



Hannah L. Nelson and Mendocino Cannabis Alliance Statement of Issues Related to The Crisis Facing Mendocino County Cannabis Businesses

As you may have seen recently in regional¹² and national media³⁴, the community of small licensed cannabis farmers and businesses in Mendocino County are in a crisis of epic proportions. Small farmers in California face a combination of excessive taxation at the local, state and federal levels as well as a deadline to have their state licenses converted from Provisional to Annual. Those factors combined with massive overproduction and severely limited market access have created a perfect storm of existential threats. The additional circumstances that small farms in Mendocino County face compound those destabilizing forces in a way that will ensure the shuttering of even more small family farms and businesses in Mendocino County.

Our local farmers were already facing extreme conditions from years of poor administration of the local permitting process and the state Provisional licensing crisis. The lack of communication or effort by the Mendocino Cannabis Program or the Board to publicly address these and more recent “portal” re-application process difficulties, the failure to adequately supervise the administration of the Equity Grant Program, and the failure to provide a process that is fair, reasonable, and consistently administered without simply blaming inadequacies on applicants has led to an environment of fear and confusion for applicants and permit-holders alike.

Mendocino County advocacy groups like the Mendocino Cannabis Alliance and the Covelo Cannabis Advocacy Group, and attorney and advocate Hannah Nelson, have worked hard to provide solutions and on the ground input to the Board of Supervisors and the Mendocino Cannabis Program (MCP). Recently, the County formed a new Cannabis Ad Hoc Committee to address both the Portal Application Resubmission Process and Local Equity Grant Program. Despite this engagement and repeated calls from many program participants, clear standards and guidelines for permit processing and approval have yet to be provided. Inconsistencies in review of the same materials - and mistakes by staff and applicants - due to the lack of standards and proper

¹ <https://www.northbaybusinessjournal.com/article/article/small-north-coast-cannabis-farms-face-daunting-future/>

² <https://sanfrancisco.cbslocal.com/2021/12/12/small-scale-california-cannabis-growers-say-theyre-barely-hanging-on/>

³ <https://www.politico.com/news/2021/10/23/california-legal-illicit-weed-market-516868>

⁴ <https://mjbizdaily.com/marijuana-farmers-at-greater-risk-of-taking-own-lives-amid-hardships-california-industry-officials-warn/>

instructions have plagued the process. Actionable, clear communications from the MCP are virtually non-existent.

In order to assist the necessary dialogue that must occur if the County is to rectify the situation and maintain some level of accountability of the program, we offer a summation of history of the most pressing issues:

1. Portal Process

From August 2, 2021 to November 2, 2021, local cannabis permit applicants were required to re-submit their entire County Cannabis Permit application and all supporting materials to create a clean slate of compliance paperwork after years of lost files and program changes by the County. Applicants were told that to begin with, the portal submission review was for completeness of the application, not substantive review of their ultimate approval or denial. However, what appear to be matters relating to substantive review have been included in the initial portal review for completeness, and applicants were later told that if the application packet was not "complete", which now meant substantively approvable within the narrow portal timeframe, they would be rejected.

Applicants were also led to believe that they would have an opportunity to cure portal issues after the Portal closed, but were instead sent letters that did not state that and gave the impression that they would be denied⁵. Some of those notices were incorrect and had to be changed by the County, but the County never changed the date on the notice— rendering it legally deficient for its intended purpose. Some applicants received 2 to 3 sets of Notices for the same application without any explanation of the differences between the notices or any changes to the checklist of deficiencies that were sent with the Notices. The County sent applicants what amounted to a fear and anxiety producing letter just before the holidays, stating that they might be denied a permit due to an 'incomplete' submission, and emphasizing that since the Portal was already closed, there was no way to change their status to "complete". These multiple and sometimes incorrect Notices were sent to tax paying businesses most of which have been operating for 4 & 1/2 years and in many instances had submitted files to the county 2-4 times in the past, in order to replenish files which were in many cases lost by the various iterations of the County Cannabis Program.

⁵ The letter stated that the submission was deemed "incomplete", that the portal had closed, and that applications that were "incomplete" after the portal closure date may be denied. No information concerning a re-opening of the portal to correct the listed deficiencies, some of which were errors by staff, was included.

Applicants have been receiving these deficiency notices regarding their application, but have not been provided with the corresponding information promised by MCP that would include guidelines and timelines for successful completion. Furthermore, incorrect assumptions and errors by MCP staff have often formed the basis of an alleged deficiency. Multiple, successive reviewers on any one submission have come to completely different conclusions about whether a category was complete or deficient. Some of the deficiencies result from mistakes made on form templates issued immediately before the portal opening without advanced warning.

There have been no clear communications regarding any of the following from MCP:

- A) standards by which portal submissions for completeness are judged;
- B) standards by which approvals and denials will be determined (either up front after portal submission in lieu of an incomplete notice, or later when substantive review is conducted);
- C) when educational materials with those standards and any clarifying information will be released;
- D) what steps will be taken to perform educational efforts to support successful completion by applicants;
- E) when the Portal will be reopened and how much time people will have to resubmit through it to correct “deficiencies” listed in the Incomplete determinations;
- F) how errors by applicants or staff can be addressed so that denials based on errors by staff or by applicants are avoided, and/or can be cleared up outside of any arbitrary tight timeframe of resubmission or appeal;
- G) what kind of appeal process and timeframe for appeal will be afforded for Denials:
 - 1. Based on initial portal submission, or resubmission;
 - 2. Denials based on substantive review of application after portal submission or resubmission or of those in “good standing” or renewals.

This lack of communication is causing the entire community of local permittees to experience massive confusion and anxiety. It is imperative to release information that at the very least gives clear indications of these different timelines.

Applicants have had to completely reorganize their lives based on a constant 'hurry up and wait' mode of conducting business in the County. They are expected to at all times be ready with unknown documents that fulfill unknown expectations and standards. They have zero information about when or how they will be judged. Honest and human mistakes by the staff of MCP are deemed to be correctable at some unknown time and only then by the efforts and detailed request of the applicant, but honest and human error by the applicant, or submission of an incorrect document or something that an outside agency has prepared that is in some way inconsistent with the applicant's materials, are presumed to be out of compliance and either subject to denial or subject to unknown additional efforts by the applicant at some unknown time.

These challenges would be enough to drive even the most seasoned business professional to their wits end, and yet they are only one part of the crisis our community is facing.

2. Local Equity Grant Program & New Jurisdictional Grant Program

The overwhelmed and understaffed MCP has been unable to properly manage the contracted Equity Grant administrator and ensure smooth coordination with other County departments. The company contracted to administer the program has been ineffective and the County must have better oversight of the contracts it issues.

MCP inherited the bones of an Equity Grant Program and tried to build the ship as it sailed. However, MCP lacks the capacity to handle proper oversight of the program efficiently. A case in point is that MCP never involved the necessary other County departments prior to the rollout of the Equity Grant Program. A good example was the fact that it was not until AFTER awards were approved and grantees notified that County Counsel created a contract template for use in the program. It was not until AFTER awardees were notified that the County departments involved in financial expenditures were looped in and began the technical process of having the approved funds wind their way through the maze of required departments. As a result, QUALIFIED, APPROVED NOTIFIED AWARDEES did NOT get the funding that was promised to them in 2021.

Again, the current MCP inherited the current program, and the responsibility for pre-grant interdepartmental coordination should have been up to the prior MCP administration. However, once the current MCP took over, it should have immediately evaluated the pragmatic details to ensure the contracted

administrator could effectively accomplish the purpose: to get money to the qualified grantees in a timely manner. Stakeholders had specifically forewarned the need to address these matters at length in the last 6 months, but the County did not act. It should be further noted that this was YEARS AFTER the program funds were awarded by the State to the County and more importantly, Equity Grant funding from the state to local equity programs may be RESCINDED and the funding withdrawn if state timelines are not adhered to. In this instance, more than \$2 Million in FREE grant funds from the state could be rescinded.

These funds are CURRENTLY needed as a lifeboat and can't be allowed to drift away. Additionally, the enormous \$17.5 million dollar local jurisdiction grant cannot be allowed to drift into the same kind of failure of efficiency, pragmatism and lack of oversight. Planning must be done NOW to push the funding out to those that are intended to benefit from the award. Contrary to MCP and perhaps public perception, the local jurisdiction grant from the state was to directly benefit the state provisional license holders who are struggling to transition to their state annual licenses because they do not yet have their local annual permit and/or do not have the funding to finish the CEQA process and infrastructure projects required by state and local regulations as a prerequisite to state annual licensing.

3. Satisfaction of CEQA Requirements and Appendix G Processing

MCP informed one applicant that a determination regarding their Contiguous Expansion Affidavit proof could not be addressed because CDFW was taking issue (again) with the County's application of that process. This information was not disclosed by the MCP to the Ad Hoc despite the fact that it directly impacts the Portal resubmission timelines. There has been no indication of when or how issues related to the Contiguous Expansion Affidavit, which, if the project is eligible to utilize it, is a necessary component of fulfilling both the primary application requirements as well as the satisfaction of CEQA with respect to Sensitive Species and Habitat.

Appendix G processing has completely been halted. The County never issued better guidance materials but instead forced the applicants and staff to engage in interminable back and forth submission, suggested edits, resubmission, and so forth (rinse and repeat). Licensed and qualified CEQA professionals were and are at a loss as to the standards and expectations mounted against each submission without relation to the Appendix G guidance documents posted by the County on its website. Repeatedly, practitioners and applicants requested updates to the templates and materials, but none have ever been issued.

Then, suddenly, without discussion or warning, all processing of Appendix G packets stopped, apparently in September. While it would be wonderful if the

reason for the abrupt discontinuance of that processing was due to preparation of updated materials, sadly, we do not believe that is the case. Rather, the program is too overwhelmed and understaffed to continue to process them. Also, any issue with respect to the Contiguous Expansion Affidavits would impact the Appendix G situation. Zero communication to the public was conducted providing an explanation of the abrupt halt until forced to answer questions by individual applicants about why their submitted package had not been responded to. At the very least, should MCP be forced to make a tough call to alter a key programmatic function like the suspension of processing applications or CEQA certifications, it has the responsibility to educate the Board and the public about it as soon as the information becomes available, and should endeavor to email the entire applicant pool with that information and the expected timelines to follow.

4. Local Taxation

Currently farmers that have come forward to be regulated are subject to a minimum cultivation tax based on the size of their permit application and not on the amount of product actually grown or sold. Cannabis is the only crop on which the County places a minimum tax regardless of the actual sales conducted. This tax does not take into account crop failure or allow for deductions based on unsold products.

Recently, the Board of Supervisors signed a resolution that it sent to the State asking for State cannabis tax reform but declined to take action on local cannabis cultivation taxes.

We strongly believe that the best way to approach the State with a Tax Reform proposal is as a partner doing everything possible on the local level to match the challenge of the moment for our licensed cannabis businesses. To this end, we urge the County to adopt the following local Tax Reform suggestions that would both provide relief for struggling licensees and signal to the State that Mendocino County is ready to work together with them to address the existential crisis our community is facing:

1. We recommend the Board give direction that cannabis cultivation taxes only be levied based on the amount of canopy being grown (minus any potential crop loss) by a licensee, NOT based on their permit size. It is our understanding that the current Tax Initiative does not mandate that tax is based on permit size, and that it would be under the authority of the Board to adjust this aspect of the tax framework without changing the ordinance and without being in contravention of the Initiative. This can potentially be accomplished through Tax Credits, if necessary.

2. We recommend that the Board work with stakeholders to sponsor an ordinance change to the Tax Code that would base cultivation taxes on Gross Receipts with no guaranteed minimum.
3. Continue to advocate for state cannabis tax reform, including elimination of the cultivation tax, reduction of the excise tax and modification of the manner in which taxes are calculated to prevent triple taxation because sales taxes are based on totals that include both the cultivation and excise taxes.

We believe that initiating local tax reforms will substantially bolster our efforts when asking the State to provide tax relief.

It is short-sighted to fail to address the over-taxation issue at the local level. What amounted to a \$5.6 million tax income to the County will evaporate to zero if our local cannabis businesses are shuttered.

Conclusion

We understand that the MCP is understaffed, and we have supported their staffing up for over a year. However, at a certain point, the substantial impact of the inability to staff up quickly, meaningfully, and with the correct expertise and capacity must be addressed. The continued inefficiencies and errors have resulted in systemic failures that together with the other external factors noted above (market crash, over taxation, etc.) have crescendoed into an urgent situation that must be rectified.

The Board was justified in supporting the new program manager nearly a year ago as she attempted to tackle the problems that had built up over the prior 3 & ½ years and it was right in authorizing the funds necessary to ensure the department had the resources it needed. However, at this point, it becomes complicit in not getting into the trenches and helping more specifically to tackle these monumental issues— especially as mistakes and errors in rollout and further delays continue. Due to understaffing and lack of history of the current version of the MCP, it is necessary to provide more direct oversight and accountability. However, even before those heroic efforts may be undertaken, the most important immediate need is for communication. Applicants, including annual permit holders that have or will be applying for renewal and that may have provided or be ready to provide Appendix G materials to the County for certification, must have more specific information pertaining to timelines, templates, standards, and ability to engage to correct errors by staff or by the applicant. MCP must be able to articulate processes and standards clearly and apply them consistently.

Until now, offers of practical problem solving from knowledgeable experts and stakeholders have been rejected by MCP. We hope that the County will avoid perpetuating the same type of mistakes that we have repeatedly warned against in the past and will direct MCP to work directly with stakeholders to vet all new processes and programmatic implementations BEFORE they are finalized and rolled out. Additionally, it is time to tell applicants (including annual renewal applicants) exactly what the timelines are moving forward. It is unreasonable to continue to keep them in suspense about how and when they will be able to proceed, especially if there is once again going to be a very narrow (30-day) and arbitrary deadline that every single applicant that was given an incomplete must meet. The fact that this amounts to over 80% of the applicants in the portal provides a good indication that the primary problem is the underlying system and lack of consistent and clear standards, guidelines and communication.

Every applicant has VOLUNTEERED to be regulated and stepped forward into the abyss. No one thought it would be as torturous of a process (neither the County nor the applicants) as it has been and continues to be. Every one of these tax-paying businesses is tracked and traced at the state level. Accountability of state license holders is no longer the issue, it is now the County.

Urgent attention to the Portal, Appendix G processing, the Equity Grant Program, including oversight and accountability measures for the contracted program administrator, and immediate and pragmatic planning for the rollout of the Local Jurisdiction Grant Program is imperative. Reform of local cannabis taxation policies are necessary to ensure the sustainability of that revenue stream for the County and the support of our struggling small businesses. The time for focused action is now, or we risk losing what remains of our local licensed cannabis community.

Sincerely,

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[Hannah L. Nelson](#) is a local attorney with extensive experience in cannabis issues, policy, and compliance at the local and state level.

The [Mendocino Cannabis Alliance](#) serves and promotes Mendocino County's world-renowned cannabis cultivators and businesses through sustainable economic development, education and public policy initiatives.