REDWOOD CHAPTER
55A Ridgway Avenue, Santa Rosa, CA
P.O. Box 466, Santa Rosa CA 95402
(707) 544-7651
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SIERRA CLUB

July 7, 2016

Mendocino County Board of Supervisors
County Administration Center
501 Low Gap Road, Room 1070
Ukiah, CA 95482
via email to *duketts@co.mendocino.ca.us* and *browncj@co.mendocino.ca.us*

Dear Chair Brown and members of the Board:

Redwood Chapter represents nearly 10,000 members of the Sierra Club, the nation's largest and oldest environmental organization, residing in northwestern California; approximately 1000 of those members live in Mendocino County. The damage done by unregulated marijuana cultivation has concerned us for a number of years, and in 2011 the Chapter was primarily responsible for Sierra Club California's adoption of a policy statement recognizing the "severe environmental degradation to wild places" and risks to "human health and safety" that it has brought to this region.

We therefore greatly appreciate this opportunity to comment on the Draft Mendocino County Medical Cannabis Cultivation Compliance Program. The desire to establish a clear regulatory framework that will regularize cultivation of medical marijuana in Mendocino County and reduce or eliminate ancillary environmental devastation is laudable, and we agree that better regulation and enforcement is needed.

However, we have serious concerns about the current draft ordinance, particularly potential impacts to water supply, water quality, and aquatic habitat. Unsustainable levels of appropriation, illegal diversions, unregulated toxic discharge and underfunded enforcement have impaired every stream and river on the North Coast for both sediment and temperature, and endangered the salmonid populations that depend upon these waterways for their survival. This sad state of affairs was true even *before* years of drought raised these impairments to critical levels. Even under current usage levels our coastal watersheds are being sucked dry, and the dramatically increased demand likely to occur should the draft ordinance be adopted is highly probable to result in alarming consequences for riparian and aquatic habitat and also for existing agricultural and domestic water users.

Cannabis cultivation on the scale governed by the proposed permitting system should be subject to all the same regulatory framework that governs other agricultural crops, and since supplemental irrigation is always needed, should be limited to Agriculturally zoned properties with an identified water source. Allowing marijuana growsites (other than those for strictly personal use) on Rural Residential land ensures conflicts with

neighbors; allowing them in Timber Production Zones, Forest Lands and Rangeland ensures the degradation of these areas and the reduction of their value for timber production, fish and wildlife habitat, watershed protection, and scenic enrichment.

The California Environmental Quality Act (CEQA) has deliberately set a low bar for requiring that an Environmental Impact Report (EIR) be prepared as the basis for considering project approvals. It is not necessary to demonstrate that environmental impacts necessarily *will* occur, or that mitigations have definitely failed to reduce such impacts below the level of significance, but merely to provide substantial evidence that insufficiently mitigated impacts *could potentially* occur. Given the impaired coastal waterways and their imperiled populations of fish that will inevitably be affected by a dramatic increase in countywide cannabis cultivation the potential for significant impacts is only too obvious.

We therefore urge the county very strongly to delay any consideration of this draft ordinance until an EIR has provided a sound framework for evaluating its consequences. It would furthermore be prudent to wait for the release of the California Department of Food and Agriculture (CDFA) draft Medical Cannabis Cultivation Program, and therefore ensure that the local ordinance is consistent with statewide standards and also allow Mendocino County's environmental analysis to be tiered off CDFA's programmatic EIR.

Yours sincerely,

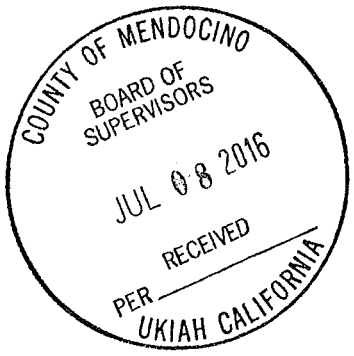
Victoria Brandon
Chair, Sierra Club Redwood Chapter

Nicole French - North Coast Regional Water Quality Control Board comments on Mendocino County's draft cannabis program

From:	"Henrioulle, Diana@Waterboards" <Diana.Henrioulle@waterboards.ca.gov>
To:	"bos@co.mendocino.ca.us" <bos@co.mendocino.ca.us>, "County AgCommissione...
Date:	7/7/2016 5:20 PM
Subject:	North Coast Regional Water Quality Control Board comments on Mendocino County's draft cannabis program
CC:	"Lee, Shin-Roei@Waterboards" <Shin-Roei.Lee@waterboards.ca.gov>, "St.Joh...
Attachments:	160707_DHG_Comment_Letter_on_Mendo_Ordmsj.pdf

Thank you for the opportunity to review the Draft Medical Cannabis Cultivation Compliance Program. Our comments are attached. If you have any questions, you may contact me or Adona White of our cannabis team staff.

Sincerely
Diana Henrioulle



July 7, 2016

Mendocino Board of Supervisors
County Administrative Center
501 Low Gap Road, Room 1010
Ukiah, CA 95482

Dear Supervisors Brown, McCowen, Woodhouse, Gjerde, and Hamberg:

We appreciate the opportunity to work with Mendocino County on cannabis cultivation compliance programs. As you are aware, the North Coast Regional Water Quality Control Board developed and is implementing a cannabis cultivation waste discharge regulatory program (Order No. R1-2015-0023[1]). The regulatory Order, in combination with enforcement and education and outreach, addresses water quality and beneficial use impacts from properties with cannabis cultivation, associated activities, and operations with similar environmental effects. We appreciate the opportunity to provide input to and partner with the county to ensure that the Regional Water Board's and the county's programs complement each other and protect the environment of Mendocino County.

Enclosed please find comments on the Draft Medical Cannabis Cultivation Compliance Program, dated June 21, 2016. If you wish to discuss these comments, or if you have any questions regarding the Regional Water Board's programs, please feel free to contact Diana Henrioulle at 707-576-2350 or Diana.Henrioulle@waterboards.ca.gov.

Sincerely,

Matthias St.John 2016.07.07 17:08:49 -07'00'
Water Boards

Matthias St. John
Executive Officer

160707_DHG_Comment_Letter_on_Mendo_Ord

Enclosure: Regional Water Board comments

[1] http://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/

Enclosure:
North Coast Regional Water Quality Control Board Comments on
Draft Chapter 10A.17 – Medical Cannabis Cultivation Compliance Program

1. The Medical Marijuana Regulation and Safety Act has been renamed the Medical Cannabis Regulation and Safety Act with the adoption of SB 837. Similarly, the Bureau of Medical Marijuana Regulation has been renamed the Bureau of Medical Cannabis Regulation. (SB 837).

2. Section 10A.17.020 – Definitions should be revised to include a definition of "an approved third party inspector" which is in contrast with an "Approved Third Party Program" with the North Coast Regional Water Quality Control Board.

3. Section 10A.17.040 (F) should be revised as follows:
   (F) All cultivation of medical cannabis shall not utilize water that has been or is illegally diverted from any waters including areas hydrologically connected to a spring, wetland, stream, creek, or river.

4. Section 10A.17.040 (G) should be clarified to define the scope of "activities associated with cultivation of medical cannabis." The Regional Water Board program addresses property-wide conditions including controllable sediment delivery sites. It would be helpful to understand if the entire property is included in the county's evaluation.

5. Comment on Section 10A.17.100 Permit Review and Issuance – consider coordination with the Regional Water Board in conducting the site inspections. Such coordination would improve interagency coordination and minimize the number of inspections that an applicant may need to accommodate.

6. Section 10A.17.110 (D) should be revised as follows:
   (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable permit, license or registration or the annual filing of a statement of water diversion and use of surface water from a stream, river, underground stream, or other watercourse if required by Water Code section 5101. ~~, or other applicable permit, license or registration~~

7. Section 10A.17.110 (F) should be revised as follows:
   (F) Maintain enrollment in Tier 1, 2 or 3~~, certification~~ with North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, ~~or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency~~.

   It is not clear from this language what the County will be looking at to determine whether or not a party is enrolled and "maintaining" that enrollment in good standing.

The Regional Water Board requests that the County require more than a copy of the NOI to determine compliance with this provision and instead recommends that the County verifies that a party is enrolled, paid all applicable fees and submitted all required plans and reports prior to issuance of a cultivation permit by the County.

8. Section 10A.17.110 (G) should be revised as follows::
   (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015-0023 is required, the site shall comply with the standard conditions ~~of approval for enrollment~~ set forth in that Order, which is set forth in Appendix A to this Chapter.

9. Add Section 10A.17.110 (O) as follows:
   For activities that involve construction and other work in waters of the United States, including streams and wetlands, comply with Clean Water Act (CWA) section 404 by obtaining a federal permit from the Army Corps of Engineers and CWA Section 401 by obtaining a water quality certification from the North Coast Regional Water Quality Control Board.

10. Add Section 10A.17.110 (P) as follows:
    For projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.

11. Comment on Section 10A.17.140 "Cultivation Site Inspections: Violations and Enforcement" – these provision require a Third Party inspector to determine whether or not a site is in compliance with "conditions of approval" and provides a procedure by which a permit can be terminated if a site is not in compliance with the "conditions of approval." The term "conditions of approval" however is not defined and it is not clear if Performance Standards provided in section 10A17.110 are a "condition of approval" or if the condition of approval for the Regional Board's Order are considered "conditions of approval" for purpose of this section, or perhaps both? Regional Board recommends clarifying this provision so that it is clear upon what basis a permit can be terminated.

12. Section 10.A.17.130 – "Third Party Inspectors" – (F) should be revised to clarify "adherence to standard conditions <u>of the County Ordinance</u>." As presently crafted it appears the third party inspectors for the county may make determination of adherence to standard conditions in the Regional Water Board waiver when the third party may not be qualified to make that determination.

General Gov't Committee
MEETING RELATED CORRESPONDENCE
MEETING DATE: 7/18/16 ITEM: 1
Distribution: (1 Original to Clerk)
BOS CEO CoCo Press COB Staff Liaison:
CBAB

Staff Comments on draft medical cannabis ordinance

Date: 7/7/2016 4:47 PM
Subject: Fwd: MCRCD Staff Comments on draft medical cannabis ordinance
Attachments: image001.jpg; MCRCD Staff_Comment Letter7.7.2016.pdf

>>> "Patricia Hickey" <patricia.hickey@mcrcd.org> 7/7/2016 12:33 PM >>>
Good Afternoon All,

Please find attached MCRCD's comment letter on the proposed ordinance. The RCD has a very strong interest in ensuring that a local ordinance that has the potential to significantly impact our past and future work in fisheries restoration and enhancement is well thought out, particularly given the very negative unintended consequences of adoption of such an ordinance as is now being experience in Humboldt County. They are seeing whole subwatersheds pumped dry of water. The County's planning department is completely overwhelmed and has severely constrained code enforcement capabilities. According to Scott Bauer of CDFW, it is a total "train wreck." We very much hope that Mendocino County will learn from their experience.

I have spoken to many local and state public agency folks over the last month regarding adoption of the proposed ordinance. Yesterday I spoke with a lead CEQA attorney for the California Department of Food and Agriculture regarding the state program. She affirmed that CDFA has made a concertize effort to advise cities and counties to wait on local ordinance development until CDFA releases it program outlines and CEQA EIR findings to date. They anticipate releasing that information sometime in August or September.

Respectfully, Patricia Hickey

Patricia Hickey, Executive Director
Mendocino County Resource Conservation District
410 Jones Street, Suite C-3
Ukiah, CA 95482
707-462-3664 ex. 101
patricia.hickey@mcrcd.org

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Mendocino County
Resource Conservation District

July 7, 2016

Supervisor Carre Brown
County Administration Center
501 Low Gap Road, Room 1070
Ukiah, CA 95482

Dear Supervisor Brown,

Thank for you visiting MCRCD's office on June 30, 2016 to talk with us about MCRCD staff concerns with the County's draft Medical Cannabis Cultivation Compliance Program as written. At the end of the conversation, you requested that we prepare a bulleted list outlining those concerns. The following are key issues MCRCD staff feel should be addressed during the initial comment period on the draft ordinance.

- We believe that the potential permitting of irrigated agriculture (cannabis cultivation) on non-agriculturally zoned land could have a significant, cumulative environmental impact on endangered species habitat for coho salmonid and steelhead trout. The ordinance as written would permit irrigated agriculture on approximately 90% of private land in the county (e.g., parcels zoned R-R 5; R-R 10; R-L; and R-F). The potential for severe over drafting of surface waters during a period of extend drought conditions is of particular concern.

- It is important to note that 80% of the parcels in these non-agricultural zoning districts are located in watersheds that are listed as impaired for sediment and temperature by the State Water Resources Control Board on its 303(d) List of Impaired Waterbodies. Total Maximum Daily Load (TMDL) studies require significant reductions in land use impacts, while County permitting of expansion of cannabis cultivation in forested watersheds would likely increase environmental impacts. Headwater streams and springs are a critical source of cool water for salmonid species. County sanction of additional water withdrawals for irrigated agriculture in these sensitive forested subwatersheds could imperil listed species. It is also difficult to imagine effective mitigation of increased sedimentation from land clearing without a County grading ordinance in place.

- The eleven listed watersheds for sediment and high instream temperatures are: Ten Mile River; Noyo/Pudding Creek; Big River and Berry Gulch; Albion River; Garcia River; Gualala River; Navarro River; Upper Russian River; Middle Fork Eel; South Fork Eel; and Middle Mainstem Eel River.

- Adoption of the proposed ordinance is a "project" pursuant to the California Environmental Quality Act ("CEQA"), and thus the County has an obligation to fully analyze the ordinance's potential environmental impacts, disclose those potential impacts to the public and public

agencies, and adopt and implement all feasible mitigation measures available to reduce those impacts. The proposed ordinance has substantial potential for significant direct, indirect, and cumulative environmental impacts to sensitive species and habitat (including federally endangered species habitat), related to but not limited to increased water demand and use, increased soil erosion and sedimentation, and increased use of pesticides within and adjacent to sensitive habitats and watersheds. In addition, there are potentially significant impacts relating to the use and conservation of timberland, potential impacts to non-Cannabis agricultural resources, aesthetics, recreation, energy use, waste generation, and habitat connectivity and fragmentation. Given these potentially significant impacts, not all of which may be mitigated to a level of less than significant, we recommend that the County prepare an Environmental Impact Report as required by CEQA for the proposed ordinance.

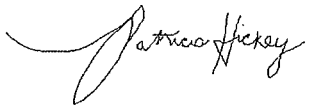
- The importance of completing environmental review before the ordinance is adopted is of the utmost importance given that the ordinance seems to allow the County to issue cultivation permits ministerially. Issuance of ministerial permits (as opposed to discretionary permits) does not trigger CEQA review – thus if environmental review is not completed now, no environmental review of the potential environmental impacts associated with cultivation may ever occur, and there may be no opportunity to identify and adopt mitigation measures to reduce those potential impacts.

- Should the County proceed with either an Environmental Impact Report, as we recommend, or a Mitigated Negative Declaration, mitigation measures protecting our sensitive habitats and resources must be concrete, enforceable, and be shown to feasibly reduce the ordinance's potential environmental impacts.

- We also recommend that the County consider waiting until the California Department of Food and Agriculture releases its draft Medical Cannabis Cultivation Program description in August or September of this year to take action on a County ordinance. Indeed, Amber Morris, CDFA's Medical Cannabis Cultivation Program Manager, has strongly recommended that counties wait until program guidelines are released before drafting local ordinances [personal communication]. This will help to prevent adoption or consideration of ordinance permit requirements or performance standards at variance with minimum statewide standards and will allow Mendocino County staff to review CDFA's Environmental Impact Report determinations.

- Lastly, MCRCD staff reviewed and supports the comment letter submitted to the Mendocino County Board Supervisors on June 20, 2016 from The Nature Conservancy and Trout Unlimited.

Respectfully,



Patricia Hickey, Executive Director
Mendocino County Resource Conservation District

Nicole French - Nature Conservancy and Trout Unlimited comments on the Draft Mendocino County Medical Cannabis Cultivation Compliance Program

From:	Jennifer Carah <jcarah@TNC.ORG>
To:	"browncj@co.mendocino.ca.us" <browncj@co.mendocino.ca.us>, "frenchn@co.m...
Date:	6/20/2016 9:17 PM
Subject:	Nature Conservancy and Trout Unlimited comments on the Draft Mendocino County Medical Cannabis Cultivation Compliance Program
CC:	Elizabeth Forsburg <eforsburg@TNC.ORG>, "Matt Clifford (mclifford@tu.org...
Attachments:	image001.jpg; Mendo_Ordinance_commentletter_6_20_2016_TNC_TU.pdf

Mendocino County Board of Supervisors
Attn: Supervisor Brown, Senior Deputy Clerk of the Board Nicole French

Dear Supervisor Brown and Ms. French:

Thank you for the opportunity to provide comments on the Draft Mendocino County Medical Cannabis Cultivation Compliance Program. The Nature Conservancy and Trout Unlimited have jointly prepared the attached comments.

We welcome any questions or requests for additional information.

Thank you,

Jennifer Carah
The Nature Conservancy

Matt Clifford
Trout Unlimited

JENNIFER CARAH | *Freshwater Ecologist, Water Program* | THE NATURE CONSERVANCY | w: 415.281.0410 | c: 415.517.9659 |www.nature.org

General Government
MEETING RELATED CORRESPONDENCE
MEETING DATE: 7/8/16 ITEM: 1
Distribution: (☒ Original to Clerk)
☒Bees ☒CEO ☒CoCo ☐Press ☒COBStaff ☒ Liaison:
CB & DG

COUNTY OF MENDOCINO
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June 20, 2016

Mendocino County Board of Supervisors
County Admiration Center
501 Low Gap Road, Room 1070
Ukiah, CA 95482

Dear Supervisor Brown, Supervisor McCowen, Supervisor Woodhouse, Supervisor Gjerde and Supervisor Hamburg,

Thank you for the opportunity to provide comments on the Draft Mendocino County Medical Cannabis Cultivation Compliance Program. The Nature Conservancy and Trout Unlimited have jointly prepared the following comments.

In general, our organizations appreciate the County's call for a clear regulatory framework that will standardize Cannabis cultivation in Mendocino County and help prevent environmental impacts often associated with the industry. Years of essentially unregulated activity has resulted in devastating environmental impacts, especially to sensitive coastal streams and the species that depend on them. We agree with the County's desire to address these impacts through better regulation and enforcement.

To that end, we feel that the County's current draft ordinance does include some adequate mechanisms for safeguarding the public interest and protecting natural resources and sensitive species, but in other areas there are significant gaps that should be addressed.

We include specific comments below.

Water diversion/water rights/water quality

We appreciate the County's efforts to encourage consistency with existing regulations and programs aimed at reducing significant impacts to the streams and rivers of the North Coast, in particular North Coast Regional Water Quality Control Board Order No. 2015-0023, the Department of Fish and Wildlife's Lake and Streambed Alteration Permit, and California water rights law. However, we strongly feel the County should strengthen wording in the ordinance to explicitly require compliance with these laws and policies as a condition of licensure. Following are several ways in which the ordinance could do this.

First, as a mandatory precondition of receiving a Cultivation Permit, the ordinance should expressly require ***all*** applicants to show proof of a legal right to use the water needed for the operation. Such proof could take various forms, including: evidence of connection to a municipal or community water system; a current Statement of Diversion of Use filed with the State Water Resources Control Board (SWRCB) (in the case of riparian rights), or a valid permit, license, or registration *approved by* the SWRCB. The current ordinance requires such documentation only "where applicable." Since *every*

Cannabis operation requires water from some source, the requirement to demonstrate a legal source of water should extend to all operations. Likewise, since many applications and registrations filed with the SWRCB are not ultimately granted, the ordinance should require an *approved* license, permit or registration rather than merely a filing.

Second, in addition to a valid water right, all operations that divert water from a surface or underground stream should be required to show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to §1602 of the Fish and Game Code, which gives CDFW the authority to place conditions on water diversion to protect fish and wildlife via a Lake/ Streambed Alteration Agreement (LSAA). While the draft ordinance requires applicants to show evidence of an LSAA for activities such as grading that impact the bed or banks of a watercourse, it should clearly state that this requirement applies to water diversion as well.

Third, with regard to water quality, the ordinance should explicitly require that *all* operations demonstrate compliance with the North Coast Regional Water Quality Board waste discharge order covering Cannabis operations. (No. 2015-0023). For small operations (<2,000 square feet), this could be as simple as demonstrating they are of a small enough size, and low potential for waste discharge, to qualify as "tier 0" under that order. For larger operations, this would require proof of supporting documents such as a Notice of Intent and Monitoring Self-Certification, and associated operating plans demonstrating compliance with best management practices. The draft ordinance merely requires applicants to provide copies of "any" filings with the NCRWQB. Instead, it should require all applicants to demonstrate compliance with, or exemption from, WDR No. 2015-0023.

Additionally, we recommend that siting Cannabis cultivation near rivers, creeks, wetlands or other sensitive habitats be expressly prohibited. To that end, we suggest amending Section 10A.17.040 (A) to include: "(6) outdoors or indoors within 200 feet of a surface water (i.e., wetland, Class I, II, or III streams)."

Land Use – Timber Production Zone (TPZ), Forest Land (F-L) and Rangeland (R-L)

Allowing Cannabis cultivation on lands zoned TPZ is not compatible with the spirit of the California Timberland Productivity Act of 1982 and should not be allowed under this ordinance. The Act specifically aimed to maintain the limited supply of timberland to ensure its current and continued availability for the growing and harvesting of timber and compatible uses, and to discourage premature or unnecessary conversion of timberland to urban and other uses. Section 51104 (g) of the Act states that a TPZ is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, defined as "any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and include (but is not be limited to):

(1) Management for watershed.
(2) Management for fish and wildlife habitat or hunting and fishing.
(3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas.
(4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities.
(5) Grazing.
(6) A residence or other structure necessary for the management of land zoned as timberland production."

Forest Land is similarly intended under Mendocino County Code "to create and preserve areas suited for the growing, harvesting and production of timber and timber-related products. Processing of products produced on the premises would be permitted as would certain commercial activities associated with timber production and the raising of livestock. Typically the F-L District would be applied to lands not zoned Timberland Production but which have the present or future potential for timber production, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection of efficient management of timber resource lands." As such, these lands should be protected for these purposes, the significant natural habitat value and connectivity they provide for fish and wildlife, as well as the signature scenic value they provide.

Rangelands similarly supply important natural habitat value and connectivity necessary to support fish and wildlife in the County, and are already under threat of conversion to other uses[1]. Recent real estate trends in the Emerald Triangle threaten both ranching and forest lands[2], and the large intact landscapes they help protect, and we can see no reason to further encourage large-scale conversion or fragmentation of these large properties when land better suited to Cannabis cultivation is widely available elsewhere in the County.

Therefore, we recommend, that Section 10A.17.080 – Cultivation Permits – Specific Requirements be amended with Rangeland "R-L", Forest Land "F-L" and Timberland Production "TPZ" lands removed as lands permissible for Cannabis cultivation.

California Environmental Quality Act – CEQA

The regulatory framework must demonstrate CEQA compliance. Exempting this County Program from review under CEQA would be an unfair attempt to insulate Cannabis cultivators from the rigorous public process and environmental review to which all other agricultural producers are subjected. CEQA review would protect the public interest and minimize environmental harms posed by the ordinance.

Adequate permitting and licensing fees, as well as violation penalties, to cover program regulation, enforcement, and restoration costs

The proposed ordinance outlines extensive permitting and monitoring processes, and we encourage the County to ensure that fees generate adequate funds to pay for the administration of the program and ensure compliance with regulations intended to protect the environment.

Best regards,

Jennifer Carah
The Nature Conservancy

Matt Clifford
Trout Unlimited

[1] Cameron et al. 2014. http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0103468
[2] http://www.sfchronicle.com/science/article/Allure-of-legal-weed-is-fueling-land-rush-in-7948587.php?cmpid=gsa-sfgate-result

Nicole French - Submission for Governance COmmittee Standing COmmittee Meeting tomorrow, July 8

From: Hannah Nelson <hannahnelson@hannahnelson.net>
To: <bos@co.mendocino.ca.us>
Date: 7/7/2016 2:09 PM
Subject: Submission for Governance COmmittee Standing COmmittee Meeting tomorrow, July 8
Attachments: 20June16LetterGovtComm.docx; SUPPLEMENTAL MEMO CONCERNING PROPOSED PERMANENT CANNABIS REGULATION ORDINANCE.docx

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Attached please find TWO memos from me that I would like included in the materials for tomorrowâ€™s committee meeting. The more recent document (Supplemental Memo) was not previously submitted. The June 20th letter was handed in person, but not until AFTER the last meeting because I thought the meeting was at 1:30pm but it was at 9am. Since the more recent memo refers to the June 20th letter, I thought it prudent to include it with the Supplemental Memo so it is handy for them

General Gov't Committee
MEETING RELATED CORRESPONDENCE
MEETING DATE: 7/8/16 ITEM: 1
Distribution: (☑ Original to Clerk)
☑ BOS ☑ CEO ☑ CoCo ☑ Press ☑ COB Staff ☑ Liaison:
DGfCB

COUNTY OF MENDOCINO
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HANNAH L. NELSON
Attorney At Law
31452 Airport Road, Fort Bragg, CA 95437
Tel: (707) 962-9091 hannahnelson@hannahnelson.net Fax: (888) 761-5720

Mendocino County Board of Supervisors
General Government Standing Committee
501 Low Gap Road, Room 1010
Ukiah, CA 95482

June 20, 2016

Re: Cannabis Cultivation Compliance Program Proposals

Dear Honorable Committee Members:

Amnesty Program?

Before addressing various aspects of the proposed ordinance for 2017, I ask that the Committee immediately address the critical issue of an Amnesty Program for Mendocino County residents who wish to bring their unpermitted buildings, ponds, septic systems, etc. into compliance (in general and as a condition of participation in the 9.31 Exemption Program under the Urgency ordinance passed last month. The matter was clearly and specifically discussed by the Board and there was a consensus at that time that such an amnesty program was desired. However, the issue was never dealt with in either in the Urgency Ordinance or in any separate motion or Resolution. I have numerous clients who have gone to the Building and Planning Department to start the process of bringing their buildings into compliance and have been told that they should wait because an amnesty program was about to be enacted, but that they had no specific direction on that matter as of yet. I have inquired with County Counsel and while she agreed that the topic was discussed, she indicated that the Board must pass a specific Resolution in order to institute such a program. I request that this Committee pass a motion to have the matter brought before the full Board and passed at the earliest possible opportunity.

Proposed Ordinance

1. Issue of permanent dwelling associated with cultivation site: I would urge the Committee to consider alternative ways to restrict cultivation to persons who have ties to the community. While I appreciate the thought behind the proposal, it **inadvertently discourages people from responsible cultivation practices**. Specifically, by requiring a dwelling on the same parcel as the cultivation, it penalizes those who are intentionally keeping cultivation activities away from residences with children. Additionally, it inadvertently may promote an increase in dwellings in order to satisfy the requirement. For parcels zoned FL or TPZ that would promote further clearing of those lands. Finally, since industrial and commercial zoning do not require a dwelling, an out of town cultivator could cultivate on parcels with those zoning designations while long term residents who keep the cultivation far from children and neighbors would be penalized.
2. Nursery Licenses: I suggest a **distinction be made** between nursery locations that **serve the public** versus those that limit the site activities to **wholesale transactions and/or have a separate retail location**. In addition, for the reasons stated in the next item, I suggest that **nursery licenses be permitted on TPZ zoned parcels**, especially since currently **Agriculture is a permitted use for TPZ** zoned parcels.
3. TPZ issues: **Current permitted uses** on TPZ zoning designated parcels **allow for all types of Agricultural uses** including Horticulture, Row & Field Crops, and Packing and Processing-Limited. It seems unnecessary to require further permitting for cultivation efforts on parcels with that zoning.

Additionally, requiring **3 Acre Conversion** Exemption Permits from CDF **IF no trees are being removed** for the use, seems to put the landowner in a double bind. As noted in prior Board discussion, there are many parcels that have substantial clearings that are in TPZ zoning. It seems to be an unnecessary and perhaps unobtainable requirement to have people apply for conversion permits when they are not intending on removing any trees.

4. Legal parcel definition: If the Board wishes to promote family farms, cultivation by and employment of local residents and wishes to not see a rush to subdivide properties or have families engage in the shell game of selling single APNS to someone else in their family, then the board will revert to the common sense definition of legal parcel. **No other agricultural, ranching or timber production endeavors are subject to redefinition of the ownership of their lands**. The State and Mendocino County have recognized that **cannabis cultivation IS farming and is properly defined as AGRCULTURE**. Limits on the number of plants per acreage and limits on the number of permits issued can be used to limit overall production if that is what the Board wishes to accomplish. Redefining ownership rights of landowners is not a fair or productive way to accomplish those goals and has very unfair consequences for those who have developed responsible cultivation practices by ensuring they have sufficient land to cultivate on. **Why should those persons who happen to purchase non-contiguous parcels be better situated than those who have purchased contiguous parcels**. Each APN is taxed and subject to land use rules. Each APN should be defined as it is meant to be: a separate legal parcel.
5. Setback Waivers: Waivers should be permitted.
6. Nonprofit Requirement: AB 1575 is making its way through the California Legislature and is expected to pass and be signed into law. Among other things, that legislation would specifically authorize cannabis transactions, whether conducted through a collective or otherwise, may be conducted FOR PROFIT. **At the very least, the proposed language should specify that licensees operate not for profit UNLESS AND UNTIL State law allows otherwise**. Given that the State law is likely to change before the sunset of the Urgency Ordinance, I respectfully request that the Committee refer this issue to the Board for an amendment to the Urgency Ordinance on this issue.
7. Other Issues:
    a. Page 2 of Proposed Ordinance, 5th paragraph: "nonmedical purposes": Add "unless otherwise permitted under State law."
    b. Page 6 of Proposed Ordinance, Section 10A.17.030 (C): maximum of two cultivation permits, but Page 10, Section 10A.17.070 (1st Sentence) limits to 1 cultivation permit per applicant per legal parcel.
    c. Stock and Seed propagation: It is unclear whether cultivators who are not Nursery license holders may produce their own stock from clones or seeds.
    d. Page 19 Section 10A.17.090 (D): photographs of cultivation prior to 1/1/16: Should allow proof of voluntary enrollment or exemption program enrollment as proof.
    e. Page 19, Section 10A.17.090 (E): photographs for cultivation that currently exists: Ag Commissioner has indicated that Voluntary Registration this year (25 plants or less) does NOT restrict registrant from applying for greater permit next year. Please do not limit next year's permits to size of this year. That would penalize people who waited until Urgency Ordinance was passed and then did not have time to properly cultivate more than 25 because of those delays. Likewise, exemption program participants have been repeatedly told that the permit is specific to them. Given that next year there will be zoning restrictions that are not present this year, it is important to allow current Voluntary and Exemption Program enrollees to move locations (presuming the new site is otherwise a proper location).

Thank you for your careful considerations of these issues.

Hannah L. Nelson

SUPPLEMENTAL MEMO CONCERNING PROPOSED PERMANENT CANNABIS REGULATION ORDINANCE[1]

1. SPECIFIC REFERENCE TO THE TERM "COMMERICIAL CANNABIS" ACTIVITY

It is critical that any cannabis regulatory scheme adopted by the Board specifically refer to "commercial cannabis" activity as the activity that is being regulated. Not only would such language parallel MMRSA, it would end the conflict between the common-sense interpretation of the intended regulation and the interpretation taken by both our Sheriff and our District Attorney. Specifically, Sheriff Allman and District Attorney Eyster have repeatedly stated that "commercial" cannabis activity is STILL unlawful and will be prosecuted. As shown below, that interpretation is contrary to MMRSA and inconsistent with the very nature of many parts of the regulatory scheme the County is considering.

While it is true that for the moment [2] the exchange of medical cannabis for money must still be conducted among a "closed loop" collective system, and that until AB 1575 is signed into law,[3] the collective should not make a profit (all reasonable reimbursement, including pay for those working in the endeavor are permitted), there is NO current ban on "commercial" cannabis activity (meaning the exchange for money at a retail or wholesale level, of medical cannabis) and in fact, MMRSA and many other local regulatory schemes SPECIFICALLY refer to the regulatory scheme as the regulation of "commercial cannabis activity."

AB 266 (one of the three bills which constitutes MMRSA) reads:

> *This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of* ***commercial cannabis*** *and cannabis products.*

MMRSA defines it:

> *(k) "**Commercial cannabis activity**" includes cultivation, □ possession, manufacture, processing, storing, laboratory testing, □ labeling, transporting, distribution, or sale of medical cannabis □ or a medical cannabis product, except as set forth in Section 19319, □ related to qualifying patients and primary caregivers. □*

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[1] Please also see the attached letter I wrote and submitted on June 20, 2016.

[2] The provision that provides for the "collective" and "closed loop" model is dismantled in MMRSA after the state licenses become available.

[3] Statewide legislation clarifying that cannabis activity MAY specifically be conducted for profit is making its way through the legislature in the form of AB 1575 and is widely believed to be passed into law soon.

MMRSA REGULATES "commercial cannabis activity":

> *(a) A person engaging in **commercial cannabis activity** □without a license required by this chapter shall be subject to civil □penalties of up to twice the amount of the license fee for each □violation, and the court may order the destruction of medical □cannabis associated with that violation in accordance with Section □11479 of the Health and Safety Code.*

MMRSA even specifically discusses local regulation of "commercial cannabis activity":

> *(a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt □ordinances that establish additional standards, requirements, and □regulations for local licenses and permits for **commercial cannabis** □**activity**. Any standards, requirements, and regulations regarding □health and safety, testing, security, and worker protections □licensees statewide. established by the state shall be the minimum standards for all*

Other local jurisdictions have mirrored MMRSA. Humboldt County's regulation even uses the term in the name of its ordinance:

> SECTION 1. Section 313-55.4 of Chapter 3 of Division 1 of Title III is hereby added as follows:
>
> 313-55.4 **Commercial Cultivation**, Processing, Manufacturing and Distribution of Cannabis for Medical Use Coastal Zone Land Use Regulation
>
> 55.4.1 Authority and Title
>
> This Section shall be known as the **Commercial** Medical Marijuana Land Use Ordinance ("CMMLUO"), which provides **for the regulation of Commercial Cultivation, Processing, Manufacturing and Distribution of cannabis** for medical use, as defined in this Code, located in the coastal zone of the County of Humboldt.

Our current regulations (State and local) insist on Seller's Permits and other requirements specific to "commercial" activity.

Without specific reference to "commercial cannabis activity"" in our cannabis ordinance, we will not only be out of step with State regulations, but we will have conflict between the District Attorney and the Sheriff's interpretation of our local ordinances and the intent of the regulations: to regulate commercial cannabis activity. **PLEASE** include this specific language in our ordinance and please **amend the urgency ordinance to include this language**. On July 1, 2016, I listened to a replay of a KZYX broadcast from the night before in which Sheriff Allman specifically stated that even those with **permits under the urgency ordinance** will be arrested and prosecuted if it was discovered that they were conducting "commercial operations for money." **If citizens who have applied for permits under the Urgency Ordinance do not have protection from arrest and prosecution if**

they are conducting activity fully in accordance with the program requirements, WHY do we have a permitting program?

Our Sheriff and District Attorney have stated that unless the clear language of 9.31 states otherwise, they will continue to interpret the law as still prohibiting "commercial" cannabis activity. It is imperative that our ordinance, both the Urgency Ordinance and the permanent one, include specific language that makes clear the intent that the cannabis activity the regulation seeks to regulate, among other things, is "commercial."

2. REMOVE AND/OR MODIFY REFERENCES TO ATTORNEY GENERAL'S GUIDELINES AND THE NONPROFIT REQUIREMENT:

As stated in my previous submissions, AB 1575, a so-called "cleanup" bill to MMRSA, is making its way through the legislature and is expected to be signed into law soon. One of the specific terms it "cleans up" is the assumption that medical cannabis transactions must not make a profit (an assumption based on old language in the 2008 Attorney General's Guidelines). It specifically spells out that persons and collectives MAY make a profit. The legislature recognized that the significant costs imposed on cannabis enterprises associated with the regulation of the industry, make it prudent to allow for a return on the substantial investment in order to convince producers and other participants to come out of the shadows. It was an oversight that the nonprofit requirement was not addressed in the original MMRSA bills. **The entire scheme set forth in the 2008 Attorney General's Guidelines (which was a woefully inadequate attempt to clarify the rules regarding medical cannabis nearly 12 years after Prop 215 passed) is being replaced by the new regulatory scheme under MMRSA.** While its true that the current scheme of exchanging medicine for money only through a "collective" in which medicine producers and consumers are part of the same membership (the so-called "closed loop") is not eliminated as a defense to a crime of illegal sales until after state permits are available, **there is nothing in the current law under MMRSA which requires that those transactions occur on a nonprofit basis or that the collectives themselves operate in a nonprofit manner.** That is why the specific provision that spells out that individuals and collectives may operate for profit is included in the "clean up" legislation that is currently making its way through the legislature. **The provision in AB 1575 specifying that making a profit is allowed does not replace language prohibiting persons or collectives from making a profit (in MMRSA), it merely clarifies that intent in the CURRENT law under MMRSA as it was enacted last year.**

Oakland's cannabis ordinance which is currently being modified in order to better mirror State law underscores these points by not only removing references to the Attorney General's Guidelines (which are obsolete under MMRSA), but also include a specific section on "Profit" which has been amended to simply mirror state law:

5.80.060 - Profit Sales.

~~The dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.~~

Retail sales of medical marijuana that violate California law or this Chapter are expressly prohibited.

Likewise, Oakland's proposed modifications to their regulatory scheme redefines "collectives" to remove reference to the Attorney General's Guidelines in favor of simply referencing State law:

> "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the ~~Attorney General Guidelines~~ State law.

At the very least, Mendocino regulations pertaining to collectives, profits, and sales should mirror State law whatever that may be at any one time. Otherwise, as each successive refinement occurs at the State level, such as elimination of the Attorney General's 2008 Guidelines, or replacement of MPP in MMRSA, or passage of recreational use in the fall if AUMA passes, our ordinance would have to be amended. Instead, if we simply include language that simply tracks "State law" rather than referring to the specific State law that may have been in effect at one time, amendments would become less necessary over time (with respect to provisions that otherwise may conflict with State law).

OTHER MATTERS

1. Effect of Voter Passed Initiative on CEQA Review Process: (Issue addressed at request of Supervisor Brown) Local government's adoption of voter passed initiative is NOT subject to CEQA review. In 2014, the California Supreme Court settled this issue in *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029.
2. Amnesty Program: As stated in previously submitted materials, there are many people who listened to multiple Board meetings and were under the specific impression that the Board was going to institute an amnesty program at the time the Urgency Ordinance was passed. Staff at the Building & Planning Department have been telling people that the Board will be passing an amnesty program, but that they are still waiting for the Board Resolution so that they (Building and Planning) can implement it. The provisions of the Urgency Ordinance require that people bring their buildings, ponds, roads, etc., into compliance by properly permitting them. While it may seem insignificant to some, the additional fees (fines) that would be imposed if an amnesty program were not instituted would be substantial for folks who are already having to invest large sums to comply with other aspects of local and State cannabis regulations. PLEASE, honor the intent expressed at multiple Board meetings to provide this minimal but helpful relief to people who are trying to comply with all regulations.
3. Type of Proof Required to Prove Prior Cultivation:
    a. There is a three-year statute of limitations on state crimes. By asking persons who have been previously raided (within the past 3 years) to provide photographic proof of that cultivation would be asking them to violate their right against self incrimination. There must be other ways to establish proof of prior cultivation. I suggest that voluntary enrollment in the Ag Department registration this year as well as enrollment into the 9.31 Exemption Program through the Sheriff's Department under the Urgency Ordinance should be prima facie proof of prior cultivation.
    b. Likewise, persons who have previously cultivated in Mendocino County but who have or will have to move locations either to satisfy responsible

growing practices (environmentally or because of changes in zoning or setbacks) should not be penalized by not having proof of prior cultivation at a specific location (so long as the new location meets all applicable requirements under the new ordinance).

c. Finally, persons who have limited their cultivation to a maximum of 25 plants this year because they were waiting for proper regulations and no longer had time to plant more than that this year, should not be limited to the size that they limited themselves to this year. Specifically, it would be an absurd result if persons who did not violate the prior regulation which limited all cultivation to 25 plants per parcel were prevented from cultivating more than 25 plants in the future (if they otherwise met all conditions of any new ordinance) while persons who took the chance and violated that restriction were rewarded by being able to cultivate more. Limiting the cultivation size to the specific prior amount could create this unfair disparity.

I respectfully request that the Committee (and the full Board) carefully consider the points outlined above and outlined in my submission dated June 20, 2016. While it may be tempting to allow program administrators figure out the details, punting on some of these important specifics could result in results contrary to the Board's intent or could result in unintended consequences that significantly impact people who are trying to have a measure of certainty regarding the rules (which have changed on them many times) going forward.

Thank you for your detailed attention to these issues.

Hannah L. Nelson
Attorney At Law

From: <eeleeds@yahoo.com>
To: <bos@co.mendocino.ca.us>
Date: 7/8/2016 1:50 AM
Subject: To the Board, I woul... from Web

To the Board,
I would like to express my concerns with regards to the permanent draft ordinance 9.31.
I am a coastal resident since 2002. I am a building contractor and aspiring artist and local grower. I served as a volunteer firefighter for several years in Albion in the past. I plan on continuing that service in Mendocino as soon as the kids are a little older. My wife is a small business owner in the village of Mendocino. We have recently purchased a home in the village and plan on raising our 2 boys there. Our hope is to be among the few but steadily growing number young families staying and investing in our coastal community, running and supporting local business and raising up the next generation.

We are at a crucial moment in deciding the future of our communities' lively-hood and prosperity. Marijuana has been a major, if somewhat secretive force in our economy. Almost everyone I know has had ties, either directly or indirectly, to the "business" of marijuana cultivation. From the other parents at my children's schools, to the business owners, to my realtor friends, to all the builders like myself everyone has been positively influenced by the industry. During the economic crisis many people turned to it in some small way to help make ends meet (from working as trimmers or garden assistants to hanging a couple lights in their garage). I know many people who work in the fishing and logging industries who have managed to keep their homes and businesses because of assistance from Cannabis cultivation. Not to mention all the patients, in county and throughout the state, that the medicine has genuinely helped.

Of course, we've all had our negative experiences with Marijuana in our community as well. There have been incidents of violence and crime and abuse, particularly from outside influences that do not share our respect for the community. This is why this moment in time is so important. We as a community need to design the future that we want and deserve. A future that preserves the Mendocino County that we all love.

Marijuana is becoming legal. A huge multimillion dollar industry rides on the coattails of that legalization. Mendocino has been a frontrunner in the illegal/legal/grey marijuana business for over 50 years. We have a Brand and we have a more experienced growing populace than almost anywhere in the world. This time is a unique opportunity for us as a community to position ourselves as frontrunners into the future.

I understand the need for caution. There are a lot of different interest groups to appease. There is a lot of fear around having too "loose" of a structure and the reputation that proceeds that. I look forward to regulation keeping our community and environment safer, to keeping the product we produce safer. The real issue is zoning. If we exclude a major portion of our cannabis cultivators from participating in the coming process, because of strict zoning laws, we truly endanger our future prospects in the industry as well as the safety of our community. Countless growers, particularly on the coast, will be forced to remain outlaws. They can't simply sell their homes and try an find a compliant property. They can't simply uproot their families. These are good people. They feed the community in so many ways. Their experience could be a great resource in the task of shaping our future. And yet they'll be outlaws hiding on the fringe, and that is not safe for anyone.
All that said, here is what I am concerned with most:

The first issue is Coastal Zone. You cannot exclude this classification from the permit process. It will effectively cut the coast off from being able to participate in any legitimate future. That will greatly harm the full time coastal community and increase the number of vacant second homes owned by wealthy retirees from the Bay Area. The Coastal Zone is a powerfully structured plan that rightly protects our precious resource. Agriculture, horticulture, manufacturing and even cottage industry all have strict guidelines they must adhere to as use classifications within the various coastal zoning types. But they are certainly allowed. Marijuana could easily fulfill the same set of requirements. It just needs to fulfill additional requirements ie; security, privacy, odor control and general nuisance constraint. Those should

be strict and carefully considered.

Second is the sub-classification zoning. Whether a cultivation site is in RR-2, 5, TPZ, FL or any zone class, it is essential that it first meet the use requirements as the agricultural or horticultural product that it is. Then it must fulfill the additional conditions that will be determined for Marijuana specifically. If the site can meet all those requirements then I don't see zoning as a special consideration for Marijuana at all. Here is a brief list of what I consider reasonable Marijuana specific regulations. I only mention items that are not satisfactory as they have been proposed in the draft ordinance.

Outdoor is not my immediate concern, so I will not address it further.

Indoor should be considered cottage industry and/or horticulture and allowed as such within all acceptable zoning.
Structure to be 50 ft from neighboring residential structure.
Additional regulation must include strict odor treatment and noise compliance(max 65 decibels at 25 ft).
Parcel size
Type CA - min 1 acre

Mixed light greenhouse considered as agriculture/horticulture and allowed as such within acceptable zoning.
100ft from property boundary and any legal dwelling unit unless sophisticated odor, light and noise control systems are implemented.
max 600watts per 5ftx5ft canopy

All water and environmental regulation should be treated as agriculture/horticulture use

Thank you for your time.
Eric Leeds

Page: http://www.co.mendocino.ca.us/bos/
Browser: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_11_5) AppleWebKit/601.6.17 (KHTML, like Gecko) Version/9.1.1 Safari/601.6.17
IP: 75.106.24.133, DT: 2016-07-08 01:43:36
d: 1

From: <mycandybliss@gmail.com>
To: <bos@co.mendocino.ca.us>
Date: 7/8/2016 8:10 AM
Subject: To the Board of Super... from Web

To the Board of Supervisors:

Re: 9.31

My name is Valerie Edwards and I am a cannabis cultivator in Laytonville, Mendocino County.

I would like to address the size limitation of the 2-acre minimum for a cultivatable site. I live in a rural residential area of Laytonville and over 200 families live in my neighborhood on 1/2 acre parcels, 1 acre parcels with some being a little bigger. Most of my neighbors are cultivators. We are a friendly neighborhood and I personally know most of them. I have lived in 7 different states in over 20 cities and this is the first time I actually know most of my neighbors. I am a single woman and I feel very safe every night knowing my neighbors, in the same industry, help provide that level of safety because we are looking out for each other.

If the 2-acre minimum stands then you have put me and my whole neighborhood outside the safety confines of a county ordinance. These small-farmer cultivators would find it hard to make ends meet financially if they can't even come under the Cottage Permit section of the State program.

The cultivators in my neighborhood are ready to work with the Water Board's requirements for ecological best practices, so allowing the maximum number of cultivators into the program will only help the environment as we all become better stewards of the land.

In addition, raising the minimum level to 2 acres will take away the ability for the small farmers in my neighbor to continue doing what we have been doing for years. Our neighborhood is one of the safest ones in town because we are safer in numbers. A 2-acre minimum will insure that only bigger cultivators will be able to afford the land required to operate in Mendocino County. You are shutting out the small farmer who you said you wanted to protect.

Please remove the 2-acre minimum from the ordinance.

If you have questions, please call me at 707-799-0744.

Thank you,
Valerie Edwards
Resident of Laytonville

Page: http://www.co.mendocino.ca.us/bos/boardmemphoto.htm
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IP: 216.7.76.105, DT: 2016-07-08 08:03:03
d: 1

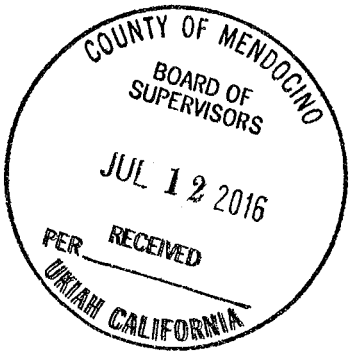
Nicole French - Recommendations for Proposed Medical Cannabis Ordinance

From: "Casey O'Neill" <casey@cagrowers.org>
To: <bos@co.mendocino.ca.us>
Date: 7/11/2016 9:47 PM
Subject: Recommendations for Proposed Medical Cannabis Ordinance
Attachments: 7_10_16 responses to proposed ordinance.docx

Hello all,
Attached you will find the recommendations from the California Growers Association and the Heritage Initiative Committee regarding the proposed Medical Cannabis Ordinance. We have undergone a robust process of stakeholder review by many members of the cannabis community throughout the County. We appreciate the opportunity to provide input in the process and trust that our comments will be thoughtfully considered. Apologies for any redundancy in communication, hoping that this will make it into the Board Packet.
Thank you

--
Casey O'Neill, HappyDay Farms,
Acting Board Chair California Growers Association
Cell: 707-354-1546 Casey@cagrowers.org
http://www.calgrowersassociation.org/

General Gov't & BOS
MEETING RELATED CORRESPONDENCE
MEETING DATE: 7/12/16 & 7/13/16 ITEM: 5OS 66
Distribution: (☑ Original to Clerk)
☑BOS ☑CEO ☑CoCo ☐Press ☑COBStaff ☑ Liaison:



MENDOCINO
HERITAGE INITIATIVE
SMART CANNABIS POLICY
2016

TO: Mendocino County Board of Supervisors and Staff regarding the Medical Cannabis Ordinance.

FROM: California Growers Association and the Heritage Initiative Committee

We appreciate the ongoing efforts of staff and the Board of Supervisors to develop a cannabis cultivation ordinance that protects community safety, the environment and small family farms. The number of applicants seeking permits under the Urgency Ordinance, despite the uncertainty and confusion created by the lawsuit and the resulting very hasty conclusion of the application period, has been reported at 342. This response proves that very significant numbers of cannabis cultivators are ready to embrace reasonable regulations. But the regulations must be reasonable in a way that works for the environment, the community and for the existing cultivators. The purpose of this letter is to focus on areas where we believe the full Board of Supervisors has already given clear direction, and to highlight additional items that need further clarification or consideration.

Items that we believe were already given direction by the full board: In the following three areas (use permits, setbacks, and minimum acreage) we believe the Board has already given clear direction. If an important goal of the ordinance is to encourage compliance, we question the wisdom of adopting overly stringent requirements, some of which will make large numbers of currently legal growers suddenly noncompliant. We believe it is important to remember that only existing cultivators who are able to comply with the current setbacks and limitations will be eligible for permits.

-Use Permits: We believe that the Board gave clear direction that Use Permits would not be required with an exception for cottage indoor cultivation of more than 500 square feet up to 2,000 square feet in Upland Residential; Rural Residential; Rangeland; and Forest Land/Timber Production Zone. Given the timelines for ordinance adoption and the Use Permit approval process, cultivators subject to this requirement will be unable to cultivate for the 2017 growing season. If the goal is to encourage compliance by current cultivators, this requirement will have the opposite effect. It is also not necessary because the extensive permit compliance conditions already address the same site specific requirements as the use permit process.

-Setbacks: We believe the Board gave clear direction that the setbacks and limitations established by the current cultivation ordinance would be included in the new ordinance, but the draft includes a two hundred (200) foot setback from "parcel under separate ownership" instead of the current one hundred (100) foot setback from a legal dwelling unit on a separate parcel under different ownership and 50 foot setback from other legal parcel. Expanding the setback (especially when factored to include Water Board Stream setbacks and the lay of the land) will mean that many currently legal cultivators will have to move their gardens, creating unnecessary environmental impacts and economic hardships, or will not be able to comply at all. Instead of applying for permits, they will be forced to discontinue cultivation or remain underground. Again, this is the opposite of encouraging compliance.

-Minimum Acreage for Cottage Permits: We believe the Board previously gave clear direction that Type 1 permits would generally require a five acre minimum parcel size and Type 2 would require a ten acre

minimum parcel size. We do not recall any discussion of a two acre minimum size for cottage permits, although we did appreciate the addition of RR-2 parcels. We believe the intent of the Board was that anyone who could comply with the setbacks and limitations of the current ordinance would be eligible to apply for a cottage level permit. The effect of a two acre minimum will mean that many cultivators at the cottage level who are currently legally compliant will automatically be non-compliant and not eligible for permits. Again, this is the opposite of encouraging compliance.

Items for clarification or further consideration: We believe that the following areas either require clarification or are worthy of further consideration.

-Amnesty: The Board has clearly stated that there would be an amnesty program, not just for cultivation permit applicants, but for all county residents who may have unresolved building and code compliance issues. What action is needed by the Planning and Building Department and/or the Board of Supervisors to bring the amnesty program online? What is the timeline for doing so? Also, the draft ordinance states that the applicant must come into compliance within one year. Because some issues require studies or testing that can only be done at certain times of the year, we believe the ordinance (and the amnesty program) should specify that as long as the applicant is diligently working to resolve the issue that they are in compliance, even if it takes more than one year.

- **Other Permit Types:** The Board has directed that Processing, Manufacturing, Distribution, Dispensary, and Testing permits will be offered, the same as the state license types. When can we expect the development of the other permit types to begin and what is the anticipated timeline for adoption? Will these other permit types require the same level of environmental review?

- **Coastal Zone:** When does staff expect to begin development of a coastal zone cultivation ordinance and what is the expected length of time to complete the process?

- **Forest Land, Timber Production Zones, and Rangeland:** Some public comment has suggested a prohibition on cultivation in these zoning types. Row and field crops are clearly authorized on these zoning types. Cannabis cultivation is compatible with these zoning types, is comparable to row and field crops, and ought to be authorized. Exclusion of cannabis cultivation from these zones will mean that many currently legal cultivators will be non-compliant and ineligible for permits.

- Equal Treatment for Owners of Forest Land and Timber Production Zone: The draft ordinance only allows cultivation at the cottage level unless the applicant was previously included in the 9.31 permit program or the urgency ordinance program. The application period for the urgency ordinance was closed ahead of schedule with just over 24 hours' notice. Many people did not learn of this sudden change in time to apply. Current cultivators with the same zoning and parcel size should not be treated differently because one was able to act on unexpectedly short notice and one was not.

- **Clustering or Zoning Overlays:** In addition to staff's suggestion to consider some sort of clustering for cannabis production and distribution, creation of some form of Zoning Overlay may be applicable to existing rural neighborhoods in which cottage cultivation is already concentrated. Creation of a zoning

overlay may be a way to address the issue of setback waivers by creating zones in which waivers between neighboring cultivators would be automatically approved.

- **Multiple Cultivation Sites:** Language around "single site" in the Planning Dept's Attachment E needs clarification. Cultivators often utilize multiple cultivation sites on the same parcel and ought to be able to continue to do so as long as all other permit conditions are met. Further, for parcels with multiple households, multiple permits need to be allowed, as long as they do not cumulatively exceed the maximum allowable square footage.

- **Slopes:** Many existing cultivation sites are on slopes; this should be acceptable so long as appropriate mitigations are maintained (mulch, terracing, ground cover, appropriate drainage). The Water Board Permit will address these mitigation issues.

- **Medical Exemption:** The Medical Exemption should clearly state that square footage will be measured by non-contiguous canopy (i.e. cultivators can grow plants in separate areas so long as they do not exceed 100 square feet). This is appropriate for outdoor cultivators who want to spread their plants out to maximize light penetration and air movement, which cuts down on diseases.

- **Parcel definition:** Contiguous parcels should not be defined as one legal parcel. Instead, cultivation permits can be limited by allowing a maximum number per cultivator (i.e. 2, 3, or 4), based on what the Board believes to be appropriate.

- **Start Date for New Cultivators:** The draft ordinance restricts initial permit applications to those cannabis cultivators who were cultivating in the county prior to January 1, 2016. We support the intent, which we believe is to give preference to current cultivators who are already invested in their local communities, but are concerned that a start date of January 1, 2018 for new cultivators is premature. Hundreds of applicants have applied this year for a permit under the urgency ordinance. At least several hundred more can be expected to apply in both 2017 and 2018 and it is possible that applicants could number in the thousands. Also, state licenses will not be available until 2018. Because this is a new program, both for staff and for the applicants, we believe it makes sense to first bring as many current cultivators as possible into the program and defer opening up the program to new cultivators until January 1, 2020.

Local Ordinance Title: We have received a surprising amount of comment objecting to the title of the local ordinance, which becomes M2C3P when rendered as an acronym, which sounds more like a Star Wars character than an ordinance dealing with a crucial issue of public policy that affects many people's livelihoods. We suggest that a more straight forward title like "Medical Cannabis Ordinance" is more in keeping with the serious topic at hand.

State Ordinance Title: The title of the state ordinance was amended to be the Medical Cannabis Regulation and Safety Act (MCRSA) and the draft county ordinance should be updated to include this change.