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Chair Gjerde and Members of the Mendocino County Board of Supervisors

Via email: bos@mendocinocounty.org

Re: Requested Revisions to Phase 3 Ordinance to Ensure Constitutionality (ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 – CANNABIS CULTIVATION SITES)

Dear Chair Gjerde and Members of the Mendocino County Board of Supervisors:

I am a land use attorney representing one of the Phase 1 cannabis cultivation permit applicants who was rejected on the sole grounds that their parcel's Certificate of Compliance was recorded a few months after the January 1, 2016 cutoff date for Phase 1. I am following up on my email sent to you on April 19, 2021 voicing my objection to excluding Phase 1 applicants from the Phase 3 process on these grounds which no longer apply to Phase 3, thereby treating them unequally from otherwise similarly situated parcel owners who had not applied under Phase 1. In short, this letter (1) reiterates the request to strike parcel legality as grounds for rejecting Phase 1 applicants; (2) proposes certain text amendments to the Ordinance to clarify that Phase 1 rejected applicants may still apply under Phase 3 provided they meet the Appendix A zoning restrictions; and (2) objects to the revisions to the Appendix A zoning restrictions for Rangeland zoned parcels proposed by Supervisor McGourty which would effectively preclude my client from applying under Phase 3 even though their parcel meets the objectives of this restriction

1. Background

My client applied for a cannabis cultivation permit under Phase 1 for their parcel which is zoned Rangeland. More than two years after their original submittal, their application was ultimately denied on the sole grounds that a Certificate of Compliance confirming their parcel's legality was not issued until a few months after January 1, 2016. They met all of the other requisite criteria including proof of prior.

Following the April 19th hearing, your Deputy County Counsel called me in response to my email and explained that the Phase 3 Ordinance was not intended to shut out applicants such as my client that were rejected under Phase 1.3. He explained that all applicants that met the Appendix A zoning restrictions would be allowed to apply under Phase 3 and there was no parcel legality date cut off for Phase 3 applicants. He explained that rejected Phase 1 applicants would not be shut out of the Phase 3

process if they met the Appendix A zoning restrictions, they just would not be entitled to priority for processing under Phase 3. This is less than clear in the Ordinance.

2. Requested Text Revisions to Preserve my Client's Phase 1 Status under Phase 3

This letter reiterates our request to strike subsection (4) below which, if not stricken, would effectively and we believe unfairly eliminate my client's status as a Phase 1 applicant under the Phase 3 process:

Notwithstanding the limitations of Appendix A of this Chapter, Phase 1 applicants who applied for a Phase 1 permit under Chapter 10A.17 may apply for a Land Use Permit pursuant to this Chapter, subject to the following criteria:

(A) Eligibility. The parcel upon which the Land Use Permit is requested shall not be located in a Commercial Cannabis Prohibition (CP) Combining District or sunset area (as described in Mendocino County Code section 10A.17.080(B)(2)(b)). In addition, the Phase 1 permit application shall not have been denied for one of the following reasons:

- (1) Tree removal violation.
- (2) Failure to pass the required background check.
- (3) Lack of proof of prior cultivation.
- ~~(4) Legal parcel established after January 1, 2016.~~
- (5) Non-responsiveness to requests for information from the County.

3. Requested Text Revisions to Clarify Eligibility of Rejected Phase 1 Applicants Under Phase 3:

To clarify the intention of the Ordinance (as relayed to me by your Deputy County Counsel) that all parcel owners that meet the Appendix A zoning restrictions are eligible to apply under Phase 3 regardless of whether they were rejected in Phase 1 for one of the reasons listed above, we respectfully request the following underlined and highlighted text addition to the Ordinance:

Section 22.18.060 Application Process

(B) Phase 1 applicants who meet the eligibility criteria set forth in section 22.18.050(A) shall be provided a 60-day early application window prior to the Department accepting any other applications for a Land Use Permit for commercial cannabis activities related to cultivation.

(C) Phase 1 applicants who do not meet the eligibility criteria set forth in section 22.18.050(A) but whose parcels comply with the zoning district limitations set forth in Appendix A of this Chapter may apply for a Land Use Permit under this Chapter following the early application window set forth in subsection (B).

4. Requested Text Revisions to Supervisor McCourty's Proposed Item no. 7 Restriction

Supervisor McGourty's memo dated April 18, 2021 proposes revisions that would effectively amend the Appendix A zoning limitations to exclude my client from the Phase 3 process altogether. To preserve my client's eligibility under Phase 3 while meeting the intent of this restriction to allow only Rangeland and TPZ zoned parcels that have been previously cleared and have a legal reliable water source, we respectfully request the following revisions to this restriction (shown in highlighted strike-out text):

7. No expansion of cannabis into Rangeland, TPZ or other areas unless there already exists ~~non-cannabis~~ crop land that has been cleared and has a legal reliable water source.

Unless this text is stricken as requested, owners of parcels in cannabis crop production that are otherwise similarly situated to parcels in non-cannabis crop production would be unfairly prejudiced and arguably denied equal protection under the 14th Amendment of the United States Constitution.

I understand that at the April 19th Board meeting, Supervisor McGourty clarified item no. 7 to further require that the crop land must have been cleared prior to 2015. I have scanned through the testimony and see no rational basis given for this cutoff date which is even more restrictive than the Phase 1 January 2016 proof of prior cutoff date. We would urge that the cutoff date for cleared land in Rangeland and TPZ District zones be twelve months prior to the effective date of the Phase 3 Ordinance. This would prevent a rush of land clearing after Ordinance adoption while preserving the intent of the discretionary Phase 3 application process to be more inclusive than the Phase 1 ministerial process.

Many thanks for your consideration.

Respectfully submitted,



Camas J. Steinmetz

Cc: County Counsel (cocosupport@mendocinocounty.org)