3 COMMENTS AND RESPONSES

This chapter contains comment letters received during the public review period for the Draft EIR, which concluded on December 23, 2019, including a summary of the comments received during the December 3, 2019 Planning Commission public hearing. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the Draft EIR.

The letters received during the public review period on the Draft EIR are provided in their entirety. Oral comments from the Planning Commission meeting are provided in summary form. Each set of comments is bracketed to separate one distinct comment from another, and each bracket is numbered to allow for a corresponding response. Responses are provided immediately following each comment letter/document.

Many of the comments received do not pose questions or comments about the adequacy of the information or analysis within the Draft EIR; therefore, responses are not mandated pursuant to CEQA Guidelines Sections 15088(a) and 15132(d). Nevertheless, the County has provided responses to all comments received, including those directed solely to the various components of the CLUO.

Where revisions to the Draft EIR text are called for, the Draft EIR page number is identified, followed by a description of the appropriate revision. Added text is indicated with underlined text, and deleted text is shown in strikeout. Text revisions to the Draft EIR are identified fully in Chapter 4, “Revisions to the Draft EIR,” of this response to comments document.

3.1 MASTER RESPONSES

Several comments raised similar issues. Rather than responding individually, master responses have been developed to address the comments comprehensively. A reference to the master response is provided, where relevant, in responses to the individual comment. Master Response 1 is referenced as MR-1, Master Response 2 is referenced as MR-2, and so on.

3.1.1 Summary of Master Responses

The following is a summary of master responses provided below:

- Section 3.1.2 – Master Response 1: No Project Alternative and No Cannabis Alternative
- Section 3.1.3 – Master Response 2: Baseline Conditions Used in the Draft EIR
- Section 3.1.4 – Master Response 3: Range of Alternatives Evaluated in the Draft EIR
- Section 3.1.5 – Master Response 4: CEQA Alternatives and County Decision-Making
- Section 3.1.6 – Master Response 5: Cannabis as an Agricultural Crop
- Section 3.1.7 – Master Response 6: Economic Effects and Property Values
- Section 3.1.8 – Master Response 7: Code Enforcement and Crime
- Section 3.1.9 – Master Response 8: Marijuana and Hemp
- Section 3.1.10 – Master Response 9: Buffers
- Section 3.1.11 – Master Response 10: CUP Process and Overconcentration
- Section 3.1.12 – Master Response 11: Cultural Change
- Section 3.1.13 – Master Response 12: Expression of Opinion/Preference
- Section 3.1.14 – Master Response 13: Cannabis Tax Revenue
- Section 3.1.15 – Master Response 14: County Cannabis Disclosures
3.1.2 Master Response 1: No Project Alternative and No Cannabis Alternative

Several comment letters state that the No Project Alternative in the Draft EIR does not meet CEQA requirements because it includes the 78 existing and eligible cannabis cultivation sites. Many commenters request that a “no cannabis alternative” should be considered.

CEQA Guidelines Section 15126.6(a) requires that EIRs include an assessment of:

- a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a range of potentially feasible alternatives that will avoid or substantially lessen the significant adverse impacts of a project, and foster informed decision making and public participation. An EIR is not required to consider alternatives that are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason (Citizens of Goleta Valley v. Board of Supervisors [1990] 52 Cal.3d 553 and Laurel Heights Improvement Association v. Regents of the University of California [1988] 47 Cal.3d 376).

Evaluation of a no project alternative is required under CEQA (CEQA Guidelines Section 15126.6(e)). The purpose of the no project alternative is to allow a comparison of the environmental impacts of approving the proposed project with the effects of not approving it. Pursuant to Section 15126.6(e)(3) of the CEQA Guidelines, the discussion of the “no project” alternative usually involves one of two approaches:

- **(A)** When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the “no project” alternative will be the continuation of the existing plan, policy or operation into the future. Typically, this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

- **(B)** If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the “no project” alternative is the circumstance under which the project does not proceed.

The No Project-No CLUO Alternative satisfies approach “A.” Alternative 1, “Cultivation (Ancillary Nurseries and Processing Only) With Existing Limits (Existing Operations With CLUO) CEQA Preferred Alternative,” assumes retention of the identified 78 existing and eligible cannabis cultivation sites. It would implement the CLUO and would not be considered the No Project Alternative. Draft EIR Chapter 5, “Alternatives,” evaluates the No Project-No CLUO Alternative as the CEQA required No Project Alternative. The No Project-No CLUO Alternative is similar to Alternative 1 in that it assumes continued operation of the 78 cannabis cultivation sites that are currently allowed or eligible to cultivate in the County under Yolo County Code Title 5, Chapter 20 (Marijuana Cultivation Ordinance). However, the No Project-No CLUO Alternative would not include the adoption of the proposed CLUO. Rather, it would assume continued operation of those licensed facilities under the existing licensing program (Yolo County Code Title 5, Chapter 20) without implementation of the proposed CLUO.
The Draft EIR does identify a ban on commercial cannabis operations in the County as a potential alternative. Under this alternative, the County would implement a ban on commercial cannabis cultivation operations. No new commercial cannabis cultivation, processing, or distribution facilities would be allowed (Draft EIR, Section 5.2.1, “Ban on Commercial Cannabis Operations in the County,” page 5-2). This alternative would also result in the cessation of commercial cultivation cannabis operations currently allowed under the Marijuana Cultivation Ordinance. Enforcement activities would be undertaken by the County and other agencies, if necessary, to ensure proper closure of existing commercial cannabis cultivation operations.

Consistent with the requirements of CEQA Guidelines Section 15126.6(c), the Draft EIR identified that this alternative was rejected from further evaluation for the following reasons:

- It is inconsistent with the passage of Proposition 64 in November 2016 which carried in Yolo County by a margin of 60.5 percent to 39.5 percent.
- It is inconsistent with the passage of Measure K in June 2018 which carried in Yolo County by a margin of 79 percent to 29 percent.
- As described on page 5-2 of the Draft EIR, it does not attain six of the 11 project objectives (D, F, G, I, J, and K) and is arguably inconsistent with project objective E. All of the project objectives are listed below for convenience:
  
  A. Protect the public health, safety, and welfare.
  B. Protect environmental resources and minimize environmental impact.
  C. Ensure neighborhood compatibility.
  D. Ensure safe access to medical cannabis for patients.
  E. Support agricultural economic development including recognition of valuable new crops, preservation of agricultural land, and creation of opportunities for new farmers.
  F. Recognize cannabis as an agricultural crop with unique challenges including Federal classification, legal history, crop value, transaction security, distinct odor, and energy and water requirements.
  G. Recognize competing and evolving community values and interests related to the cannabis industry.
  H. Avoid establishing undesirable precedents for other agricultural sectors.
  I. Avoid unintended consequences including unforeseen community impacts and over-regulation that drives cannabis activities underground.
  J. Allow for adaptation to changing market, cultural, and regulatory considerations over time.
  K. Acknowledge the will of the voters in passing Proposition 64, Marijuana Legalization, in 2016.

As described in Draft EIR Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” the County is considering a range of alternatives for the implementation of the CLUO related to the extent of allowed cannabis uses, performance standards and buffers, and concentration of cannabis operations in regions of the County. MR-4, “CEQA Alternatives and County Decision-Making,” discusses this in greater detail.
3.1.3  Master Response 2: Baseline Conditions Used in the Draft EIR

Several comment letters state that the Draft EIR does not adequately define baseline conditions. These commenters state that the baseline conditions for the Draft EIR should be conditions from before adoption of Chapter 20 to Title 5 of the Yolo County Code and the subsequent licensing of cannabis cultivation sites in the County.

CEQA Guidelines Section 15125(a) provides the following guidance for establishing the baseline in an EIR:

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

The notice of preparation (NOP) was issued on August 24, 2018. Typically, and in accordance with CEQA Guidelines Section 15125, the date on which the NOP is issued is considered appropriate for establishing the baseline. As described in Draft EIR Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” and the “Approach to the Environmental Analysis” section in Section 3, baseline conditions for the consideration of the impacts of the proposed CLUO consist of the identified 78 existing and eligible cannabis cultivation sites allowed in Chapter 20 of Title 5 of the Yolo County Code, which include ordinance amendments adopted October 25, 2016, November 7, 2017, and July 24, 2018 (see Draft EIR pages 2-3 through 2-12, 3-1, and 3-2). Countywide baseline conditions for each environmental issue area described in Draft EIR Sections 3.1 through 3.16 reflect existing cannabis cultivation operations, as well as the most recent information and technical studies that were available when the Draft EIR was prepared.

The description of baseline conditions in the Draft EIR is consistent with CEQA requirements and published case law. CEQA does not require environmental review of or mitigation for historic or pre-project conditions. CEQA Guidelines Section 15125(a) states that the baseline physical conditions are the basis by which a lead agency determines whether an impact of the project is significant. In Center for Biological Diversity et al. v. California Department of Fish and Wildlife (2015) 234 Cal.App.4th 214 (183 Cal.Rptr.3d 736), the Fourth Appellate District Court upheld the baseline conditions and ruled that the baseline condition must reflect the physical conditions at the time the environmental analysis begins even if the current conditions include unauthorized and even environmentally harmful conditions that never received environmental review. Other published court decisions that support this interpretation of CEQA are Riverwatch v. County of San Diego (1999) 76 Cal.App.4th 1428 (91 Cal.Rptr. 2d 322) and Fat v. County of Sacramento (2002) 97 Cal.App.4th 1270 (119 Cal.Rptr.2d 402).
3.1.4 Master Response 3: Range of Alternatives Evaluated in the Draft EIR

Commenters identified concerns regarding the extent of the alternatives evaluated. Specifically, these comments state that the alternatives do not address environmental impacts of cannabis uses, do not consider reductions in allowed cannabis uses, and may not consider all of the possible combinations of CLUO implementation that could be adopted (e.g., buffers, noncultivation cannabis uses, overconcentration, and placement of cultivation in greenhouses and buildings).

As discussed in MR-1, “No Project Alternative and No Cannabis Alternative,” CEQA Guidelines Section 15126.6(a) requires EIRs to describe a range of alternatives to the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. The proposed CLUO would continue to regulate, and potentially reduce or expand, allowed cannabis activities in the unincorporated area that is currently allowed under Chapter 20 to Title 5 of the Yolo County Code. As described in Draft EIR Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” the County is considering a range of alternative approaches to the CLUO consistent with the project objectives related to the extent of allowed cannabis uses, performance standards and buffers, and concentration of cannabis operations in regions of the County. The Draft EIR discloses the effectiveness of variations in CLUO performance standards/buffers under each of the five alternatives in addressing environmental impacts. Examples include effectiveness of different buffer distances on odor impacts (Draft EIR Impact AQ-4), noise impacts (Draft EIR Impacts NOI-1 and NOI-2), and overconcentration impacts (Draft EIR Chapter 4). The Draft EIR provides adequate disclosure of these CLUO provisions to allow the County to blend features into a modified alternative that would not require recirculation under CEQA Guidelines Section 15088.5.

The Draft EIR identifies the assumed number, type, and distribution of cannabis uses under each alternative (see Draft EIR Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives”). The distribution assumptions are based on current licensed cultivation operations in the County, review of cannabis applications received in response to the nursery and processing facilities pilot program and the early implementation development agreements for cannabis operations, and input from County staff based on an understanding of the local cannabis industry. The intent is to reflect reasonable dispersion assumptions for purposes of the countywide environmental impact analysis. The five CLUO alternatives do not commit the County to reach the number of cannabis uses identified under each alternative. The Board of Supervisors (Board) has the discretion to establish caps on cannabis uses below the assumed number identified for each alternative. Reduction in the assumed number of cannabis uses is unlikely to require recirculation of the Draft EIR under CEQA Guidelines Section 15088.5. As explained further in MR-4, “CEQA Alternatives and County Decision-Making,” below, the issue of recirculation will be evaluated following an indication from the Board regarding its likely decision/direction.

3.1.5 Master Response 4: CEQA Alternatives and County Decision-Making

Several commenters have indicated that the Board should be limited to considering only the specifically defined CEQA alternatives described in the Draft EIR. Others have gone further and suggested that should the Board make any modifications to the identified alternatives, recirculation of the Draft EIR would be required. To the contrary, the Board is not restricted in its consideration of an alternative or of changes to the CLUO under any of the alternatives. However, the County does have an obligation to demonstrate that the EIR adequately addresses the final proposed CLUO and that the requirements of CEQA have been fully met.

Alternatives, in the context of CEQA, reflect different ways that a project proponent could achieve most of the stated objectives, while also reducing or eliminating the environmental impacts of the proposed project (see MR-3, “Range of Alternatives Evaluated in the Draft EIR”). The Lead Agency is required to evaluate and compare the environmental impacts of alternatives to the proposed project in an EIR, though not at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)). However, the County elected to analyze five alternatives at a detailed equal level of review, as described further below.
A fundamental mandate of CEQA is 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 the project” (PRC Sections 21002, 21081) and meet the objectives of the project. Therefore, as part of the decision-making process for projects involving the preparation of an EIR, governmental agencies are required under CEQA to consider alternatives to proposed actions affecting the environment (PRC Section 21001(g)).

An EIR can be overturned if it analyzes a range of alternatives, but fails to identify one of the alternatives as the preferred project. The courts have said that a broad range of alternatives without a stable project presents the public with a moving target and an obstacle to informed participation (Washoe Meadows Community v. Department of Parks and Recreation, 2017). The CLUO Draft EIR addresses this by clearly identifying the Preferred Project as Alternative 1.

As described in MR-3, “Range of Alternatives Evaluated in the Draft EIR,” the CLUO Draft EIR examines a total of seven alternatives (Alternatives 1–5, the No Project-CLUO Alternative, and the Ban on Cannabis Alternative). Alternative 1 is identified as the preferred project. Alternatives 2 through 5 are analyzed at the same level of detail as Alternative 1 in Draft EIR Chapters 1–4. This level of detail goes well beyond the requirements of CEQA but was undertaken to provide additional detailed information to the Board for decision-making purposes. The No Project—No CLUO Alternative is analyzed at a comparative level-of-detail in Draft EIR Chapter 5. Comparative alternatives analysis satisfies the requirements of CEQA which allows for alternatives to be considered at a lesser level of detail than the preferred project. The Ban on Cannabis Alternative is considered but rejected from further evaluation in Draft EIR Chapter 5 (see pages 5-2 through 5-3 and MR-1, “No Project Alternative and No Cannabis Alternative”). The Ban on Cannabis Alternative was rejected as infeasible for reasons summarized in MR-1.

Identification of Alternative 1 as the preferred project does not limit the discretion of the Board in considering any of the alternatives, nor in making changes to the preferred project before adoption. Similarly, rejection of the Ban on Cannabis alternative in Chapter 5 of the Draft EIR, does not limit the Board from re-evaluating that conclusion, should they so choose.

Upon determining which alternative is most closely in alignment with a majority of the Board members, and further determining what changes (if any), the Board wishes to make to that alternative, the County’s obligation under CEQA is to determine whether recirculation is required before certification of the EIR (CEQA Guidelines Section 15088.5). Recirculation is required when significant new information changes the EIR 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.” Significant new information may include any of the following:

- changes in the project,
- changes in the environmental setting,
- additional data, or
- other new information.

CEQA Guidelines Section 15088.5 provides the following four examples of “significant new information” that would trigger recirculation:

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

2) A disclosure that 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 disclosure that 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 draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Some commenters have identified more specific site and/or zoning controls as a desirable option for siting cannabis uses. This is examined further in MR-9, “Buffers.”

In the course of deliberating the proposed CLUO, the various County citizens advisory committees (CACs) were given the opportunity to provide their recommendations regarding the final CLUO. They were asked which alternative is most closely in alignment with a majority of the CAC members and their particular community, and what changes (if any), the CAC wishes to recommend to that alternative. The recommendations of the CACs were considered by staff in the preparation of a staff recommendation to the Planning Commission and will be subsequently and independently considered by the Planning Commission and the Board of Supervisors.

The Planning Commission will consider the staff recommendation, the CAC recommendations, and all other public and agency comments, in formulating its recommendation to the Board. The Planning Commission will be asked which alternative is supported by a majority of the Commissioners, and what changes (if any), the Commission wishes to recommend to that alternative, for consideration by the Board. The recommendations of the staff, the CACs, the Planning Commission, and all other public and agency comments will be considered by the Board in making its final decision regarding the proposed CLUO. Following a public hearing(s) and deliberation by the Board, the Board members will be asked to articulate their direction regarding the final CLUO. County staff, with input from the CEQA consultant and technical team, will assess whether additional environmental impact analysis of the Board’s articulated direction is necessary to comply with CEQA, and provide this information to the Board for its consideration.

A proposed new alternative constitutes new information only if all three tests in Section 15126.6(a) of the CEQA Guidelines are met: (1) the alternative was feasible; (2) the alternative was considerably different from alternatives already analyzed; and (3) the alternative would clearly lessen the significant environmental impacts of the project (South County Citizens for Smart Growth v. County of Nevada, 2013 WL 5936664, Cal. App. 3 Dist.).

3.1.6 Master Response 5: Cannabis as an Agricultural Crop

Commenters raised concerns that cannabis cultivation and noncultivation activities conflict with agricultural uses that are the County’s primary industry as set forth in the General Plan and should not be considered an agricultural crop. As described below, cannabis does fit within the County’s definition of Agriculture as set forth in the General Plan and zoning regulations. The County considers cannabis to be an agricultural crop and has issued annual cannabis cultivation licenses for the last 4 years in reliance on this determination.

Commenters also identified the following concerns which are addressed below.

- Cannabis uses may alter the visual character of the County and result in quality of life impacts.

- Outdoor cannabis cultivation may pose a threat to noncannabis agricultural operations because of conflicts with pesticide spray drift and the potential for contamination from agricultural dust. The potential for pesticide spray drift and agricultural dust contamination of cannabis cultivation may result in potential financial and litigation liability to nearby agricultural uses.

- Operation of cannabis cultivation sites may create pest impacts and remove agricultural lands from production as a result of cannabis site density and potential lack of maintenance of the remaining agricultural area of the parcel.
CANNABIS AS AN AGRICULTURAL CROP AND ITS IMPACTS

Pursuant to California Health and Safety Code Section 11362.777(a) and Business and Profession Code Section 26067(a), the state has defined medical and adult-use cannabis as agricultural products (Draft EIR page 3.2-20). Section 8-2.1404(E) of the proposed CLUO identifies cannabis cultivation and related activities as agricultural land uses. Section 8-2.1404(E) states:

Cannabis Cultivation and Related Activities are Agricultural Land Uses – Legal cultivation of cannabis is an agricultural use.

The cultivation and commerce process for cannabis involves largely the same practices as other agricultural products currently generated in the County. These similar practices include:

- cultivation of the crop through a growth medium (soil), light, water, and nutrients;
- harvesting and processing of the crop for sale;
- industrial activities that create products from the crop; and
- sales of crop and/or products created from the crop.

The Draft EIR does acknowledge that there are differences in how cannabis cultivation operations are conducted in the County as compared to other agricultural operations. While the current average parcel size for cannabis cultivation in the County is roughly 40 acres, the cannabis cultivation activity footprint is generally no larger than 2 acres because the cultivation garden canopy is limited to 1 acre under Yolo County Code Section 5-20.04(A)(2)(a)(1). As a result, the operations dedicated to cultivation are generally limited to a portion of the parcel and the remaining land areas of the parcel are often not used for cultivation. This differs from other County agricultural operations such as row crops, orchards and vineyards, and pastureland that more commonly use the entire parcel area. Cannabis cultivation sites often include solid fencing that obstruct open public views across agricultural fields. Other features that differ from existing agricultural operations (or that do not exist) include security features (e.g., gates, security personnel, and guard dogs) and in some cases, the lack of maintenance of the remaining land areas of the parcel that are not used as part of the cultivation operation (Draft EIR pages 3.1-13 and 3.1-14 and 3.2-20 and 3.2-21).

Noncultivation cannabis uses under CLUO Alternatives 2, 3, 4, and 5 would support the success of cannabis cultivation consistent with General Plan policies AG-3.2, AG-3.4, AG-3.7, and ED-1.3 that allow for uses that support agriculture including commercial uses, product sales, processing, and distribution of locally produced crops. Noncultivation cannabis uses are considered by the County as compatible with agriculture and are similar to agricultural land uses currently allowed under the Zoning Regulations. Section 8-2.303 of the Yolo County Code defines agricultural land use types and operations as including processing of agricultural products, accessory uses such as greenhouses, commercial uses such as agricultural chemical/fertilizer sales, wineries, breweries, and industrial uses such as regional processing facilities (e.g., wine, beer, spirit, olive oil production, canneries, and commercial composting). The corresponding Zoning Regulation Tables 8-2.304[a], 8-2.304[c], and 8-2.304[d] list examples of common uses and the permits required relative to agricultural production, commercial, and industrial uses.

The environmental impacts associated with the operational characteristics of cannabis uses are disclosed in Draft EIR Sections 3.1 through 3.15 and Chapter 4, “Cumulative Impacts and Overconcentration.” The Draft EIR impact analysis does conclude that adoption and implementation of the proposed CLUO under each of the five alternatives, including subsequent Cannabis Use Permits under the adopted CLUO, would result in significant and unavoidable visual character and odor impacts (see Draft EIR Impacts AES-3, AQ-4, CUM-1, CUM-3, OVC-1, and OVC-3), but does not conclude there would be significant impacts on agriculture or agricultural resources.
PESTICIDE SPRAY DRIFT AND DUST CONTAMINATION ISSUES

Draft EIR Impact AG-3 addresses conflicts with adjoining agricultural uses consisting of pesticide usage and dust contamination. The use of restricted pesticides is an existing component of the ongoing agricultural operations countywide. The California Department of Pesticide Regulation places controls on pesticides based on the results of risk characterization studies and documentation that limits their use to trained individuals and then only at times and places approved by county agricultural commissioners. The Yolo County Agricultural Commissioner has established 10 “use conditions” for the use of restricted materials (pesticides) for the protection of public health and adjoining land uses that include application restrictions, wind direction and speed, and buffers and setbacks for ground and aerial application (Draft EIR pages 3.2-8 through 3.2-14).

Technical studies have confirmed the effectiveness of the use of buffers and drift-reducing spray nozzles, limiting speed of application, and monitoring wind speeds to address pesticide drift (Rasmussen et al. 2011; Egan et al. 2014; Al Heidary et al. 2014). Exposure to restricted pesticides due to pesticide drift resulting from applications occurring at off-site farming operations is prohibited. Pesticide drift could adversely affect cannabis cultivation in a manner similar to organic crops currently grown in the County. The Yolo County Agricultural Commissioner investigates reported improper pesticide applications, including pesticide drift. Confirmation of pesticide drift can result in warning letters, fines, or loss of licensing to conduct pesticide application (Draft EIR page 3.2-24).

Unlike pesticide drift occurring during application, the Agricultural Commissioner does not regulate the migration of dust from field to field during wind events, farming operations, or otherwise. Dust generated from agricultural operations is regulated by the Yolo/Solano Air Quality Management District if it becomes a public nuisance (District Rule 2.5) and a farmer generating the dust may be advised to temporarily cease activities or face citation. Dust from normal agricultural practices under normal weather conditions does not generally result in nuisance conditions. The Draft EIR identifies on page 3.2-25 that as a result of the migration of dust containing residue from pesticides properly applied on nearby farming operations, “the potential may exist for a cannabis crop to be rendered unmarketable” depending on the results from required laboratory testing pursuant to CCR Title 16, Division 42, Sections 5304 and 5702 (Draft EIR pages 3.2-23 and 3.2-24).

Approximately 5 percent of all cannabis flower product tested in 2019 in the state failed to meet Bureau of Cannabis Control quality standards (Bureau of Cannabis Control 2019). The Bureau of Cannabis Control does not require testing laboratories to determine the specific source of the substances found in the cannabis goods (Bureau of Cannabis Control 2020). However, whether the contamination may be due to pesticide drift or a subsequent migration of dust from nearby fields, the use of restricted pesticides in a lawful manner and windblown dust is part of the environmental setting. CEQA does not consider effects of the environment on a project to be “environmental impacts” for purposes of analysis, mitigation, or otherwise. Rather, CEQA is directed at adverse environmental changes anticipated to be caused by a project. (California Building Industry Association v. Bay Area Air Quality Management Dist., 62 Cal.4th 369, 377 [2015].)

Appropriate resolution of this concern would be for neighboring farmers to work collaboratively to accommodate one another or to request the assistance of the Cannabis Task Force (CTF), Agricultural Commissioner, the Farm Bureau, or other industry leadership to help achieve a mutually beneficial outcome. Mediation services may also be appropriate, and ultimately the courts are available as a last resort. In 2019, the Agricultural Commissioner identified six complaints by cannabis farmers about pesticide applications on nearby crops. In five of the instances the complaint involved claims of aerial application of pesticides on nearby noncannabis crops with no notice to neighboring cannabis farmers. The sixth incident involved a claim of pest migration from a noncannabis crop to cannabis crop. The complaints were resolved with communication between parties facilitated by County staff.

AGRICULTURAL LANDS TAKEN OUT OF PRODUCTION AND PEST CONCERNS

As noted above, cannabis cultivation activities may be conducted on only a limited portion of a parcel, and remaining land areas of the parcel (particularly if it is large) may not be used as part of the cultivation operation. Based on the business decisions of the landowner, this may occur with any agricultural endeavor.
and is not limited solely to cannabis cultivation. Although this land may be fallowed for some period of time, the land is not converted to another use. It remains available for agricultural use. While Yolo County supports productive agricultural use of agricultural land, the business decision to fallow all or a portion of any particular agricultural property is generally considered a common, acceptable practice, and remains at the discretion of the land owner and/or land manager.

If left unmaintained, these areas could harbor agricultural pests that could affect adjoining agricultural uses. Draft EIR Impact AG-3 identifies the following requirement for maintenance of cannabis sites and associated fallow land to avoid nuisances and pest issues that could result in impacts on adjoining agricultural uses:

Section 8-2.1408(B) Agricultural Maintenance: Permittees on agricultural land must demonstrate to the satisfaction of the County Agricultural Commissioner that the majority of the parcel, excluding the area in cannabis cultivation, will be used for agricultural activities and/or will be properly maintained (e.g. weed abatement, pest management, etc.) when not in agricultural use to, among other things, avoid maintenance deficiencies that conflict with agriculture on other nearby properties.

Verification of compliance with this CLUO requirement would be provided through annual reporting and inspections by the County as provided under CLUO Section 8-2.1411 (Reporting and Inspections). Failure to comply could result in Cannabis Use Permit revocation and requirements for site restoration under CLUO Section 8-2.1412 (Enforcement).

CLUO CONSISTENCY WITH GENERAL PLAN AGRICULTURAL POLICIES

The discussion of Agricultural Resources in Section 3.2 of the Draft EIR lists several General Plan policies from the Land Use and Community Character and Agriculture and Economic Development Elements that are specific to agriculture and potentially relevant to the CLUO and its implementation. Several of these policies are cited above under “Cannabis as an Agricultural Crop and Its Impacts.” Page 3.2-11 of the Draft EIR also cites the General Plan definition of the Agriculture (AG) land use designation, which is stated in Policy LU-1.1 of the Land Use and Community Character Element as follows:

Agriculture includes the full range of cultivated agriculture, such as row crops, orchards, vineyards, dryland farming, livestock grazing, forest products, horticulture, floriculture, apiaries, confined animal facilities and equestrian facilities. It also includes agricultural industrial uses (e.g. agricultural research, processing and storage; supply; service; crop dusting; agricultural chemical and equipment sales; surface mining; etc.) as well as agricultural commercial uses (e.g. roadside stands, “Yolo Stores,” wineries, farm-based tourism (e.g. u-pick, dude ranches, lodging), horse shows, rodeos, crop-based seasonal events, ancillary restaurants and/or stores) serving rural areas. Agriculture also includes farmworker housing, surface mining, and incidental habitat.

Page 3.2-11 of the Draft EIR includes an incomplete version of this language. Chapter 4, “Revisions to the Draft EIR,” of this document contains a text change to correct the missing General Plan text, which is cited in its entirety, above.

In addition to the General Plan policies listed above, several others were referenced in Section 3.2 of the Draft EIR, including Policy LU-2.2, which seeks to allow additional agricultural commercial and agricultural industrial land uses in the agricultural areas; Policy AG-1.1 which encourages the growth of emerging crops and value-added processing; Policy AG-3.8 which encourages reuse of agricultural facilities to reflect changing economic conditions; Policy AG-3.16 which promotes agricultural innovation, including nontraditional agricultural operations to expand business opportunities; and Policy AG-5.1 which promotes markets for locally and regionally grown and/or prepared agricultural products and services.
The proposed CLUO includes an amendment to the General Plan to explicitly acknowledge cannabis as a legal crop, consistent with state law, and as such provides for new agricultural opportunities in support of agricultural economic development, preservation of agricultural land, and creation of opportunities for new farmers. Impact AG-4 (Conflict with Yolo County General Plan and Community Policies Related to Agricultural Resources) concludes that adoption of the CLUO and the associated updated policies and regulations would not conflict with the General Plan (Draft EIR page 3.2-25). The proposed amendments to the General Plan that acknowledge legal cannabis operations as agricultural land uses form the basis of this conclusion because the emerging legal industry provides additional opportunities for processing, distribution, and marketing of a locally grown crop.

CANNABIS AND RIGHT-TO-FARM PROTECTIONS

Unless the Board of Supervisors determines otherwise, County staff has taken the position that cannabis is not covered by the County right-to-farm ordinance (County Code of Ordinances, Title 10 (Environment), Article 6 (Agriculture), Sections 10-6.101 through 10-6.104 (Right-to-Farm). Moreover, if the proposed CLUO is enacted, the standards and requirements of the proposed ordinance would largely nullify any such protections. The County has taken no position on whether cannabis is or is not covered by the state right-to-farm provisions located in the California Civil Code, Division 4 (General Provisions), Part 3 (Nuisance), Title 1 (General Principles), Section 3482.5.

3.1.7 Master Response 6: Economic Effects and Property Values

CEQA is an environmental protection statute that is concerned with foreseeable physical changes on the environment from the project. Significant effects on the environment are those that result in a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by implementation of the CLUO, including conditions related to land, air, water, mineral resources, flora, fauna, noise, and objects of historic or aesthetic significance.

In evaluating the environmental impacts of a project, an EIR must evaluate indirect physical effects, in addition to the direct effects of a project. Direct effects are effects that are caused by a project and occur in the same time and place. An indirect environmental effect is a change in the physical environment that is not immediately related to a project, but that is caused indirectly by a project.

Although economic or social changes may have an indirect effect, economic or social changes alone are not considered significant effects on the environment. CEQA Guidelines Section 15064(e) provides that economic and social changes resulting from a project shall not be treated as significant effects on the environment (see also CEQA Guidelines Sections 15358(b), 15064(e), and 15382). As a result, evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment do not provide substantial evidence of a significant impact that require analysis under CEQA. Examples of socioeconomic effects that are typically not evaluated under CEQA include effects on property values, health care, job opportunities, property taxes, and impacts on specific businesses (see Preserve Poway v. City of Poway [2016], 245 Cal.App.4th 560 [a change in community character absent an adverse change in the physical environment was not subject to CEQA]; Saltonstall v. City of Sacramento [2015], 234 Cal.App.4th 549, 585 [allegations that a proposed basketball stadium would result in post-event impacts on safety by event crowds and the potential for crowd violence raised a social issue rather than an environmental issue that must be reviewed under CEQA]; Maintain Our Desert Env’t v. Town of Apple Valley [2004], 124 Cal.App.4th 430 [large national retailer need not be identified as end user in EIR’s project description because social, economic, and business competition concerns are not relevant under CEQA unless it is shown that they bear directly in the EIR’s analysis of effects on the physical environment]; Friends of Davis v. City of Davis [2000], 83 Cal.App.4th1004 [economic effect of a new store on similar stores was not a CEQA issue, absent substantial evidence of an adverse physical change]; City of Pasadena v. State [1993], 14 Cal.App.4th 810 [the social effects of locating a parole office in downtown were not subject to CEQA]).
In summary, changes in property values do not require analysis under CEQA, except to the extent that there is substantial evidence to support a finding that they would result in physical environmental effects. A lead agency is also not required to analyze conclusory statements regarding social and economic impacts that are not supported by substantial evidence in the record. However, they may be considered by the Planning Commission and Board of Supervisors during their deliberations on the merits of the CLUO.

Concerns regarding effects on property values were raised by a number of commenters. Some expressed opinions speculating that cannabis has or will harm property values and property tax revenue. While not a CEQA issue, as established above, the County nevertheless undertook research to explore this as an economic and social issue to be considered by the Board in its deliberations. The County has identified pertinent research on the effects of dispensaries on homes values in urban areas, and on the effects on agricultural prices of increased densities of cannabis cultivation in an area. In both cases the evidence indicates that property values increased. This is summarized more below.

The question of effects on property values specifically for residences on agricultural land (e.g., farm dwellings) is not directly addressed, however staff does not consider this to be pertinent. As described in MR-9, “Buffers,” the policy of allowing homes on agricultural land is relevant to this discussion. Yolo County has historically discouraged residential development on agricultural land and when allowed, such residences are generally considered incidental to the principal agricultural use. This acknowledges that the conduct of agricultural operations on designated agricultural land is the principal allowed use, and that such uses may create externalities for residents living in the agricultural area. In other words, the compatibilities and protections afforded a residential use in a residential area do not extend to homes on agricultural land. For this same reason, analyzing effects on farm dwellings from cannabis grown as a legal crop on agricultural land would not be determinative and is not further explored here.

Effects on homes near cannabis dispensaries are analyzed in a number of studies available online and seem to consistently conclude that the location of cannabis dispensaries increases both residential and commercial property values. Several more recent reports are summarized below:

“The Effect of Marijuana Dispensary Openings on Housing Prices,” Jesse Burkhardt and Matthew Flyr, Contemporary Economic Policy, November 29, 20181. This study was prepared by a policy and economic analysis firm. It used real estate and census information in the Denver area to assess the effect of dispensary openings on housing prices in Denver, Colorado. The study concludes home prices near new dispensaries do increase. The effect diminishes with distance but remains consistent over time.

“Marijuana and Real Estate: A Budding Issue,” National Association of Realtors Research Group, November 20182. This study reports the findings of a membership survey regarding interaction with marijuana and the real estate sector in states where marijuana is legal. The study concludes that the demand for both residential and commercial properties on/in which marijuana activities are conducted is a growing market. Of those that expressed knowledge related to the question, members observed no or increased change in residential property values near dispensaries. Some members reported difficulty selling a “grow house” even in states where marijuana is legal. Many reported tightening residential inventory associated with all cash purchases as a result of the emerging industry. This study also explored several relevant questions focused on the commercial real estate sector. Members reported a net increase in demand for warehouses, storefronts, and land in states where marijuana use is legal. Of those that expressed knowledge related to the question, members reported no net increase in perception of crime and no net change in actual increase in crime in states where marijuana use is legal. There were other questions explored in this report (relating to leasing and tenancy concerns) that are not pertinent to the Draft CLUO and not reported here.

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"How Legalizing Recreational Marijuana Impacts Home Values," Luke Babich, Clever Real Estate, April 09, 2019. This study was prepared by a real estate marketing firm. It used various real estate data bases to explore questions related to effects of legalized cannabis on home values in an urban environment, effects on crime rates, the relationship between cannabis crime and home values, and the effect of dispensaries on home value in an urban setting. The study makes the following conclusions:

- Recreational dispensaries lead to higher local home values.
- The connection between cannabis legalization and crime is unclear.
- Recreational cannabis legalization leads to an initial bump in home values, even without commercial sales.

Effects of cannabis cultivation on rural land prices are analyzed in several studies as well and the findings generally indicate a positive relationship between cannabis cultivation density and property prices. A summary of several available reports is provided below:

Sonoma County Cannabis Economic Report, Task Force Report, Sonoma County Economic Development Board, October 7, 2016. This task force report was prepared by a business group in Sonoma County and focuses on economic impacts and opportunities. Among many recommendations and conclusions in this report, Section 5 contains a statement from an industry expert that “property prices have skyrocketed in cities and counties throughout California that are considering, or have passed, regulations for medical cannabis businesses.” The report generally reflects a belief that the cannabis industry contributes to increasing property values and opportunities related to sales or lease for cannabis operations.

“Estimating the Impact of Cannabis Production on Rural Land Prices in Humboldt County, CA,” Benjamin Schwab and Van Butsic, Kansas State University/University of California Berkeley, September 2016. This academic paper focuses on Humboldt County and analyzes the competing forces of pricing reflective of cannabis cultivation revenue potential and pricing reflective of rural residential values in light of perceived externalities from cannabis such as crime, transient workers, odor, etc. The results indicate that the density of cannabis production in an area has a positive relationship with property prices. In other words, areas best suited for cannabis production have statistically significant higher prices than similar prices in parts of the County that do not produce cannabis.

“Green Acres? Cannabis Agriculture and Rural Land Values in Northern California,” Benjamin Schwab and Van Butsic, Kansas State University/University of California Berkeley, July 2017. This academic paper focuses on Humboldt County and analyzes the effect of cannabis cultivation on land prices. The results indicate that cannabis production has been a driver of increasing land values in Humboldt County. This paper also explores the effects on property value from passage of a cannabis land use ordinance. Post ordinance, eligible properties experienced increased values and the relative value of ineligible properties declined. Overall the study demonstrates that cannabis likely increases property values generally, and as regulations make growing more legitimate, eligible properties specifically exhibit increasing values. The authors indicate that whether the observed property premiums continue long-term may depend on the rigor of enforcement and whether cultivators perceive benefits from operating legally. The authors also point out that increasing prices may create competition for land between cannabis farmers and farmers of traditional crops, and that price gains in Humboldt County may stabilize as other areas allow outdoor cultivation.
3.1.8 Master Response 7: Code Enforcement and Crime

Several commenters raised concerns regarding code enforcement associated with licensed cannabis sites, specifically sites in Rumsey and near Guinda; how the County addresses complaints, and how to make complaints or obtain cannabis information from the County; and crime associated with cannabis sites.

While code enforcement of licensed cannabis sites may be funded through licensing fees, code enforcement of illegal cannabis operations cannot be funded through licensing fees, but may be funded through revenue from the cannabis tax. More information about the cannabis tax is provided in MR-13, “Cannabis Tax Revenue.”

The Yolo County CTF within the Department of Community Services is responsible for the enforcement of licensed cannabis cultivation sites. The CTF staff includes three cannabis code enforcement officers, a program supervisor, and a policy and enforcement manager. There are also two Sheriff detectives assigned to the CTF. The licensed cannabis cultivation sites are equally divided amongst the enforcement officers. Each enforcement officer is responsible for conducting unannounced monthly inspections of his/her assigned cultivation sites. An electronic inspection form is used to verify compliance with the provisions of the County’s Licensing Ordinance (Yolo County Code Title 5, Chapter 20, Marijuana Cultivation). The inspection form identifies the items with which licensees must be in compliance, based on the interim ordinance and applicable local and state laws, ordinances, and regulations. A copy of the inspection form is included in Appendix A.

If a licensee is not in compliance with an item on the inspection form, the corrective action(s) is identified and a deadline for making the correction(s) is documented. A summary of the inspection is provided to the licensee or his/her representative (if the licensee is not present) after the inspection is completed. The inspection form is then signed by the code enforcement officer and the licensee or his/her representative. A copy of the inspection form is emailed to the licensee if he/she was not present during the inspection.

If a correction action(s) was identified during the inspection, a follow-up inspection is conducted to verify whether the corrective action was made. Depending on the severity of the noncompliance, a notice of violation may be issued. A notice of violation may also be issued if the licensee fails to take corrective action(s) by the specified date(s). As of June 30, 2020, since the program’s inception, the CTF has issued 62 notices of violation.

As of June 30, 2020, five licensees have received three or more notices of violation within a 2-year period. The renewal license applications for these licensees were denied; they chose not to apply for a license renewal; or the license was withdrawn.

In addition, pursuant to Section 5-20.10(H), the CTF may revoke a license or deny the renewal of a license based on noncompliance activities at a cultivation site. As of June 30, 2020, an additional two licensees were denied a license renewal based on noncompliance activities at the cultivation sites.

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7 Upon adoption of the CLUO, the Licensing Ordinance will be modified as necessary to align with the CLUO and to reflect additional provisions based on public input, CTF and Sheriff Office experience, and experience from other counties that allow cannabis activities.
COMPLAINTS

Another responsibility of the CTF is responding to and verifying complaints on licensed cannabis sites. (Complaints associated with illegal cannabis cultivation sites are immediately referred to and addressed by the two CTF Sheriff detectives.) The County has an online complaint form which complainants can fill out anonymously or provide their name/contact information. A link to the complaint form is below:

https://survey123.arcgis.com/share/99a6cb2272b94bcca383db7dbc2a5495

Providing contact information is helpful to CTF staff since it enables them to contact the complainant to seek further information and/or provide follow-up information on the complaint. If complainant name and contact information are provided, this information is not disclosed to the licensee or his/her staff. The complaint form specifically states:

NOTE: If you would like to be contacted by a staff member to update you on the status and/or findings of the complaint, please provide a contact number where you can be reached. You may remain anonymous as this contact information will not be disclosed to the public.

Complaints made directly to the Sheriff’s Office are kept confidential upon request. However, complaints made to the Board of Supervisors, the Clerk of the Board, or sent to other County staff are considered public information and are not kept confidential.

Once a complaint is received, it is directed to the assigned enforcement officer for investigation. The enforcement officer will contact the complainant, if his/her contact information is provided. Some complaints are resolved through the CTF answering questions the complainant may have regarding activities on the cultivation site in question. Other complaints require the enforcement officer to verify the complaint and determine if a violation has occurred. In these instances, the licensee or his/her staff is informed that CTF personnel are there to follow-up on a complaint. This is necessary because once a complaint is verified by the CTF, the licensee is required to pay for the CTF time spent on addressing the complaint. Once a complaint is verified, the licensee must take corrective action as specified by the CTF. Throughout this process, the source of the complaint remains confidential.

Additional information regarding the County’s cannabis program and the CTF can be found on the County’s website, by calling 530-406-4800, or emailing cannabis@yolocounty.org. The link to the website is provided below:

https://www.yolocounty.org/community-services/cannabis-3398

CRIME

There are two Sheriff’s detectives assigned to the CTF. These detectives review licensee and property owner background checks, review any required security plans, and participate in site inspections. The detectives are also responsible for investigating thefts or other crimes that may occur on a licensed cannabis site and addressing illegal (nonlicensed) cannabis cultivation and other related activities in unincorporated Yolo County.

In 2017 the County investigated four crimes (e.g., theft, burglary, or robbery) occurring at cannabis sites, in 2018 there were 16 crimes, and in 2019 there were 14 crimes. These occurred geographically (by area) as follows:

<table>
<thead>
<tr>
<th>Table 3-1 Crimes Related to Cannabis Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2017</strong></td>
</tr>
<tr>
<td>Guinda</td>
</tr>
<tr>
<td>Woodland</td>
</tr>
<tr>
<td>Rumsey</td>
</tr>
<tr>
<td>Dunnigan</td>
</tr>
<tr>
<td>Capay</td>
</tr>
<tr>
<td>Zamora</td>
</tr>
<tr>
<td>Knights Landing</td>
</tr>
<tr>
<td>Esparto</td>
</tr>
</tbody>
</table>

Yolo County
Cannabis Land Use Ordinance Response to Comments Document
As noted earlier, background checks are currently required for the licensee and property owner on which a licensed cannabis cultivation site is located. If the licensee or property owner has been convicted of a crime “that is substantially related to the qualifications, functions, or duties of marijuana cultivation” the County may impose administrative penalties, deny an application, revoke a license, or suspend, place on probation with terms and conditions, or otherwise discipline the licensee. The crimes, as specified in Section 5-20.10(H)(14) of the Interim Ordinance include, but are not limited to:

a. A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

b. A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

c. A felony conviction involving fraud, deceit, or embezzlement.

d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

e. A felony conviction for drug trafficking.

Section 5-20.10(H)(15) of the Interim Ordinance also states that with the exception of items (d) and (e) above, a prior conviction where the sentence was completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related to marijuana cultivation and shall not be the sole ground for denial of a license. However, a conviction of this type after a site is licensed is grounds for revocation of a license or denial of the renewal of a license.

As stated in Draft EIR Section 3.13, “Public Services,” County staff will recommend that background checks be expanded to also include cannabis employees (Draft EIR page 3.13-7). It is believed that this could help reduce crimes on licensed cannabis sites. In addition, it could provide residents near licensed cannabis sites assurances that the employees at the site have not committed crimes such as those identified above.

As noted in Draft EIR Section 3.13, “Public Services,” the Sheriff’s Office has two resident deputies in Clarksburg. In addition, last year the Board of Supervisors approved the addition of a resident Sheriff’s Office deputy in the Capay Valley, including Esparto and Madison. The resident deputy is dedicated to the area, both living and working in the Capay Valley. (Draft EIR page 3.13-7)

In late 2019, an intergovernmental agreement was executed between the Yocha Dehe Wintun Nation and the County increasing the number of Sheriff deputies assigned to the Capay Augmented Patrol to a total of eight. These additional deputies will be assigned to the Capay Valley, including Esparto and Madison. They will provide the Capay Valley and Cache Creek Casino area with a specialized unit, including designated and trained deputies on a 24-hour/7-day-per-week patrol. Generally, two full-time deputies will be working within the Capay Valley on a daily basis.

The addition of a Capay Valley resident deputy and the two additional deputies who will be part of the Capay Augmented Patrol will provide further protection for residents in that area.

**CEQA ANALYSIS OF LAW ENFORCEMENT**

CEQA focuses EIR analysis of law enforcement on impacts resulting from physical improvements of needed facilities, essentially construction impacts. Consistent with this mandated focus, impacts on law enforcement associated with implementation of the draft CLUO are addressed on Draft EIR pages 3.13-34 through 3.13-37.

In general, the focus of CEQA is on disclosure of significant adverse physical effects. Economic and social concerns are not CEQA topics (see MR-6, “Economic Effects and Property Values”). However they are relevant project considerations that will be considered by staff and the Board in their deliberations. These
“non-CEQA” concerns expressed by the commenters are directly addressed in the draft CLUO through the performance standards set forth in Section 8-2.1408(LL) and Section 8-2.1410(D), which would minimize the potential for criminal activities through implementation of site security systems that may include access control, security cameras, alarms, security personnel, and fencing at sites. CCR Sections 5042, 5043, 5046, 5047, 40200, and 40205 also require on-site security measures for identified cannabis uses. These standards minimize the potential for criminal activities through controlled access for authorized personnel and locked door requirements at noncultivation sites (CCR Sections 5042 and 5043), security measures that include video surveillance, security personnel, lock and alarm system requirements (CCR Sections 5044, 5045, 5046, and 5047). Similarly, manufacturing sites are required to provide security plans that address access controls to buildings, alarm system requirements and video surveillance (CCR Sections 40200 and 40205).

3.1.9 Master Response 8: Marijuana and Hemp

Several commenters raised questions and concerns regarding hemp, including how it is currently being regulated by the County, and whether and how that might change. Hemp and marijuana are both strains of the plant Cannabis Sativa. Hemp is defined as follows:

“Industrial hemp” or “Hemp” means an agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis. (California Food and Agriculture Code, Division 24 Industrial Hemp, Section 8100(a)(6))

The difference between Industrial hemp and marijuana is that industrial hemp consists primarily of cannabidiol. It cannot have more than 0.3 percent of tetrahydrocannabinol, the principal psychoactive constituent of marijuana.

FEDERAL HEMP LAWS AND REGULATIONS

The Federal Agriculture Improvement Act of 2018 (the 2018 Farm Bill), which went into effect on January 1, 2019, removed hemp from Schedule I of the Federal Controlled Substances Act, thus, no longer federally regulating hemp as a controlled substance. It also allowed the transfer of hemp-derived products across state lines for commercial or other purposes and put no restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law.

The U.S. Department of Agriculture (USDA) established the U.S. Domestic Hemp Production Program through an interim final rule on October 31, 2019. This rule provides that the requirements for state and tribal regulatory plans regarding the production of industrial hemp be developed and submitted to USDA for review and approval.

CALIFORNIA HEMP LAWS AND REGULATIONS

In October 2019, Governor Newsom signed into law Senate Bill 153 (Statutes 2019, Chapter 838, Section 2. Effective January 1, 2020) which revised provisions of State law regulating the cultivation and testing of industrial hemp. Specifically, it requires the Secretary of the California Department of Food and Agriculture (CDFA), in consultation with the governor and state attorney general, to develop and submit a State plan consistent with the requirements of the 2018 Farm Bill and the interim final rule discussed above, and

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8 For purposes of this Draft EIR response, the term “hemp” refers to industrial hemp as defined by California Food and Agriculture Code, Division 24 Industrial Hemp, Section 8100(a)(6). The terms “marijuana or cannabis” refers to the definitions in the County’s Licensing Ordinance under Title 5, Chapter 20 of the Yolo County Code.
submit the plan to the USDA for approval on or before May 1, 2020. However, as of May 1, the State plan had not yet been submitted. The law also includes:

- requirements for established agricultural research institutions, hemp cultivators, and hemp breeders to register annually with county agriculture commissioners;
- requirements for hemp testing; and
- consequences for violating the law.

CCR Title 3, Food and Agriculture, Division 4, Chapter 8, Industrial Hemp Cultivation, provides additional details regarding registration fees and testing requirements for industrial hemp.

YOLO COUNTY HEMP REQUIREMENTS

In January 2019, the Yolo County Board of Supervisors adopted a 45-day moratorium on the cultivation of industrial hemp in the unincorporated areas of Yolo County. The moratorium was extended an additional 10 months and 15 days on February 26, 2019, which resulted in an expiration date of January 15, 2020.

On October 22, 2019, the Board directed staff to extend the moratorium on industrial hemp cultivation until January 14, 2021. The Board also directed County staff to develop a program to allow indoor (greenhouse) nursery production of hemp. In addition, the Board directed staff to work on strategies for how hemp could be cultivated more broadly in 2021 and thereafter.

On November 19, 2019, the Board adopted the ordinance extending the temporary moratorium on industrial hemp cultivation within the unincorporated area of Yolo County. The moratorium is in effect until January 14, 2021. The ordinance includes a limited exemption to allow the indoor (greenhouse) cultivation of nursery stock, transplants, research, or seed breeding. This program is administered through the County's Agriculture Commissioner's office.

The County has also established a Hemp Working Group to develop strategies for the cultivation of hemp more broadly beginning in 2021. The working group is comprised of representatives of the County Administrator's Office, County Counsel's Office, Department of Community Services, CTF, Sheriff's Office, Agriculture Commissioner's Office, UC Davis, the Yolo County Farm Bureau, and cannabis and hemp cultivators. The working group will address the following issues associated with hemp to assist in developing a future county ordinance on hemp cultivation:

- cross pollination between hemp and cannabis,
- odor impacts since hemp has similar odor issues as cannabis,
- hemp for human consumption vs. industrial purposes, and
- crime given the similarities between hemp and cannabis as related to appearance and odor.

Lastly, since there is currently no state guidance on the processing and manufacturing of industrial hemp, on December 17, 2019, the Board directed County staff to develop an ordinance banning industrial hemp processing, manufacturing, and sales until a state legal framework for such activities is adopted. On March 17, 2020, the Board approved an ordinance banning the processing, manufacturing, and storage of industrial hemp (except for processing, manufacturing, and sales associated with the indoor (greenhouse) cultivation of nursery stock, transplants, research, or seed breeding as allowed under the ordinance approved on November 19, 2019). The March 2020 approved ordinance also prohibits storage of industrial hemp (maintaining harvested hemp in an enclosed, secure, and legally complaint structure) unless the facility was used for this purpose as of February 25, 2020.
3.1.10 Master Response 9: Buffers

A number of commenters provided input on setbacks and buffers, including how they should be measured, what size they should be, the circumstances under which they should apply, and whether they should differ for existing licensees versus new applicants. This master response addresses these issues.

SETBACKS AND BUFFERS

Although the terms “setback” and “buffer” are often used interchangeably, in the land use regulatory environment they typically have different meanings. Setbacks are regulatory tools that define “no-build” or “no activity” zones based on the requirements of the County Zoning Regulations for each zone district (Yolo County Code Title 8, Chapter 2). Unless otherwise specified in the regulations, they are measured from the property line of a parcel inward towards the center of the property. They are applied to all parcels within a zone. Their focus is identification of the allowable area of a parcel for various uses/activities typically in the form of various “yard” areas such as side yard, front yard, and back yard. Buffers are also regulatory in the literal sense but their focus is generally on environmental and/or compatibility issues. Buffers focus more on distance between defined on- and off-site uses, typically to address issues related to environmental protection (e.g., buffers from biological resources or waterways) and/or compatibility between potentially conflicting uses (e.g., buffers between defined uses to dissipate noise or odor).

BUFFERS ESTABLISHED BY THE STATE

Section 26054(b) of the California Building and Professions Code allows local jurisdictions to establish different buffers that may be more or less stringent than the state requirements (600 feet from a K-12 school, day care center, or youth center). The County’s Licensing Ordinance which is in effect currently establishes buffers in Section 5-20.05, which are summarized below. The proposed CLUO will include buffers that supersede both the State and current County regulations and may differ. In addition, the State Water Resources Control Board’s Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation General Requirements and Prohibitions, Term 20 prohibits cannabis cultivation activities from occurring within 600 feet of an identified tribal cultural resources site. The State Water Resources Control Board may modify this requirement for specific identified tribal cultural resource sites at the request of an affected California Native American tribe(s) after consultation with the affected tribe(s).

CLUO SETBACKS

Section 8-2.1407 contains the CLUO Table of Cannabis Regulations including references to applicable zoning setbacks. This table clarifies that minimum setbacks applicable to the relevant zoning district will apply to the cannabis operation. For example, minimum front and side yard setbacks in agricultural zones (A-N and A-X) are 20 feet from property line or 50 feet from roadway centerline (whichever is greater). Rear setbacks are a minimum of 25 feet, and side yards require a minimum setback of 20 feet. Greenhouses and other structures must be located outside of these setback areas. Agricultural crops are not subject to zoning setbacks.

CLUO BUFFERS

Section 8-2.1408E of the proposed CLUO addresses buffers and how they would or would not apply under a variety of circumstances. Buffer distances and their effectiveness would differ based on many variables. Cannabis (like other agricultural crops and operations such as garlic and dairies) is a crop with a strong odor, considered offensive to some. The proposed CLUO establishes performance standards for odor that identify acceptable and unacceptable odor strengths. In other words, the ordinance would allow for some odor to be emitted from this crop without it being considered a nuisance. The Draft EIR substantiates that cannabis odor generally dissipates over distance and may also be affected by intervening conditions like vegetation, topography, and wind patterns.
Buffer Distance – The proposed CLUO does not assume a precise buffer distance. The CLUO Draft EIR examines a range of 0 to 1,000 feet through the defined CEQA alternatives. The distance for CLUO buffers will be defined ultimately by the Board and is not constrained by the range examined in the Draft EIR. Based on preliminary direction from the Board, staff will confirm that CEQA coverage is adequate and whether recirculation would be triggered (see MR-4, “CEQA Alternatives and County Decision-Making”). The final buffer distance(s) adopted by the Board will be integrated into the final CLUO. The Board may choose to apply variable buffers for different uses and/or under different circumstances.

Buffer distance would have a notable effect on the location of cannabis operations. One square acre of cannabis would have dimensions of approximately 208 feet by 208 feet. Rounding these to 200 x 200 for quick analysis purposes, a required buffer of 1,000 feet would extend over an area totaling 121 acres surrounding the cannabis cultivation on all sides. A required buffer of 500 feet would extend over an area totaling 36 acres surrounding the cannabis cultivation area on all sides. Table 3-2 reflects the approximate extent of the buffer area for various buffer distances.

<table>
<thead>
<tr>
<th>Buffer Distance</th>
<th>Affected Area¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000 feet</td>
<td>±256 acres</td>
</tr>
<tr>
<td>1,000 feet</td>
<td>±121 acres</td>
</tr>
<tr>
<td>700 feet</td>
<td>±64 acres</td>
</tr>
<tr>
<td>500 feet</td>
<td>±36 acres</td>
</tr>
<tr>
<td>200 feet</td>
<td>±9 acres</td>
</tr>
<tr>
<td>75 feet</td>
<td>2 to 3 acres</td>
</tr>
</tbody>
</table>

+Notes: ¹ Surrounding a 1-acre-square cultivation site.

Identified Sensitive Land Uses – The Draft CLUO identifies the following sensitive land uses as those to which the CLUO buffers would apply:

- off-site individual legal residences under separate ownership,
- residentially designated land,
- licensed day cares,
- public parks,
- recognized places of worship,
- public or licensed private schools,
- licensed treatment facilities for drugs or alcohol,
- federal lands held in trust by the federal government or that is the subject of a trust application for a federally recognized tribal government, and
- licensed youth centers that are in existence at the time a use permit is issued for any CDFA permittee.

This list in the proposed CLUO differs somewhat from, and would supersede, a similar list identified in the County’s current Licensing Ordinance (see Section 5.20.05][A][1] of the County Code). The differences and the reasons for them are described in Table 3-3.
Table 3-3 Differences in the Definition of Sensitive Land Uses Between the CLUO and County Code

<table>
<thead>
<tr>
<th>Proposed CLUO Sensitive Land Uses</th>
<th>Existing County Code Sensitive Land Uses</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Off-site individual legal residences on agriculturally zoned parcels under separate ownership</td>
<td>Any occupied residence located on a separate parcel</td>
<td>Clarified; removes occupancy requirement.</td>
</tr>
<tr>
<td>Residually zoned land</td>
<td>Not included</td>
<td>Added to proposed CLUO to parallel General Plan definition and allow for distinction between homes on residually zoned land and homes of non-residually zoned land.</td>
</tr>
<tr>
<td>Licensed day cares</td>
<td>Not included</td>
<td>Added to proposed CLUO to parallel General Plan definition and capture a vulnerable population.</td>
</tr>
<tr>
<td>Public parks</td>
<td>Park</td>
<td>Clarified; applies to “public” parks only.</td>
</tr>
<tr>
<td>Recognized places of worship</td>
<td>Church</td>
<td>Expanded to include all religions.</td>
</tr>
<tr>
<td>Public or licensed private schools</td>
<td>School</td>
<td>Clarified; does not cover private schools that are not licensed; corresponds to available data base.</td>
</tr>
<tr>
<td>Licensed treatment facilities for drugs or alcohol</td>
<td>Residential treatment facility</td>
<td>Clarified; corresponds to available data base.</td>
</tr>
<tr>
<td>Federal lands held in trust by the Federal government or that is the subject of a trust application for a federally recognized Tribal government</td>
<td>Federal lands held in trust by the Federal government or that is the subject of a trust application for a federally recognized Tribal government (shall apply prospectively)</td>
<td>Identical; not necessary to say “applies prospectively” as that is true as a matter of law unless otherwise stated.</td>
</tr>
<tr>
<td>Licensed youth centers</td>
<td>Youth-oriented facility</td>
<td>Clarified; corresponds to available data base.</td>
</tr>
<tr>
<td>Not included</td>
<td>School bus stop</td>
<td>Deleted; schools bus stops in rural locations may change based on student enrollment; they are not defined or designated making buffer measurement difficult; can be considered with each conditional use permit.</td>
</tr>
</tbody>
</table>

This list of identified sensitive land uses defined in the proposed CLUO also differs from defined sensitive receptors in the County General Plan. As shown below, the General Plan provides identical definitions of sensitive receptors for purposes of air emissions, hazardous materials, and noise emissions:

**Action CO-A108:** Regulate the location and operation of land uses to avoid or mitigate harmful or nuisance levels of air emissions to the following sensitive receptors: residually designated land uses; hospitals, nursing/convalescent homes, and similar board and care facilities; hotels and lodging; schools and day care centers; and neighborhood parks. Home occupation uses are excluded. New development shall follow the recommendations for siting new sensitive land uses consistent with the CARB’s recommendation as shown in the table below. (Policy CO-6.1, Policy CO-6.2)

**Action HS-A46:** Provide adequate separation between areas where hazardous materials are present and sensitive uses. The following land uses are considered sensitive receptors for the purpose of exposure to hazardous materials: residually designated land uses; hospitals, nursing/convalescent homes, and similar board and care facilities; hotels and lodging; schools and day care centers; and neighborhood parks. Home occupation uses are excluded. (Policy HS-4.1)

**Action HS-A62:** Regulate the location and operation of land uses to avoid or mitigate harmful or nuisance levels of noise to the following sensitive receptors: residually designated land uses; hospitals, nursing/convalescent homes, and similar board and care facilities; hotels and lodging; schools and day care centers; and neighborhood parks. Home occupation uses are excluded. (Policy HS-7.1, Policy HS-7.4)
The differences between the Draft CLUO sensitive uses and General Plan sensitive receptors are described in Table 3-4.

<table>
<thead>
<tr>
<th>Proposed CLUO Sensitive Land Uses</th>
<th>General Plan Sensitive Receptors</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Off-site individual legal residences on agriculturally zoned parcels under separate ownership</td>
<td>Not included</td>
<td>The General Plan specifically excluded this category based on the determination that homes on agricultural land are incidental to the principal agricultural use.</td>
</tr>
<tr>
<td>Residually zoned land</td>
<td>Residually designated land uses</td>
<td>Identical</td>
</tr>
<tr>
<td>Licensed day cares</td>
<td>Day care centers</td>
<td>Clarified; consistent with how General Plan is implemented.</td>
</tr>
<tr>
<td>Public parks</td>
<td>Neighborhood parks</td>
<td>General Plan focused solely on neighborhood serving parks.</td>
</tr>
<tr>
<td>Recognized places of worship</td>
<td>Not included</td>
<td>Considered a public and quasi-public use in the General Plan</td>
</tr>
<tr>
<td>Public or licensed private schools</td>
<td>Schools</td>
<td>Clarified; consistent with how applied in the General Plan</td>
</tr>
<tr>
<td>Licensed treatment facilities for drugs or alcohol</td>
<td>Board and care facilities</td>
<td>Effectively consistent</td>
</tr>
<tr>
<td>Federal lands held in trust by the Federal government or that is the subject of a trust application for a federally recognized Tribal government</td>
<td>Not included</td>
<td>Not addressed in the General Plan; considered to be addressed through zoning setbacks.</td>
</tr>
<tr>
<td>Licensed youth centers</td>
<td>Not included</td>
<td>Not specified in General Plan; would be considered with each CUP application.</td>
</tr>
<tr>
<td>Not included</td>
<td>Hospitals and nursing/convalescent homes</td>
<td>Not specified in CLUO; would be considered with each CUP application.</td>
</tr>
<tr>
<td>Not included</td>
<td>Hotels and lodging</td>
<td>Not specified in CLUO; would be considered with each CUP application.</td>
</tr>
</tbody>
</table>

Note: CUP = conditional use permit.

Measurement of Buffers – As specified in Section 8-2.1408(E) of the proposed CLUO, buffers are proposed to be measured from “the closest point of the cultivation site” to the following:

1. The closest surface of the building for residences, day cares, places of worship, schools, treatment facilities, and youth centers.

2. The closest point of the zone boundary for residually designated land.

3. The closest point of the parcel boundary for public parks and Tribal trust land.

Several commenters have taken issue with these proposed methods of measurement and/or have recommended alternative measurement methods. When contemplating how and where to establish buffers, staff takes into consideration the following:

- General Plan consistency
- Consistency with the County’s history of protection of agricultural uses and the practices and supporting uses necessary for the economic success of agriculture.
- Recognition that incidental uses allowed in agricultural zones should be treated deferentially to the principal use.
- Ability to feasibly and consistently implement in the field.
The County has traditionally discouraged/prohibited use of agriculturally zoned land for residential development. Where allowed, the purpose of farm dwellings on agricultural land has been to support the principal agricultural use. The County has historically endeavored to preclude residences in agricultural areas recognizing that they may erode the ability to successfully use the land for agricultural purposes by creating incompatibilities related to agricultural odor, noise, and practices. The following General Plan policies and actions reflect this:

- **Policy AG-1.2:** Maintain parcel sizes outside of the community growth boundaries large enough to sustain viable agriculture and discourage conversion to non-agricultural home sites.

- **Policy AG-1.3:** Prohibit the division of agricultural land for non-agricultural uses.

- **Policy AG-1.4:** Prohibit land use activities that are not compatible within agriculturally designated areas.

- **Policy AG-1.7:** Locate farm dwellings in a manner that protects both on-site and off-site agricultural practices. All dwellings in agriculturally zoned areas shall be encouraged to be located on portions of the parcel less suitable for agricultural use and in “clustered” configurations.

- **Policy AG-1.8:** Regulate and encourage removal of incompatible land uses and facilities from agriculturally designated lands.

- **Action AG-A7:** Work with agricultural interests to develop farm dwelling site criteria. Proposed homes that comply with the criteria would be issued building permits, while those that are not consistent with the criteria would require prior approval of a use permit. Criteria would apply to both the primary and the ancillary home and may include the following:
  - Size and mass of the home(s).
  - Location of the homes(s) to avoid areas of excessive slope, higher quality agricultural soils, native vegetation, flooding, lack of water availability, or other physical constraints.
  - Location of the home(s) within the property to avoid restricting the extent of pesticide/herbicide spray on adjoining farm operations.
  - Approval of a stewardship plan demonstrating how the property would be farmed.
  - Cluster homes in a location within the parcel with the least impact to agricultural operations. New farm dwellings may be clustered in proximity to existing homes on adjoining properties.
  - Consideration of an agricultural conservation easement deed restriction or similar instrument on all or a portion of the remainder of the property, outside of any home site(s).
  - Recodnation of a “rural oath” acknowledging the potential for nuisances to occur, such as dust, agricultural chemical applications, etc.
  - Recodnation of a deed notice acknowledging the County’s right-to-farm ordinance. (Policy AG-1.7)
With this in mind, staff has proposed (see Appendix D) the following refinements to the proposed CLUO buffers and how they are measured:

1. Off-site individual legal residences under separate ownership located on agriculturally zoned land shall be distinguished between those on parcels of 20 acres or more, and those on parcels less than 20 acres. Those residences on parcels of 20 acres or more are considered “farm dwellings” and recognized as supportive or incidental uses to the agricultural use of the parcel. Consistent with the underlying principal use of the zone, farm dwellings on agricultural zoned parcels of 20 acres or more should be expected to accept the typical externalities associated with agricultural uses. Therefore, farm dwellings would not be afforded the same buffers as residences would receive if they were located on non-agriculturally zoned land or on smaller agriculturally zoned parcels clustered in small rural communities, such as in areas just outside of Guinda and in Rumsey.

2. Buffers applied to residences on agriculturally zoned parcels of 20 acres or more, day cares, places of worship, schools, treatment facilities, and youth centers would be measured from the closest surface of the building to the closest point of any structure or outdoor area containing cannabis.

3. Buffers applied to residences of agriculturally zoned parcels less than 20 acres would be measured from the closest point of the parcel boundary to the closest point of any structure or outdoor area containing cannabis.

4. Buffers applied to residentially zoned land would be measured from the closest point of the residential zone boundary to the closest point of any structure or outdoor area containing cannabis.

5. Buffers applied to public parks and Tribal trust land would be measured from the closest point of the parcel boundary to the closest point of any structure or outdoor area containing cannabis.

The Planning Commission will independently consider these recommendations, and the Board of Supervisors has final decision-making authority on this issue.

### 3.1.11 Master Response 10: CUP Process and Overconcentration

A number of commenters have asked questions about or made statements regarding the proposed cannabis conditional use permit (CUP) process. This master response provides general information about CUPs, the findings of fact that will be required under the proposed CLUO to approve a CUP, and the anticipated application process for a CUP including a proposed “batch” process for applications in identified areas of potential overconcentration and overconcentration.

#### GENERAL INFORMATION ABOUT CONDITIONAL USE PERMITS

A CUP allows a city or county to consider through a public hearing process, special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district (Governor’s Office of Planning and Research 1997). Among other things, a CUP enables a jurisdiction to control certain uses that could have detrimental effects on a community (Neighborhood Action Group v. County of Calaveras, 1984, 156 Cal.App.3d 1176).

Consideration of a CUP is a discretionary act with respect to CEQA, which means each cannabis CUP approved under the final CLUO will require appropriate CEQA compliance. The County intends to use this Program EIR prepared for the CLUO to streamline the environmental review and consideration of future cannabis CUP applications. Individual applications for cannabis CUPs under the ordinance will be subject to further site-specific environmental review as applicable under CEQA Guidelines Section 15168(c), Use with Later Activities. This section of the CEQA Guidelines addresses environmental review of projects intended to be addressed in a program for which an EIR was prepared. The County may determine that the environmental impacts of an individual project are adequately addressed in the CLUO Final EIR and that no
further environmental review is required, or it may determine that site-specific environmental review is required and could require additional focused environmental review. Preparation of a site-specific environmental review document would be required if the County determines that the proposed cannabis application could cause a significant environmental impact that was not examined in the CLUO Final EIR or would substantially increase the severity of a previously identified significant impact (CEQA Guidelines Sections 15162 and 15168[c]). The CLUO Final EIR and any other site specific CEQA documentation will also be used and/or relied upon by CDFA for its licensing actions.

Under PRC Section 21083.3 and CEQA Guidelines Section 15183, lead agencies can use EIRs prepared for zoning actions (such as the CLUO) to analyze the impacts of proposed cannabis projects that may be approved pursuant to the ordinance, and limit later project-level analysis to only site-specific issues not already examined (if any). Under the above-referenced code sections, CEQA analysis for later projects is limited by statute to issues “peculiar” to the site or new environmental concerns not previously addressed. CEQA Guidelines Section 15183(f) provides that impacts are not “peculiar” to the project if uniformly applied development policies or standards substantially mitigate that environmental effect. Upon adoption, the CLUO will meet the definition of a uniformly adopted standard, and compliance with the CLUO will allow for CEQA streamlining authorized under this section of the CEQA Guidelines to be used.

CUPs may not authorize uses that the zoning ordinance does not allow, nor uses not expressly authorized by the permit. A CUP applies the provisions of the zoning ordinance and its standards to the specific set of circumstances which characterize the proposed activity at the proposed location. For this reason, approval of a CUP is considered an administrative or quasi-judicial decision rather than a legislative decision of the jurisdiction. The rules under which a jurisdiction may issue a CUP are provided by state regulation and case law. In Yolo County, the rules for issuance of a non-cannabis-related CUP are set forth in Section 8-2.217 of the Zoning Regulations. The County is proposing separate and distinct regulations for issuance of a cannabis CUP. These will be set forth in the final adopted CLUO which will be promulgated in the zoning regulations.

California Government Code (CGC) Section 65905 requires a public hearing to be held on an application for a CUP. At a minimum, advance public notice, an opportunity to be heard, and a fair hearing are constitutional due process rights (Horn v. County of Ventura, 1979, 24 C.3d 605). Depending on local ordinance requirements, hearings are typically held by a board of zoning, the planning commission, or a zoning administrator. Residents and property owners near the site are sent advance notice of the date, time, and place of the hearing. At a minimum, state law requires that notice must be mailed to all property owners within 300 feet of the proposal’s site boundary at least 10 days before the public hearing (CGC Section 65091[a][4]). Jurisdictions may exceed the minimum public noticing standards set by the state.

The proposed CLUO identifies the Planning Commission as the hearing body for cannabis CUPs except in areas where an overconcentration of cannabis activities (as defined in the CLUO) is determined to exist, in which case the Board of Supervisors would be the final hearing body (Section 8-2.1410(A) as modified by Mitigation Measure OVC-1(a)IV). Section 8-2.1410(J) of the revised CLUO (see Appendix D) identifies a 1,000-foot public noticing distance.

**FINDINGS REQUIRED FOR APPROVAL OF A CANNABIS CONDITIONAL USE PERMIT**

As a quasi-judicial decision, the approval of a CUP requires the decision-making body to adopt written findings to support its action. Written “findings of fact” are required to support the decision of the hearing body to approve or deny a CUP (Topanga Association for a Scenic Community v. County of Los Angeles, 1974, 11 C.3d 506). Findings are the legal support upon which local decision-makers rely to show how the decision-making process progressed from the initial facts to the decision. Findings “bridge the analytical gap between the raw evidence and ultimate decision.” If the decision is challenged, a court will examine the evidence supporting the findings to determine whether the hearing body abused its discretion when acting on a CUP. The County would be required to demonstrate the following: (1) that they followed the law; (2) that the decision was supported by findings; and (3) that the findings were supported by evidence in the administrative record.
The Draft CLUO, as amended by Mitigation Measure OVC-1, identifies in Section 8-2.1406(L) the following required findings:

1. The requested use is a conditionally allowed use in the applicable zone designation.
2. The requested use is consistent with the general plan, and area or specific plan if applicable.
3. The proposed use complies with each of the applicable provisions of the Cannabis Land Use Ordinance and other applicable sections of the County Zoning Regulations.
4. The proposed use, together with the applicable conditions, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.
5. Adequate utilities, access roads, drainage, sanitation, and/or other necessary facilities will be provided, as required in applicable County and State regulations, standards, and specifications.
6. The number of cannabis operations in the area has been taken into consideration.
7. The proximity of cannabis operations to each other, and/or to other identified sensitive land uses has been taken into consideration.
8. The proximity to adjoining/nearby land uses has been taken into consideration.
9. The population in the area has been taken into consideration.
10. The crime rate in the area has been taken into consideration.
11. The compliance history of the applicant and/or operator has been taken into consideration.
12. The record of nuisance abatements in area has been taken into consideration.
13. Community character has been taken into consideration.
14. Community support has been taken into consideration.
15. Parcels size and proposed uses on the non-cannabis portion(s) of the parcel have been taken into consideration.
16. Subject matter input relevant to the specific location or proposed project from County department and division heads, and the Cannabis Task Force have been taken into consideration.
17. Other cultural, social, equity, and environmental justice concerns deemed applicable by the County have been taken into consideration.
18. Site efficiency and use of the site to minimize fallowing of agricultural land has been taken into consideration.

In earlier versions of the Draft CLUO, Section 8-2.1406(H) included special findings that the Board of Supervisors could make to create an exception to the over-concentration cap. The staff is proposing that this language be deleted (see Appendix D).

As implied by the title of the permit, cannabis CUPs will include conditions that limit the applicant’s use of the property and/or manner in which the proposed activity is undertaken. There are limitations on the County in establishing conditions of approval which are generally as follows: 1) the County must be acting within its police powers; 2) the condition must substantially further a legitimate public purpose; 3) the
condition must further the same public purpose for which it was imposed; and 4) the property owner may not be required to carry a disproportionate load in furthering the public purpose. In other words, there must be a proportional relationship between the extent of the condition and the particular demand or impact of the project (Dolan v. City of Tigard, 1994, 129 L. Ed 2nd 304). In addition, the applicant cannot be burdened with a requirement for impact fees or public improvements that are not reasonably related to the proposed project. Limitations on impact fees are described in the Mitigation Fee Act (CGC Section 66000 et seq.). If a condition applied to a CUP is not linked to some legitimate public need or burden the project creates, the condition imposed could be deemed a taking of property in violation of the U.S. Constitution’s Fifth and Fourteenth Amendments.

THE APPLICATION PROCESS FOR A CANNABIS CONDITIONAL USE PERMIT

Following adoption of the CLUO, County staff will identify procedures for implementation. The process overall will be similar to the process the County uses currently for use permit applicants, but specific to the CLUO and the cannabis program. These procedures will include, among other things, an application package, various compliance checklists, processing protocols, submittal templates and samples, CEQA compliance questionnaire, and fee schedule. The application will be subject to public notifications and hearings including neighboring property owner notices, CEQA noticing (if applicable), and hearing notices. As described in Mitigation Measure OVC-1, staff anticipates processing existing and eligible licensees under the County’s current program first, using an application batching process that limits the number of permit applications being processed at any one time to a manageable number in terms of available resources.

To secure approval of a cannabis CUP, applicants would be required to demonstrate compliance with applicable state requirements, the new CLUO, other applicable County requirements, and CEQA. Each application would be evaluated against the required findings of fact identified above, and assessed by staff for “best fit” within each of the required findings. Relevant CACs would provide input for consideration by the Planning Commission. For applications in areas determined to be overconcentrated, the Planning Commission would provide its recommendations to the Board of Supervisors. In situations where a cap on the number of CUPs and/or allowable cannabis use types has been established, the decision-making body would identify those applications that are best suited based on compliance and site-specific characteristics, including compatibility and community character features.

There are a variety of additional anticipated limitations and disclosures worth noting, including:

- Because CUPs are discretionary, a compliant application may not ultimately receive an approval.
- Overconcentration caps in cluster areas may prevent otherwise approvable CUPs from being granted.
- In addition to an assessment of whether a CUP will satisfy each finding of fact, the County will also consider best fit within each required finding of fact.
- Licensees are required to secure a CUP to operate; failure to meet submittal deadlines could result in rejection of the CUP application which could result in loss of the cannabis license.
- Failure to meet batch deadlines could result in an inability to secure CUP approval within an area with overconcentration limits.
- Applications for new or amended CUPs will be examined in light of applicable overconcentration caps; the overconcentration analysis is proposed as an ongoing requirement.
- The capital investments made by existing cannabis licensees were made at risk given the modifications to the cannabis program as a result of the CLUO.
- Performance history as a licensee will be a valid consideration in the CUP process.
3.1.12  Master Response 11: Cultural Change

Cannabis regulation is currently both challenging and unique for a variety of reasons. Foremost among these is the fact that cannabis remains illegal at the Federal level. Its recent change from illegal to legal in the State of California and elsewhere reflects the rapidly changing regulatory environment. As of January 2020, cannabis is legal for adult use in 11 states plus Washington, D.C. Medical cannabis is legal in another 23 states. This leaves 16 states plus the Federal government where it remains illegal. As the number of states that allow cannabis in some form increase, it is likely the federal government will take action as some point to legalize or decriminalize its use.

However, cannabis is legal in California based on the will of the voters. At both the state and local level it is a form of agriculture. In 2016, the Board of Supervisors directed staff to develop an “interim ordinance” that addressed neighbor complaints about certain outdoor cannabis cultivation sites and limited harmful environmental impacts that are sometimes associated with cannabis cultivation. This ordinance created a ministerial licensing and enforcement program for cannabis cultivation. In October 2017, the Board initiated the process of developing a CLUO through the approval of Guiding Principles for development of the CLUO. The CLUO will establish a discretionary use permit process that will provide an important tool for addressing community concerns, and allowing for the detailed examination of the compatibility of proposed locations and operations based on site-specific conditions. Adoption and implementation of some form of the CLUO as soon as feasible is strongly recommended by County staff. Annual licenses will still be required pursuant to the County’s Marijuana Cultivation Ordinance; however, this ordinance will be modified to reflect additional provisions based on public input, CTF and Sheriff Office experience, experience from other counties which allow cannabis activities, and as necessary to align with the CLUO.

The County staff acknowledge the strongly held beliefs of some commenters fundamentally opposed to cannabis activities. However, with the performance standards including in the CLUO the transparency tied to public notification and participation in the CLUO’s discretionary use permit process, and modifications to the County’s licensing ordinance, there will be a better balance between the concerns of residents and the permitting process in the future.

3.1.13  Master Response 12: Expression of Opinion/Preference

The County appreciates the time and effort taken by commenters to express their views and concerns as a part of this process. These views and recommendations will be considered by County staff in developing the staff recommendation, and by the Planning Commission and Board of Supervisors in their deliberations and decision-making regarding certification of the EIR and adoption of the CLUO.

Section 15088(a) of the CEQA Guidelines directs that lead agencies must prepare written responses to those comments received during the Draft EIR comment period that raise “significant environmental issues.” This means that the County is under no legal obligation in the Final EIR to respond to comments on other issues or to respond to late comments. Nevertheless, the County has chosen to respond to all comments received on the Draft EIR and Draft CLUO in this Response to Comments document. The County has opted to take this broad approach to facilitate the public process, document the exchange of information, and provide important information about considerations relevant to the proposed CLUO.

Where a comment provides substantial evidence in support of a conclusion different from that reached in the Draft EIR, the County and its expert consultants have considered the evidence and responded accordingly. Section 15151 of the CEQA Guidelines (and the judicial opinions that have explored it) directs that in situations where there is a disagreement between experts, the EIR should summarize the main points of disagreement for consideration by the Board in reaching its decision. Disagreements between experts do not preclude the process from moving forward, nor do they preclude the Board from considering the evidence and making its decision(s).
Where a comment provides the opinion, preference, or observation of the commenter, without substantiation, this is acknowledged for the record, and no further response is provided. As noted above, all comments, whether substantiated by facts or simply reflecting the position of the commenter, will be considered by the County throughout this process.

### 3.1.14 Master Response 13: Cannabis Tax Revenue

Several commenters inquired regarding the County’s Cannabis Tax Measure including how it is structured, current revenue streams, and how revenues have been spent.

In March 2018, the County Board of Supervisors adopted an ordinance amending Chapter 18 to Title 3 of the Yolo County Code to impose a general tax on the gross receipts of commercial cannabis activities in the unincorporated area of Yolo County. The tax measure (Measure K) required voter approval and was placed on the June 5, 2018 ballot. It was approved by approximately 70 percent of the Yolo County voters who participated in the election and took effect on July 1, 2018. The tax measure imposed a tax on cannabis businesses of between 1 and 15 percent of gross receipts, with a 4-percent initial rate on cultivation and 5-percent for other cannabis businesses.

In April 2020, the Board voted to maintain the existing tax percentages for cultivation and other cannabis businesses. The tax rate will be reconsidered after the CLUO process for the 2021-22 fiscal year budget.

A seven-member Citizen’s Oversight Committee was developed to act in an advisory role to the Board in reviewing the annual revenue and expenditures generated by the tax. The cannabis tax is for general governmental purposes and revenue generated from the tax can be spent on criminal enforcement of illegal cultivation, early childhood intervention and prevention, youth development, substance abuse education and treatment for children and adults, rural infrastructure and programs, cannabis research, and other unrestricted general revenue purposes. The Citizen’s Oversight Committee makes annual recommendations to the Board on how the cannabis tax funds should be spent as part of the County annual budget process.

During the first year of tax collection, July 1, 2018 to June 30, 2019, the County collected approximately $780,000 in cannabis tax revenue. The Board has directed allocation of this revenue to the following programs:

- $15,000 California Cannabis Authority participation fee
- $70,000 Sheriff Department illegal cultivation enforcement
- $75,000 Sheriff patrol vehicle
- $100,000 First Five Yolo early childhood prevention program
- $100,000 Health and Human Services Agency analysis of underage cannabis use
- $240,000 Rural Community Investment Program economic development and health/safety programs
- $100,000 AgTech Innovation Alliance matching funds for Lab@AgStart food science wet lab facility
- $80,000 Ten-Percent Reserve
- $780,000

Tax revenue has increased each quarter that taxes are due. The Department of Financial Services (DFS), which collects the tax, works with the County’s CTF to ensure that taxes collected from cultivators are consistent with the amount of cannabis cultivated. In addition, DFS conducts tax audits of cannabis cultivators. Penalties are imposed to those who have not paid their taxes or those who have paid less than what was determined is due. In addition, the CTF does not renew a cultivator’s annual license if he/she is not current on his/her cannabis tax.
3.1.15 Master Response 14: County Cannabis Disclosures

Several commenters expressed concern that existing cultivation sites would be allowed to continue, regardless of whether or not the operations comply with an adopted CLUO, based on financial considerations, such as significant investments in equipment and facilities.

This response addresses how the County has communicated to the existing set of licensed and eligible cultivators regarding the lack of uncertainty with respect to the future of cannabis operations in unincorporated Yolo County. The following provides information on the County's current regulatory processes for renewing cannabis cultivation licenses.

Under the County's existing Licensing Ordinance administered under Chapter 20, Title 5 (Marijuana Cultivation) of the Yolo County Code, the commercial cultivation of cannabis is allowed only following the issuance of a license and is otherwise prohibited (Yolo County Code Section 5-20.04). The Interim Ordinance explicitly states that a marijuana (i.e., cannabis) cultivation license does not create any interest or value, constitutes a revocable privilege, does not run with the land, and is only valid until the end of one calendar year. Each cannabis cultivation license expires on December 31 of the year it was issued (County Code Section 5-20.04[A][2][b]). Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” of the Draft EIR explains in the second paragraph on page 2-1 that existing County regulation of cannabis cultivation includes a ministerial licensing program in which licenses are required to be renewed annually (see also MR-16, “Cannabis Licensing Program”).

Provisions for renewal of a license require a cultivator to reapply and pay all applicable fees. License holders, including those eligible for renewal, must be in good standing and in compliance with the County Code and state law. Issuance of a County cannabis license does not create, confer, or convey any vested or nonconforming right or benefit regarding cultivation or other commercial cannabis activity (County Code Section 5-20.15).

The County has employed several methods for implementing the Interim Ordinance, including a license renewal process that is conducted by the CTF, responsible for enforcing the provisions of the County Code (see MR-7, “Code Enforcement and Crime,” for further details on enforcement). As indicated in Chapter 3, “Environmental Setting, Impacts, and Mitigation Measures,” of the Draft EIR, page 3-2, operations that are not in compliance are subject to code enforcement and/or law enforcement unless remedied.

License holders choosing to make significant investments to their operations, such as construction of facilities and purchasing of expensive equipment, do so at their own risk and are required to sign a “Cannabis Notice” upon submittal of building permit applications for construction or grading activities. A copy of the notice is included in Appendix B. The notice states that the owner of the property and owner of the business understand there are pending changes to the regulatory program that could affect the operations, and that by signing the notice they agree they would like to pursue the construction activities and will comply with the requirements and ordinances in effect, including any future changes to the County’s regulations. There are also signs posted at the front counter of the Department of Community Services building informing cultivators of pending changes to the cannabis program.

Lastly, in an effort to address odor and other issues stemming from outdoor cultivation, the Board approved an early implementation development agreement policy on March 6, 2018, for existing licensed cannabis cultivators proposing projects that include indoor or mixed-light (greenhouse) cultivation. The intent of this policy was to provide licensed cultivators in good standing, who were willing to make significant investments to reduce odor and other nuisances, an opportunity to apply for a development agreement as a way to vest their operations for a period of up to 10 years. As described in Section 2.3.4 of Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” in the Draft EIR, the County received eight completed applications for the early implementation development agreements, all of which would be subject to a robust and independent environmental review. To date, none of the applications have completed the environmental review process and have not moved forward for the Board’s consideration.
In summary, notable business risk is involved when seeking to proceed with cannabis cultivation. This is made clear by County staff through discussions with cultivators and any time a cultivator submits a building permit application for permanent facilities. The County’s effort to draft a set of land use regulations to replace and/or complement the current licensing program was put into motion to address a more permanent solution for appropriately siting cultivation and noncultivation activities. Use permits, unlike licenses, run with the land and would be vetted on a case-by-case basis for a multitude of issues related to land use and community compatibility.

Section 8-2.1409(B) of the proposed CLUO contains similar language acknowledging applicant/operator risk. Section 8-2.1409(E) contains indemnification language and also establishes a requirement for cannabis operators to maintain general liability insurance.

3.1.16 Master Response 15: Traffic Analysis

Commenters raised concerns that analysis of potential transportation impacts from implementation of the proposed CLUO provided in the Draft EIR did not adequately analyze the cannabis use generated traffic and associated impacts on roadway conditions, traffic operations, and safety.

TRANSPORTATION ANALYSIS METHODOLOGY FOR THE CLUO

The proposed CLUO would further regulate, and potentially reduce or expand, cannabis activities in the unincorporated area that are currently allowed under Chapter 20 to Title 5 of the Yolo County Code. As described in Draft EIR Chapter 2, “Description of Preferred Alternative and Equal Weight Alternatives,” the County is considering a range of alternative approaches to sections of the Draft CLUO related to the extent of allowed cannabis uses, performance standards and buffers, and concentration of cannabis operations in regions of the County. The Draft EIR identifies an assumed distribution of these cannabis uses under each alternative (see Draft EIR Exhibits 2-4 through 2-8). The distribution is based on current licensed cultivation operations in the County, review of cannabis applications received in response to the nursery and processing facilities pilot program and the early implementation development agreements for cannabis operations, and input from County staff based on an understanding of the local cannabis industry and an intent to reflect reasonable assumptions for purposes of the countywide environmental impact analysis.

The evaluation of potential transportation impacts is analyzed in Draft EIR Section 3.14, “Transportation and Circulation.” This section analyzed whether implementation of the proposed CLUO, including issuance of subsequent Cannabis Use Permits pursuant to the adopted CLUO, could result in increased transportation impacts under each of the five alternatives. The transportation analysis in the Draft EIR is based on the report prepared by KD Anderson and Associates (provided in Appendix G of the Draft EIR) which analyzed both vehicle miles traveled (VMT) as required under recent state direction, and operational impacts using thresholds in the County General Plan.

The CLUO would not directly entitle any commercial cannabis uses and therefore the exact locations of all future commercial cannabis uses are not known at this time. For these reasons, the Draft EIR traffic analysis evaluates roadway segment traffic operations countywide under each of the five CLUO alternatives as defined. The roadway segments evaluated were the same roadway segments evaluated in the Yolo County 2030 Countywide General Plan EIR which focused primarily on roadways that provide regional circulation. Conditions on local roadways would be examined through the CUP process.

The roadway segment traffic operations analysis was conducted based on the assumed number, type, size, and general location of commercial cannabis uses under each of the five alternatives. It is important to note that these assumptions were established solely for analysis purposes in the Draft EIR, and do not commit the County to allowing the levels of commercial cannabis development assumed in the Draft EIR. Additionally, as detailed on page 20 of the traffic analysis in Appendix G of the Draft EIR, assumptions regarding specific trip generation rates were made in order to conduct the roadway segment level of service...
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(LOS) analysis. The report describes that these trip generation rates were derived from existing and permitted cannabis use data throughout the state, results of Yolo County-initiated surveys of current cannabis cultivators, and cannabis dispensary trip generation rates published in the Institute of Transportation Engineers Trip Generation Manual, 10th Edition.

TRANSPORTATION ANALYSIS CONCLUSIONS

As discussed on page 3.14-12 of the Draft EIR, CEQA Guidelines Section 15064.3 was added in the 2018 CEQA Guidelines to address the requirements of Senate Bill 743 (PRC Chapter 2.7, “Modernization of Transportation Analysis for Transit-Oriented Infill Project”), which changes the focus of transportation analysis conducted under CEQA away from congestion to, among other things, reduction in greenhouse gas emissions, encouraging mixed use development, and other factors. More specifically, PRC Section 21099(b)(2) directs that automobile delay and congestion as determined through a LOS analysis “shall not” be considered a significant impact on the environment upon certification of the updated CEQA Guidelines. The updated CEQA Guidelines were certified by the Secretary of the Natural Resources Agency on December 28, 2018; and thus, in accordance with PRC Section 21099(b)(2), LOS (i.e., automobile delay) is no longer considered a valid impact analysis metric for the purposes of CEQA. Therefore, as shown on page 3.14-16 of the Draft EIR, the significance criteria used to assess impacts on the transportation and circulation system associated with implementation of the project do not include roadway segment LOS, and instead focus on VMT, which measures amount and distance of travel. Jurisdictions may, however, continue to assess LOS as it relates to other topics valued by the agency, such as General Plan consistency. Because the Yolo County General Plan retains policies related to LOS, and preservation of capacity in local roads for planned/allowed uses, such an assessment was conducted.

General Plan Consistency

Draft EIR Impact TRANS-1 details the general plan consistency analysis which addresses whether implementation of the CLUO would conflict with General Plan circulation policies. As described on page 3.14-17 of the Draft EIR, use of the County roadways for farm-to-market traffic from trucks and employees within the County is allowed by-right, and therefore not considered an adverse impact. Generally countywide, the rural road network is “reserved” for allowed uses, including specifically and primarily by-right agricultural activities. General Plan text on page AG-1 identifies agriculture as the primary business in Yolo County, and to date virtually all farming-related agricultural activities remain primarily by-right with no discretionary approvals required for cultivation on land designated for Agricultural use. General Plan text on page CI-1, and Policies CI-3.1, CI-3.10, and CI-7.3 reinforce this. The proposed CLUO would be the first time the County has imposed a use permit requirement for a particular crop.

Pursuant to Draft CLUO Section 8-2.1408(JJ) applicants that would add 100 or more new trips on local roadways would be required to submit a traffic assessment for consideration as part of Cannabis Use Permit application process. Additionally, proposed CLUO Sections 8-2.1408(K) and 8-2.1408(JJ) would require that in some situations roadway improvements (e.g., safety improvements or emergency access consistent with General Plan Policy CI-3.18) or other circulation improvements may be required as conditions of approval.

Therefore, it was determined that the proposed CLUO, including subsequent Cannabis Use Permits approved pursuant to the adopted CLUO, would not conflict with the transportation related objectives, goals, and policies of the General Plan associated with transportation policies under the five alternatives. Compliance with these Draft CLUO requirements would also ensure all roadway improvements associated with new cannabis operations would be constructed in accordance with all applicable County and Caltrans design and safety standards. Additionally, the vehicle types associated with operation of cannabis operations (i.e., passenger vehicles, light-duty vehicles, single unit trucks) are consistent with the vehicle types currently utilizing the County roadway network and thus would not result in the operation of incompatible uses. Therefore, implementation of the CLUO would not increase hazards because of a design feature or incompatible uses.
Traffic Operations

The Draft EIR Appendix G, “Traffic Impact Analysis (TIA) for Yolo County Cannabis Land Use Ordinance,” provides a traffic operational analysis for each of the five CLUO alternatives. The TIA estimates traffic generated from cannabis uses for each alternative associated with employment, materials transport, and retail sales (Draft EIR Appendix G pages 20–22). The TIA identifies traffic generated forecasted for each of the five CLUO alternatives as summarized below. These traffic forecasts are based on the cannabis use assumptions provided in Table 2-4 of the Draft EIR (presented here as Table 3-5) (Draft EIR pages 2-30 through 2-32).

<table>
<thead>
<tr>
<th>Alternative</th>
<th>Total Daily Trips</th>
<th>Total PM Peak Hour Trips</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3,600</td>
<td>915</td>
</tr>
<tr>
<td>2</td>
<td>7,458</td>
<td>1,537</td>
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<tr>
<td>3</td>
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<td>3,064</td>
</tr>
<tr>
<td>4</td>
<td>7,708</td>
<td>1,617</td>
</tr>
<tr>
<td>5</td>
<td>6,330</td>
<td>1,414</td>
</tr>
</tbody>
</table>

The TIA used County traffic analysis zones and roadway segments from the 2020 General Plan EIR traffic analysis. Assumed locations of existing and eligible cannabis cultivation sites (Alternative 1) as well as assumed locations of new cannabis uses for Alternatives 2 through 5 identified in Draft EIR Exhibits 2-4 through 2-8 were applied to the 2020 General Plan EIR traffic analysis zones (TAZs) and roadway segments to evaluate changes in traffic operations (see Draft EIR pages 2-23 through 2-29 and Appendix G).

Potential changes in traffic operations (roadway volume changes and LOS) for existing plus CLUO conditions (all five alternatives) are provided in Appendix G Table 6 (Appendix G pages 26–29) and cumulative plus CLUO conditions (all five alternatives) are provided in Appendix G Table 7 (Appendix G pages 36–38). Under Alternative 1, assumed cannabis uses consist of existing and eligible cultivation sites. For purposes of the TIA, this represents the baseline condition. Increases in roadway volumes for Alternatives 2 through 5 vary by roadway segment.

As identified in the report, with only two exceptions, projected conditions under all defined CLUO alternatives will have no effect on LOS conditions modeled to occur under existing and/or cumulative conditions without the project. The two exceptions are CR 32B from Mace Boulevard to Webster Road and CR 98, under cumulative conditions only (20 additional trips); and from CR 24 to SR 16, under existing and under cumulative conditions (180 additional trips in each scenario). These conditions would only occur under Alternative 3.

With respect to traffic operations and LOS, it is relevant to consider the relationship between LOS and ultimate capacity of a particular roadway (see Table 1 on page 7 of the report). For a two-lane rural road, a capacity of 1,000 vehicles per hour per lane was assumed in the Yolo County General Plan Draft EIR, based on methods from the Highway Capacity Manual. This reflects an LOS F condition and generally represents the maximum design capacity of the road assuming traffic in both directions. The volume thresholds for other levels of service (e.g., C, D, E) are lower. If LOS F represents a heavily used road with 1,000 cars flowing in each direction, LOS C is generally about 40 percent of that volume, and LOS D is generally about 80 percent of the maximum volume. From a fiscal perspective, LOS thresholds lower than D (i.e., LOS A–C) represent a significant underuse of the full capacity of a roadway, which is among the more expensive pieces of public infrastructure. This is one of many reasons why congestion has fallen out of favor as a CEQA impact metric.

Vehicle Miles Traveled

As described on page 3.14-14 of the Draft EIR, an extensive evaluation process was undertaken to determine whether a transportation model could be used to accurately quantify changes in VMT resulting from the proposed CLUO, including subsequent Cannabis Use Permits approved pursuant to the adopted
Due to concerns regarding accuracy, the quantitative modeling tools evaluated were rejected. It was determined that there is no reliable method for quantitatively assessing VMT for this nature and scale of use. As further discussed below, consistent with CEQA Guidelines Section 15064.3(b)(3), the Draft EIR relied on a qualitative analysis of VMT.

Draft EIR modeling and analysis of VMT under the Draft CLUO and the associated alternatives evaluated the combined effect on total daily VMT under each alternative, and accounted for changes to travel patterns resulting from the new employment opportunities created by cannabis uses assumed under the five CLUO alternatives. Change in employment associated with the Draft CLUO is used to assess the transportation-related effects of the Draft CLUO because employment is the primary trip generating unit used by the Sacramento Activity-Based Travel Simulation Model (SACSIM) to estimate VMT for the industrial and retail land use categories. SACSIM addresses travel within the six-county area composed of Yolo, Sacramento, Placer, El Dorado, Yuba, and Sutter Counties. Although SACSIM’s inventory of land uses does not include agricultural employment (i.e., the land use that would most closely approximate the trip generation and VMT of cannabis uses associated with cultivation), it does include industrial uses. Similar to agricultural land uses, the travel patterns associated with the industrial land use category would account for employee commute travel but would also reflect regional deliveries of materials and products. Due to the relatively similar travel characteristics between agricultural and industrial land uses in general, the trip generation characteristics of industrial land uses were applied to cultivation operations and nursery facilities for the purposes of this analysis. Additionally, the SACSIM industrial land use type was assigned to the processing, manufacturing, testing, and distribution facilities under the Draft CLUO. The SACSIM retail land use category was assigned to the retail cannabis uses under the Draft CLUO, and a combination of the SACSIM industrial and retail land use categories (i.e., two-thirds industrial and one-third retail) was assigned to the Draft CLUO micro business land uses. (Draft EIR page 3.14-14)

Because SACSIM does not account for travel outside of its six-county area in its VMT calculation, off-model adjustments were made to SACSIM outputs for each alternative to ensure that the VMT was not truncated as described above. The off-model adjustments were based on census data and characteristics for employee travel generated by Yolo County. It was assumed that each alternative’s net effect on total VMT outside of the SACSIM area would be 34 percent of the effect of each alternative on internal VMT. (Draft EIR page 3.14-15)

While the modeling did identify changes in VMT, results were nominal and were within the typical forecasting margin of error for these model types. Further, SACSIM is not designed to factor the proximity of cannabis cultivation and noncultivation uses that are assumed in the Draft EIR analysis for alternatives 2 through 5. Due to the limitations of SACSIM as detailed above, and in the absence of relevant studies and data, SACSIM could not accurately measure VMT for this project. However, the provision of a range of cultivation and noncultivation operations within the unincorporated area of the County would reduce VMT generated as compared to traveling to cities and/or outside the County for commercial nurseries, testing, manufacturing, and retail uses.

Draft EIR Impact TRANS-2 addresses the Draft CLUO’s impacts on VMT under each of the five alternatives and considers whether or not the proposed ordinance would conflict or be inconsistent with CEQA Guidelines Section 15064.3(b). Based on the qualitative impact analysis it was determined that implementation of the proposed CLUO, including subsequent Cannabis Use Permits approved pursuant to the adopted CLUO, would not conflict or be inconsistent with CEQA Guidelines 15064.3(b) for any of the alternatives. Alternative 1 would retain existing cannabis cultivation uses and would not result in an increase in VMT. Alternatives 2 through 5 are assumed to result in the addition of noncultivation facilities (i.e., processing, manufacturing, testing, distribution, retail sales, and microbusiness facilities) within the County, which is currently devoid of any such facilities. The placement of such facilities in the unincorporated area of the County near existing and future cultivation uses would allow cultivators to avoid transporting cannabis to more distant locations where these facilities currently exist (e.g., existing testing facilities are located in the cities of Davis and Sacramento). Therefore, allowing for noncultivation facilities to be located in close proximity to cultivation operations could potentially reduce VMT, as well as through compliance with the requirements of Draft CLUO Sections 8-2.1408(N) and 8-2.1408(JJ) that include vehicle trip reduction measures. In other words, the
CLUO is likely to be neutral or supportive of reduced VMT because growing and processing cannabis closer to customers and with greater proximity between the raw materials and value-added processing will minimize trips and shorten their length.

Thus, implementation of CLUO is not expected result in a net increase in countywide VMT beyond what was evaluated in the General Plan EIR. As described in Draft EIR Section 3.14.3 under “VMT Significance Threshold Methodology,” implementation of the proposed CLUO, including subsequent Cannabis Use Permits approved pursuant to the adopted CLUO, would not conflict or be inconsistent with CEQA Guidelines 15064.3(b). (See Draft EIR pages 3.14-18 through 3.14-21.)

3.1.17 Master Response 16: Cannabis Licensing Program

The history of the County’s cannabis regulations is summarized in Section 2.3.3 of the Draft EIR starting on page 2-11. The County’s first marijuana cultivation ordinance was adopted in March of 2016 and later amended in October and November of 2017 which resulted in the current cap of 78 existing and eligible licenses. The original ordinance limited cannabis activities to cultivation for medicinal purposes only. However, in July of 2018 the Board amended the regulations to allow cultivation for adult recreational uses as well.

A number of commenters have expressed questions and opposition to the County’s current licensing regulations, in particular to the position taken by the County that CEQA compliance is not required for license issuance.

At the time the licensing ordinance was adopted, the Board of Supervisors determined that adoption and implementation of the ordinance was not subject to CEQA review based on three conclusions:

1. Pursuant to CEQA Guidelines Section 15060(c)(2) the licensing ordinance was statutorily exempt because it would not result in a direct or reasonably foreseeable indirect physical change in the environment;

2. Pursuant to CEQA Guidelines Section 15061(b)(3) the ordinance was statutorily exempt because there was no possibility the ordinance would have a significant effect on the environment; and

3. Pursuant to CEQA Section 15308 the ordinance was categorically exempt under the Class 8 Categorical Exemption which applies to actions by regulatory agencies to assure the protection of the environment.

These findings reflected the County’s position that the ordinance contained fixed standards and consistent measurable standards that would be applied objectively to all applicants for an activity that was merely the planting of a new legal crop. Cannabis cultivation was viewed fundamentally as no different from other legal crops in the County and Yolo County did not at the time, nor does it now, regulate a farmer’s choice of crops.

The licensing ordinance put into place a ministerial process for how cannabis cultivation would be allowed to be carried out, and each potential licensee was examined for compliance with the identified standards and requirements. Applicants that met the requirements were issued a license and those that did not were not licensed. The County did not exercise discretion or judgement in reaching a decision about issuance of the license. These characteristics align with the legal definition of a ministerial action (CEQA Guidelines Section 15369) and pursuant to CEQA Guidelines Section 15002(j)(1) CEQA does not apply to ministerial actions.

Notwithstanding the above, in October of 2017 the Board of Supervisors directed staff to commence the process of developing a Cannabis Land Use Ordinance, with the express intent to establish a set of requirements for conditional use permits for cannabis activities, the effect of which would render applications for cannabis activities discretionary and subject to CEQA. The subject project is the adoption of the proposed CLUO which would overlay a rigorous discretionary process on top of the existing ministerial licensing process. Until a CLUO is in place, absent other changes by the Board, cannabis cultivation license approvals will remain ministerial and limited to eligible and existing licensees.
### 3.1.18 Master Response 17: Consolidated Cannabis Campus

Some commenters have identified more specific site and/or zoning controls as a desirable option for siting cannabis uses. Examples include restricting cannabis activities to certain areas of the County, such as industrial areas only, remote special cannabis overlay areas, co-located cannabis mini-plots like a community garden, centralized nurseries or processing locations, and/or one or more cannabis campuses on public lands such as on buffer land at the County landfill.

Under Alternatives 1 through 5, the proposed CLUO allows for one or more applicants to develop a cannabis campus with centralized services and security. This is referred to as “co-location” (see Section 8-2.1408[G]). The County can restrict cannabis activities to certain zones and/or areas through the CLUO. Alternative 5 for example restricts cannabis to agricultural zones only. A variant of this alternative would be to restrict cannabis activities to industrial zones only, or to restrict it to only certain areas within agricultural or industrial zones through the use of an overlay zone.

Some comments suggest the County should find “the best location” countywide to consolidate commercial cannabis activities (such as the County landfill) and that the County become a landlord and property manager for cannabis activity at that location. The County has not undertaken a feasibility analysis of the possibility of such a campus being owned and operated by the County. Nevertheless, the Board could choose to explore this under the CLUO, as well as explore private-sector partnerships that could involve variations of the cannabis campus concept.

The proposed CLUO effectively allows for one or more cannabis campuses, but at the expense and risk of the private sector rather than the public sector (i.e., County land ownership and/or property manager). A CUP applicant would bear responsibility for identifying and ensuring economic feasibility of a particular site and operation. The County has not explored the feasibility or desirability of a County-owned/managed cannabis campus, though the Board could choose to do so. The analysis assumes cannabis uses would occur solely on private land, but would not be materially changed should such uses occur on public land. However, should the Board choose to pursue such an outcome, the CLUO would require modification to allow cannabis uses within the Public/Quasi Public (PQP) zone/designation. For example, Section 8-2.1407 (Table of Cannabis Development Regulations) would require modification to indicate that cannabis would be allowed on land zoned PQP under specified circumstances, and Section 8-2.1408(II), which prohibits cannabis on public land would require modification to eliminate that prohibition.

In summary, the cannabis campus idea would fit within the range of CEQA alternatives analyzed in the Draft EIR which explore different cannabis use types, buffers, and location based on zoning restrictions and other performance measures. The cannabis campus idea could be accomplished through zoning controls in the form of a zoning overlay district. Ownership of the land, whether public or private, would have no effect on the potential for CEQA impacts and therefore would be the same for both. If determined to be feasible, this alternative would not differ substantively from the alternatives explored in the Draft EIR. Potential environmental impacts would be expected to be the same as those identified within the Draft EIR and mitigation measures identified in the Draft EIR would apply.

### 3.2 COMMENTS AND RESPONSES

The verbal and written individual comments received on the Draft EIR and the responses to those comments are provided below. The comment letters, including a summary of the verbal comments made at the December 3, 2019, Planning Commission meeting, are numbered according to the date they were received, reproduced in their entirety, and followed by individual responses to each comment. Each letter is bracketed to separate distinct comments, and each bracket is numbered to allow for a corresponding response.