



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. That said, 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. Further, given previous direction from the Board, the community of cultivators have already begun operating based on those recommendations. 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 in the current draft. 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.



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- **Clustering or Zoning Overlays:** In addition to staff's suggestion to consider some sort of clustering for cannabis processing 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 applications for new cultivators until Jan. 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.