

ATTACHMENT A
CALAVERAS COUNTY
REGULATION OF COMMERCIAL CANNABIS OPERATIONS
FINDINGS OF FACT

I. INTRODUCTION

The Calaveras County Board of Supervisors (Board), in the exercise of its independent judgment, makes and adopts the following findings, as well as the accompanying statement of overriding considerations in Section XII, regarding the Calaveras County Regulation of Commercial Cannabis Operations (the Regulatory Ordinance) in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) and the CEQA Guidelines (Cal. Code Regs., Tit. 14, § 15000 et seq.).

II. STATUTORY REQUIREMENTS FOR FINDINGS

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same section provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” (Pub. Resources Code, § 21002.) Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, §21081, subd. (a); CEQA Guidelines, §15091, subd. (a).) For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(CEQA Guidelines, § 15091, subd. (a); Pub. Resources Code, § 21081, subd. (a).) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.” (See also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565.)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a Statement of Overriding Considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, §21081, subd. (b).)

Because the EIR prepared for the Regulatory Ordinance identified significant effects that may occur as a result of the project, and in accordance with the provisions of the CEQA Guidelines presented above, Calaveras County hereby adopts these Findings as part of the approval of the Calaveras County Regulation of Commercial Cannabis Operations. These Findings constitute the County’s best efforts to set forth the evidentiary and policy bases for its decision to approve the project in a manner consistent with the requirements of CEQA. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that come into effect with the Calaveras County approval of the Regulatory Ordinance. Moreover, because certain environmental impacts would be significant and unavoidable, the County also adopts a Statement of Overriding Considerations.

III. PROJECT BACKGROUND

Unregulated cannabis cultivation and related activities have been occurring in Calaveras County for decades. Even prior to the state’s adoption of the Medical Marijuana Regulatory and Safety Act (MMRSA) in September, 2015, the Board and County staff were working to develop an ordinance to regulate the cultivation of medical cannabis, but, for a time, were unable to establish clear policy guidance.

In early 2016, the Board directed County staff to prepare an ordinance that would regulate medical cannabis in the County. A draft regulatory ordinance was prepared and reviewed by the Board in February, 2016, and the County determined that an EIR would be necessary under CEQA. The originally-proposed regulatory ordinance included measures that would establish land use regulations for the cultivation, manufacture, testing, distribution, and storage of medical marijuana within the County. A Notice of Preparation (NOP), the first step in preparing the EIR, was published by staff on April 5, 2016.

On May 10, 2016, the Board adopted an urgency ordinance—the Urgency Ordinance Regulating Medical Cannabis Cultivation and Commercial Uses Involving Medical Cannabis. The purpose

of the urgency ordinance was to quickly establish land use regulations concerning the cultivation, manufacture, testing, distribution, transportation, and storage of medical marijuana in the County. Adoption of the urgency ordinance was considered necessary to address conditions that were creating public nuisances related to location, types, and size of marijuana cultivation sites and commercial activities. Specifically, the urgency ordinance addressed the proximity of marijuana plants and products near schools, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards. Without further action by the Board, the urgency ordinance would have expired by its terms in February 2018.

In November 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), an initiative that legalized recreational use of cannabis and limited the extent to which local jurisdictions could restrict cultivation for personal use. This complicated the County's regulatory scheme since the urgency ordinance only dealt with medical cannabis, not recreational cannabis.

In the meantime, in observation that cannabis cultivation was continuing to proliferate in the state, the County continued to consider its options for regulating cannabis. After new members were elected to the Board in November, 2016, the Board directed staff to prepare an ordinance that, if adopted, would ban cannabis cultivation and associated commercial activities in the County. A draft ban ordinance was prepared and posted on the Planning Department's website on April 27, 2017. The draft ban ordinance was also included in the Draft EIR and analyzed as an alternative to the regulatory ordinance. The Draft EIR explained that it was intended to serve as the environmental clearance document necessary for the Board's approval of either a regulatory ordinance or a ban ordinance.

During preparation of the Final EIR and subsequent consideration and deliberations by the County Planning Commission and Board of Supervisors, the state legislature approved Senate Bill 94, known as the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) which implemented Prop. 64 and significantly modified MCRSA with respect to both commercial cannabis regulation in general and to the addition of recreational use. This was signed into law by the Governor on June 27, 2017, and both the current regulatory ordinance and the ban ordinance were modified to conform to the new requirements.

Numerous other jurisdictions in California have considered or are considering similar approaches to the regulation of cannabis-related operations to the extent allowable under state law.

IV. PROJECT OBJECTIVES AND DESCRIPTION

A. PROJECT OBJECTIVES

Recognizing the requirements of state and federal law related to the use and distribution of cannabis, the primary objectives of the Regulatory Ordinance include the following:

1. Comprehensively regulate premises within the County used for marijuana cultivation or commercial activities related to marijuana or to prohibit those uses within the constraints of state law.

2. Maintain the health, safety, and well-being of the County, its residents, and environment.
3. Minimize risks of and complaints regarding fire, odor, and pollution caused by unregulated cultivation of marijuana within the County.
4. Protect the County's surface and groundwater resources by reducing the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste.

B. PROJECT LOCATION

Calaveras County is located in California's central Sierra Nevada region, ranging from low-elevation oak-covered foothills to high-elevation pine forests. The Mokelumne, Stanislaus and Calaveras rivers flow through the County collecting water from rain and melting snow to fill the County's numerous lakes and reservoirs. The majority of land within the County falls within the regulatory jurisdiction of the County, with the exception of the City of Angels Camp, the only incorporated city within the county boundaries, and federal and state lands (approximately 13 percent of the land area of the County). Approximately 39,000 acres within the County are owned by the Bureau of Land Management with an additional 6,000 acres, associated with the Calaveras Big Trees State Park, owned by the State of California. The Regulatory Ordinance will apply countywide.

C. PROJECT DESCRIPTION

The Regulatory Ordinance is an amendment to Chapter 17.95 of the Calaveras County Code that, once in effect, will regulate the cultivation of, and other commercial activities related to, cannabis within the County to the extent allowable under state law. The Regulatory Ordinance contains 12 sections: a purpose and intent statement, definitions, provisions describing the relationship to other laws, a declaration that cultivation and all commercial activities relating to cannabis (except as provided by the ordinance and the minimum non-commercial cultivation protected under state law) are a nuisance and therefore prohibited, exceptions, registration requirements, operating restrictions, remediation requirements for abandoned cultivation sites, registrations terms and renewal requirements, terms related to revocation of registrations issued by the County, enforcement provisions, and indemnification of the County from future litigation related to on-site operations at a registered site.

With the adoption of the Regulatory Ordinance, the County will allow for limited commercial medical cannabis operations and limited non-commercial cannabis cultivation. Per Proposition 64, as approved on November 8, 2016 by California voters (California Health and Safety Code section 11362.2, subdivision (b)(2)), the County may not completely prohibit residents from growing marijuana indoors and must allow residents the ability to cultivate up to six indoor plants (although reasonable regulations can be imposed).

Under the Regulatory Ordinance, commercial cannabis cultivation, processing, or distribution facilities will be allowed within the County with specific zoning, setback, and operating

restrictions as defined in the ordinance. The Regulatory Ordinance will also allow for outdoor cultivation of up to six plants for non-commercial use, with appropriate setbacks and notifications to neighbors under certain circumstances. Compared to the urgency ordinance, this is anticipated to result in a 50% reduction in the number of cannabis-related sites within the County. The minimum parcel size for outdoor cultivation is 100 acres. Permitted cultivation operations shall not exceed 22,000 square feet of total canopy area for outdoor/mixed-light cultivation (with no more than 44,000 square feet of total canopy area per parcel) and 10,000 square feet of total canopy area for indoor cultivation. The Regulatory Ordinance will also require the cessation of commercial cannabis operations currently allowed under the County's urgency ordinance and will require the restoration of existing sites.

V. ENVIRONMENTAL REVIEW PROCESS

In accordance with Public Resources Code section 21092 and CEQA Guidelines section 15082, the County issued a notice of preparation (NOP) on April 7, 2016, to inform agencies and the general public that an EIR was being prepared and to invite comments on the scope and content of the document. The NOP was submitted to the State Clearinghouse; posted on the County's website (<http://planning.calaverasgov.us>); posted with the Calaveras County Clerk; and made available at the Calaveras County Planning Department as well as the San Andreas Central Library. In addition, the NOP was distributed directly to public agencies (including potential responsible and trustee agencies), interested parties, and individuals who had previously requested such notices. Finally, a press release was issued by the County on April 5, 2016. The NOP was circulated through May 6, 2016, for a 30-day review period.

In accordance with Public Resources Code section 21083.9 and CEQA Guidelines section 15082(c), a noticed scoping meeting for the EIR occurred on July 20, 2016, at the Calaveras County Board of Supervisors Chambers in San Andreas, California.

On May 1, 2017, a Draft EIR was released for a 45-day public review and comment period that ended on June 14, 2017.

The Draft EIR identified the Medical Cannabis Cultivation and Commerce Ordinance as the "proposed project." At the direction of the Board, a ban ordinance was included in the Draft EIR and analyzed as an alternative to the proposed project. The Draft EIR analyzed the potential environmental impacts of both the initially proposed regulatory ordinance and a ban ordinance, as well as two other alternatives, one of which was a reduced zoning designations alternative (Alternative 3). The level of impact varied by alternative, with only the ban ordinance having no impacts or less than significant impacts. Accordingly, the ban ordinance was identified as the "environmentally superior alternative."

The DEIR was submitted to the State Clearinghouse; posted on the County's website (<http://planning.calaverasgov.us>); posted with the Calaveras County Clerk; and made available at the Calaveras County Planning Department as well as the San Andreas Central Library. A notice of availability was distributed by the County to the Calaveras Enterprise and a project-specific mailing list.

The County held a public hearing on May 22, 2017, to receive input from agencies and the public on the Draft EIR. The hearing was held at the Calaveras County Board of Supervisors Chambers in San Andreas, California.

The County issued a Final EIR on September 5, 2017. The Final EIR includes the written and verbal comments that the County received from agencies, organizations, and individuals on the content of the Draft EIR, and responses to those comments. The Final EIR also includes minor revisions and clarifications, including an additional alternative, titled Minimum Parcel Sizes and Further Reduced Zoning Designations Available for Commercial Cannabis Operations, and mitigation measure that were proposed during the comment period.

The Calaveras County Planning Commission held a public hearing on September 28, 2017, to consider a recommendation to the Board of Supervisors. The Planning Commission voted to recommend that the Board consider both a ban ordinance and a strict regulatory ordinance that would impose greater restrictions on cannabis cultivation than allowed under the originally-proposed regulatory ordinance. The Board of Supervisors considered the Planning Commission's recommendations as part of a public hearing on October 24 and 25, 2017, but voted to request further amendment of a regulatory ordinance based on specific recommendations/requirements of the Board. On November 22, 2017, the Planning Commission held another public hearing to discuss the proposed amendments to the regulatory ordinance as recommended by the Board of Supervisors. In consideration of those recommendations, the Planning Commission voted to recommend a modified regulatory ordinance that would impose greater restrictions on cannabis cultivation than allowed under the originally-proposed regulatory ordinance.

The Board of Supervisors considered the Planning Commission's recommendations at a public hearing on December 19 and 21. The Board of Supervisors directed staff to prepare a revised Regulatory Ordinance consistent with the Board's discussion, which is the subject of these Findings.

VI. RECIRCULATION

Under CEQA Guidelines section 15088.5, recirculation of an EIR is required when "significant new information" is added to the EIR after public notice is given of the availability of the Draft EIR for public review but prior to certification of the Final EIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not "significant," however, unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(CEQA Guidelines, § 15088.5, subd. (a).)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1132.) “Recirculation was intended to be an exception, rather than the general rule.” (*Ibid.*)

The Final EIR includes minor changes and revisions to the Draft EIR, including the addition of a new alternative—Alternative 4—that was suggested during the public comment period. That alternative, however, is not considerably different from the others previously analyzed and would not clearly lessen the significant environmental impacts of either the originally-proposed regulatory ordinance or the Ban Ordinance. Alternative 4 is similar to Alternative 3, with minor differences mainly related to setbacks and restricting such activities to larger parcels. Alternative 4 would result in similar environmental impacts as Alternative 3, which was analyzed in the DEIR. Accordingly, including Alternative 4 in the Final EIR did not require recirculation. (CEQA Guidelines, § 15088.5, subd. (a)(3); see also *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330–331 (*South County Citizens*).

The fact that the Board has elected to approve the Regulatory Ordinance, and not one of the alternatives specifically identified in the EIR, also does not trigger CEQA's recirculation requirements. (See *South County Citizens, supra*, 221 Cal.App.4th; *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890 (*WPCARE v. Placer County*)). The Regulatory Ordinance approved by the Board is not considerably different from the alternatives that were analyzed in the EIR and it certainly falls within the range of those alternatives. Specifically, the Regulatory Ordinance, like the other alternatives, provides a mechanism for the County to regulate cannabis. It is slightly more restrictive than the initially proposed project and is similar to both Alternatives 3 and 4, with only slight variations regarding the type of restrictions imposed. For instance, Alternative 3 is similar to the initially proposed project except it removed Rural Residential (RR) as an acceptable zone within which commercial cannabis operations could occur. Alternative 4 is slightly more restrictive than Alternative 3 because it imposes further restrictions on the zoning designations available for commercial cannabis cultivation and related activities and also establishes minimum parcel sizes for many of the allowable zones. The Regulatory Ordinance is slightly more restrictive than Alternative 4, but not as restrictive as Alternative 2. In other words,

the Regulatory Ordinance represents only modest refinements to the regulatory provisions that were identified for the alternatives in the EIR. These types of post-EIR refinements do not require recirculation. (*South County Citizens, supra*, 221 Cal.App.4th 316; *WPCARE v. Placer County, supra*, 144 Cal.App.4th at p. 899.)

In fact, CEQA encourages the type of project refinements that occurred here. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1046-1047.) The ordinance was refined based on input received during the CEQA process, resulting in a final Regulatory Ordinance that reduces environmental impacts compared to the initially proposed ordinance, while still achieving all of the County's project objectives.

The Board finds that none of the changes and revisions in the Final EIR substantially affects the analysis or conclusions presented in the Draft EIR. Therefore, recirculation of the Draft EIR for additional public comments is not required. (CEQA Guidelines, § 15088.5, subd. (a).)

VII. RECORD OF PROCEEDINGS

In accordance with Public Resources Code section 21167.6(e), the record of proceedings for the Board's approval of the Regulatory Ordinance includes the following documents at a minimum:

- The NOPs (Notices of Preparation) and all other public notices issued by the County in conjunction with the Draft EIR, as well as all comments submitted by agencies or members of the public during the comment period on the NOPs;
- The Draft EIR and all appendices;
- All comments submitted by agencies or members of the public during the comment period on the Draft EIR;
- All comments and correspondence submitted to the County with respect to the ordinance, in addition to timely comments on the Draft EIR, including comments submitted subsequent to the release of the Final EIR;
- The Final EIR, including comments received on the Draft EIR, responses to those comments, and appendices;
- Documents cited or referenced in the Draft EIR and Final EIR;
- All findings adopted by the Board in connection with the Regulatory Ordinance and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the ordinance prepared by the County, consultants to the County, or responsible or

trustee agencies with respect to the County's compliance with the requirements of CEQA and with respect to the County's action on the ordinance;

- Matters of common knowledge to the County, including, but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6(e).

Pursuant to Guidelines section 15091(e), the documents constituting the record of proceedings are available for review during normal business hours at the Calaveras County Planning Department, 891 Mountain Ranch Road, San Andreas. The custodian of these documents is Peter Maurer.

VIII. GENERAL FINDINGS

a. Certification of the EIR

In accordance with CEQA, the County has considered the effects of the project on the environment, as shown in the Draft EIR, Final EIR, and the whole of the administrative record, prior to taking any action to approve the Regulatory Ordinance. The Final EIR was released for public review on September 6, 2017. The Planning Commission reviewed the Final EIR and, at the September 28, 2017 public hearing, continued to October 2, 2017, recommended to the Board of Supervisors that the EIR be certified as adequate. The Board of Supervisors has reviewed and considered the EIR and the information relating to the environmental impacts of the Regulatory Ordinance and has certified that the EIR has been prepared and completed in compliance with CEQA. By these Findings, the Board of Supervisors ratifies and adopts the conclusions of the Final EIR as set forth in these Findings, except where such conclusions are specifically modified by these Findings. The Final EIR and these Findings represent the independent judgment and analysis of the Board of Supervisors.

b. Evidentiary Basis for Findings

These Findings are based upon substantial evidence in the entire record before the County. The references to the Draft EIR and Final EIR set forth in the Findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these Findings.

c. Findings Regarding Mitigation Measures

i. Mitigation Measures Adopted

Except as otherwise noted, the mitigation measures herein referenced are equivalent to those identified in the Final EIR. Mitigation measures have been revised to improve efficacy and implementation, and have been inserted into appropriate sections of the Regulatory Ordinance, but sometimes in section

numbers different from those identified in the Final EIR. The County had adopted the mitigation measures, as amended, as set forth in the MMRP.

ii. Impact After Implementation of Mitigation Measures

Except as otherwise stated in these Findings, in accordance with CEQA Guidelines Section 15092, the County finds that environmental effects of development of the Regulatory Ordinance will not be significant or will be mitigated to a less-than-significant level by the adopted mitigation measures. All significant environmental effects have been substantially lessened or eliminated where feasible. The County has determined that any remaining significant effects on the environment that are found to be unavoidable are acceptable due to overriding considerations as described in Section XII. These overriding considerations consist of specific economic and other benefits of the project, which justify approval of the project and outweigh the unavoidable adverse environmental effects of the project, as more fully stated in Section XII (Statement of Overriding Considerations). Except as otherwise stated in these Findings, the County finds that the mitigation measures incorporated into and imposed upon the project will not have new significant environmental impacts that were not analyzed in the EIR.

iii. Relationship of Findings and MMRP to Final EIR

These Findings and the MMRP are intended to summarize and describe the contents and conclusions of the Draft EIR and Final EIR for policymakers and the public. For purposes of clarity, these impacts and mitigation measures may be worded differently from the provisions in the Final EIR and/or some provisions may be combined. Nonetheless, the County will implement all measures contained in the Final EIR, or equivalent measures or modified measures as necessary. In the event that there is any inconsistency between the descriptions of mitigation measures in these Findings or the MMRP and the Final EIR, the County will implement the measures as they are described in these Findings. In the event a mitigation measure recommended in the Final EIR has inadvertently been omitted from these Findings or from the MMRP, such a mitigation measure is hereby adopted and incorporated in the Findings and/or MMRP as applicable.

d. Location and Custodian of Records

Pursuant to CEQA Guidelines Section 15091, the County is the custodian of the documents and other materials that constitute the record of proceedings upon which the decision is based, and such documents and other materials are located at the offices of the Calaveras County Planning Department, 891 Mountain Ranch Road, San Andreas, California 95249. Additionally, many of the documents and materials are available online at <http://cannabis.calaverasgov.us/>.

IX. ALTERNATIVES

The range of alternatives evaluated in the EIR included those alternatives necessary to permit a reasoned choice (CEQA Guidelines Section 15126.6[f]). As directed by CEQA, the EIR included potentially feasible alternatives that would reduce or avoid significant environmental impacts associated with the project. Alternatives considered in an EIR need to attain most of the project objectives in order to be considered feasible. The exception is the No Project Alternative, which is a required alternative for EIRs under CEQA (Guidelines Section 15126.6[e]).

Pursuant to the requirements of CEQA Guidelines Section 15126.6 and in light of the project objectives, the following alternatives to the Regulatory Ordinance were identified and evaluated in the Draft EIR:

- Alternative 1: No Project
- Alternative 2: Ban on Commercial Cannabis Operations
- Alternative 3: Reduced Zoning Designations Available for Commercial Cannabis Operations
- Alternative 4: Minimum Parcel Sizes and Further Reduced Zoning Designations Available for Commercial Cannabis Operations Alternative

a. Alternative 1: No Project

State CEQA Guidelines Section 15126.6(e)(1) requires that the no project alternative be described and analyzed “to allow decision makers to compare the impacts of approving the project with the impacts of not approving the project.” The no project analysis is required to discuss “the existing conditions at the time the notice of preparation is published... as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services” (Section 15126.6[e][2]).

Under this alternative, the County would not adopt regulations related to the growing, processing, and distribution of cannabis within the county limits. The urgency ordinance would also be allowed to expire and not be renewed. State regulations related to the growing, processing, and distribution of cannabis for medicinal purposes (e.g., RWQCB Order R5-2015-0113 and Department of Pesticide Regulations requirements) would remain in place, however, the County’s zoning requirements do not permit cannabis cultivation for commercial purposes in any zone. Prop 64 allowances for personal recreational use would be permitted under this alternative. This would result in no future commercial cultivation activities, and existing grows would either be abandoned or repurposed. Because the revenue source (sales of medical marijuana) that motivated individual property owners to invest in property modifications would no longer be available, the length of time and/or feasibility to restore/redevelop properties is not known. It should also be noted that the County would also not realize revenue from permit applications and Measure C taxes such that the ability to monitor grows within the County and their relative level of compliance with state and local regulations would be reduced. Due to the fact that this alternative would not allow for commercial cannabis operations within the County,

the mitigation measures identified in the EIR would not be considered feasible measures for the purposes of mitigating the impacts of this alternative.

This alternative would not meet any of the project objectives identified above in Section IV.A., “Project Objectives,” because no comprehensive regulations would be adopted that would ensure the health and safety of the County, its residents, and the environment. For these reasons, the Board of Supervisors hereby rejects Alternative 1 because it is infeasible.

b. Alternative 2: Ban on Commercial Cannabis Operations

Under this alternative, the County would implement a ban on commercial cannabis operations and cannabis cultivation, in general, except for up to six indoor cannabis plants (regardless of whether they are cultivated for medical or recreational use or both). Per Proposition 64, as approved on November 8, 2016 by California voters (California Health and Safety Code Section 11362.2 (b)(2)), the County may not completely prohibit residents from growing marijuana indoors and must allow residents the ability to cultivate up to six indoor plants (although reasonable regulations can be imposed). No new commercial cannabis cultivation, processing, or distribution facilities would be allowed within the County. This alternative would also result in the cessation of commercial cannabis operations currently allowed under the urgency ordinance and would require the restoration of existing sites to pre-existing conditions. The responsibility, including all expenditures, for restoration to pre-existing conditions, would be borne by the individual property owners. Because the revenue source (sales of medical marijuana) that motivated individual property owners to invest in property modifications would no longer be available under the ban, the length of time and/or feasibility to restore properties to pre-existing conditions is not known. Additional revenues afforded to the County for policing and monitoring compliance with applicable regulations (e.g. water-quality) would no longer be collected. Due to the fact that this alternative would not allow for commercial cannabis operations within the County, the mitigation measures identified in the EIR would not be considered feasible measures for the purposes of mitigating the impacts of this alternative.

Based on the environmental analysis contained in the EIR, Alternative 2 would result in less impacts compared to the Regulatory Ordinance. With respect to project objectives, Alternative 2 would not provide funding (through taxation of cannabis-related revenue) that could otherwise be used by the County to police and monitor the County for the presence of illegal grows, which is considered necessary to maintain the health, safety, and well-being of the County, its residents, and the environment. Thus, Alternative 2 would not meet certain key objectives to the extent of the Regulatory Ordinance.

Moreover, a county-wide ban on commercial cannabis activities, as contemplated under Alternative 2, is not the policy direction that the Board envisions for the County. Rather, the Board seeks to allow some cannabis activities to occur subject to strict regulations that will protect the health, safety, and well-being of the County, its residents, and the environment. Accordingly, the County finds that Alternative 2 is infeasible on policy grounds. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [“an alternative that ‘is impractical or undesirable from a policy standpoint’ may be rejected as infeasible”].)

For each of the foregoing reasons, the Board of Supervisors rejects Alternative 2 because it is infeasible.

c. Alternative 3: Reduced Zoning Designations Available for Commercial Cannabis Operations

This alternative would involve a reduced number of zoning and land use designations that would allow for commercial cannabis operations through either an administrative use permit, zoning clearance certificate, or conditional use permit. Under this alternative, Rural Residential (RR) would not be considered an acceptable zone within which outdoor and indoor cultivation could occur through either a zoning clearance certificate or administrative use permit. Based on the percentage of applications received under the urgency ordinance for commercial cannabis operations within property zoned RR, it is assumed this alternative would reduce the potential for commercial cannabis operations within the County by approximately 25% compared to the urgency ordinance. This is also anticipated to result in the location of commercial cannabis operations within less urban areas of the County and away from developed communities. Due to the fact that this alternative would allow for commercial cannabis operations within the County, the mitigation measures identified in the EIR would be considered feasible measures to mitigate the impacts of this alternative.

Based on the environmental analysis contained in the EIR, Alternative 3 would result in largely similar impacts to the Regulatory Ordinance. However, this alternative could allow for more cannabis-related activities than under the Regulatory Ordinance, thereby resulting in greater impacts, notably those related to air quality emissions, odors, and transportation. Because Alternative 3 would not reduce the impacts anticipated under the Regulatory Ordinance, the Board of Supervisors rejects this alternative.

d. Alternative 4: Minimum Parcel Sizes and Further Reduced Zoning Designations Available for Commercial Cannabis Operations Alternative

Similar to Alternative 3, this alternative would involve a reduced number of zoning and land use designations that would allow for commercial cannabis operations through either an administrative use permit, zoning clearance certificate, or conditional use permit, however, it would represent a further reduction in the number of parcels within the County that would qualify for cannabis-related operations. Based on the percentage of applications received under the urgency ordinance for commercial cannabis operations, it is assumed this alternative would reduce the potential for commercial cannabis operations within the County by approximately 45%. Due to the fact that this alternative would allow for commercial cannabis operations within the County, the mitigation measures identified for the proposed ordinance would be considered feasible measures to mitigate the impacts of this alternative.

Based on the environmental analysis contained in the EIR, Alternative 4 would result in largely similar impacts to the Regulatory Ordinance. However, this alternative could allow for more cannabis-related activities than under the Regulatory Ordinance, thereby resulting in greater impacts, notably those related to air quality emissions, odors, and transportation. Because

Alternative 4 would not reduce the impacts anticipated under the Regulatory Ordinance, the Board of Supervisors rejects this alternative.

e. Environmentally Superior Alternative

The CEQA Guidelines Section 15126.6 states that an EIR should identify the “environmentally superior” alternative. “If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” As shown in Draft EIR Section 7.4.1, Summary of Project Impacts, there would be significant and unavoidable impacts associated with the regulation of cannabis cultivation and commerce within the County. These impacts are related to air quality and traffic. Compared to the Regulatory Ordinance, Alternatives 1 (No Project) and 2 (Ban) would reduce impacts compared to the Regulatory Ordinance. As noted above, however, these alternatives have been rejected as infeasible by the Board of Supervisors.

X. FINDINGS OF IMPACT

The Calaveras County Board of Supervisors has reviewed the Final EIR for the Regulatory Ordinance, consisting of the Medical Cannabis Cultivation and Commerce Ordinance Project Draft EIR (May 2017) and the Medical Cannabis Cultivation and Commerce Ordinance Project Responses to Comments Document (September 2017), together which form the Final EIR. The Calaveras County Board of Supervisors has considered the public record on the project, which, in addition to the above documents and this Statement of Findings, includes the Mitigation Monitoring and Reporting Program (MMRP) . The MMRP meets the requirements of Section 21081.6 of the Public Resources Code by providing a monitoring plan designed to ensure compliance during project implementation with mitigation measures adopted by the County.

All relevant project documents are on file at the Calaveras County Planning Department, 891 Mountain Ranch Road, San Andreas.

Pursuant to Public Resources Code Section 21081, for each significant effect identified in the EIR, the County must make one or more of the findings described in Section II of this document.

After reviewing the public record, composed of the aforementioned elements, the Calaveras County Board of Supervisors hereby makes the following findings regarding the significant effects of the Regulatory Ordinance, pursuant to Public Resources Code Section 21081 and Section 15091 of the CEQA Guidelines. The numeric references for each impact refer to the impact/mitigation label included in the EIR. Several of the mitigation measures listed below have been summarized herein. As many of the mitigation measures require amendments to the Regulatory Ordinance, the exact language to be adopted as part of the ordinance may differ from the mitigation measures to reflect the desired wording of the various county departments that would be responsible for its implementation, monitoring, and enforcement.

As explained, the Regulatory Ordinance is a modified version of the initially proposed project that was analyzed in the EIR. Because the Regulatory Ordinance is more restrictive than the initially proposed project, it will have less environmental impacts. Thus, unless otherwise noted, if impacts of the proposed project were less than significant or less than significant after

implementation of the identified mitigation measures, those same conclusions apply for the Regulatory Ordinance.

a. Potentially Significant Impacts Associated with Ordinance Adoption

Significant Effect: Impact 3.1-1: Have a substantial adverse effect on a scenic vista or substantially damage scenic resources.

Potential commercial cannabis operations within the County that may occur under the Regulatory Ordinance could alter localized views from nearby roadways and the Mokelumne Coast to Crest Trail. The limitations on size and location of cannabis grows, as well as the required screening under the ordinance, would limit the potential for potential cannabis-related uses to alter or have substantial adverse effects on scenic vistas or other scenic resources. However, this would not necessarily apply to designated scenic resources such as the Mokelumne Coast to Crest Trail. As a result, the project would have a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on scenic vistas and scenic resources to a less-than-significant level.

Mitigation Measure 3.1-1: Distance from Scenic Resources.

The County shall amend the proposed ordinance to require that any areas of cultivation, not contained within existing structures that would not be modified for cannabis-related activities, be located at least one thousand (1,000) feet from any designated scenic resources, as determined by the County consistent with General Plan policies and implementation programs, the California Scenic Highways Program, or the National Scenic Byways Program. Further, any site-specific security measures, including the provision of armed security staff, shall be limited to the cannabis-related operation and not within required setback distances established by the County through the proposed ordinance.

This measure will substantially reduce potential aesthetic impacts by requiring adequate setbacks and restricting views of cannabis-related operations, and the impact would be reduced to a less-than-significant level.

This mitigation measure has been incorporated into the Ordinance under Section 17.95.070, Subsections E.10 and E.13. Subsection E.13 provides that outdoor and mixed-light commercial cannabis cultivation shall not be located within 1000 feet of a state scenic highway or national scenic byway. Based on the 1996 Calaveras County General Plan, there are no designated scenic resources in the County other than the Nationally-designated scenic byway and State-designated scenic highway of State Route 4 east of Arnold. Subsection E.10 prohibits site-specific security measures within the required setback distances.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.1-3: Create a new source of substantial light or glare that would adversely affect views.

Exterior lights and lights associated with mixed-light and some indoor cultivation operations could create a source of substantial light or glare. Although the permit application process includes a provision for Planning Commission review of proposed lighting, the Regulatory Ordinance does not establish standards to prevent light pollution that could adversely affect views. This would be a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts related to light and glare to a less-than-significant level.

Mitigation Measure 3.1-3: Lighting Standards.

The County shall amend the proposed ordinance to reflect the following text in Sections 17.95.210, 17.95.240, and 17.95.310:

All lighting provided in conjunction with facility security or cultivation activities shall be installed, directed down and away from nearby property lines, and shielded to confine all direct rays of light within the boundaries of such facilities.

This measure will substantially reduce potential aesthetic impacts by orienting new lighting such that light spillover onto adjacent properties would be minimized, and the impact would be reduced to a less-than-significant level.

This measure has been incorporated into the Ordinance under Section 17.95.070, Subsection E.7. The section numbers listed in the measure (17.95.210, 17.95.240, and 17.95.310) are from an earlier draft of the proposed ordinance.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.2-2: Long-term operational emissions of ROG, NO_x, PM₁₀, and PM_{2.5}.

Operation of cannabis-related sites permitted under the Regulatory Ordinance would result in peak emissions of criteria air pollutants and precursors during the harvest season. While mass emissions thresholds for other criteria air pollutants and precursors would not be exceeded,

countywide harvest-related emissions of nitrogen oxide (NO_x) would exceed the mass emission threshold recommended by Calaveras County Air Pollution Control District. Thus, operational emissions of NO_x, a precursor to regional ozone, could conflict with air quality planning efforts in the Mountain Counties Air Basin and contribute substantially to the nonattainment status of Calaveras County with respect to the federal and state air quality standards for ozone. This would be a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on air quality to a less-than-significant level.

Mitigation Measure 3.2-2: Prohibit the use of fossil fuel-powered outdoor power equipment during operation of cannabis grow sites and processing facilities.

The County shall amend the proposed ordinance to include the following text in Sections 17.95.210 and 17.95.240:

Refrain from using generators that are powered by gasoline, diesel, or other fossil fuels to assist in the cultivation and harvesting of cannabis (operational activities).

This measure reflects a modification to the mitigation measure provided in the EIR due to the reduction in anticipated air quality emissions associated with implementation of the Regulatory Ordinance, as a whole. The mitigation requirement reflected above will substantially reduce potential long-term air quality impacts, and the impact would be reduced to a less-than-significant level.

This measure has been incorporated into the Ordinance under Section 17.95.070, Subsection A.7. That subsection prohibits the use of generators for cultivation activities, including pumping, except as an emergency backup to another power source. Any generator used to provide temporary, emergency power to the cultivation site is subject to additional requirements listed in the subsection. The section numbers listed in the measure (17.95.210 and 17.95.240) are from an earlier draft of the proposed ordinance.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.2-3: Generation of greenhouse gas emissions.

Construction and operation of cannabis-related sites permitted under the Regulatory Ordinance would result in a net increase in GHG emissions. This would be a cumulatively considerable contribution to climate change and, therefore, a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts related to greenhouse gas emissions to a less-than-significant level.

Implement Mitigation Measure 3.2-2.

Mitigation Measure 3.2-3: Reduce GHG emissions associated with the cultivation, processing, and distribution of cannabis.

The County shall amend the proposed ordinance to include the following text under Section 17.95.200:

1. Each applicant shall demonstrate a reduction in annual GHG emissions equivalent to a one-time offset of 17.2 metric tons of CO₂e for construction-related emissions and an offset of 5.9 metric tons of CO₂e/year for operational emissions or a reduction equivalent to the construction and annual operational GHG emissions associated with the specific cultivation site, as calculated using an ARB-accepted model/technique. The manner in which this is demonstrated may include, but is not limited to, the following in order of preference to reduce emissions:
 - a. Photovoltaic panels on on-site structures. The extent to which solar is considered feasible shall be based on roof orientation, shade, and other factors. Each applicant shall submit a determination/evaluation of whether on-site solar is feasible or infeasible prepared by a qualified professional to the Planning Department;
 - b. Provision of and documentation that the well pump used to supply irrigation water to the cannabis grow area is powered by photovoltaic cells;
 - c. Documentation of attainment of offset credits of metric tons of carbon dioxide-equivalent associated with construction and operation of the new outdoor commercial grow site, including the loss of carbon-sequestering vegetation. The offset credit must be issued by a recognized and reputable carbon registry that validates that the offset credit is real, additional, quantifiable, and enforceable. Documentation demonstrating purchase of the annual offset credit must be provided to the Planning Department prior to the beginning of the first cannabis grow cycle during each calendar year.

The County shall also amend the proposed ordinance to include the following text under Section 17.95.230:

1. Each applicant shall demonstrate a reduction in annual GHG emissions equivalent to a one-time offset of 11.3 metric tons of CO₂e for construction-related emissions and an offset of 56.5 metric tons of CO₂e/year for operational emissions or a reduction

equivalent to the construction and annual operational GHG emissions associated with the specific cultivation site, as calculated using an ARB-accepted model/technique. The manner in which this is demonstrated may include, but is not limited to, the following in order of preference to reduce emissions:

- a. Photovoltaic panels on on-site structures. The extent to which solar is considered feasible shall be based on roof orientation, shade, and other factors. Each applicant shall submit a determination/evaluation of whether on-site solar is feasible or infeasible prepared by a qualified professional to the Planning Department;
- b. Provision of and documentation that the well pump used to supply irrigation water to the cannabis grow area is powered by photovoltaic cells;
- c. Documentation of attainment of offset credits of metric tons of carbon dioxide-equivalent associated with construction and operation of the new outdoor commercial grow site, including the loss of carbon-sequestering vegetation. The offset credit must be issued by a recognized and reputable carbon registry that validates that the offset credit is real, additional, quantifiable, and enforceable. Documentation demonstrating purchase of the annual offset credit must be provided to the Planning Department prior to the beginning of the first cannabis grow cycle during each calendar year.

These measures will substantially reduce potential impacts related to greenhouse gas emissions, and the impact would be reduced to a less-than-significant level.

This measure has been incorporated into the Ordinance under Section 17.95.070, Subsections E.16 and F.9.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

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

Implementation of the Regulatory Ordinance would allow for construction and operation of cannabis-related activities, which would generate localized construction and operational odors associated with equipment operation, which could be odor sources to nearby residents. However, the cultivation and processing of cannabis generates odors associated with the plant itself, which during maturation can produce substantial odors. Setbacks are provided as part of the Regulatory Ordinance; however, they do not preclude the generation of odorous emissions in such quantities as to cause detriment, nuisance, or annoyance to a substantial number of people. This would be a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County to mitigate or avoid the significant effects on the environment. While the mitigation measures would reduce the significant effects related to odors, feasible mitigation is not available

the County cannot preclude the generation of objectionable odors associated with cannabis-related operations as allowed under the Regulatory Ordinance. Alternative 1 (no project) and Alternative 2 would avoid these impacts, but these alternative have been rejected as infeasible for the reasons set forth above. The Regulatory Ordinance includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts, but not to a less-than-significant level. No other feasible alternatives are available to reduce this impact. Therefore, the Board finds that specific economic, legal, social, technological, or other considerations make infeasible further mitigation that would avoid or substantially lessen the significant environmental effect, and thus, this is a significant and unavoidable impact.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure to reduce impacts related to odors.

Mitigation Measure 3.2-4a: Prohibit burning of cannabis and other vegetative material.

The County shall amend the proposed ordinance to reflect the following text in Sections 17.95.210, 17.95.240, 17.95.270, and 17.95.310:

The burning of excess plant material associated with the cultivation and processing of medical cannabis is prohibited.

This measure has been incorporated into the Ordinance under Section 17.95.070.D.15. The section numbers listed in the measure (17.95.210, 17.95.240, 17.95.270 and 17.95.310) are from an earlier draft of the proposed ordinance.

Mitigation Measure 3.2-4b: Indoor cultivation odor control.

The County shall amend the proposed ordinance to reflect the following text in Sections 17.95.240:

Install and maintain a filtered ventilation system which relies on activated carbon filtration, negative ion generation, and/or other odor control mechanism demonstrated to be effective in reducing cannabis odors.

The measure has been incorporated into the Ordinance under Section 17.95.070.F.5. The section number listed in the measure (17.95.240) is from an earlier draft of the proposed ordinance.

Mitigation Measure 3.2-4c: Increase setback requirement.

The County shall amend the proposed ordinance to reflect a setback of at least 75 feet from any property line instead of 30 feet within Sections 17.95.210, 17.95.240, 17.95.270, and 17.95.310.

The setback has been increased to 500 feet for commercial cultivation, well in excess of the mitigation measure, incorporated into the Ordinance under Section 17.95.070.E.3. Outdoor cultivation of up to six plants for non-commercial use would require either a setback of 75 feet, as set forth in the mitigation measure, or consent of neighbors. This requirement is incorporated in Section 17.95.070.B.6 of the Ordinance. Because odor impacts are based on the perception of those experiencing the impact, allowing a smaller setback upon consent of neighbors is considered comparable mitigation. The section numbers listed in the measure (17.95.210, 17.95.240, 17.95.270 and 17.95.310) are from an earlier draft of the proposed ordinance.

While the mitigation identified above would reduce indoor cultivation and some outdoor cultivation and processing odors by reducing odor generating activities and increasing the distance between potential sources and receptors, it would not preclude the potential for people to perceive objectionable odors within the County attributable to cannabis operations. As a result, while this impact would be reduced, it would remain significant and unavoidable. Odors from individual sites may be reduced to a less-than-significant level on a case-by-case basis, however, it is not possible to ensure that cannabis-related odors within the County would not be perceived as objectionable.

Significant Effect: Impact 3.3-1: Impacts to Special-Status Species.

Implementation of the Regulatory Ordinance may result in grading of natural habitat and tree and vegetation removal, which could directly and indirectly affect individual special-status species and/or their habitat, thereby resulting in a potentially significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on special-status species to a less-than-significant level.

Mitigation Measure 3.3-1: Minimum Size of Commercial Cultivation Activities

The County shall amend the proposed ordinance in Sections 17.95.200 and 19.95.230 to require a minimum site size of 1,000 square feet.

This measure will substantially reduce potential impacts to special status species by requiring conformance with applicable regulations from the State Water Resources Control Board and Central Valley Regional Control Board, which require that impacts to special-status species are less than significant, and as a result, this impact would be reduced to a less-than-significant level.

The measure has been incorporated into the Ordinance in Section 17.95.070.E.12. The section numbers listed in the measure (17.95.200 and 17.95.230) are from an earlier draft of the proposed ordinance.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.3-2: Modification and/or loss of streamside habitat and fill or other disturbance of waters of the United States and/or state.

Disturbance of natural land cover associated with development of commercial cannabis operations allowed under the Regulatory Ordinance could result in the modification and/or loss of streamside habitat and fill or other disturbance of waters of the United States and/or state resulting in a potentially significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on streamside habitat and jurisdictional waters to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will substantially reduce potential impacts to jurisdictional waters and streamside habitat by requiring conformance with applicable regulations and associated permitting requirements of the State Water Resources Control Board, Central Valley Regional Control Board, US Army Corps of Engineers, and California Department of Fish and Wildlife. As a result, this impact would be reduced to a less-than-significant level.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.3-3: Degradation or removal of sensitive natural communities.

Implementation of the Regulatory Ordinance could result in disturbance or removal of natural land cover, through vegetation removal or grading which could result in the degradation or removal of sensitive natural communities. This would be considered a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts to sensitive natural communities to a less-than-significant level.

Mitigation Measure 3.3-3: County Review of Biological Site Assessments

Prior to approval of applications under the proposed ordinance, the County shall arrange for a qualified biologist (either through an on-call contract or employment by the County) to review the Biological Site Assessments prepared for Central Valley Regional Water Quality Control Board compliance. In addition, the County shall amend the proposed ordinance in Sections 17.95.200 and 17.95.230 to require applications for commercial cultivation sites to provide copies of Biological Site Assessments to the County that demonstrate the construction and operation associated with the cannabis operation would not remove or otherwise affect sensitive natural communities, including sensitive vegetation alliances that may occur within the County.

By requiring any commercial cultivation activities within the County to demonstrate to the County that impacts to sensitive natural communities, including sensitive vegetation alliances, would not occur through provision of biological site assessments to a professional associated with the County to verify such determinations, potential impacts to sensitive natural communities through implementation of the Regulatory Ordinance would be reduced to less than significant.

The measure has been incorporated into the Ordinance under Section 17.95.060.B.7. The section numbers listed in the measure (17.95.200 and 17.95.230) are from an earlier draft of the proposed ordinance.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.3-4: Conflicts with any local policies protecting biological resources.

Implementation of the proposed project could result in disturbance of natural habitat, which could conflict with the policies of the Calaveras County General Plan. This would be a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts related to potential conflicts with local policies protecting biological resources to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls as referred to above in the summaries of Impacts 3.3-1 and 3.3-2. Due to regulatory controls afforded by cannabis-related orders to be implemented and enforced by the Central Valley

Regional Water Quality Control Board, this impact would be reduced to a less-than-significant level.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.3-5: Disturbance or loss of wildlife migratory corridors.

Development of cannabis-related sites within or in proximity to natural environments would alter the vegetation that wildlife use as cover; potentially resulting in disturbance or loss of wildlife migratory corridors. This would be considered a potentially significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on wildlife corridors to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure, which requires conformance with setbacks from jurisdictional waters and riparian areas, will also help protect the wildlife that use these watercourses, and encourage protection of wetlands, watercourses, and associated riparian areas and thus help minimize impacts to wildlife corridors. Therefore, by requiring compliance with the orders to be enforced by the Central Valley RWQCB Order through Mitigation Measure 3.3-1, implementation of the Regulatory Ordinance would have a less-than-significant impact on wildlife corridors.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.4-1: Change in the significant of an historical resource.

Commercial cannabis operations associated with the Regulatory Ordinance could occur on undeveloped lands and/or near historic resources, and as such, disturbance of historic resources could occur during construction and/or operation of cannabis-related activities. As a result, the Regulatory Ordinance could result in a potentially significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on historic resources to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls as referred to above in the summary of Impact 3.3-1 and including a requirement that applicants demonstrate that all potential impacts to cultural resources, including historic resources, will be appropriately addressed and mitigated. Due to regulatory controls afforded by these cannabis-related orders to be implemented and enforced by the Central Valley Regional Water Quality Control Board, this impact would be reduced to a less-than-significant level.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.4-2: Disturb unique archaeological resources.

Commercial cannabis operations associated with the proposed ordinance could occur on properties that contain known or unknown archaeological resources and ground-disturbing activities could result in discovery or damage of as yet undiscovered archaeological resources as defined in CEQA Guidelines Section 15064.5. As a result, the Regulatory Ordinance would result in a potentially significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts on archaeological resources to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls as referred to above in the summary of Impact 3.3-1 and including a requirement that applicants demonstrate that all potential impacts to cultural resources, including archaeological resources, will be appropriately addressed and mitigated. Due to regulatory controls afforded by these cannabis-related orders to be implemented and enforced by the Central Valley Regional Water Quality Control Board, this impact would be reduced to a less-than-significant level.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.5-1: Construction water quality impacts.

Development of new cannabis cultivation or commercial cannabis sites would require ground-disturbing activities that could result in erosion and sedimentation, leading to degradation of water quality. Potential water quality impacts may occur during construction and would be considered significant.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce construction-related water quality impacts to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls. Coupled with the County's existing program of storm water pollution prevention and remediation, cannabis-related activities within the County would be required to implement BMPs, subject to regular inspections by local and state regulators, thus limiting the amount of pollution entering receiving waterways. Consequently, with implementation of Mitigation Measure 3.3-1, impacts to surface and groundwater quality from construction activities at cannabis operations within the county would be less than significant.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.5-2: Operational water quality impacts.

Existing and new cannabis cultivation and commercial cannabis facilities have the potential to modify surface drainage and flows in such a manner that increased sedimentation and erosion could take place, leading to water quality degradation. The long-term operational use of unregulated pesticides, fertilizers, and other chemicals can also have a negative effect on water quality and ultimately affect the health and sustainability of organisms that rely on high quality waters. As a result, potential impacts would be significant.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce operational water quality impacts to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls. Coupled with the County's existing program of storm water pollution prevention and remediation, cannabis-related activities within the County would be required to implement BMPs, subject to regular inspections by local and state regulators, thus limiting the amount of pollution entering receiving waterways. Consequently, with implementation of Mitigation Measure 3.3-1, impacts to surface and groundwater quality from construction activities at cannabis operations within the county would be less than significant.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.5-3: Groundwater supply impacts.

Cannabis is a water-intensive crop, the cultivation of which has the potential to consume vast amounts of water from local sources, and exceed groundwater supply and recharge. Transition to groundwater supply sources could exceed the capacity of local groundwater aquifers to provide adequate supply. This could result in the long-term drawdown of groundwater resources and would be a significant impact.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce impacts to groundwater supplies to a less-than-significant level.

Mitigation Measure 3.5-3: Groundwater monitoring requirements.

The county shall amend the proposed ordinance to reflect the following text in Sections 17.95.210, and 19.95.240:

Applicants with a permitted well water supply source shall prepare and implement a well-monitoring program. The program shall, at a minimum, include short-duration pumping tests to assess production capacity and water levels. Monitoring shall be carried out at the water supply source well and any nearby wells that could be affected by consumption of water at the source well, as determined by a qualified well driller, hydrologist, or hydrogeologist approved by the county. The first test shall be used to determine connectivity of the source supply well to other nearby wells. These tests shall be completed monthly during the months of August, September, and October and preceded by a minimum of eight (8) hours of non-operation to maintain a static depth to water measurement. Results of testing shall be provided to the County Planning Department and Department of Environmental Health Department for review and approval. If continuous decline of water levels is observed for a period of five (5) consecutive years in the source water supply well, an alternative water source shall be procured until well water levels have recovered to within ten (10) percent of pre-drawdown levels.

The intent of this measure is to ensure adequate and reliable groundwater supplies for existing and proposed uses within the County. The County, through the Environmental Health Department, already implements a program to ensure that adequate groundwater supply is available for any proposed wells, including adjacent water supply wells, and requires preparation of and provision of a Pump Test and Source Capacity Report. The Environmental Health Department determined that a rigorous pump test and source capacity testing regimen that includes monitoring of nearby wells would provide more effective mitigation than the measure identified in the Draft EIR. Inclusion of the Pump Test and Source Capacity Report requirement as part of the Regulatory Ordinance would be considered to reflect the intent and requirements of Mitigation Measure 3.5-3, and impacts would be reduced to less than significant.

The measure was found by the County Environmental Management to be less effective than what was replaced by Section 17.95.060.J, which requires demonstration that a proposed well would not adversely impact nearby wells prior to issuance of a cultivation registration or permit. This was found to be more effective mitigation to the impact on groundwater supplies.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.5-4: Surface drainage impacts on onsite and offsite flooding.

The construction of new cannabis facilities, including commercial structures or lined water detention basins, could alter local drainage characteristics of individual sites and influence onsite or offsite flooding. Compliance with regulations relating to grading and drainage would limit these effects, however only cannabis-related activities in excess of 1,000 sf of disturbance would be required to comply with both local ordinances and requirements of the Central Valley Regional Water Quality Control Board. As a result, impacts would be potentially significant.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County that mitigate or avoid the significant effects on the environment.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure that will reduce flooding impacts to a less-than-significant level.

Implement Mitigation Measure 3.3-1.

This measure will require all cannabis-related operations to comply with the regulations of the Central Valley Regional Water Quality Control Board and its associated regulatory controls. The impact of increased runoff volume associated with new or expanded facilities would then be addressed through compliance with both the Calaveras County grading and drainage ordinance and the General Order, and would result in a less-than-significant impact to onsite and offsite flooding.

The Regulatory Ordinance also includes changes that make it more restrictive than the initially proposed project, including more restrictive zoning requirements, larger setback requirements, and greater operating restrictions. These changes have reduced the project's impacts.

Significant Effect: Impact 3.9-2: Long-term increase in traffic.

Upon adding trips associated with the cannabis-related activities allowed under the Regulatory Ordinance to existing traffic levels, the project could cause the Level of Service (LOS) on nine State highway segments and potentially other local roadways to degrade to unacceptable levels. Therefore, with LOS that exceeds existing LOS standards, this impact is considered significant.

Finding

Changes or alterations have been required in, or incorporated into, the project by Calaveras County to mitigate or avoid the significant effects on the environment. While the mitigation measures would reduce the significant effects related to traffic, there is no feasible mitigation available that would reduce the impact to a less than significant level. Alternatives 1 (no project) and 2 (ban) would avoid these impacts, but these alternatives have been rejected as infeasible for the reasons set forth in Section VIII, above. The Regulatory Ordinance will reduce the impact, but not to a less than significant level. No other feasible alternatives are available to reduce this impact. Therefore, specific economic, legal, social, technological, or other considerations make infeasible further mitigation that would avoid or substantially lessen the significant environmental effect, and thus, this would be a significant and unavoidable impact.

Facts in Support of Finding

Calaveras County has adopted and will implement the following mitigation measure to reduce impacts related to increases in local/regional traffic.

Mitigation Measure 3.9-2: Participation in County Road Impact Mitigation Fee Program.

The County shall amend the proposed ordinance to reflect the following text in Sections 17.95.210, 17.95.240 and 17.95.310:

Participate in the County's approved Road Impact Mitigation (RIM) Fee Program prior to initiation of operational activities. Fees assessed for each cannabis-related activity will be based on the potential one-way employee trips that could be generated per day during peak operations and determined by the Calaveras County Public Works Department.

The measure is incorporated into the Ordinance in Section 17.95.060.I, and expanded to include all vehicle trips, not just one-way employee trips. The section numbers listed in the measure (17.95.210, 17.95.240 and 17.95.310) are from an earlier draft of the proposed ordinance.

While the mitigation identified above would require contribution to the County's existing RIM Fee Program and would reduce impacts through implementation of roadway improvements, improvements to certain roadways, especially State highways, may not occur prior to operation of cannabis-related operations allowed under the Regulatory Ordinance. As a result, implementation of the Regulatory Ordinance may result in temporary and periodic increases in traffic volumes such that LOS would degrade to unacceptable levels. As a result, this impact would be significant and unavoidable.

XI. FINDINGS FOR IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT OR NO IMPACT WITHOUT IMPLEMENTATION OF MITIGATION MEASURES

The Board has reviewed and considered the information in the Draft EIR and the Final EIR, addressing potential environmental effects, as well as the proposed mitigation measures, and alternatives.

The Board, relying on the facts and analysis in the Draft EIR and Final EIR, which were presented to the Board and reviewed and considered prior to any approvals, concurs with the conclusions of the Draft EIR and Final EIR regarding the potential environmental effects of the Regulatory Ordinance, as currently amended and presented to the Board.

As explained above, the Regulatory Ordinance is a modified version of the initially proposed project that was analyzed in the EIR. Because the Regulatory Ordinance is more restrictive than the initially proposed project, it will have less environmental impacts. Thus, impacts that were less than significant or no impact for the proposed project will also be less than significant or no impact for the Regulatory Ordinance.

The Board finds that the Regulatory Ordinance has no potential for significant environmental effects on the following resource categories: Agriculture and Forestry Resources; Geology and Soils; Hazards and Hazardous Materials; Mineral Resources; Public Services; Recreation; and Utilities and Service Systems.

The Board finds that all of the following impacts will be less than significant or no impact:

Aesthetics

Impact 3.1-2: Substantially degrade the existing visual character or quality of the project area.

Air Quality

Impact 3.2-1: Short-term construction-generated emissions of ROG, NOX, PM₁₀, and PM_{2.5}.

Archaeological, Historical, and Tribal Cultural Resources

Impact 3.4-3: Accidental discovery of human remains.

Impact 3.4-4: Disturb a unique paleontological resource.

Impact 3.4-5: Change in the significance of a tribal cultural resource.

Hydrology and Water Quality

Impact 3.5-5: Surface drainage impacts on riparian environments.

Land Use and Planning

Impact 3.6-1: Potential for physical division of an established community.

Impact 3.6-2: Conflict with relevant plans, policies, and zoning adopted for the purpose of avoiding or mitigating an environmental effect.

Noise

Impact 3.7-1: Short-term, construction-related noise.

Impact 3.7-2: Long-term non-transportation operational noise.

Impact 3.7-3: Long-term traffic noise levels.

Population and Housing

Impact 3.8-1: Increased employment opportunities and housing demand from operation.

Transportation and Circulation

Impact 3.9-1: Construction-related increase in traffic.

Impact 3.9-3: Potential for increased emergency response times or inadequate emergency access.

XII. STATEMENT OF OVERRIDING CONSIDERATIONS

A public agency may approve a project despite its significant and unavoidable impacts if it makes the necessary findings and adopts a “Statement of Overriding Considerations” setting forth the specific reasons why the agency finds that the project’s “benefits” render “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, §21081, subd. (b).) The Board’s decision to approve the Regulatory Ordinance despite its significant and unavoidable impacts is guided by CEQA Guidelines Section 15093, which provides as follows:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In accordance with the requirements of CEQA and the CEQA Guidelines, the Board finds that the mitigation measures identified in the Final EIR and the MMRP, as amended and incorporated into the Ordinance, when implemented, will avoid or substantially lessen nearly all of the Regulatory Ordinance’s significant environmental effects. Certain significant impacts, however, are unavoidable even after incorporation of all feasible mitigation measures. These significant and unavoidable impacts are related to odors and traffic (see Section X, above).

The Board finds that the remaining significant and unavoidable effects are outweighed and are found to be acceptable due to the following specific overriding economic, legal, social, or other benefits identified below. The Board finds that any one of the benefits set forth below is sufficient by itself to warrant approval of the Regulatory Ordinance. This determination is based on the findings herein and the evidence in the record. Having balanced the unavoidable adverse environmental impacts against each of the benefits, the Board hereby adopts this Statement of Overriding Considerations for the following reasons.

1. The Regulatory Ordinance establishes a county-wide policy regarding cannabis and provides a means for the County to regulate cannabis activity. Although cannabis-related

activities have been occurring in Calaveras County for decades, it has largely been unregulated. The lack of regulations or a county-wide policy on cannabis caused illegal cannabis operations to proliferate, leading to environmental harm and putting the health, safety, and welfare of county residents at risk. While the County's urgency ordinance has provided a temporary solution, the Regulatory Ordinance establishes a permanent policy and regulations to protect the health, safety, and welfare of County residents.

2. The Regulatory Ordinance will reduce conditions that create public nuisances by enacting regulations including, without limitation, restrictions as to location, type, size, and operation of cannabis cultivation sites, and the use of adequate screening, security, and other protective measures to more effectively control the adverse impacts on County residents and the environment associated with cannabis cultivation and other commercial cannabis activities.
3. The Regulatory Ordinance will have environmental benefits that outweigh its significant and unavoidable impacts. Unregulated cannabis activities can cause environmental harm, including impacts related to, among others, hazardous substances, water pollution, air pollution, erosion, and loss of habitat or other harm to endangered or threatened species. By establishing strict rules to regulate cannabis activities in the County, the Regulatory Ordinance will help assure that these types of impacts can be avoided. It will also help minimize risks of and complaints regarding fire, odor, and pollution caused by unregulated cultivation of marijuana within the County.
4. The Regulatory Ordinance will provide revenue to the County that it can use to enforce the regulations and eliminate those cannabis activities that are prohibited, as well as the adverse effects that are associated with them. It is estimated that the total tax revenue from regulated cannabis activities would be approximately between \$13,450,000 and \$17,850,000 depending on the number of applications approved (assuming that all registered commercial cultivators under the urgency ordinance are able to relocate to a conforming parcel and each operator grows the maximum amount allowed under the Regulatory Ordinance). If fewer than the estimated 300 to 400 successful registrants are able to relocate and receive approval, revenue would be less than the above estimates. In addition to this tax revenue, allowing certain cannabis activities to occur, as strictly regulated under the Regulatory Ordinance, would also have other economic benefits for the County including increased employment and labor income.¹

¹ See *An Economic Impact Assessment of the Cannabis Cultivation Industry in Calaveras County* (February 2, 2017) prepared by Center for Business and Policy Research, Eberhardt School of Business, and McGeorge School of Law.