



HUMBOLDT COUNTY GROWERS ALLIANCE

May 18, 2023

Dear Supervisors and Staff,

On behalf of the Humboldt County Growers Alliance, we are writing today in response to Shute, Mihaly, and Weinberger's April 20, 2023 letter to the County regarding the Humboldt Cannabis Reform Initiative (HCRI).

Our analysis below focuses on the many negative, and often catastrophic, policy impacts of the HCRI, but does not address issues related to elections law which are raised in the Shute Mihaly letter. Instead, issues pertaining to elections law are addressed in a separate letter authored by Sanders Political Law, a firm retained by HCGA to address elections law issues.

From a policy perspective, we believe the Shute Mihaly letter deeply and severely mischaracterizes the impact of the HCRI on small farmers. We believe it's important to note that Shute Mihaly are the authors of the initiative, and have been retained by the proponents who are seeking to convince voters to approve the initiative. It is therefore strongly in Shute Mihaly's interest to characterize the initiative in the best possible light - and the county's critical analysis in the worst possible light - even if an objective reading of the initiative would lead to a different conclusion.

With this in mind, the goal of this letter is to respond to what we believe are major flaws within the Shute Mihaly analysis, with the hope that this will help to inform both the public and the county on the likely effects of the HCRI on licensed cannabis farmers were it to pass.

HCGA has previously published a comprehensive analysis of the HCRI [here](#). Below, we expand upon this analysis in relation to Shute Mihaly's April 20 letter.

The Definition of "Expansion" in the Initiative Dramatically Restricts the Addition of Any New Structure on a Farm - Not Just Water Storage or Solar

One of the most critical flaws in the HCRI is its amendment of the General Plan to include an extremely broad definition of "expansion," which includes any increase in "the number or size of any structures used in connection with cultivation."¹

The Shute Mihaly letter focuses narrowly on whether water storage or solar installation would be considered "expansion" as "structures" under the HCRI's text. However, the Shute Mihaly analysis does not contest that many other structures which are pragmatically necessary on working farms would be encompassed under this definition of expansion.

¹ Planning Department Analysis, page 14.



The Planning Department’s analysis specifically mentions greenhouses as one example of an additional structure that would be restricted under the HCRI’s definition of expansion; however, it is critical to note that other essential structures would be encompassed under this definition, including:

- Building a new drying shed, or replacing an old drying shed, with a new, well-insulated structure to improve product quality and reduce energy consumption.
- Building or improving structures to engage in on-farm trimming or packaging to ensure greater product quality, similar to “estate bottling” in wine.
- Building a new nursery or clone room to preserve unique on-farm genetics, or replacing an old nursery or clone room to improve energy efficiency.
- Building a new shed for storage of fertilizers or farm equipment.
- Adding new structures to establish on-farm distribution or sales.
- Building a permanent ADA-compliant bathroom.
- Building an additional dwelling unit or employee housing.

If applied to any other land use context, these restrictions would be self-evidently absurd. The County would not seek to restrict ranchers from building a new barn, or a homeowner from building a new garden shed or addition, by tying these activities to restrictions which cannot practically be complied with. As with other land uses, working cannabis farms need the flexibility to make improvements on their farms, modernize infrastructure, and adapt to environmental and market conditions. Nothing in the Shute Mihaly letter, however, defends this approach or discusses the impact of the initiative’s “expansion” definition outside the narrow context of water storage and solar infrastructure.

Interpretation of “Expansion” as Including Water Storage and Solar Reflects Statements from the Proponents, and is Not “Extreme”

The Planning Department analysis notes that the installation of water storage and solar would likely be considered “structures” and would therefore be restricted under HCRI.² The Shute Mihaly letter disagrees, and characterizes this interpretation as “extreme.”

Ironically, however, this “extreme” interpretation has repeatedly been advanced, in writing and in multiple outlets, by the proponents themselves.

The proponents’ website currently states that “adding new water tanks might be interpreted as expansion,” and proceed to argue why they believe this is “appropriate” in the context of the initiative’s Category 4 road requirements.

² Planning Department Analysis, page 15.



HUMBOLDT COUNTY GROWERS ALLIANCE

Would the Initiative interfere with a Cal F&W requirement to add new water tanks or trigger a certification that Category 4 road standards have been met?

Answer:

Adding new water tanks might be interpreted as an expansion and might require modification of an existing permit. Where an existing farm had previously self-certified that all roads met the Category 4 standard, a new expansion might require an engineer to verify that claim, which would be appropriate. Poorly designed and maintained roads are a huge environmental and water quality problem. People without adequate expertise should not be making self-interested judgments about whether their roads meet technical standards.

Source: <https://cannabisinitiative.org/initiative/> website as of May 15, 2023.

Further, upon reviewing other public statements made by the proponents, the notion that the initiative seeks to restrict water storage is not so extreme as the letter suggests.

Prior to qualifying the initiative to the ballot, HCRI proponents directly and repeatedly criticized water storage due to concerns that it would interrupt their local viewshed. In an October 22, 2021 op-ed in the Eureka Times-Standard, the HCRI's primary proponent complained that, if a local Kneeland cultivation project were to move forward, "*panoramic views would be replaced by a sea of water tanks.*"³

A petition to stop this same cultivation project in Kneeland, signed by 814 people, similarly complained about impacts to "*adversely affected property owners, who will suffer from this water catchment impound, visual blight, [and] increased aggressive traffic.*"⁴ Concern regarding water catchment is further echoed in a letter to Redheaded Blackbelt by another Kneeland neighbor opposed to cannabis cultivation.⁵

The record of advocacy by HCRI proponents reflects a concern with any cannabis cultivation in their neighborhood, not with large-scale or environmentally destructive cultivation in particular. Consequently, the text of the HCRI is written primarily in opposition to legal cannabis cultivation broadly, not to large-scale or environmentally problematic cultivation specifically.

³ <https://www.times-standard.com/2021/10/22/my-word-time-for-a-moratorium-on-cannabis-permitting/>

⁴

<https://www.change.org/p/humboldt-county-supervisors-save-kneeland-water-for-residents-wildlife-and-fire-suppression-not-a-mega-grow>

⁵ <https://kymkemp.com/2021/09/27/letter/>



HUMBOLDT COUNTY GROWERS ALLIANCE

The notion that the county's interpretation of expansion is "extreme" is also contradicted by other aspects of Shute Mihaly's letter. While the letter at several points refers to the county's interpretation of expansion as "extreme," on page five it instead describes it as a "literal interpretation" with "perverse" effects (p. 5). We agree with this latter characterization. If Shute Mihaly is concerned with the county's "literal" interpretation, they should not have written an initiative which restricts water storage and solar infrastructure in its plain wording.

The Shute Mihaly Letter Includes Multiple Misleading Claims Regarding the Initiative's Catastrophic Category 4 Road Provisions

Restrictions on "expansion" in the HCRI must be read in conjunction with section CC-P13's new General Plan requirement for Category 4 or equivalent roads on "expanded" cultivation sites.

In short, the HCRI defines "expansion" so broadly as to encompass any normal activity on a working farm, and then requires any "expanded" farm to meet Category 4 road standards.⁶

Applying Category 4 road requirements to pre-existing cultivation sites is perhaps the single most catastrophic provision contained in the HCRI. Local engineers have estimated the cost of Category 4 improvements at \$200,000-\$250,000 per mile, and many county-maintained roads do not meet a Category 4 standard.⁷ The requirements imposed by this section of the HCRI are simply non-functional and not possible for nearly all small farmers to comply with.

The Shute Mihaly letter misleadingly states that "The Ordinance already requires" Category 4 or equivalent roads on licensed cultivation sites.

In reality, however, there is no "ordinance" (singular) for cannabis cultivation in Humboldt, but rather multiple ordinances; and the CMMLUO, which governs pre-existing cultivation sites in Humboldt County, does not require Category 4 or equivalent roads. According to the Planning Department analysis, 739 of 1,027 cannabis cultivation permits in Humboldt are pre-existing.

The Shute Mihaly letter proceeds to quote from the *other* Humboldt cannabis ordinance, the CCLUO - which governs "new" cultivation - to substantiate that Category 4 roads are already required; again, missing the key point, that pre-existing cultivators are not currently required to abide by this standard.

⁶ Planning Department Analysis, page 21.

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<https://kymkemp.com/2022/11/14/for-or-against-in-2024-the-controversial-cannabis-reform-initiative-is-on-the-ballot-for-humboldt-county-voters/>



HUMBOLDT COUNTY GROWERS ALLIANCE

The Shute Mihaly letter then omits critical context from the initiative by only quoting part of the language in Section CC-P13, the section of the initiative which would establish Category 4 road requirements in the General Plan. The letter quotes the following:

“a licensed engineer’s report shall be required to support a conclusion that the road meets or exceeds the Category 4 standard”

Reading Section CC-P13 in its entirety, however, creates a very different impression:

CC-P13: Roads. Where any parcel on which a permit for new or expanded commercial cannabis cultivation activities is proposed is served by a private road without a centerline stripe, a licensed engineer's report shall be required to support a conclusion that the road meets or exceeds the Category 4 standard (or same practical effect).

Shute Mihaly’s decision to omit the critical section of their own initiative is puzzling. Read as a whole, it is clear that the Category 4 road requirement in the HCRI is applicable to all new or expanded cultivation, whether under the CCLUO or CMMLUO: keeping in mind, again that the HCRI defines “expanded” so broadly as to cover nearly any activity on a working farm.

The Shute Mihaly Letter Does Not Address the Catastrophic Policy Impact of Classifying All Farms Over 10,000 Square Feet as “Large-Scale” in the General Plan

The HCRI amends the General Plan to include the following provision:

CC-G2: Prevent large-scale grows that damage the environment and harm the community. Limit new and expanded commercial cannabis cultivation permits to Outdoor Cultivation, Mixed-light Tier 1 Cultivation, and Nurseries with a maximum cultivation area of 10,000 square feet.

The Shute Mihaly letter narrowly addresses whether defining cultivation sites larger than 10,000 square feet as large-scale is “arbitrary.” However, the letter does not grapple with the *policy* impact of classifying the 41% of cultivation sites in Humboldt County over 10,000 square feet as “large-scale,” and then amending the General Plan to state that these farms inherently “damage the environment and harm the community.”

Many of the cannabis farms in Humboldt which are best-known for their environmentally sustainable practices and community involvement are over 10,000 square feet. Many cultivate outdoors, in the full sun, on multi-generational farms, and have obtained additional environmental certifications substantiating the quality of their practices. Additionally, all cannabis farms in Humboldt, regardless of size, are required to abide by voluminous regulatory and environmental requirements from county and state agencies.



HUMBOLDT COUNTY GROWERS ALLIANCE

There is nothing inherently environmentally destructive or harmful about a farm simply because it is over 10,000 square feet; any such claim can only be informed by stereotypes of cannabis cultivation as inherently harmful, without regard for an individual assessment of the practices of each particular cultivator.

Because the General Plan is the guiding document informing all other county land use decisions, there are potentially far-ranging consequences to defining cultivation over 10,000 square feet as inherently harmful. In fact, Section CC-IM2 of the HCRI would *require* the Board of Supervisors to adopt additional ordinances that implement its General Plan language:

CC-IM2 Ordinance Consistency. The goals, policies, standards, and implementation measures set forth in Section 4.9 of the General Plan shall control over any conflicting provision of the Humboldt County Code or Zoning Regulations. As soon as possible, but no later than two years after the adoption of the Humboldt Cannabis Reform Initiative, the County shall revise the Humboldt County Code and Zoning Regulations to establish consistency with the Initiative, including all goals, policies, standards, and implementation measures set forth in Section 4.9 of the General Plan.

The HCRI's Restriction on "Multiple Permits" Would Have Severe Negative Impacts on Small Farmers, Even Under Shute Mihaly's Interpretation

The Planning Department analysis and Shute Mihaly letter disagree as to whether the restriction on a single person or parcel holding "multiple permits" in Section CC-P5 of the HCRI applies only to cultivation permits, or whether it applies to permits more broadly. This issue is discussed in the Sanders Political Law letter, which supports the county's interpretation on this issue in light of rules for statutory construction.

Even if the proponents' interpretation is correct that CC-P5's limitation on permits is limited to "cultivation," however, the effects on small cannabis farmers would still be severely negative. The definition of "cultivation" under the initiative explicitly includes both nurseries and processing activities, clearly prohibiting these additional permits from being held by a cultivator under CC-P5 even if the proponents' interpretation is granted.

Under the existing cannabis regulatory framework, the segmentation of farmers into only a narrow set of cultivation activities has been one of the major factors preventing the development of a craft Humboldt cannabis market. Similar to artisanal wine producers who bottle wine on-site to guarantee quality, or producer cooperatives which engage in value-added activities in a centralized and cooperatively-owned facility, exercising greater control over the production and distribution process is a major component of bringing high-quality, small-farm craft cannabis products to consumers.



Specifically, the ability to hold additional permits for both nurseries and processing is critical to building Humboldt's long-term viability in differentiated, craft-scale cultivation.

Nursery licenses are critical to developing and distributing specialty genetics that hold the key to differentiating small-scale, craft cannabis production. Because state regulations (specifically, DCC regulation §16300(c)) prohibit a cultivation license holder from distributing seeds or immature plants without a separate nursery license, cultivators are not able to engage in any value-added activity related to their specialty genetics - or even transfer genetics on or off their farm - without obtaining a separate nursery license. The HCRI's proposed prohibition on holding both a cultivation and nursery license is senseless, and would effectively lock cultivators out of any ability to distribute the specialty genetics which are one of the primary factors differentiating craft Humboldt cannabis.

Processing licenses, including cooperative processing licenses, are also critical for quality control and appellation development for small farmers. For years, HCGA has emphasized the critical importance of access to localized processing (trimming) services. In a position paper published in 2021, we wrote:⁸

"When cannabis is trimmed by a third-party company, farmers lose physical custody of the product and the ability to conduct oversight for quality control. Additionally, draft regulations for California's cannabis appellations program require that cannabis must be fully trimmed within appellation boundaries in order to legally use the appellation name. Without access to on-farm processing, or other local processing options, many farmers will be unable to meet appellation standards."

These policy goals are embedded in current Humboldt county land use policies: specifically, in Section 55.4.7 of the CCLUO, which establishes requirements for "Cannabis Support Facilities" including "Off-Site Processing, Enclosed Nurseries, [and] Community Propagation Centers." The CCLUO envisions these nursery and processing "support facilities" as being located on centralized sites, appropriately zoned, and accessible to many farmers. The HCRI, however, would prohibit these facilities from being cooperatively owned by existing farmers.

The suggestion in the Shute Mihaly letter to combine cultivation, processing, and nursery activities into a single permit does not meaningfully resolve this concern. If the respective cultivation, processing, and/or nursery permits are not located on the same property - for example, in the case of a cooperative processing facility owned by multiple farmers - it is clearly not possible to combine several activities into a single permit. Similarly, a farmer who seeks to obtain a nursery permit to be able to *distribute* their genetics - not just utilize them on farm -

⁸ <http://hcgga.co/wp-content/uploads/2021/02/HCGA-On-Farm-Trimming-Letter-2.19.21-1.pdf>



HUMBOLDT COUNTY GROWERS ALLIANCE

would be required to obtain a separate permit, an activity which would be prohibited under the HCRI.

For these reasons, while the HCRI's proponents' may have intended Section CC-P5 to prevent "license-stacking" loopholes that increase cultivation area, the actual effect of this section would be to prevent precisely the cooperative and value-added activities necessary for a craft, differentiated, small-scale cannabis industry.

The Shute Mihaly Letter Foreshadows Extensive Litigation if the HCRI Were to Pass

Shute Mihaly's adversarial letter foreshadows the inevitability of extended and protracted litigation if the HCRI were to pass, putting the county and taxpayers on the hook for the initiative's poor drafting.

The HCRI spans over thirty pages of dense and complex legal language. In response, the Planning Department has issued a 27-page analysis, which has now resulted in a 15-page legal memo from the initiative's proponents. In response, HCGA has felt it is necessary to retain an attorney to provide an additional 11 page legal analysis rebutting these claims, which has been provided as a separate document.

A disproportionate amount of this back-and-forth has been dedicated to what the initiative's provisions "really mean," and to whether and how the initiative can be amended by the Board of Supervisors. Should the initiative pass, there is no reason to believe that these disagreements, or the adversarial tone accompanying them, would subside. Regardless of how the county interprets the initiative in implementation, stakeholders within the county - whether neighbors, cannabis farmers, environmental groups, or other members of the public - will be incentivized to interpret the initiative differently, and seek to resolve these differences through litigation. As is further discussed in the Sanders Political Law letter, this litigation risk is further heightened by the initiative's extremely complex and restrictive language on potential amendments.

The Board of Supervisors Should Vote Formally Oppose the HCRI

The Board of Supervisors has now had extensive opportunity to hear from the proponents and critics of the HCRI, as well as from the Planning Department, on the likely impacts of the HCRI were it to pass. The HCRI is a highly complex document, and deliberation on the HCRI's real meaning and consequences has therefore been similarly complex and far-ranging.

In the interest of cutting through this complexity and speaking straightforwardly, however, we believe the following conclusions are clearly supported by the Planning Department analysis and a thorough legal and policy analysis of the HCRI, and have not been meaningfully rebutted



HUMBOLDT COUNTY GROWERS ALLIANCE

by the proponents or their attorneys. The below summary is not intended to include all harmful consequences of the HCRI, but only to briefly reiterate some of its most damaging provisions:

1. The HCRI defines “expansion” so broadly as to encompass nearly any activity on a working farm.
2. The HCRI then requires “expanded” farms of any size to abide by Category 4 road or equivalent standards which, in nearly all cases, are not possible to comply with. This provision would be catastrophic for small farms in Humboldt. The initiative would also prohibit farms over 10,000 square feet from “expanding” under any circumstance.
3. The HCRI would amend the General Plan to define all farms over 10,000 square feet - 41% of existing permitted farms in Humboldt County - as inherently damaging to the environment and harmful to the community, and require the county’s cannabis ordinances to be amended to reflect and implement this General Plan statement.
4. The HCRI would prohibit farmers from holding multiple permits, such as nurseries and processing facilities - and likely other permits as well - that are the key to retaining added value for craft products and developing appellations.
5. The HCRI would provoke extensive and protracted litigation on its complex, vague, and poorly-drafted legal provisions.

In light of these findings, we believe it is evident that the HCRI would throw Humboldt’s cannabis ordinances into chaos, with devastating effects on the environmental, economic, and equity goals of a functional cannabis program.

For these reasons, we urge the Board of Supervisors to vote to formally oppose this initiative.

Sincerely,

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