are essentially meaningless. For the CCVH ordinance to have any value, enforcement of the ordinance is necessary. EPIC urges CCVH to include a provision which would make the ordinance effective contingent upon the passage of a funding mechanism. This could be added to Section 15 which concerns the effective date of the regulation. Without this provision or something similar, EPIC will actively oppose the ordinance.