

## C4 Minority Report: Environment, Neighborhoods, Youth

**I. Purpose:** The purpose of this minority report is to document the concerns regarding the protection of youth, neighborhoods and the environment from the potential harmful impacts of cultivation of medical cannabis. It is the opinion of the authors, that the issues raised in this report have not been addressed adequately by the C4 recommendations.

In fall of 2015 C4 recommended that the ban on out of county export is removed from current and future ordinance. The Board of Supervisors temporarily adopted this recommendation in the interim ordinance 7.128. Several C4 members agreed to this on the condition that strong regulations limiting size and amount of grows are put into to place in the final iteration of a cultivation ordinance. From the public health perspective, these strong regulations have not been put into place in the existing C4 recommendations.

This minority report uses as its guide the following charge given by the County of Santa Cruz Board of Supervisors to the C4: “Recommendations coming out of the work of the committee should **protect neighborhoods, protect our environment, and ensure that there is an adequate supply of medical cannabis for those who have a doctor’s recommendation.**” As well as the following statement provided in new MMRSA state regulations-AB 266 Section 19303 “**Protection of the public shall be the highest priority...whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount**”.

The report provides two alternative recommendations. One that is the *preferred recommendation*, and one that is the *compromised recommendation*. We propose that these alternative recommendations will more adequately address the needs of environment, neighborhoods, and youth, and integrate both the Board of Supervisors’ charge and MMRSA’s ‘highest priority’. We ask that the Board of Supervisors take these recommendations into consideration in the development of the final cultivation ordinance.

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**II. Background:** Although shown to have medicinal benefits, the cultivation of medical cannabis has led to numerous problems, including:

1. The supply of medical cannabis outstrips the demand from patients, resulting in unknown amounts of cannabis becoming available outside the medical cannabis structure. Of particular concern is saturation of cannabis and its impact on increased access to cannabis among young people and associated risks including driving under the influence (DUI). In Santa Cruz County, young people find it easier to obtain cannabis (65% of 9<sup>th</sup> graders) than their peers at the State (54% of 9<sup>th</sup> graders). Excess grow of cannabis in the county contributes to the normalization of cannabis use as a recreational drug, increasing youth use and adversely affecting youth brain development and growth. Recent reports from Washington and Colorado point to this trend. In the two year average (2013/2014) since Colorado legalized recreational cannabis, youth past month cannabis use increased 20% compared to the two year average prior to legalization (2011/2012). Nationally youth past month cannabis use declined 4% during the same time.
2. The illegal diversion of medical cannabis into the black market has resulted in a profitable, illegal business. Law enforcement officials report that violence and disturbances of the peace are common. Fifty-three percent of Santa Cruz County youth report buying cannabis themselves. Lieutenant Governor Gavin Newsom’s Blue Ribbon Commission on Marijuana Policy states, “A core public safety goal is to ensure that the legal market does not act as a cover for illegal activities.”
3. Cannabis cultivation can result in serious harm to the environment, including diversion of scarce water resources, use of toxic chemicals that pollute both the land and waterways, well-documented poisoning of wildlife, invasive grading, erosion, and devastating wildfires. Santa Cruz County leads the state in numbers of endemic and threatened species. Scientists from UC Davis & US Fish & Wildlife

have documented alarming kill offs of more than 30 species including owls, bobcats, mountain lions and the fisher (an animal protected by the Endangered Species Act) due to indiscriminant use of anti-coagulant poisons often used in cannabis cultivation. This state-wide problem was recently addressed by legislation, but effective enforcement has been difficult.

4. Cannabis cultivation in rural and urban areas has caused numerous problems, including hazardous use of electric power increasing the risk of fire, complaints from neighbors adversely affected by the strong odor of cannabis plants, robberies, theft of plants, and other disturbances of the peace. Many rural neighborhoods in particular have been heavily impacted by irresponsible and/or illegal cannabis grows including reports of the following: utilization of personal grows for commercial grows; disputes between neighbors over odor and increased traffic; exposing youth to pervasive grows; incidents of threats, vandalism and tampering of personal property; illegal clear cutting; arson and fire. In fact, in 2015, Cal Fire reported a 35% increase in cannabis related fires in the Santa Cruz mountains and notes that cannabis-related fires were relatively rare five years ago and are now commonplace. The two large wildfires in recent years in the mountain areas were attributed to cannabis grows costing \$25,000,000 to suppress. Since 2013, CAL FIRE'S Forestry Division reported illegal conversions (cannabis grows) jumped from occupying 1% of the divisions efforts to 45 % of their efforts.

Drawing from the lessons and work to reduce problems associated with tobacco and alcohol use, very specific best practice regulations are necessary to mitigate against these harmful impacts.

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### **III. Recommendations: C4 Recommendations from March 29, 2016, followed by Preferred Alternative, Compromised Alternative, and Justifications.**

#### **A) Commercial Cultivation: License Categories, Zones, Canopy Sizes, & License Caps**

##### **1. Indoor Warehouse:**

- **C4 Recommendation (from 3.29.16):** {C4, M1, M2, and M3 zoning} – up to the MMRSA limit of 22,000 square feet (SF).

- **Preferred Recommendation:** {C4, M1, M2, M3 zoning} – up to 10,000 SF with public notice

- **Compromise Recommendation:** {C4, M1, M2, M3 zoning} – up to 10,000 SF OR up to 22,000 SF with caps on number of licenses issued.

- **C4 Members in agreement with Compromise Recommendation:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

##### **2. Commercial agriculture:**

- **C4 Recommendation (from 3.29.16):** {CA zoning} – would allow canopies of up to 2 percent of the site's parcel size, up to MMRSA limits of 22,000 SF in year one, 44,000SF in year two.

- **Preferred Recommendation:** {CA Zoning} – up to 10,000 SF with public notice

- **Compromise Recommendation:** {CA Zoning} – canopy limit of 2% parcel size; up to 10,000 SF OR up to 22,000 SF with caps on number of licenses issued with public notice.

- **C4 Members in agreement with Compromise Recommendation:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

##### **3. Rural:**

- **C4 Recommendation (from 3.29.16):** {A, TP, SU, and RA zoning}

- Phase I grows are prioritized and processed first; Existing growers only as of 1/1/16
- Phase I-Small Rural Grows: Min. Parcel Size 1 acre, 3 acres in RA with public review
  - Grow Sizes Outdoor: 1-5 acres 1000 SF; 5-10 2000 SF; 10+ 5000 and plant count option for each tier with public review
  - Grow Sizes Indoor: 1-5 acres 750 SF; 5-10 1500 SF; 10+ 2500
- Phase II- Large Rural Grows: Min. Parcel Size 10 acres
  - Max Grow Sizes Outdoor 10,000 SF;

- Max Grow Sizes Indoor 5,000 SF
- 1% of parcel size for RA & SU; 1.5% of parcel size for TP & A
- Exceptions process allowed for all grow sizes

- **Preferred Recommendation:** {A, TP, SU, and RA zoning}

- Phase I grows are prioritized and processed first; Existing growers only as of 1/1/14
- Phase I-Small Rural Grows:
  - Min. Parcel Size 1 acre, 5 acres in RA
  - Grow Sizes Outdoor: 1-5 acres 1000 SF; 5-10 2000 SF; 10+ 3000 plant count option of 10 plants, 20 plants, 30 plants for each tier
  - Grow Sizes Indoor: 1-5 acres 750 SF; 5-10 1500 SF; 10+ 2500
- Phase II Small Rural Grows: No commercial cultivation on RA 1-5 acres, without exception (10 x 10' non profit, personal medicinal ok)
- Phase II- Large Rural Grows: Min. Parcel Size 10 acres; occurs in year 3
  - Max Grow Sizes Outdoor & Indoor 5000 SF
- Annual monitoring, random inspections, and regular reporting on the impacts of rural grows on neighborhoods, youth, and the environment.
- TP cultivation only by review process by Cal Fire (See **Appendix 1** for explanation)
- Public review process for all grows on RAs

- **Compromise Recommendation:** {A, TP, SU, and RA zoning}

- Phase I grows are prioritized and processed first; Existing growers only as of 1/1/16
- Phase I-Small Rural Grows
  - Min. Parcel Size 1 acre, 3 acres in RA, with public review
  - Grow Sizes Outdoor: 1-5 acres 1000 SF; 5-10 2000 SF; 10+ 3000 for RA (with public review) & SU; 10+ 5000 for TP & A and plant count option for each tier
  - Grow Sizes Indoor: 1-5 acres 750 SF; 5-10 1500 SF; 10+ 2500
- Phase II Large Rural Grows: No commercial cultivation on RA 1-5 acres, without exception (10 x 10' non profit, personal medicinal ok)
- Phase II- Large Rural Grows: Min. Parcel Size 10 acres
  - Max Grow Sizes Outdoor 10,000SF &
  - Max Grow Sizes Indoor 5000 SF
  - 1% of parcel size for RA & SU; 1.5% of parcel size for TP & A
  - TP cultivation only by review process by Cal Fire
- Annual monitoring, random inspections, and regular reporting on the impacts of rural grows on neighborhoods, youth, and the environment.
- Public review process for all grows on RAs
- Exceptions process available but NOT for RA parcels under 5 acres

- **C4 Members in agreement with Compromise Recommendation:**

- Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy

**4) License Caps**

- **C4 Recommendation (from 3.29.16):** No caps on licenses

- **Preferred Recommendation (no compromise position):** The Board of Supervisors monitor the number, type, and location of licenses issued by the Licensing Official to determine if the following cumulative square footage limits should be exceeded:

- Warehouse sites (C-4, M-1, M-2, M-3 Districts) 250,000 SF
- Commercial Agriculture (C-4 District) 500,000 SF
- Phase I and Phase II Rural sites (RA, SU, TP A Districts) 250,000 SF

Total in the county - 1,000,000 SF

**- C4 Members in agreement with *Compromise Recommendation*:**  
 Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy

**Concerns/Justifications:** The limits on cannabis cultivation size, zoning, and utilization serve at least six important functions: (1) Reduces risk of environmental damage; (2) Reduces risk of theft and violence by making the crop less valuable and easier to secure and monitor; (3) Reduces likelihood of neighborhood disruption and public nuisance activities; (4) Reduces likelihood that there will be consolidation of the industry into a small number of large entities (corporations). (5) Reduces saturation of cannabis farming and excess cannabis that can be diverted into black market accessed by youth. (6) Reduces likelihood that saturation of cannabis market will adversely affect existing agricultural businesses, commercial agriculture land prices, and the availability of warehouse space for other purposes.

*Note regarding TP Zoning:* TP Zoning is governed by Forest Practice Act (CPR &4789) and administered by California Department of Forestry & Fire Protection (CAL FIRE). Converting TP zoned parcels for cannabis cultivation requires special permits (See **Appendix 1** for further explanation).

**B) Setbacks**

**- C4 Recommendation (from 3.29.16):**

	CA, A, SU, TP, & RA Zone Districts: Indoor	CA, A, SU, TP, & RA Zone Districts: Outdoor	C-4, M-1, M-2, M-3 Zone Districts: Indoor Only
Schools	600 ft	600 ft	600 ft
Youth Intensive Sites <sup>1</sup>	300 ft	600 ft	50 ft
State and County Parks	300 ft	300 ft	50 ft
Licensed Drug Treatment Facilities	not allowed on adjacent properties	300 ft	50 ft
Streams Perennial Intermittent Ephemeral	NA	100 ft 50 ft 25 ft	NA
Adjacent Habitable Structures	Standard zoning setbacks	10% of grow size, min of 100 ft max of 300 ft	Standard zoning setbacks
Public and Private Roads	40 ft	40 ft	Standard zoning setbacks

**- Preferred Recommendation:**

	CA, A, SU, TP, & RA Zone Districts: Indoor	CA, A, SU, TP, & RA Zone Districts: Outdoor	C-4, M-1, M-2, M-3 Zone Districts: Indoor Only
Schools	1000 ft	1000 ft	1000 ft
Youth Intensive Sites	1000 ft	1000 ft	1000 ft
State and County Parks	600 ft	600 ft	600 ft
Licensed Drug Treatment Facilities	600 ft	600 ft	600 ft

<sup>1</sup> Youth intensive sites are public entities, that are devoted to any of the following:

1. Playground areas primarily used by younger children for play or recreation, and often containing features such as sandboxes, slides and swings and other similar recreational equipment;
2. Organized sports athletic fields, tennis and basketball courts, swimming pools and other similar play areas;
3. Informal turfied play fields and picnic grounds;
4. Buildings primarily devoted to youth activities such as libraries, gymnasiums and recreational centers.

Streams Perennial Intermittent Ephemeral	NA	100 ft 50 ft 25 ft	NA
Adjacent Habitable Structures	Min. of 200 ft	600 ft	Standard zoning setbacks
Public and Private Roads	100 ft	100 ft	Standard zoning setbacks

**- Compromise Recommendation:**

	<b>CA, A, SU, TP, &amp; RA Zone Districts: Indoor</b>	<b>CA, A, SU, TP, &amp; RA Zone Districts: Outdoor</b>	<b>C-4, M-1, M-2, M-3 Zone Districts: Indoor Only</b>
Schools	600 ft	600 ft	600 ft
Youth Intensive Sites <sup>2</sup>	600 ft	600 ft	600 ft
State and County Parks	600 ft	600 ft	600 ft
Licensed Drug Treatment Facilities	300 ft	300 ft	300 ft
Streams Perennial Intermittent Ephemeral	NA	100 ft 50 ft 25 ft	NA
Adjacent Habitable Structures	Standard zoning setbacks	10% of grow size, min of 200 ft max of 300 ft	Standard zoning setbacks
Public and Private Roads	40 ft	40 ft	Standard zoning setbacks

**Concerns/Justifications:** The setback and fencing/hedges requirements are designed to decrease risks of theft, violence, and odor nuisance by making the plants less visible and more secure. The setback requirements are also intended to reduce offensive odors affecting adjacent properties. Variables involving the presence of odor include: size of grow, plant type, the season, breeze, and slope, and should be measured through olfactometers or other appropriate technology. Use of poisons in cannabis grows adjacent to parks and open space inhabited by wildlife is a concern that can be addressed by setbacks. Santa Cruz County has one of the greatest concentration of endemic species of anywhere in the United States and includes over 30 plus species identified by the US Fish and Wildlife as endangered.

**Appendix 2** describes the complexities in setbacks from State Parks and rural areas.

**C4 Members in agreement with Compromise Recommendation:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy

**C) Cultivator Living on Site**

- **C4 Recommendation (from 3.29.16):** License applicants do not need to live on the cultivation site.

- **Preferred Recommendation:** Requirement for grower and/or cannabis business representative to live on site for rural grows (A, TP, SU, RA).

<sup>2</sup> Youth intensive sites are public entities, that are devoted to any of the following:

5. Playground areas primarily used by younger children for play or recreation, and often containing features such as sandboxes, slides and swings and other similar recreational equipment;
6. Organized sports athletic fields, tennis and basketball courts, swimming pools and other similar play areas;
7. Informal turfed play fields and picnic grounds;
8. Buildings primarily devoted to youth activities such as libraries, gymnasiums and recreational centers.

- **Compromise Recommendation:** Requirement for grower and/or cannabis business representative to live on site for rural grows (A, TP, SU, RA) *under 10 acres*. Exceptions process allowed with approved fire and safety plan.

**Concerns/Justifications:** Not requiring grower to live onsite raises concerns regarding public safety including fires, thefts, and robberies in residential areas.

**C4 Members in agreement with Compromise Recommendation:**  
Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

#### **D) Power/Water**

- **C4 Recommendation (from 3.29.16):** Allow the use of trucked water from an approved source and the use of generators consistent with standard safety features and electrical certification

- **Preferred Recommendation:** Cal-Fire and Fire Safe Council members recommend commercial grows in Rural areas should only be allowed on properties with a permitted structure. Cultivators on Rural sites should also meet standards for water storage and electricity, allow no generators, and have adequate access to the cultivation site for emergency vehicles. This is based on the incidences of cannabis related fires on properties with no permanent residences resulting in inability to identify responsible parties. It is recommended that the Board approve the proposals in the Wildfire Safety Recommendations Report-See **Appendix 3**.

- **Compromise Recommendation:** Require cultivators to meet reasonable standards for water storage, have permitted structure on grow site, and have access to site for emergency vehicles. Allow generators for emergency purposes only on rural grows (A, TP, SU, RA). Exceptions process required for Generators to be used as Primary Source of Power on rural grows.

**Concerns/Justifications:** Generators can cause noise nuisance, significant fire and safety concerns and can have a high carbon footprint. Trucking of water contributes to the deterioration of public and private roadways with no mechanism for compensation of costs by cultivators. Lack of road access will impact fire safety.

**C4 Members in agreement with Compromise Recommendation:**  
Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

#### **E) Home Based Cultivation**

- **C4 Recommendation (from 3.29.16):** Does not recommend any licensing for home-based cultivation.

- **Preferred Alternative Recommendation (no compromise position):** Does not recommend any licensing for home-based cultivation.

**Concerns/Justifications:** Although the proposal for home base cultivation did not pass, it was a very close vote and therefore this report would like to provide its justification for not recommending it. Home grows are not properly zoned for commercial agriculture activity, do not fall into the Home Occupation ordinance, and can impact neighborhood safety and cause nuisance issues. Furthermore, allowing commercial cultivation in R zoned neighborhoods would have deep impacts to our already stressed housing supply.

**C4 Members in agreement with Compromise Recommendation:**  
Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy

## **F) Personal Grows and Collective Grows**

### **- C4 Recommendation (from 4.12.16):**

- Non-commercial cultivation for the purposes of supplying cannabis medicine for up to 2 patients per household shall be allowed at the size limit of 200 SF and may register voluntarily.
- Non-commercial collective cultivation for the purposes of supplying cannabis medicine for between 3 to 5 patients shall be allowed at the size limit of 100 SF per patient and must register.
- Non-commercial cultivation for the purposes of supplying cannabis medicine for up to 1 patient per household shall be allowed at the size limit of 100 SF and may register voluntarily.
- Non-commercial collective cultivation for the purposes of supplying cannabis medicine for between 2 to 5 patients shall be allowed at the size limit of 100 SF per patient and must register.
- Best Management Practices (BMPs) shall be developed for all non-commercial cultivation.

### **- Preferred Alternative Recommendation (no compromise position):**

- Non-Commercial "Collective" cultivation for the sole purpose of supplying cannabis for 2-5 specified patients shall be allowed at the size limit of 100 SF per patient. Collective grows must register and must meet all applicable zoning and building codes.
- Non-Commercial "Collective" cultivation sites must have a robust Track and Trace system, as well as a "dedicated" Cannabis Cooperative Coordinator (individual member) who maintains accurate records of all production costs, supplies, equipment, utilities and rent, if any. Additionally, records shall be kept and made available to Cannabis Compliance Officer indicating square footage under cultivation, weight of all dried cannabis flowers and trim yielded, the name of each patient, quantity of cannabis each patient received, and amount of money's received for the reimbursement of expenses. In no event shall cannabis being cultivated under a "Non-Commercial Collective" model be sold, or redistributed to individuals not specified as the 2-5 patient members of said cultivation location.
- Non-commercial cultivation for the purposes of supplying cannabis medicine for up to 1 patient per household shall be allowed at the size limit of 100 SF or a plant count of 10 (which ever is smaller), and may register voluntarily.
- Non-commercial outdoor cultivation should not be visible from outside the property.
- All outdoor non-commercial cultivation shall have plants locked and secured.

**Concerns/Justifications:** Personal grows and collective grows have impacted neighborhoods negatively when not contained-including odor and noise issues, as well as visibility impacting community safety. Furthermore, in the past these grows have been used as a means to create excess cannabis that can be diverted and sold into the black market.

### **C4 Members in agreement with *Compromise Recommendation*:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

## **G) Usability and Slope**

**- C4 Recommendation (from 3.29.16):** No adoption of a slope or usability percentage.

**- Preferred Recommendation (no compromise position):** Usability should be factored into determining appropriate areas for grows and grow sizes.

**Concerns/Justifications:** Usability refers to the portion of a parcel that is suitable for growing a crop, which means the space on a parcel not exceeding 17 degrees slope. Much of the acreage in mountain regions is steep and not suitable for crops of any kind. In many parcels in mountain areas the only level ground on a parcel is taken up by the house or other structures Enclosed is a plot plan of RA neighborhood in Bonny Doon (**See Appendix 4**). The colored regions indicate property that is too steep for agricultural use. In this neighborhood the distances between houses is between 55' and 300' and the amount of usable land is less than 50% of the acreage. This neighborhood is located on

a single private road with public access. C4 did not define a rural neighborhood and did not provide the rural community with the protections provided in the previous cultivation ordinances (7.126 and 7.128). Although these areas are not typically appropriate for agricultural use, neighborhood review process and implementation of best practices may mitigate slope impacts.

**C4 Members in agreement with *Compromise Recommendation*:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy

**H) Medical Cannabis Advisory Committee**

- **C4 Recommendation (from 3.29.16):** Committee recommends that the Board of Supervisors create a Medical Cannabis Advisory Commission which could sunset or expire in 3-5 years. The Committee has not had sufficient time to recommend the specific makeup of the Advisory Commission and will provide this detail in its next report to the Board.

- **Preferred Recommendation:** No cannabis advisory committee.

- **Compromise Recommendation:** The county holds on action to form an advisory committee for one to two years of implementation of the program which will include the establishment of the Licensing Officer and staff. If at that time it is determined that a commission is necessary membership shall include 2 community representatives, 1 youth prevention representative, 1 environmental health representative, 2 regulatory experts, 1 law enforcement representative, and 2 cannabis industry representatives.

**Concerns/Justifications:** Equal and diverse representation of perspectives is essential for a body that provides any policy guidance on an issue that is as complex and controversial as medical cannabis. A majority of members from the industry can result in a skewed perspective and may not give adequate attention to public health, safety, and neighborhood concerns. Lieutenant Governor. Gavin Newsome recommends, “Any boards, commissions, or agencies that oversee the legal marijuana industry should represent all the public interests of the people of California rather than being dominated by individuals with an economic stake in the industry itself.”

**C4 Members in agreement with *Compromise Recommendation*:**

Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

**I) Taxes & Fees**

- **C4 Recommendation (from 3.29.16):** The Committee recommends that a new tax on cannabis cultivation must meet the following objectives:

- Provide revenue to support essential governmental services and programs;
- Fairly allocate the tax burden so as not to disadvantage cannabis grown by and for local residents;
- Fairly distribute the tax burden imposed on the various businesses involved in the production and sale of cannabis;
- Off-set the social and environmental costs that may result from cannabis cultivation;
- Not be set at a rate that would result in tax evasion and black market cannabis sales;

- **Preferred Recommendation:** Create discretionary taxes with a significant portion designated to prevention, public health, law enforcement and environmental conservation programs.

- **Compromise Recommendation:** Adopt the C4 recommendations but add to first bullet: “including an emphasis on law enforcement, prevention, and environmental conservation programs”.

**Concerns/Justifications:** For regulation to be effective, in particular at the start of a regulatory program, adequate resources must be set aside for enforcement efforts. Additionally, strict and best practice regulations will offer some protection against youth use and misuse, however, continued prevention and education efforts are necessary to offset the negative impacts of increased cannabis in the community. Furthermore, such funds may be utilized to conduct local research that assesses the changes in youth use and associated consequences of increased cannabis in the community overtime. Such models have successfully been put into place with tobacco and alcohol license fees.

**C4 Members in agreement with *Compromise Recommendation:***  
Shebreh Kalantari-Johnson, Eric Hoffman, Bob Kennedy, Colin Disheroon

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**III. Conclusion.** Much has gone into the work of C4 to date. Every member brought forth their perspective, needs and voice in the best way they saw fit. Although the group worked hard to reach compromises and consensus, there were fundamental differences in cultural perspectives and how various members of the committee envisioned the future landscape of Santa Cruz County. These difference thus resulted in dissenting opinions-some of which are reflected in this report. In general, we support an initial licensing system that encourages the majority of current local cultivators to come under the County's regularity umbrella so that they may move toward best practices and end unregulated damage to our environment, neighborhoods and youth. We also believe that a phasing process in which we start small and scale up, while closely monitoring impacts on environment, neighborhood and youth indicators is the most responsible approach. Thank you for your consideration of the work of the entire C4 and the alternative recommendations presented in this minority report.

## State and Local Regulations Governing TP Zoned Parcels

The draft recommendations of the Santa Cruz County Cannabis Choices Committee treat cannabis cultivation on parcels zoned TPZ (for Timber Production) equivalently to cannabis cultivation on parcels zoned CA (for Commercial Agricultural). There is good reason to believe that this could be in conflict with the California State Public Resource Protection Code [PRC].

Forest Resources in California are governed by the Z’Berg-Nejedly Forest Practice Act (PRC §4789), the California Timberland Productivity Act of 1982, (Gov. Code, § 51100 et seq.), and the Forest Practice Rules (14 CCR) which are administered by the California Department of Forestry & Fire Protection [CAL FIRE]. At the local level, they are governed by County Code §13.10.371 et seq.

The implementation of the Z’Berg-Nejedly Forest Practice Act and Timberland Productivity Act are interpreted in the California Forest Practice Rules 2016. In particular, PRC §4526 and the Forest Practice Rules define timberland **not** just as land producing economically viable timber harvests, but as land **potentially** able to grow commercial trees. While several California State Supreme Court decisions have clarified that Counties through zoning, can establish where timber operations can occur, the State controls how timber operations must be carried out on timberland, regardless of zoning. It should be noted that the Forest Practice Rules protect not only potential timber production, by watersheds and habitat as well.

A “meadow” or “clearing”, unless it is totally waterlogged or bare rock is still timberland if it is capable of growing commercial species like Redwood, Douglas fir and Ponderosa pine. Converting a meadow to cannabis cultivation on timberland is what State statutes call a *timberland conversion* and requires special state permits and county agreement. If this land is zoned TP it will need to be zoned out of TP. This typically includes a subdivision permit, on account of tax advantages granted to timber production. If there is an illegal timberland conversion, recent local cases have resulted in the landowner being required to restore the affected area to its prior state. In 2014, a parcel off Patrick Road in Bonny Doon was incorrectly granted a timberland conversion permit to clear 3 acres for cannabis cultivation. CAL FIRE reversed the grant of the timberland conversion and the absentee landowner was indeed held liable for restoration.

CAL FIRE San Mateo Santa Cruz Unit Forestry Division Chief Rich Sampson’s division is responsible for compliance with the Forest Practice Rules in our county. Since 2013, when the “Green Rush” in Santa Cruz County began, illegal timberland conversions have jumped from occupying 1% of his efforts to 45%. Chief Sampson says that in all his time here, after observing dozens of grows, he has **never** seen a legal timberland conversion to cannabis cultivation in Santa Cruz County.

In summary, no matter what the County Ordinance may say, e.g. that cannabis can be cultivated on land zoned TP, it doesn’t relieve the landowner from having to obtain conversion permits from CAL FIRE. Failure to obtain those permits is a violation of State Law (PRC) and a misdemeanor.

## APPENDIX 2

**EXPLANATION OF SETBACKS**, author-Eric Hoffman C4 District 3 representative

### **Expert Opinions needed to determine State Park Setbacks**

I feel the C4 committee did not adequately address some vital issues in making a recommendation of 300' offsets to state parks. Some members see offsets primarily as zones taking away grow space and a property rights issue. I see far more important issues: Fire Prevention, the protection of residents, rural neighborhoods, wildlife & water.

### **Background on Setback Recommendation**

In December 2015, a 600' setback for state parks was recommended to the Board of Supervisors by C4 and incorporated by County Counsel into interim ordinance 7.128. Four months later C4 decided to recommend 300' as a setback around State Parks, and 600' setbacks from something called "intense" parks (small regional parks). An "intense park" was largely defined as one frequented by youth.

I fully supported the 600' setback from the regional parks but not the reduction from 600' to 300'. If you're thinking 600' is a lot of space, please realize **many governmental and science-based groups recommend 1000' as the standard setback for parks and recreational areas.**

Although many experts were made known to the committee, none were invited to address C4 to inform them about reasons for setbacks from state and regional parks and what variables determines the size of the setback.

As a member of C4 it is unclear to me what the term "intense park" met when we voted and how it was determined small parks were more "intense" than state parks, so I did some research:

### **Findings That Should be Considered**

- 1. State Parks are "intensely" used.** It turns out the state parks are visited annually by hundreds of thousands more people than regional parks. The numbers: Wilder Ranch State Park: 6,231,885 visitors from 1996 to 2014, averaging 327,994 annually; Big Basin State Park: 10,666,872 in the same time period with an average attendance of 561,414; Henry Cowell Redwoods: 8,294,896, averaging 436,573 annually. By comparison of nearly 50 neighborhood and community parks listed by Santa Cruz County Parks estimates rarely exceeded 16,000 visitors and often attracted less than 10,000.
- 2. Setbacks to protect wildlife.** Santa Cruz County is considered a biological "hot spot" and is home to the most diverse endemic and rare species in the state. It is well documented that cannabis farms throughout California use anti-coagulant poisons indiscriminately which has resulted in the poisoning of more than 30 species including threatened and endangered species. New legislation has been directed at this problem but it persists. Google "pot grows and poisoning wildlife" and you can read the details in numerous articles.

## APPENDIX 2

Santa Cruz County has not funded the kinds of studies that have been undertaken in other parts of the state, even though Santa Cruz County probably has the greatest saturation of cannabis farms, historically and into the future.

There are anecdotal reports in some areas of the disappearance of common wildlife, especially mid-sized predators: owls, raccoon, coyotes, etc. **The safest and least expensive action Santa Cruz County can take to separate pot farms from wildlife habitat in parks (and other conservation areas) is to create an ample buffer between parks and grows.** 600' is better than 300'. Depending on the area of the park the distance should probably be 1000'. Risks need to be carefully assessed when creating set backs and not all parts of a park boundary are the same.

3. **Setbacks to protect rural homes.** I am the only rural resident (42 years) on C4 not involved in the cannabis business. From my first days on this committee I wasn't convinced that very many other committee members understood what it was like to live rurally in a changing time greatly influenced by the coming of age (legalization) of the cannabis grower.

It is important to acknowledge that unlike Santa Cruz County other counties see cannabis grows as an attractant to people wanting to rip off plants valued at somewhere between \$500 and \$2000 a piece. Sanctioning an attractant (be it legal or not) to dangerous people is not something anybody I know living in District Three wants. In addition to criminal activity, they fear forest fires, land and water degradation, and killing of wildlife. These are BIG concerns where I live.

People on the committee seemed to have a fairly naive understanding about the impact on residents and the environment of changing use of nearby public lands.

Here's a brief list of bizarre and dangerous activities along the boundary of Henry Cowell State Park near Empire Grade and our RA neighborhood:

- shooting incident in the park in which livestock running for cover was badly injured. State Parks responded with a SWAT team with automatic weapons but found nobody;
- construction of sweat lodge in the park near private houses. The sweat lodge (with fire pit being used midsummer), was dismantled by neighbors,
- arson fire in park within 500 yards of houses. Fire occurred mid-summer, extinguished by CAL-FIRE helicopter dropping water, the person lighting was never captured;
- anonymous construction of mountain bike obstacle course in the park near houses, which was torn down by nearby property owners;
- small cannabis grows in park near homes, one fed by water through a PVC pipe diverted by a renter in a nearby house.

This list could undoubtedly be expanded. [This is not an indictment of cannabis cultivators per se, but instead a realistic view of the problem of having a valuable crop in remote areas easily accessed through public lands \(parks\) to steal. This phenomenon is well documented throughout California as is aberrant behavior in state parks in Santa Cruz. In the context of Santa Cruz, this anecdotal information takes in a small swath of park boundary wrapping](#)

## APPENDIX 2

around a rural neighborhood of 21 homes. [We don't need something that attracts people who are dangerous](#)

Most park users enter to enjoy nature, but, like society at large, some park users bring their problems and inclination for acting irresponsibly and dangerously into the wilderness. Please help protect rural neighborhoods by adopting the largest possible setbacks from cannabis cultivation, and minimize the impact of this attractive nuisance.

### Additional Resources

I offer the following resources, and there are many other organizations that have both the expertise and legal responsibilities for different aspects of watershed and land management.

Public Resource Code (which C4 did not consult)

California Natural Resources Agency (headed by John Laird),

CAL-FIRE

Fire Safe Council Bonny Doon, Joe Christy

South Skyline Fire Safe Council, Eric Isacson

State Park Officials: [Andy Gordus, PhD](#)

Department of Fish and Wildlife

Rural Bonny Doon Association: [Dave Rubin, PhD](#)

Grey Hayes, PhD Natural Resource Management, Conservation Science & Biology

In many instances, District 3, Public Trust and Lands, and State Parks have similar interests and overlapping responsibilities. **Please allow the experts into the discussion before determining setbacks.**

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# WILDFIRE SAFETY RECOMMENDATIONS FOR C4

Joe Christy, president, Bonny Doon Fire Safe Council, Eric Hammer, District 5 representative to C4, John Harriman, Secretary & Board Member, South Skyline Association, Eric Hoffman, District 3 representative to C4, Michael Rowe, President, South Skyline Association, in consultation with CAL FIRE Division Chief Rich Sampson and Santa Cruz County Deputy Fire Marshall Chris Walters

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## EXECUTIVE SUMMARY

The recent wildland fire history of Santa Cruz County demonstrates that cannabis cultivation can be a grave public safety and environmental threat in rural settings. It is our conclusion that safe and sensible cannabis cultivation in rural areas requires people resident on site, water & electricity, and adequate access to the site for emergency vehicles. Therefore, we believe that cultivation sites in mountain areas must include a permanent permitted residence, since only then would existing building and fire codes, if enforced, substantially mitigate the threat of wildfire.

Note that we do address fire safety issues neither around indoor cannabis cultivation in commercial zoned areas nor cultivation in agricultural and commercial agricultural zoned areas. In these areas, existing fire codes already apply.

## INTRODUCTION

### THE THREAT

Wildland fire lies at the intersection of public safety and the environment.

The Wildland Urban Interface [WUI] is defined by a condition, that wildland fire can easily spread to homes and overwhelm the available suppression resources. Santa Cruz County has the second highest percentage of residences in the WUI of any county in California, surpassed only by Riverside County.

Additionally, the recent introduction of both permitted and non-permitted rural residences in the county have placed hundreds of new residents in the WUI which has increased the number of fire ignitions and the number of people at risk because of these ignitions.

The Santa Cruz mountains stand out as a biodiversity hotspot within the larger, globally recognized California Floristic Province biodiversity hotspot. It lies at the southern end of the habitat of coast redwoods and includes areas of northern maritime chaparral, an Environmentally Sensitive Habitat Area protected by the California Coastal Act. The northern maritime chaparral of Santa Cruz County contains more endemic species of Manzanita than any other county in California.

The resilience of the coastal redwood forest here has been severely compromised by intensive logging and misguided fire suppression of the last century, resulting in dangerously high fuel loads from weedy, dead and dying transitional species. Chaparral is an outstanding example of a fire-adapted community; its fragile health is both dependent upon and conducive to frequent wildfire.

### CANNABIS RELATED FIRES

Since cannabis related infractions have been treated as the lowest priority offenses in Santa Cruz County for decades, there are no good statistics available from the Sheriff's Office. Statewide, 95% of wildland fires in California are started by people, usually on account of ignorance or incompetence. While official County Fire/CAL FIRE statistics unfortunately don't differentiate cannabis related and non-cannabis related wildland fires, the consensus among the Incident Commanders of recent wildland fires in the county is that 2014 saw a 35% increase in cannabis related fires over dozens in 2013. Due to the missing statistics, we will concentrate on just two particular areas: Deer Creek / Lost Valley and the Summit.

## DEER CREEK / LOST VALLEY

The Deer Creek cannabis cultivation region has some of the most egregious public safety problems in the County arising from unregulated cannabis cultivation. Fortunately, CAL FIRE usually is successful in suppressing these fires before they spread to the surrounding forest and homes. Of the 11 cannabis related fires since 2010, 7 are alleged to have resulted from arson, though official public statements are only made in case the District Attorney brings charges.

The region, located at the northern end of Santa Cruz County in Supervisorial District 2, is accessed on a matrix of over 10 miles of roads, most of them unpaved, originally built for seasonal logging. Only about 5% of these roads are in compliance with local and state fire standards for emergency fire access. (See Appendix 1 and section 503 of Appendix 2 for County and State requirements for fire access roads.) When driving these roads one is struck by dense forest clinging to steep canyons. It is contained in the triangle formed by Bear Creek Road, Highway 9 and Highway 35. (See the supplemental map in Appendix 3.) The area contains only the sites most visible in Google Earth spans approximately 1200 acres.

Rivalry between competing growers is believed to be the cause of the alleged arson incidents. One theory, according to a CAL FIRE investigator is that the goal of the perpetrators was to “do in” a competitor either by “burning them out” or attracting authorities to an illegal grow site, which would result in shutting it down

The remaining 4 of cannabis related wildfires in the region came from causes typical of cannabis related wildfires county wide. Most stemmed from either escaped cooking, camp, & debris fires, or from substandard wiring of greenhouses, or from inadequate vegetation clearance around generators.

All but four of the 11 fires were controlled before they reached  $\frac{1}{4}$  acre; compare this with the statewide wildfire average of 98%. The remaining 4 grew to 4, 6, 7, and 22 acres. Due to the lack of proper road access and adequate water during the cannabis related 22-acre Castle Rock Fire in 2008, suppressing the fire required air tankers and helicopters, which drove the cost to \$20 million. Had the fire not been contained at that size, it could easily have swept up steep brushy slope to consume the entire Skyline Boulevard area. A more recent cannabis related fire off of Lost Valley Road burned within 1300 feet horizontally and 1000 feet vertically of the 125 homes in the Los Cumbres residential neighborhood above.

## THE SUMMIT

Summit Road runs East Southeast from Highway 17 near its summit and marks the boundary of Santa Cruz and Santa Clara Counties. Red Dog Ridge runs South off of Summit Road about 16 miles from Highway 17. (See the supplemental map in Appendix 3.) Summit Road and its tributary roads are unpaved in this area; only about 40% are in compliance with local and state fire standards for emergency fire access. (See Appendix 1 and section 503 of Appendix 2 for County and State requirements for fire access roads.)

This is the center point for a robust cannabis cultivation region that has been thriving for more than a decade. Large semi-permanent greenhouses (also known as hoop houses) poke up out of the chaparral. Within 2.5 miles of Red Dog Ridge there are more than 30 grows spread over roughly 20 parcels. Many of the grows are owned by limited liability corporations which obscure the true ownership. Parcel sizes run between 10 and 400 acres. Cannabis growers were attracted to the area

because it is remote, and the high dry conditions in the transitional chaparral community, which has grown up after the stand-replacing 2008 Summit fire, are preferred by many local growers.

The history of cannabis related fires in the area is grim. There have been numerous brush fires and homes destroyed since the Summit Fire. CAL FIRE engines have been denied access by growers and sheriff's deputies have had to be called in to ensure their access. One site has suffered three explosions within two years, the last in February 2016.

## FOUR RECOMMENDATIONS

### RESIDENCE / SHELTER

The first requirement for fire safety is an adult on site at all times to detect when something goes wrong, summon professional help, brief responders on the situation upon their initial arrival, and, in the rare circumstance that it is prudent to do so, provide an initial response. This, in turn requires a permanent residence; having people camping or in temporary shelters on site adds to the danger on account of the risk of fire spreading from unattended campfires and recreational vehicles, not to mention public health impacts of a lack of sanitation. Moreover, having a permitted, permanent residence on site would automatically ensure that the remaining three recommendations are followed.

### WATER

The most effective tool that can be deployed in the early stages of a wildfire is water to extinguish the fire. A single fire hose from a wildland engine distributes 100 gallons per minute. Obviously, fighting fire requires far more than a single hose. Hence there must be a large, dedicated reservoir of water on site; while cannabis cultivation itself requires water, there must not be contention for a resource which is likely to be scarce at precisely the times when wildfire risk is highest. Section 7.92.507.1 of the county fire code (see Appendix 4) requires a permanent 10,000 gallon tank on site, dedicated to fire suppression only, for newly permitted, permanent residences; this is in keeping with current best practices in the WUI nationwide.

### ELECTRICITY

Even assuming that there is a portable pump, with standard fire fittings, on hand to draw water, deploying a pump takes at least 90 seconds, and this will be a time when seconds mean the difference between containment and escape of a fire. For that reason, the water requirement specifies that the water source supply 500 gallons per minute for 20 minutes, without power.

Nonetheless, cannabis cultivation typically requires ample power for lights, ventilation, and drying fans. Just as in the case of campfires, using a portable generator adds to danger of fire, from the wiring, proximity to nearby vegetation, and from the necessary fuel storage. Permanent and emergency electrical power requirements for permitted residences are covered in sections 604 & 605 of the state fire code (in Appendix 2).

### ROAD ACCESS

You can't fight a fire unless you can get to it. Once there, you don't start fighting the fight until civilians are out of harm's way and there is a secure escape route for the firefighters. While it is true that some

rural areas where cannabis is currently cultivated are accessible by logging roads, the specifications for logging roads are entirely different from emergency access roads. Logging roads are only used for short periods in good weather. If a logging truck gets stuck, the other logging equipment at a timber harvest can be used to extract it, and the consequence is merely a delay in an already fluid timeline. If a fire engine, tanker, or other equipment gets stuck, not only is the escape route blocked for both residents and trapped firefighters blocked, but bulldozers must be brought in and other emergency equipment be diverted from fighting the fire to extricate the stuck vehicle.

## FIRE CODE & ENFORCEMENT REGIME

### EXISTING CODES

Once there is a permitted residence on site, the existing County and State Fire Codes apply and suffice to largely mitigate the risk of wildland fire. In addition to the State Fire Code in Appendix 2, access and onsite water requirements are contained in Section 4290 of the California Public Resource Code and vegetation clearance for defensible space is specified in Section 4291. (For both, see Appendix 5)

### ENFORCEMENT

Just as in any other permitted activity, there needs to be an inspection to guarantee compliance with the existing codes before a cultivation license is granted. For grandfathered cultivation sites, this means requiring that existing residences be brought into compliance with county code and retroactively permitted. The bad habits, ingrained from decades when cultivation was illegal, and the ease with which non-compliant uses can be hidden behoove us to stipulate that there be regular, unannounced inspections post licensing. The process by which this enforcement takes place is beyond the realm of our expertise and should be handled by the county planning department and sheriff's office.

## APPENDICES

### 1. COUNTY FIRE CHIEFS' ASSOCIATION FIRE PREVENTION STANDARDS – [FIRE ACCESS ROADS](#)

<https://drive.google.com/open?id=0B-eh2eLiI5gdc3d2c1VGd0pSeFU>

### 2. [2013 CALIFORNIA STATE FIRE CODE](#)

<https://drive.google.com/open?id=0B-eh2eLiI5gdQVFKYzFydGJUeVU>

[2015 revisions](#)

<https://drive.google.com/open?id=0B-eh2eLiI5gdVGtGSWZOY2ppVXc>

### 3. SUPPLEMENTAL MAPS

Showing the [Los Cumbres residential neighborhood and Deer Creek Lost Valley cannabis cultivation region](#). Online at:

<https://www.google.com/maps/d/edit?mid=zIruXJ5mo7LM.kftDDXSOXKFg&usp=sharing>

Showing the [Summit Road Red Dog Ridge cannabis cultivation region](#). Online at:

<https://www.google.com/maps/d/edit?mid=zIruXJ5mo7LM.kgRTLgqJmH20&usp=sharing>

#### 4. CHAPTER 7.92 OF THE SANTA CRUZ COUNTY CODE

[Concerning fire code.](#)

<https://drive.google.com/open?id=0B-eh2eLiI5gdX2g1RTI2N0h3N1U>

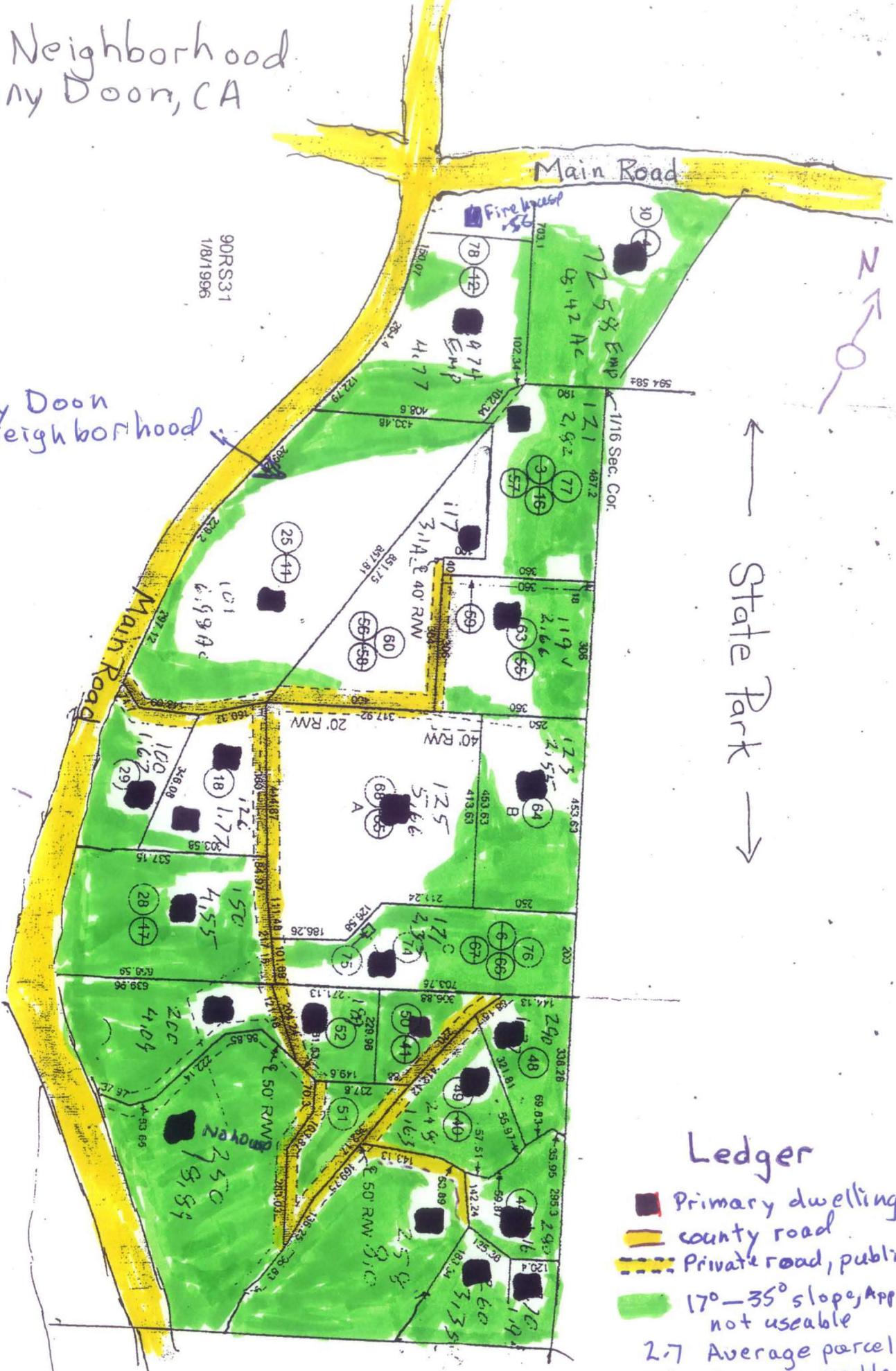
#### 5. CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 4290 AND 4291

[Concerning fire fighting water and vegetation management.](#)

<https://drive.google.com/open?id=0B-eh2eLiI5gdTW1qbks4NktaWFE>

# RA Neighborhood Bonny Doon, CA

Bonny Doon  
RA Neighborhood



State Park →

## Ledger

- Primary dwelling
- ▬ county road
- ▬ Private road, public use
- 17°-35° slope, App. 56% not useable
- 2.7 Average parcel size
- 1.3 Average useable size

Submitted by Eric Hoffman, District 3