



Rachel Doughty  
2001 Addison Street, Suite 300  
Berkeley, CA 94704  
Phone: (510) 900-9502 x 2  
Email: rdoughty@greenfirelaw.com  
www.greenfirelaw.com

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By Electronic Mail

Mendocino County Board of  
Supervisors  
bos@mendocinocounty.org

**RE: CEQA Review Required Prior to Approval of Cannabis Facilities Ordinance (April 19, 2021 Board Meeting Agenda Item 3(a))**

Dear Mendocino County Board of Supervisors:

We are legal counsel to Willits Environmental Center, writing on their behalf to inform you that the proposed “Ordinance Amending Chapter 6.36 Cannabis Facilities Businesses and Chapter 20.243 –Cannabis Facilities” does not qualify for the “common sense” exemption to CEQA, nor any other exemption from CEQA. The common sense exemption applies only “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (Cal. Code Regs., § 15061(b)(3).)

A common sense “exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.” (*Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 117 (holding city did not justify common sense exemption for ordinance by mere declaration of exemption).) “If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.” (Id.)

Staff have *not provided any explanation or analysis* for why it is *certain* that the activity authorized under the ordinance cannot have a significant effect on the environment.<sup>1</sup> It must be recognized that cannabis cultivation is not a minor activity in the County but the County’s highest grossing crop and generates massive local, regional, and even international interest; its cultivation and facilities should be considered on the potential scale of wine-growing to Napa. A few sections

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<sup>1</sup> The entire text of staff’s analysis of the issue in the Memorandum regarding OA\_2021-0001 Cannabis Facilities Ordinance Amendment from Sam Vandy Vandewater, dated April 19, 2021, is as follows: “Consistent with the California Environmental Quality Act (CEQA) determination for the CFC, Staff recommends applying Section 15061(b)(3) -General Rule Exemption to this action, as the proposed amendments do not have the potential to cause a significant effect on the environment, and is therefore not subject to CEQA.”

from the proposed ordinance demonstrate that the newly permitted activity will have a significant impact:

- Proposed Section 20.243.040(D)(7)(a) will permit as a by-right activity up to 75 tour visitors per week per cultivation site, including remote sites in the Rangeland, Upland Residential and Agricultural district near or in ecologically sensitive habitats and on unimproved roads. The County offers no assessment of the potential cumulative or specific impact of traffic, parking, foot traffic impacts, water usage, sewage/septic impacts
- Proposed Section 20.243.040(E)(A),(B) will allow processing and manufacturing by-right on any site with a cannabis cultivation permit, including permits previously issued under Phase 1 without any discretionary review.
- Proposed Section 20.243.040(E)(3),(4) allows distribution of cannabis as an accessory use to any cultivation site in any zoning district so long as the distributor is licensed with the state. This means that sites previously approved only for cultivation may also generate an untold number of extra vehicle trips, potentially by large trucks and transport vans.
- Section 20.243.040(F)(7)(8) allows retail to up to 10 visitors per day (i.e., microbusiness/cottage industry) by-right in any zoning district, without consideration of parking, traffic and wildfire-related impacts of using a smoked product.
- Section 20.243.040(D)(7)(a) and (8) allow cannabis farmers markets and events, potentially hosting hundreds of people, as accessory uses without any evaluation of the effect on the environment.

Clearly, these, and many more, activities authorized under the proposed ordinance will, singularly and collectively, have a significant impact on the environment and necessitate CEQA review. Furthermore, because the activity permitted by the ordinance will not be subject to discretionary review, the ordinance is not covered by the CEQA exemption in Business and Professions Code, section 26055, subdivision (h).

The County must prepare an EIR before passing the proposed ordinance authorizing an expansion of cannabis-related facilities.

Sincerely,



Rachel Doughty

CC: Julia Krog, Assistant Planning Director ([ackej@mendocinocounty.org](mailto:ackej@mendocinocounty.org))

Matthew Kiedrowski, County Counsel, ([kiedrowskim@co.mendocino.ca.us](mailto:kiedrowskim@co.mendocino.ca.us))