HUMBOLDT COUNTY
GROWERS ALLIANCE

Re: Concerns with Text of Proposed County Ballot Measure

November 27, 2023

Dear Supervisors and Staff,

On behalf of Humboldt County Growers Alliance, we are writing to express our significant concern with the text of the proposed cannabis measure on tomorrow's agenda.

In short, the revised text of the proposed measure now adds a wide range of additional and complex policy directives compared with the November 8 draft, while simultaneously prohibiting the Board from making any future amendments to most of these provisions.

While not posing the same existential threat as Measure A, these provisions threaten to materially harm Humboldt's cannabis program - particularly for smaller farms, who are significantly and sometimes uniquely impacted by most of the proposed amendments[1] - while locking the Board out of the ability to amend problematic provisions in the future.

Whether drafted by a San Francisco law firm or the county, establishing complex land use policy by ballot measure poses the same potential risks: the creation of inflexible policy, developed on rushed timeframes, without adequate public input. In light of these dangers, the Board should adopt a cautious approach by keeping complex policy directives to a minimum, retaining flexibility to amend the ballot measure, and considering legislative ordinance changes as an alternative policy option.

As stated in our previous letters, the most straightforward path to accomplish this is to develop a simple, one-page competing measure that specifically caps new, large-scale cultivation: the same primary issue identified by the initiative proponents when gathering signatures for Measure A. Additional changes to cannabis land use can then be adopted by ordinance through a public process which is not limited by electoral timelines.

Most of The County's Proposed Measure Cannot be Amended by the Board Under Any Circumstance

At the last Board meeting on this topic on November 8, our understanding was that the Board's direction was to make all elements of the measure amendable by a 4/5ths vote of the Board.

[1] Note that the only provision remaining in the county's proposed initiative that affects specifically larger farms is the one acre cap, while the watershed caps, discretionary review requirements, and water storage and renewable requirements would affect farms of all sizes, and in the case of discretionary review requirements, would specifically raise barriers only for small farms.

This is not reflected in the current draft, which only allows the Board to amend the sections of the measure related to countywide and watershed-based permit caps.

Other provisions included in the now ten-page proposed measure - including 1) special permit requirements for small farms, 2) caps on total cultivation size per farm, 3) direction to adopt water use criteria, 4) direction to adopt renewable energy mandates, 5) the redefinition of "cultivation site," and 6) the specific wording of provisions related to non-conforming status - would not be amendable without another ballot initiative. Further, it is unclear to us if the Board would also be prohibited from amending the ten pages of the current ordinances readopted by the proposed measure.

The current approach risks replicating the same dangers as those created by Measure A: locking the Board out of the ability to address unintended drafting errors, disagreements over interpretation, or evolving market or environmental conditions, and incentivizing either litigation or creation of additional ballot measures as the only remaining mechanisms to address disputes. The county is already familiar with these dynamics as a result of the successful litigation against Measure S.

To address this, Section 4 of the proposed measure should be amended to allow all provisions of the initiative to be amended by a 4/5ths vote of the Board. This would not limit the ability for the Board to also require further environmental review to amend the sections of the ordinance specifically related to permit caps.

Global and Watershed-Based Permit Caps Risk Prohibiting 1) New Small-Scale Cultivation, and 2) Prohibiting Modest Expansion of Existing Small Farms

The staff report provides a choice to the Board to set a cap at either 1,736 or 1,400 permits. Importantly, in either case, this permit cap is established proportionally by watershed for both the number of permits and the total acreage of permits.

The below table in the staff report is critical for understanding the implication of a 1,400 permit cap that also establishes proportional watershed caps:

Applications and Permits	Applications and Permits Acreage	60% Permit Reduction Cap	60% Reduction Acreage Cap
297	102.78	260	89
30	29.15	36	12
110	58.21	134	46
48	18.2	64	22
101	44.39	68	23
111	49.26	134	46
168	70.73	144	50
50	16	56	20
410	125.8	292	100
38	25.41	34	12
9	1.07	8	2
206	75.69	170	58
1578	**616.69**	**1400**	**480**

What this table illustrates is that significant attrition would be required not just countywide, but also in nine of twelve watersheds, in order for either new permits *or* new acreage to be allowable in most watersheds. Even if county estimates regarding attrition are correct countywide, there is a high likelihood that this attrition will not be evenly distributed across watersheds, resulting in effectively permanent permit and acreage caps in many watersheds.

The choice between 1,400 and 1,736 permits, then, essentially comes down to a policy choice by the Board: does the Board intend to risk prohibiting new small-scale cultivators in specific watersheds from entering the legal market, and existing small-scale cultivators from modestly expanding their operations?

No policy or environmental rationale has been offered for this position, yet this is what is currently proposed in the text of the measure.

Instead, the primary concern expressed by the proponents of Measure A has been a “Green Rush” of permits up to the existing cap of 3,500. This concern is equally addressed by a cap of 1,736 as compared with a cap of 1,400.

Do Water and Renewable Energy Provisions Risk Litigation?

Section 2 of the proposed measure requires the Board to adopt future policy regarding “sustainable use of ground and surface water resources” and “mandates for use of renewable energy.”

As with provisions in Measure A, we’re concerned that the vague nature of these directives risks future litigation. For example, if the Board enacts additional regulations on water resources

pursuant to this provision, can the county subsequently be sued on the grounds that these provisions are not “sustainable” enough?

“Mandates For Use of Renewable Energy” Is Overly Prescriptive and Ignores Relative Energy Consumption

Energy usage by cannabis farms varies incredibly widely based on production method. Indoor and mixed-light 2 production utilize large quantities of artificial light and energy, while sun-grown outdoor cultivation typically utilizes minimal energy.

Given these differences, we view the relevant environmental question as the net amount of non-renewable energy usage by a farm, more so than the presence or absence of a renewable energy system.

The directive to establish renewable energy “mandates” elides this issue. Would farms be required to develop expensive alternative energy systems even if they utilize minimal energy on a sun-grown cultivation site? Further, how does total energy usage factor into this “mandate,” and what scope of a required mandate would be necessary for the county to avoid litigation?

New Special Permit Requirements Specifically Add Costs For Small Farms

As written, the proposed measure would require a special permit for all cultivation sites over 2,000 square feet. Ironically, this provision goes even further than provisions in Measure A, which only adds discretionary permit requirements for farms over 3,000 square feet. This risks adding significant new costs for postage-stamp size cannabis farms, while large-scale, non-cannabis agricultural activities continue to be permitted by right.

Remove Cap Exemption for MG-Zoned Properties

As written, the proposed text of the measure appears to retain an existing exemption for MG-zoned properties from the permit cap. To the extent that other zoning districts are subject to new caps, we do not support providing MG-zoned properties with an exemption from these caps.

In weighing the above-identified issues collectively, the Board should consider that there is a significant likelihood that Measure A may not appear on the March 5 ballot. Litigation against Measure A will be considered in Humboldt County Superior Court tomorrow morning, prior to the Board meeting on this issue tomorrow afternoon. At this hearing, a judge may choose to rule for the plaintiffs and strike Measure A from the ballot prior to Board consideration of this item tomorrow. Alternatively, the judge may delay his ruling until as long as December 28. In either case, the rationale for an alternative ballot measure becomes much lower in a world where Measure A does not appear on the ballot, as there would no longer be a need to present voters with a choice between measures.

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In sum, we encourage the Board to exercise caution on this topic, and to avoid locking hastily-considered policy into place under the pressure of a limited timeline.

Thank you for your consideration,

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