Requested Board Action:
Workshop on Medical Marijuana Proposed Zoning Ordinances

Fiscal Impact:
None

Motion:____ Second____ Roll Call: Ayes:_________ Nays:_________ Tabled To:_________

Action:

Notes:
Memo

To: Board of Supervisors
From: Frank Lynch, Senior Planner
CC: Planning Commission
Date: April 13, 2012
Re: Planning Commission recommendations related to the cultivation of medical marijuana within Trinity County

The Planning Commission has completed its initial review and recommendations to the Board for the development of regulations related to the cultivation of medical marijuana. These recommendations come after approximately one year of discussions held at the Commission level, including nine special meetings specifically focused on marijuana related issues and fifteen regular meetings which also included a discussion period on marijuana issues. The purpose of the meetings were to find a balance to the provisions of Proposition 215 and SB 420 with the realities of land use and neighborhood compatibility. Regarding marijuana, most meetings have been conducted primarily within a workshop format, to provide the community with an opportunity to have input on the development of local standards for the cultivation of medical marijuana for both the personal use of patients as well as the collective or “aggregate” cultivation for the benefit of others. These hearings have been contentious at times, but overall there has been an acknowledgement of compassionate consideration of those who do receive medical benefit from marijuana. Consensus has generally been reached by the Commission in the development of a list of standards that could be imposed in order to provide access for those in need and recognition of the impacts that cultivation operations can have on communities.

The direction of discussion has changed over time with an ever changing legal environment under which development of local regulations has evolved. The County has stayed current on the actions of countless other jurisdictions and the resulting legal decisions made throughout the State. This topic is constantly changing within many iterations and maneuvers by marijuana advocates, local agencies, as well as State and Federal guidelines. For example, local agencies have experimented with varying attempts to permit, regulate, tax and develop by exercising local police powers to make the cultivation and distribution of medical marijuana more accessible and even potentially profitable for the communities regulating it.

Trinity County has focused on the balancing of impacts, the realities of the local economy, and the ability of reasonable enforcement of regulations. Over several years, marijuana cultivation’s impacts on neighborhoods has reached a point where all citizens were impacted by the excesses of some growers on the environment including excessive vegetation removal, misuse of water supply, increased traffic and other degradation of the environment which has resulted in the County focusing on making regulations
that would be based purely on land use impacts and compatibility. Again, first the Commission dealt with aggregate grow standards, settling on a list of caveats and standards for a program that would permit, upon discretionary review, larger collective growing operations. The focus then shifted to personal grow standards. During this time frame, the regulatory and legal environment has changed with the legal advice given that ‘permitting’ of operations was not possible without placing the County in jeopardy of violating Federal laws regulating controlled substances. At this point, the Commission is has completed their review of personal and aggregate growing standards and is forwarding all recommendations to the Board for direction. The Commission is aware that their past actions on aggregate grows may need to change given current Federal guidelines, but time has come for Board review and comment.

The standards recommended for “personal medical marijuana” cultivation are as follows:

**Medical Marijuana Grow – Personal:** A personal medical marijuana garden or grow shall be considered an accessory use to an existing, legal single family dwelling within the unincorporated area of the County of Trinity. **The following assumptions and disclosers** are made in providing these guidelines:

1. Regardless of the County adopting these guidelines the County advises that individuals are assuming any and all legal liability related to or arising from the activity.

2. Any such activity shall be conducted per State Law, including the Attorney General’s Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, as either may be amended over time.

3. Property owners and individuals engaging in such operations are advised that regardless of these provisions you may be subject to prosecution under federal laws.

4. If growing for an individual living off site, each and every primary caregiver, as that term is defined by state law, is required to create and maintain an up to date list of the qualified patient(s) or person(s) with identification cards for whom the caregiver provides service. The list must immediately be provided to the County representatives upon request, for the purposes of verifying that the primary caregiver possesses no more than the maximum quantity per patient of medical marijuana authorized by state law, multiplied by the number of patients for whom the primary caregiver is providing service.

5. These guidelines are limited to the cultivation and preparation of cultivated marijuana for eventual individual medical use, such as drying, processing, and packaging.

6. No sales of cultivated marijuana are allowed on site and such uses are not considered a home occupation or cottage industry under other provisions of the County Code or Zoning Ordinance.

7. The medical marijuana garden or grow site shall comply with the all applicable building, zoning, and environmental requirements set forth in this Ordinance, and other provisions of County regulation, Code or state law;

The following **specific standards** are required:

1. Marijuana cultivated must be secured from public access, and not be readily visible to the public domain. All marijuana grown outdoors shall be located behind a fully enclosed opaque fence of at least six (6) feet in height. The fence may not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence. Vegetative fences shall not constitute an adequate fence under this provision. The fence must be adequately secure to prevent unauthorized entry. All processed marijuana must be secured to deter theft. The County reserves the right to make additional security and safety conditions, if necessary, upon review of the operation based on sound findings of need.
2. Medical marijuana may not be cultivated outdoors or used within one thousand (1,000) feet of the grounds of a school, recreation center, youth center, church, library, child care facilities, substance abuse center or other public gathering area or within 500 feet of any school bus stop;

3. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall maintain a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel.

4. Each building or outdoor area in which the marijuana is cultivated shall be set back from the property boundaries at the furthest feasible location from neighboring residences, but at a minimum in accordance with the applicable zoning for the district in which the property lies.

5. The power source shall comply with all appropriate building and fire code standards and permitting criteria. Should a generator be used, the fuel storage facility shall be reviewed and approved by the appropriate agency. If public utilities are available the site must connect to those utilities. Noise impacts from generator use shall be limited to the hours of 8:00 am to 8:00 pm.

6. Use of butane used to enhance or for additive purpose in processing medical marijuana is prohibited.

7. Any area permitted for growing shall be limited to one level, i.e. stacked or second story area shall be counted separately as part of the total area.

8. Indoor cultivation of mature marijuana plants shall be limited to the same maximum size standards as outdoor growing operations. Such operations shall be limited to an approved accessory structure approved for that purpose as defined by the current California Building and Fire Code standards.

9. Should a marijuana growing operation generate odor related complaint from property owners or residents who may reside within one quarter mile (1320 feet) from the location of the grow site, and that excessive odor can be independently verified in the location by a designated county representative, the County maintains the authority to find the use incompatible with land use regulations by a declaration that such growing constitutes a public nuisance.

10. The site of the grow or garden shall be in conformance with standard zoning setbacks that may be applicable.

Basic Definition:

Medical Marijuana Garden or Grow – Personal:

“Medical marijuana garden or grow – Personal”: means a home or location at which qualified patients, or persons with identification cards reside within the unincorporated area of the County of Trinity and cultivate, dry, process and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775. This definition is intended to describe such personal marijuana growing operations done for the benefit of individual qualified patient(s) and person(s) with identification cards living on-site, or for a maximum of one off-site patient. Growing of medical marijuana for shall not exceed the following amounts
For parcels one acre or less* 25 square feet in area or one plant**
For parcels > one (1) acre to 2.5 acres: 50 square feet in area or two plants**
For parcels > 2.5 to 5 acres: 100 square feet of area or four plants**
For parcels > 5 to 10 acres: 150 square feet of area or six plants**
For parcels > 10 acres: 200 square feet of area or eight plants**

* = mandatory indoor grow for parcels one acre or less
** = in all cases, whichever is less

In interpreting these standards the number of plants listed is for mature plants. An individual property may also maintain additional immature plant(s) equal to double the number listed above in each parcel size category however the total number is not cumulative, i.e. on a parcel one acre or less, a total of two, one mature and one immature (not three plants), or on a parcel of greater than ten acres, a total of 16, eight mature and eight immature or 16 total immature plants (not 24 plants). An immature plant is one where no part of the plant is flowering or otherwise is displaying its sex.

THE FOLLOWING IS THE CURRENT STATUS OF AGGREGATE GROWS STANDARDS WHICH ARE ACKNOWLEDGED TO REQUIRE FURTHER REVIEW AT THIS WRITING:

Aggregate Grows and Non Conforming Uses Re-visited: As the Commission is now under advisement that a use permit should not be issued some changes to the standards for such facilities should be considered. Many of the standards could remain, however the screening tool that the use permit provides would be gone, hence standards may need to be more specific or restrictive to insure that the County would not object to, in essence, providing a blanket recognition of land use, zoning, and neighborhood compatibility. The ability to impose conditions as “mitigation measures” is limited so standards need to be reviewed as thresholds for land use compatibility.

Based on this new direction, the following general definition as standards are provided:

"Medical marijuana garden or grow – Aggregate": means a home or location at which qualified patients, or persons with identification cards reside within the unincorporated area of the County of Trinity and cultivate, dry, process and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775. This definition is intended to describe such marijuana growing operations done for the benefit of individual qualified patient(s) and person(s) with identification cards living on or off site. Such sites shall meet the following size and location standards:

Land Use Designation: Such facilities shall only be located on parcels which are within a Resource or Agricultural land use designation under the General Plan.

Parcel Size: Such facilities shall only be located on parcels of a minimum of 30 acres in size.
Setbacks: Such facilities shall only be located 500 feet from any parcel boundary. Reductions in setback to 250 feet is provided for parcels adjacent to parcels of 40 acres or greater, but in no instance shall the grow site be located closer than 500 feet from any neighboring residence.

Size of Grow: Such facilities shall not exceed 2500 square feet in size, whether indoor or outdoor.

The following are the tentatively adopted standards for aggregate and pre-existing grows considered by the Planning Commission. Staff has edited these to remove the mention of a permit to be issued and instead inserted a "registration" program. This registering concept is merely a discussion point and issues such as which agency and/or how any monitoring of a grow that would be registered would occur is also open to debate. Again, the concept is that the following would be standards of general land use compatibility that would enable a grower to claim immunity from enforcement action from a pure land use perspective.

**Aggregate Grow Regulations**

**Medical Marijuana Grow - Aggregate:** An Aggregate Medical Marijuana Grow shall be considered an accessory use to an existing, legal single family dwelling within the unincorporated area of the County of Trinity provided the grow is obtain a use permit/ register to operate. The permit registering procedure shall be as set forth in Chapter _____ of this Code, and in addition, shall be subject to the specific requirements and regulations set forth in this chapter.

A. In addition to the information ordinarily required in an application for a use permit, A registration application for a permit under this chapter shall include information that will enable the County Planning Commission to make a finding that the garden meets the criteria that are included in the state law definition of medical marijuana collective.

In addition, the application shall also include:

1. A warning that operators, employees, and members of facilities where medical marijuana is collectively cultivated may be subject to prosecution under federal laws, and

2. The applicant's waiver and release of the County from any and all legal liability related to or arising from the application for a permit, the issuance of the permit, or the enforcement of the conditions of the permit, and/or the operation of any facility at which where medical marijuana is aggregately grown.

3. The operation shall comply with the Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, issued by the State Attorney General in August of 2008, i.e. shall operate on a non-profit basis as set forth in Section B.1, shall follow membership and verification guidelines as set forth in Section B.3, shall prohibit sales to non-members as set forth in Section B.5 and shall allow reimbursements and allocations of medical marijuana as set forth in Section B.6 of the Attorney General’s Guidelines.

4. Application for a use permit will require the applicant to identify access rights and road maintenance responsibilities for the site. Mitigation that may be required could include an improved road access under encroachment permit procedures administered by the County’s Department of Transportation, enhanced...
road maintenance fees, and/or bonding for road maintenance costs. The applicants are advised that traffic safety and road maintenance responsibilities linked to the operation may result in both civil actions by affected property owners, and operational assessments that may be imposed by the County.

B. In addition to the findings ordinarily required for a use permit, the approval of a use permit for an aggregate medical marijuana garden shall require the following specific findings:

(1) That the requested use at the proposed location will not adversely affect the economic welfare of the nearby community;

(2) That the requested use at the proposed location will not adversely affect the use of any property used for a school, playground, park, youth facility, child care facility, place of religious worship, or library;

(3) That the requested use at the proposed location is sufficiently buffered in relation to any residential area in the immediate vicinity so as not to adversely affect said area; and

(4) That the exterior appearance of the structure is compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area. No purpose if not issuing permit.

The following specific standards shall apply:

The County Use Permit will include, In order to meet the general compatibility standards for registration of an aggregate grow site, it shall at a minimum, comply with the following conditions standards:

1. Only qualified patients, persons with identification cards, and/or primary caregivers may cultivate medical marijuana collectively or associate for the purpose of doing so as defined by State law. Such individual(s) must reside on the property within a legal, permanent residence. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel.

2. Absolutely no on site advertising of marijuana is allowed at any time;

3. A security plan shall be provided for review and approval which, at a minimum, shall include a site plan of the various improvements on the property as well as the location of the growing, processing and storage areas within the property. The plan shall detail lighting, alarm system(s), emergency contact number and other information deemed necessary for site security. The County reserves the right to make additional security and safety recommendations if necessary upon review of the application and/or operation. or at any time following permit issuance based on sound findings of need, which shall be reported to the Planning Commission.
4. The activities that may be conducted under a use permit authorized at a marijuana grow site are limited to cultivation and preparation of cultivated marijuana for eventual individual medical use, such as drying, processing, and packaging;

5. No cooking, preparation, or manufacturing of marijuana enhanced or edible or drinkable products for public consumption, including but not limited to cookies, candy, drinks, or brownies is allowed, unless done so within commercial kitchen or preparation facility specifically permitted under the use permit;

6. No persons under the age of eighteen (18) are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent and/or documented legal guardian. This provision shall not apply to children of the owner/operator or other legal resident of the property. No persons under eighteen years of age may be employed for any aspect of the operation.

7. By participating in the County’s entitlement process registrations program the applicant consents to permit-related inspection

8. Marijuana cultivated in a licensed aggregate or collective operation must be secured from public access, and not be visible to the public domain. All processed marijuana must be secured in structures consisting of at least four (4) walls and a roof, and conform to specified Security Standards, as to locks, deadbolts and additional security measures;

9. This permit registration of a site does not authorize the consumption, use, or smoking of marijuana under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by state law;

10. The medical marijuana aggregate garden or collective shall comply with all applicable building, zoning, and environmental requirements set forth in this Ordinance, and other provisions of County regulation, Code or state law;

11. The medical marijuana collective may not be operated or located in or within one thousand (1,000) feet of the grounds of a school, recreation center, youth center, church, library child care facilities, substance abuse center or other public gathering area; NOTE: This provision is dependent on the repeal of existing provisions of County Code Section 8.55.030

12. That the applicant, owner, or any individual engaged in the management of, or employment by, the aggregate medical marijuana garden operation shall not have been convicted of a felony within the previous ten (10) year period or any violent felony as defined in Penal Code Section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code Section 667.5(c) if committed in California or equivalent crime committed in another state and is not currently on parole or felony probation. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. No purpose if not issuing a permit

13. Each and every primary caregiver, as that term is defined by state law, is required to create and maintain an up to date list of qualified patients or persons with identification cards for whom the caregiver provides service.
The list must immediately be provided to the County’s Board of Supervisor’s designated representatives upon request.

14. All marijuana grown outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence may not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence. The fence must be adequately secure to prevent unauthorized entry. Bushes or hedgerows shall not constitute an adequate fence under this Subdivision.

15. Such facilities shall only be located 500 feet from any parcel boundary. Reductions in setback to 250 feet is provided for parcels adjacent to parcels of 40 acres or greater, but in no instance shall they be located closer than 500 feet from any neighboring residence.

Each building or outdoor area in which the marijuana is cultivated shall be setback from the boundaries of the premises as follows:

a. A 500 foot minimum setback as measured in a straight line from the building housing the marijuana garden or exterior fence of the marijuana garden to the property line of the neighboring property. A reduction of setback may be considered within the use permit review in consideration of the location of the improvements on the neighboring property, the configuration of the neighboring properties to the subject property, and/or the setting in which the property resides. Nothing in this section would limit the use permit to require a greater setback dependant on circumstance.

16. The cultivation or processing facility shall comply with storm water, waste water, and other applicable requirements of the County. A plan for mitigation measures that will be utilized to prevent erosion or contaminated run off from entering any stream, creek or river, shall be submitted with the application for review and approval. The approved plan shall be implemented.

17. The legal water source for use in the growing operation shall be identified. Proof of right to water source shall be provided.

18. All power sources used for cultivation shall be identified. The power source shall comply with all appropriate building and fire code standards and permitting criteria. Should a generator be used, the fuel storage facility shall be reviewed and approved by the appropriate agency. If public utilities are available the site must connect to those utilities. Noise and impacts from generator use shall be addressed within the required noise impact mitigation plan.

19. A noise impact mitigation plan shall be provided to establish noise attenuation measures and standards that will be utilized as part of the operation. This may include hours of active site management, generator noise, equipment noise, traffic noise and operational measures to be utilized to minimize impacts to ambient noise levels in the project area. See new #31.
20. All lighting associated with the operation shall be downcast, shielded and/or screened to keep light from emanating off site or into the sky.

21. A Hazardous Materials Business Plan or other reporting requirement for storage or use of hazardous materials such as pesticides, fertilizers, soil supplements, or other chemicals shall be required. See new condition #31

22. The operation shall secure a Seller’s Permit from the State Board of Equalization. The operation shall collect and remit sales tax to the Board of Equalization if intended to sell directly to qualified patients or primary caregivers. Applicant is advised to see Special Notice, Information on Sales Tax and Registration for Medical Marijuana Sellers, Board of Equalization.

23. The owner/operation shall comply with all regulations governing business operations, as well as requirements from governmental agencies having jurisdiction, including but not limited to providing for workman’s compensation, the carrying liability insurance, compliance with Occupational and Safety Health Administration regulation, and/or other business and employment law standards.

24. The owner/operation shall comply with all requirements from the California Department of Forestry and Fire Protection, the California Regional Water Quality Board, State Division of Water Rights, the Department of Fish and Game and/or any other resource agency having jurisdiction,

25. Only one use permit registered site can be provided to any single individual, caregiver or group within Trinity County. Only one use permit may be provided per individual legal ownership.

26. As a general guideline for assessing impact, an operation that generates more than ten (10) vehicle trips per day for clients, workers, customers, or other visitors to the property, will require additional mitigation may not be considered compatible with the neighborhood in which it lies unless the project site takes direct access from a major arterial or collector as defined by the Traffic/Circulation Element of the General Plan..

27. Use of gas products, e.g. CO², butane used to enhance or for additive purpose in processing medical marijuana is prohibited.

28. An Odor Impact Minimization Plan shall be submitted for review and approval with the application. Contingency methodologies shall be provided to address odor complaint responses and techniques to suppress offensive odor complaint. Should odor complaints continue to be verified by inspection by the County representative, the County reserves the right to order a reduction in volume of the operation to mitigate impacts. This plan shall also address air quality issues that may be related to generator use as part of the operation. See new condition #31.

30. Indoor cultivation of mature marijuana plants shall be limited to the same maximum size standards as outdoor growing operations. Such operations
shall be limited to an approved accessory structure approved for that purpose as defined by the current California Building and Fire Code standards.

31. Should a marijuana growing operation generate odor, noise, or other environmental hazard related complaint from property owners or residents who may reside within one quarter mile (1320 feet) from the location of the grow site, and that impact can be independently verified in the location by a designated county representative, the County maintains the authority to find the use incompatible with land use regulations by a declaration that such growing constitutes a public nuisance.

Pre Existing Uses:

Pre-Existing Use Claims: Any individual property owner or operator of an Medical Marijuana Grow or Garden - Aggregate as described herein that does not meet the standards that are described herein regarding the permissible General Plan land use designations, i.e. is designated Rural Residential, that has been in operation prior to January 1, 2011 may request a limited term entitlement to register a site for a period not to exceed two years, with such entitlement recognition “sunsetting” not later than December 2013. (NOTE: This exemption does NOT apply to lands with the other unspecified designations, i.e. Single Family (medium), Single Family (high), Community Expansion, Community Development, Multifamily Residential, or Village land use designations). Further, such operation shall comply with the following standards:

- Shall be a minimum of twenty acres.
- Can demonstrate general compliance with the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, prepared by the California State Attorney General, dated August 2008.
- Have shown good faith compliance with Cultivation Moratorium during the 2011 growing season.
- Have a Seller’s Permit issued by the State Board of Equalization for the operation.
- Have established the operation as a non-profit entity.
- Have filed for incorporation with the Secretary of State as a cooperative

Any claim for non-conforming status shall be reviewed and approved under Use Permit application and registration processing procedures per Section 30.5 and 32 of the Trinity County Zoning Ordinance under the jurisdiction of the Planning Commission—administrative procedures to be adopted by the County.

Any entitlement recognition granted to an aggregate grow operation under this provision shall be limited in scope and operation to be compliant with the standards for a “medical marijuana garden or grow – aggregate” as described herein.

Any entitlement recognition granted for continuation of a non-conforming aggregate medical marijuana grow operation shall sunset at the end of _______ (two years) after the granting thereof. Thereafter, all cultivation of medical marijuana shall conform to adopted standards.
ORDINANCE NO. 315-796
FURTHER ENACTING SECTION 42 TO ORDINANCE 315,
THE TRINITY COUNTY ZONING CODE

The Board of Supervisors of the County of Trinity, State of California, ordains as follows:

SECTION I. This urgency ordinance is adopted pursuant to California Constitution, article XI, section 7, and Government Code Section 65858.

SECTION II. The Board of Supervisors of the County of Trinity, by four-fifths vote, hereby finds and declares the following:

(A) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.

(B) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to specified State criminal statutes.

(C) The federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation or possession of marijuana for medical purposes.

(D) On October 19, 2009, the United States Department of Justice issued a Guidance to federal prosecutors regarding enforcement of federal narcotics laws in light of the number of state laws decriminalizing or immunizing the cultivation and use of marijuana for medicinal purposes. This Guidance stated:

"As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana is unlikely to be an

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efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.”

(E) Proposition 215 and Senate Bill 420 have not been held to preempt local zoning or nuisance regulations affecting marijuana-related land uses. Nonetheless, the scope of local regulatory power continues to be challenged by proponents of marijuana-related land uses, and is presently being resolved by the Courts of Appeal.

(F) Although the law regarding Proposition 215 and Senate Bill 420 continues to develop, a proliferation of marijuana cultivation throughout the County in recent years has created an urgent and compelling need for the County to take immediate action to address very significant and damaging impacts to the environment and threats to public health and safety.

(G) In particular, in the past few years, Trinity County has seen a proliferation of “aggregate grow” operations. These are cultivation operations that grow marijuana not just for the residents or patients living on the property where the marijuana is grown, but for numerous other individuals—sometimes as much as hundreds of persons—many or most of whom do not live in Trinity County, and whose status as “qualified patients” is questionable.

(H) The proliferation of marijuana cultivation and “aggregate grow” operations within the County—particularly as pertains to operations intended to serve persons who are not Trinity County residents—poses serious threats to the health, safety, and well-being of the County and its residents, in particular its children. The deleterious impacts of such widespread cultivation include, but are not limited to: degradation of the natural environment associated with large marijuana grows, including diversion of, and discharges into, streams, creeks, and other natural watercourses; taking of endangered species, such as the Coho Salmon and Northern Spotted Owl; on-site grading without regarding to topography or erosion control, causing sedimentation of water bodies; erection of unpermitted and illegal buildings and structures; disposal of human waste without connection to sewage or septic systems; disposal of garbage and rubbish directly onto the property of grow sites; and the abandonment of grow sites without remediation of the aforementioned impacts.

(I) The impact of marijuana cultivation and “aggregate grow” operations has been particularly acute in residential areas of the County. Property owners in these areas, many of whom have moved to the community very recently, have planted several marijuana plants—sometimes as many as hundreds—on their properties. These plants are often directly visible to surrounding properties and visible from public streets. Plants also are sometimes cultivated openly.
and visibly near public schools, day care facilities, parks, and other areas where children are present. Throughout the growing and processing seasons, and especially during and immediately following harvesting, noise, lighting, unpermitted structures, and vehicle traffic associated with the grow operations continue into late hours of night and early morning. As the marijuana plants bud, they also can produce a very distinct and annoying odor (sometimes described as “skunky”) that can often be smelled many hundreds of feet away from the property where they are grown and throughout the community.

(J) The Planning Commission has held a number of meetings and workshops to address the subject of marijuana cultivation and related issues. During these meetings, the Planning Commission has undertaken extensive deliberations to consider ways in which marijuana may be cultivated consistent with the goals and policies of Proposition 215 and Senate Bill 420, but in ways that do not degrade the environment or detrimentally affect the public health, safety, and welfare. Planning Commission meetings addressing marijuana-related issues have been held several times in 2010 and 2011, and are scheduled to be held continuing into 2012. All of the meetings have been well attended and have involved extensive public comment and debate.

(K) In addition to the above Planning Commission meetings, the Board of Supervisors held several meetings, including special evening meetings, concerning a proposed marijuana cultivation ordinance and related subjects on October 28, 2008, March 2, 2009, October 20, 2009, January 4, 2010, and February 2, 2011, and March 17, 2011. These meetings, like the Planning Commission meetings, were heavily attended and involved lengthy comments by numerous members of the public.

(L) Several of the public comments received at the Planning Commission and Board of Supervisors meetings concerning marijuana cultivation have been directed to the nuisances members of the public feel they have experienced with “aggregate grow” operations in their communities. These comments have also been directed to the Board of Supervisors, and Board members individually, through numerous letters, emails, phone calls, constituent meetings, petitions, and other correspondence.

(M) In light of the considerable and extensive public comments provided to the Planning Commission and Board of Supervisors, received over several meetings, and following extensive analysis by Planning Department Staff and County Counsel, the Board of Supervisors concludes that the deleterious impacts of marijuana cultivation and “aggregate grow” operations, as described above, are fully confirmed and supported by the great weight of evidence. The Board further concludes that the impacts and conditions created by “aggregate grow” operations create significant public nuisances and that the failure to enact an immediate prohibition on such operations would be detrimental to the public health, safety, and welfare and would result in further and significant degradation of the environment.
(N) Notwithstanding the foregoing, the Board believes it necessary, and hereby directs, the Planning Commission to continue studying avenues for regulating marijuana cultivation in a manner that eliminates public nuisances while allowing legitimate patients and caregivers in Trinity County to avail themselves of the benefits of Proposition 215 and Senate Bill 420. The Board of Supervisors further directs the Planning Commission to conduct this analysis expeditiously, regularly update the Board on its effort, and, at the conclusion of its analysis, present the Board a full, written report regarding its findings, conclusions, and recommendations.

SECTION III. In order to protect the public health, safety and welfare of the residents of the County of Trinity from a current and immediate threat, the County hereby extends Section 42 of Ordinance 315 (Zoning Code), for a period lasting no later than February 2, 2013. Section 42 shall read as follows:

Section 42. Interim Prohibition of Cultivation, Harvesting, Processing, Assembly and Drying of Cannabis Plants

(a) Pursuant to Government Code section 65858, and notwithstanding any other provision of this Code, it shall be unlawful in any parcel of property with a residential General Plan designation (i.e., Rural Residential, Single Family (medium), Single Family (high), Community Expansion, Community Development, Multifamily Residential, or Village) to plant, cultivate, harvest, process, assemble, or dry any quantity of cannabis plants, except as provided in subsection (b).

(b) The County shall commence no enforcement proceedings, nor take any action to enforce, the prohibition set forth in subsection (a) if all of the following conditions are met:

(i) One or more qualified patients or primary caregivers resides on a parcel of property on which one or more cannabis plants is being cultivated, harvested, processed, assembled, or dried.

(ii) The cannabis plants on the parcel are being cultivated, harvested, processed, assembled, or dried only for those individuals for whom the parcel is primary residence, or by one or more primary caregivers growing on their primary residence for the benefit of one or more qualified patients. These patients and caregivers shall, upon request, furnish proof of their primary residence (such as by driver’s license, deed, property tax records, written lease, utility billing statement, or other reliable identifier or residence).

(iii) The area of cannabis cultivated on the parcel and does not exceed the following areas, as measured by the canopy: for parcels less than one acre in size, 50 square feet; for parcels between one acre and five acres in size, 100 square feet; for parcels greater than five acres in size, 250 square feet.
(iv) The cannabis plants comply with all applicable zoning setback requirements and are cultivated, harvested, processed, assembled, or dried only in locations that fully comply with Section 8.55.30 of the County Code.

(v) Only plants actually cultivated on the parcel, within the permitted areas above, are harvested, processed, assembled, and dried on site; no plants shall be imported onto the parcel for harvesting, processing, assembly, or drying.

(c) Pursuant to Government Code section 65858, and notwithstanding any other provision of this Code, it shall be unlawful in any parcel of property with any General Plan designation other than one set forth in subsection (a) to plant, cultivate, harvest, process, assemble, or dry any quantity of cannabis plants, except as provided in subsection (d).

(d) The County shall commence no enforcement proceedings, nor take any action to enforce, the prohibition set forth in subsection (c) if all of the following conditions are met:

(i) One or more qualified patients or primary caregivers resides on a residential parcel of property on which one or more cannabis plants is being cultivated, harvested, processed, assembled, or dried;

(ii) The cannabis plants on the parcel are being cultivated, harvested, processed, assembled, or dried only for those individuals for whom the parcel is primary residence, or by one or more primary caregivers growing on their primary residence for the benefit of one or more qualified patients. These patients and caregivers shall, upon request, furnish proof of their primary residence (such as by driver's license, deed, property tax records, written lease, utility billing statement, or other reliable identifier or residence).

(iii) The parcel is at least 30 acres in size and the maximum area of cannabis cultivated on the parcel does not exceed, as measured by the canopy, 2,500 square feet.

(vi) The area where cannabis plants are cultivated is set back 500 feet from the external boundaries of the parcel.

(vii) The cannabis plants are cultivated, harvested, processed, assembled, or dried only in locations that fully comply with Section 8.55.30 of the County Code.

(viii) Only plants actually cultivated on the parcel, within the permitted areas above, are harvested, processed, assembled, and dried on site; no plants shall be imported onto the parcel for harvesting, processing, assembly, or drying.
(e) As used within, the following terms are defined as follows:

(i) "Primary caregiver," as described in People v. Mentch (2008) 45 Cal.4th 274, is a person who (1) consistently provided caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.

(ii) "Qualified patient" means a person who is entitled to the protections of Health and Safety Code section 11362.5 (Proposition 215).

(iii) "Cannabis" shall refer to any plant of the genus Cannabis, and often referred to as marijuana.

(iv) "Canopy" shall mean the full, spatial above-ground extent of all cannabis plants cultivated, measured from above the crowns of the plants.

(f) The Board of Supervisors hereby directs the Planning Commission to further consider and study possible means of regulating or prohibiting marijuana cultivation in a manner consistent with the polices of Proposition 215 and Senate Bill 420, whether by zoning regulations or other regulations.

(g) This Section shall be in effect until the earlier of the following, and shall thereupon be repealed and of no further force or effect, unless extended by subsequent enactment of the Board of Supervisors:

(i) The completion of the study, evaluation, consideration, and legislative action, as provided in subdivision (f).

(ii) February 2, 2013.

(h) This Urgency Ordinance is not intended to, nor shall not, express or imply that cannabis cultivation, processing, drying, assembly, and are or ever have been lawful uses, either as permitted or conditional uses, within any General Plan designation or Zoning District.

(i) This Urgency Ordinance shall be enforced only by means that are civil in nature. The County shall not commence or undertake any criminal proceedings to enforce this ordinance.

(j) Neither this Urgency Ordinance, nor any of its provisions, shall be deemed to provide a defense or immunity to any action brought against any person by the Trinity County District Attorney, the Attorney General of State of California, or other state law enforcement authority. Nor is this ordinance intended to alter or exempt any provision of federal law prohibiting the cultivation, processing, drying, assembly, or of cannabis, or the enforcement of federal law by federal authorities.

SECTION IV. This ordinance extending an interim urgency ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.)
"CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this ordinance extending an interim urgency ordinance may by construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that prohibiting the establishment or operation of marijuana dispensaries on an interim basis has no possibility of having a significant effect on the environment, as set forth in California Code of regulations, title 14, section 15061, subdivision (b)(3). Further, this ordinance extending an interim urgency ordinance is exempt from CEQA pursuant to the provisions of Public Resources Code section 21080, subdivision (b)(4) and California Code of regulations, title 14, sections 15307 and 15308.

SECTION V. This Ordinance is an urgency ordinance necessary for the immediate preservation of the public peace, health and safety. Pursuant to Government Code section 25123, subdivision (d), this ordinance shall take effect immediately upon adoption by four-fifths of the Board of Supervisors, and prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least one time in the Trinity Journal, a newspaper of general circulation in Trinity County.

Introduced at a special meeting of the Board of Supervisors held on the 17th day of January 2012, and passed and adopted by the Board of Supervisors of the County of Trinity State of California on the same date, by the following roll call vote, to-wit:

AYES: Supervisors Pflueger, Otto, Morris, Chapman and Jaegel
NOES: None
ABSENT: None
ABSTAINING: None

ANTON R. JAEGEL
Chairman of the Board of Supervisors
of the County of Trinity, State of California

ATTEST:

Wendy G. Tyler, Clerk of the Board of Supervisors
County of Trinity, State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

Derek Cole, County Counsel

(DPC/00018633.)