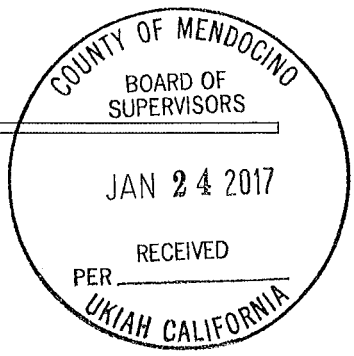

- Comments on Ag Commissioner's Proposals

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Date: 1/23/2017 8:48 PM
Subject: Comments on Ag Commissioner's Proposals
Cc: John McCowen <mccowen@co.mendocino.ca.us>, Dan Hamburg <hamburgd@co.mend...

To: Mendocino County Board of Supervisors, Staff, and others whom it may concern:
From: Casey O'Neill, Mendocino County Farmer, Vice-Chair, California Growers Association

Hello and thank you for taking the time to look over these comments. This has been a long process and I am very grateful for the continued leadership on the part of the Board. The initial four points are direct comments on the suggestions made by Agricultural Commissioner Morse. The following points were sent in an email to the Planning Commission last Thursday. I felt it might be helpful to include them in these comments as the issues are relevant to the ongoing process and I wanted to do my best to help ensure continuity between the Planning Commission and Board processes. The most important point that must be considered is that of Provisional Licenses, which is listed below in the comments to the Planning Commission. Looking at the method that Humboldt County used (allowing cultivators who turned in an application to sign an affidavit that they would follow state laws and granting them the ability to cultivate while applications are being processed) would make tremendous sense in our situation.

State Parks- The suggestion that all cultivation sites be on parcels located at least 1000 feet from any State Park has been raised as a potential issue by a number of CGA members. There is a tremendous amount of Public Land acreage that borders remote, private parcels that have been used for cannabis cultivation. Perhaps a compromise could be "Parcels located within 1000 feet of a public entrance to a State Park".

Timelines- Along with the Provisional License concept discussed below, the need for appropriate timelines for full compliance of buildings and other parcel features that may not be up to code is important. Contractors and consultants are becoming more difficult to engage with the flood of cannabis cultivators looking to accomplish permitting issues. Diligent progress towards accomplishing other permitting issues should be enough to get a local cultivation permit (which will create authorization for the state license in 2018).

Cottage License Costs: I have grave concerns about the abilities of Cottage Cultivators to afford the mounting regulatory costs. At the State Level, CGA is working on advancing policy that would limit or eliminate the tax burden for Cottage Cultivators. At the local level, I'd like to suggest

avoiding the inspection for cottage cultivation unless there is a complaint and minimizing or eliminating the tax payments required for cottage cultivators.

Prior Proof of Cultivation: It is important that we provide opportunity to demonstrate prior proof of cultivation without requiring cultivators to self-incriminate. This is especially relevant given the uncertainty with the incoming federal administration and the potential for Public Records Requests. It is important to open the door to people who want to be regulated and to avoid creating the appearance of a possibility for negative consequences.

The following was sent to the Planning Commission last Thursday:

This ongoing process has provided opportunity for dialogue, which we appreciate. Thank you for your consideration of this difficult regulatory program. We would like to highlight some of the positive changes that have been made. We are glad to see the suggestion that the ordinance be amended to allow multiple cultivation sites on one parcel so long as they do not exceed the maximum allowable square footage. We are also glad to see the removal of dwelling requirements from RR-10, in addition to the already suggested removal of the requirement for a legal dwelling unit on all parcels which receive a cultivation permit in the AG, RL, FL and TPZ Districts. We also support the removal of Mitigation Air-2; existing county regulations governing burning of agricultural wastes should suffice.

Sensible transition periods, commonsense evidentiary requirements (for an industry unused to tracking anything), and active help and information on how to comply are essential to avoid limiting participation in the regulatory framework. It is critical that the proposed ordinances take special care to set reasonable evidentiary requirements (for proof of prior cultivation) and to recognize the need to allow reasonable transitions to full compliance. The following are specific points that we feel should be addressed.

The point of this ordinance is to regulate existing cultivation sites. We must avoid the tendency to overregulate because it will undermine the overall effectiveness of the program. We must accept that these sites are already in existence, and that to achieve the most effective results we must structure the program to bring cultivators in. We do so by avoiding overburdensome regulations and by streamlining the process wherever possible. There are a number of overlapping requirements which can be simplified.

Provisional Licenses: This remains the absolute necessity for a functioning program. A programmatic delay that would prevent farmers from compliantly cultivating this year is unacceptable from the stated goal of bringing cultivators into the program. Farmers must not be forced to choose between compliance and livelihood because of bureaucratic delay.

Streamlining the Permit Process: The application process looks to become overburdensome with required check-ins to multiple agencies in both county and state government. Given that the sites that are up for permitting are already in existence, minimizing outside agency review should be emphasized. The inspections by the Ag Dept and requirements of Water Board Discharge Program participation should suffice.

Mechanism for Waiver or Appeal: It is important that some measure of flexibility be built into the program. Some sort of ability to take a granular, case-by-case basis when needed would create potential for mitigating individual problems. For example, it would seem appropriate to allow for neighbors to form agreements or adjust setbacks.

Small Parcel Cultivation: Board direction was very clear regarding small-site cultivators. The Planning Commission should not take it upon itself to remove the 1-2 acre cultivation sites that are compliant under existing regulations. We appreciate the suggested carve-out for Laytonville, but we also recognize that there are other locations in the county whiich may contain neighborhoods in favor of cultivation South Leggett has been mentioned as a location with zoning RC that should be included for a zoning overlay/carveout. I also expect that there are other neighborhoods in favor of cultivation. At the very least, a phase-out must be included for compliant cultivators on small parcels. Zoning Clearance for these parcels should be used along with provisional licensure to make sure that we avoid using county resources to abate sites that fit within proposed zoning overlays or are compliant under terms of a phase-out procedure.

Cottage Inspection: It is imperative that we minimize costs for Cottage farmers; we do not think that Cottage licenses should require an inspection unless there is a complaint. Not requiring an inspection will lower the overall cost for participation in the Cottage program.

Track and Trace: County Track and Trace is an unnecessary use of resources given the fact that the State will be bringing a program online; unless the county system will dovetail into the state system, this adds extra work and cost.

Administrative Permits on FL/TPZ: Board Direction was for Zoning Clearance for Cottage Permits and preferably for the larger outdoor/mixed light permits on Forestland and TPZ, providing that these are for existing sites and not new/expanded sites. The permit program itself will provide adequate oversight and adherence to the necessary environmental and water resource protections through mandatory inspections. Again, ensuring that the maximum number of current cultivators participate in the regulatory scheme will facilitate the best possible enforcement of environmental and water resource protections. Conversely, unnecessarily requiring additional permitting steps (beyond the extensive requirements verified by both the application process and the mandatory inspections under the proposed ordinances) will dissuade current cultivators from applying for cultivation permits and will therefore degrade the efficacy of the regulatory scheme.

Mitigation measures that create burdensome review processes that will raise the cost of the program, slow down the county response time and add unnecessary layers of bureaucratic review:

Mitigation Air 1: This Mitigation should be applied for sites requiring Use Permits only.

Mitigation Bio1: CDFW check-in should not be required for existing sites. The possibility that the site might affect sensitive species adds a level of review akin to a Full Use Permit rather than the streamlined review processes that the Board directed Staff to incorporate in the ordinance. Given the fact that this process is only for existing sites, the impacts have already happened. There must be an effort to ensure participation by current cultivators; streamlining permits for existing sites is an appropriate way to do so. Given the requirements for Water Board Discharge Waivers and County Inspections, we should remove Mitigation Bio-1.

Mitigation Bio-2: Unnecessarily expands the jurisdiction of the NCRWQCB Cannabis Order and mandates implementation of BMPs. Instead, educational assistance and incentives for those not already subject to the Order should be provided to implement BMPs. Chances are, that mandating BMPs for cultivation sites under 2000 square feet will not be effectively monitored without burdening the State and will discourage maximum participation in the cultivation permit program.

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