



# Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

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Via Email:

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

***RE: Comments on Agenda Item 6(b): Draft Medical Cannabis Cultivation Ordinance and Medical Cannabis Cultivation Site Zoning***

Dear Chair Gjerde and Board Members,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1200 members. MCFB would like to provide additional comments (comments submitted February 15, 2016 and June 10, 2016) as related to the draft medical cannabis cultivation ordinance and medical cannabis cultivation site zoning.

In listening to the additional discussion at the Board of Supervisors General Government Standing Committee meetings on this topic, MCFB encourages the Board of Supervisors to consider the additional comments and concerns from MCFB listed below.

**Williamson Act:**

In the staff memorandum to the Board of Supervisors General Government Standing Committee dated July 8, 2016 it is stated that:

*The County recently adopted new Policies and Procedures for Agricultural Preserves and Williamson Act Contracts. These Policies and Procedures set minimum parcel size requirements of 10 acres for prime agricultural land and 40 acres for non-prime agricultural land (See Table 5-1 on page 9). In addition, a minimum of 50% of the land to be contracted is to be continuously used or maintained for agricultural uses, unless the Board of Supervisors makes specific findings. These two requirements combined would essentially prevent land from being placed into a Williamson Act contract on the basis of cannabis cultivation alone, given the proposed area limitations on cannabis cultivation permit sizes.*

*In addition, staff has considered amending the Policies and Procedures to specifically provide that cannabis cultivation is a use compatible with the prior existing agricultural uses, but not a use that could qualify land for a Williamson Act contract or be counted as contributing to the continued eligibility of already contracted land. Staff intends to propose revision language that could be considered by the Board by the end of the year.*

The State Board of Conservation recently (July 2016) distributed a statement with direction to counties statewide on how to deal with medical cannabis production on Williamson Act lands. MCFB encourages the Board of Supervisors to continue to consider how medical cannabis will be dealt with as a compatible use on Williamson Act contract lands, but not necessarily as a qualifying use.

**MCFB recommends that:**

- The Board of Supervisors work with the assessor, agricultural commissioner and planning and building staff to clarify how medical cannabis allowed to be produced on Williamson Act properties will NOT be allowed to be considered as a qualifying use and that there needs to be clear evidence that the properties are in compliance with the requirement that at least 50% of the property is being used for qualifying commercial agricultural or open space uses. This will be important as the initial compliance statements for the 2015 Williamson Act county policy changes is anticipated to be sent out to Williamson Act contract holders sometime in 2016.
- Any Williamson Act contracts for properties involved with medical marijuana cultivation will also need to be vetted to ensure that compliance standards are met and that the intent of the Williamson Act, to support production agriculture and open space, is protected.
- Compliance with resource protection district restrictions (TPZ and Williamson Act) should be verified for cultivation areas and any supporting infrastructure. If compliance with TPZ or Williamson Act zoning requirements cannot be met, then medical cannabis producers growing on resource protection district lands should not receive the tax advantage provided by the resource protection zoning designation and the properties should be removed from these zoning designations.
- If medical cannabis is not considered to be a qualifying use for Williamson Act contract compliance, then any medical cannabis accessory structures (greenhouses, processing, etc) would also not be allowed on Williamson Act properties as current requirements for accessory structures are to be incidental, related and subordinate to a qualifying agricultural use.
- Any use of the land proposed to be restricted by a Williamson Act contract, other than permitted agricultural or open space uses, must be a compatible and allowable use. The use should also be evaluated to ensure that there will not be any significant affect on the agricultural or open space uses of the contracted lands.
- Any future medical cannabis compatible uses allowed on Williamson Act contracted land collectively occupy no more than 15% of the contracted land as a whole, or 5 acres, whichever is less, excluding public roads, private access roads, and driveways as stated in county code.
- Considerations be made on how medical cannabis accessory structures or related compatible uses on Williamson Act contracted properties may possibly contribute to the premature or unnecessary conversion of agricultural land to commercial uses or to significant encroachment of incompatible land uses into the immediate vicinity of contracted land.

**TPZ/ FL Timberland Zoning:**

On July 8th the Board of Supervisors General Government Committee invited Cal Fire representatives to attend the meeting to discuss Cal Fire's concerns with allowing for medical cannabis production to be cultivated on commercial timber properties (FL zoning and/or Cal Fire's definition of timberland). Craig Patterson with Cal Fire discussed the hesitancy related to Cal Fire's involvement in the conversion permit process for medical cannabis production on timberlands and how Cal Fire overall discourages the conversion of timberlands to other uses.

Since a number of counties are dealing with potential allowances of medical cannabis production on timberland zonings, it was mentioned that Cal Fire at the state level has been discussing how the agency will or will not engage with the local process for ordinance development or enforcement. In relation to TPZ or Forestland zoning designations for medical cannabis production, there needs to be a means of enforcing conversion permit requirements to prevent the illegal harvesting of trees and related impacts. Cal Fire has historically been the state agency responsible for the conversion permit process and without a clear process on how Cal Fire will be involved with the county medical cannabis cultivation ordinance compliance there could be unforeseen consequences in the future.

TPZ was established to minimize the impact of taxes on timber harvesting while encouraging the management of productive timberland for timber production. Lands designated TPZ were afforded special tax treatments (reduction in bare land values and a standing timber exemption). The reduction in the ad valorem tax was offset by the yield tax which is collected at the time of harvest. The assumption was that timberlands would continue to be utilized for timber management if the burden of the standing timber tax was removed. The Yield Tax would make up lost revenue and provide for a tax payment at the time income is received by the landowner. The law declared that the highest and best use of high quality timberland was for the production of timber for harvest. The loss of prime timberland was of significant concern then as it should be now.

Allowing medical cannabis production on TPZ will potentially raise the value of timberland to the point that timberland acquisition for timber management will no longer be economically viable. This will ultimately result in defacto timberland conversion. History shows that once timberland, especially small holdings, are removed from active management it is not likely that timber harvest will ever occur again within a reasonable time frame as envisioned in the yield tax law. In addition, history has shown that marijuana production is not compatible with timber management and legalization is not likely to change that fact.

Timber production does have the potential to be a long-term base of economic growth within the county. We have passed the timber gap and are now producing far more timber than is being harvested. Our greatest risk is that we lose the infrastructure that is necessary to convert trees to cash. Declining harvest with the conversion of timberland to medical cannabis production will have a significant impact on yield tax receipts. This defeats the intent of the TPZ designation.

MCFB recommends that:

- Mendocino County should continue to work with both local Cal Fire representatives and the state Cal Fire leadership to ensure that a clear process is in place for addressing concerns related to timberland conversion and related impacts to the commercial timber industry in Mendocino County.
- If medical cannabis is allowed to be grown on Forestland or Timber Production Zones in Mendocino County, new permit applications should be required to document if trees will have been removed for the creation of cultivation areas or infrastructure construction. Inspection of the proposed cultivation area should be performed to verify that no trees have been removed.
- The Board should use caution with allowing a "grandfather" clause for the cultivation of medical cannabis on TPZ properties that were previously enrolled in the 9.31 program. This will establish medical cannabis cultivation as a compatible use on TPZ zoned properties and could lead to pressure for additional cultivation on TPZ from new permit applicants.
- Compliance with resource protection district restrictions such as TPZ should be verified for cultivation areas and any supporting infrastructure. If compliance with TPZ zoning requirements cannot be met, then medical cannabis producers growing on resource protection district lands should not receive the tax advantage provided by the resource protection zoning designation. The

county may need to engage with the state Board of Equalization regarding the process for amending property tax evaluations on TPZ properties that are not used for timber production.

### **Additional Concerns**

#### **Section 10A.17.090 (v) – Waters of the U.S.**

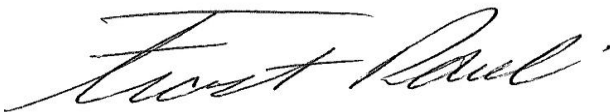
*(v) For activities that involve construction and other work in waters of the United States, including streams and wetlands, comply with Clean Water Act (CWA) Section 404 by obtaining a federal permit from the Army Corps of Engineers and CWA Section 401 by obtaining a water quality certification from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

MCFB understands that the county added this language based on the recommendations from the North Coast Regional Water Quality Control Board. However, certain land use activities covered by the Clean Water Act or state law are exempted or excluded from requiring a 404 or a 401 permit. In addition, MCFB does not encourage the county to enter into the compliance and enforcement of the Clean Water Act. The determination of what is and what is not "waters of the U.S." is highly complex and open to interpretation especially in relation to wetlands. The county should simply ask the applicant to provide evidence of compliance by providing a copy of a 404 or 401 permit if applicable. MCFB suggests the language in red below be added to section 10A.17.090 (v) and the strike out language be removed to address the points raised above.

(v) For activities that involve construction and other work in waters of the United States, including streams and wetlands, **that are not otherwise exempt or excluded, include a copy of a federal permit** ~~comply with Clean Water Act (CWA) Section 404 by obtaining a federal permit~~ **obtained from** the Army Corps of Engineers and ~~a CWA Section 401 by obtaining a water quality certification from the North Coast Regional Water Quality Control Board.~~

MCFB encourages the Mendocino County Board of Supervisors to consider the comments and recommendations above on the *Draft Medical Cannabis Cultivation Ordinance and Medical Cannabis Cultivation Site Zoning*. As always, if there are any questions on the comments and recommendations above, please do not hesitate to contact the MCFB office.

Sincerely,



Frost Pauli  
President

CC:  
Mendocino County CEO, Carmel Angelo  
Mendocino County Agricultural Commissioner, Chuck Morse  
Mendocino County Council, Katharine Elliott  
Mendocino County Chief Planner, Andy Gustavson