- Memos for 2/7 Meeting re: Item 5B

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To: "bos@co.mendocino.ca.us" <bos@co.mendocino.ca.us>
Date: 2/6/2017 2:06 PM
Subject: Memos for 2/7 Meeting re: Item 5B
Cc: Peter Kafin <peter@hannahnelson.net>, Mary Lynn Hunt <huntm@co.mendocino...
Attachments: HNmemoAgmemo.Ordinance.docx; HNmemo.docx

Attached please find 2 memos for tomrrow'stomorrow's meeting (item 5B). The first memo was originally submitted for the 1/24 meeting while I was out of town. I understand that memo was not adressed at that meeting so I am re-submitting it. In addition, attached is a new memo for tomorrow's meeting that incorporates items discusseddurng my recent meeting with the former Ag COmmissioner, the new Acting Ag Commissioner and the Assistant Ag Commissioner on 1/27 as well as items form the Staff packet for the 2/7 meeting. I
As always, I reatly appreciate your detailed attention to these matters.
Hannah

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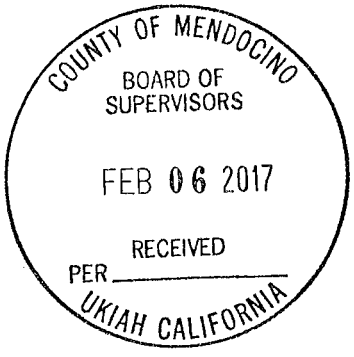

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Mendocino County Board of Supervisors
501 Low Gap Road
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February 7, 2017

RE: Revisions to Draft Ordinances □

Honorable Board Members:

In addition to the Memo I previously submitted for the last meeting on January 24, 2017, which I am resubmitting and ask that you incorporate by reference, I respectfully submit the additional points.

We might all share a desire to quickly wrap up this ordinance, but I hope that does occur at the expense of addressing some of the important details that will significantly affect the manner in which the ordinances are implemented.

From My 1/27 Meeting with Ag Department:
On January 27, 2017, I had the pleasure of meeting with Former Ag Commissioner Chuck Morse, along with Acting Ag Commissioner Diane Curry and Assistant Ag Commissioner Arif Kever. The following points were thoroughly discussed:

1. **Section 10A.17.090 Item (G) (page 24 of latest draft)**: Mr. Morse stated that the only reason he drafted language that required ADDITIONAL evidence (rather than alternative evidence) was because he understood that to be the Board's direction. When I explained that I had confirmed with two Board members that was not their intent or understanding of that provision, **Mr. Morse said he certainly may have made a mistake and was not at all opposed to changing that provision to reflect the Board's intent to allow for an ALTERNATIVE means of proof of prior cultivation to be submitted by an applicant to the Ag Department if that was in fact the Board's intent.**

   As the Board knows, this provision was initially added after I had raised the issue on multiple occasions that to limit proof of prior cultivation to date stamped aerial photographs would severely reduce the number of applicants despite the fact that they ma have indeed engaged in prior cultivation. It was meant as an ALTERNATIVE way to present sufficient evidence, not as an ADDITIONAL requirement.

   Now that the former Ag Commissioner has stated that he had no particular reason to require additional proof, but rather thought that was the Board direction, and since **the Acting Ag Commissioner did not express a need to have that provision create an additional requirement, especially since ITEM (T) (page 26 of new draft) ALREADY PROVIDES THAT THE AG COMMISSIONAER MAY REQUIRE ADDITIONAL EVIDENCE**, there is no

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reason to retain the provision as it exists. Rather, I implore the Board to change this provision back to its intended purpose: to serve as a means that applicants can prove to the Ag Commissioner's satisfaction, that they have previously cultivated (prior to 1./1/16). **Further support** for this requested change comes from the fact that those that **those that previously grew indoors have no way to provide evidence through satellite imagery**. Likewise, **those that cultivated in greenhouses, may not be able to prove the existence of cannabis plants in their greenhouses through the use of satellite imagery.** All types of growers should be able to present alternative evidence to the AG Commissioner to prove prior cultivation and if the AG Commissioner determines that such proof is sufficient, it should be an acceptable basis for such proof.

2. **Section 10A.17.070 ((page 11 of new draft)**: In the opening paragraph of this section (beginning on page 11 of the new draft, only the term "owner" is repeatedly used. The Ag Department had no objection to the addition of "tenant." Either way, the property is limited to the legal limit for that parcel. It seems **unnecessarily harsh to restrict the multiple permit holder concept to land owners when the effects, if were to include tenants, would be exactly the same.** At the very least, the Board should consider allowing for the multiple permits on one property (up to the maximum allowed for the parcel) for tenants and/or land owners for Phase 1.**The Ag Department, expressed neutrality with respect to this request.**

3. **Request to Define Hybrid Building as Either Mixed Light or Indoor**: During our 1/27 meeting, I explained to the AG Department that I had recently been presented with a scenario that I believe none of us had previously thought of: Apparently, there are some who have built or want to build buildings that have natural light roofs. Under the current definitions, it is possible that that kind of operation could be considered either a mixed light or an indoor permit type. On the one hand, the definition of "indoor" (page 4 of new draft) means within a fully enclosed structure, but the explanation of indoor permit types (beginning on page 11 of new draft, items B, E & H on pages 11-12) list the exclusive use as artificial light as a defining criteria. Likewise, the definition of "mixed light" (page 4) indicates the use of both natural and artificial light, and the permit type description (beginning on page 11 and continuing to page 12 of the new draft) describe the use of natural and artificial light "within a structure."

   We discussed the matter thoroughly and the **Ag Department felt there was no reason to limit the definition of "indoor" to only using artificial light and that the more important aspect of whether a cultivation was "indoor" was that it be a "fully enclosed" structure**. Therefore, if a hard walled structure with an affixed/attached roof was being used, the fact that the roof might be translucent should not disqualify it as an "indoor" operation. Likewise, the **Ag department felt there was no reason why such a**

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technique (hard walls with translucent roof) could not also qualify as a mixed-light operation. Allowing such a hybrid building or structure (remember, only a hard walled building with a roof attached would qualify as an "indoor" no matter what kind of roof), to qualify as either would encourage reduction of use of energy. **Given that the Ag Department had no objection, I respectfully request that the ordinance be modified to specifically state that a hard walled structure with a translucent roof could be either a mixed light permit type or an indoor permit type (but only indoor if the roof was attached to the walls like a traditional building) and to modify the description of the "indoor" permit type (pages 11-12) to remove the word "exclusively" when talking about artificial light.**

Issues From Last Planning Commission Meeting:

1. **Item 1 A of the Resolution, Mitigation Measure AES-1**: In addition to the wording in the Resolution, the **Commission specifically discussed the refinement of the requirement of light containment to specifically mean that the light or light glare does not go past the parcel upon which the light is being generated.** It is an important and necessary refinement to include that specific enunciation of that explanation of what the containment is given the new cannabis specific nuisance ordinance with expedited procedures and significant consequences. **It is worth noting that 10A.17.040 (D) (page 8 of new draft) enunciates that the light should not exceed the limits of the boundaries of the legal parcel upon which they are p[laced. I believe that the addition of that phrase to all other applicable sections would be sufficient to clarify this intent.**
2. **Item 1 C & Item 4 G of the Resolution**: It is worth noting that a lot of discussion regarding BIO-1 mitigation measure, as well as other items, focused on the **desire to get as many cultivators to enter into the process of the permitting program as possible and to try to make sure that outside agency referrals as well as County department referrals did not result in an unintended black hole.** Hence, the Commission recommended Item 4 G, to specifically require that all referrals must be responded to within 30 days or else the application moves forward. While adoption of an affidavit or other mechanism to allow cultivators who have applied for a permit to proceed while their applications are being processed might assist in dealing with a temporary gap in time, only a 30 day response time requirement would ensure that applicants have a timely processing of their applications. This is especially important if additional requirements are required under a discretionary review (administrative use permit or full use permit). **Please accept the Commission's recommendation and additionally clarify that if agencies do not respond within 30 days of the referral, the application will continue to be processed.**
3. **Additional Comments Made By The Commission/ Tie-In to County Counsel Proposed Changes**: Repeatedly when discussing different elements of the draft ordinance, the Commission members stated they

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believed it would be **important to give permit holders (or applicants) a chance to comply with various requirements.** I continue to be concerned that **if a specific exception or carve-out is not made to the newly enacted cannabis nuisance ordinance** to protect applicants and permit holders who might need some time to comply with various requirements, **private citizens may bring actions can be taken regardless of whether the Ag Department, under their discretionary powers believes that it is sensible to allow an applicant or permit holder more time** irrespective of the new protections proposed to be afforded under Section 10A.17.160 B (see the attachment to County Counsel Memo for today's meeting wherein modifications to enforcement provisions were made to offer protection to applicants who have signed an affidavit). **Those additional protections for applicants do NOT address the scenario where the Ag Department has used its discretion to allow an applicant or permit holder more time to comply with a particular provision. Or requirement**. Even under the proposed provisions that offer protection to applicants, there is reference to the nuisance ordinance that was passed as being an alternative remedy. **Retaining the availability of other types of sanctions or enforcement procedures against this class of persons (applicants who have signed an affidavit) would nullify the attempt at offering them protection in 10A17.060B.** As a result of these **TWO** separate potential problems, I respectfully request that you include specific language that **(1) does not allow a cannabis specific nuisance ordinance complaint to be filed if the Ag Commissioner has authorized more time for an applicant or permit holder to comply with a requirement**, and **(2) does not allow an action (under any law) to result in fines or other penalty (except for abatement if appropriate) against an applicant who has signed the affidavit required who is doing their best to comply and is awaiting processing of their application (and hence potentially refinement of any requirements imposed pursuant to the discretionary processes if an administrative or full use permit is applicable).**

Other Issues:

1. **Issues Pertaining to County Counsel's Proposed Change to 10A.17.160**: As stated above, I respectfully request that specific language be added to **ensure that applicants are not on the one hand allowed to proceed** while their application is being processed (if they sign the affidavit and pay all fees), while **on the other hand potentially subjected to actions under other laws**. I also request that in instances where either **applicants or permit holders are given additional time by the Ag Department to comply with a requirement, they are not subject to fines or penalties** (other than abatement if necessary) under **any law** that might be attempted to be used to lodge a complaint against them. **This last request is not intended to prevent the abatement of any act or failure to act as required. Rather, it is intended to ensure that if people are given time to comply with a particular provision, that time period could not still subject them to fines**

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or penalties by virtue of the fact that the County has reserved the right to enforce ALL other laws against a permit holder or applicant.

2. **Please Add Provisions Related to Appeal of the Denial of a Permit**. I did not see (though I certainly admit that I may be so bleary from comparing different versions I may have missed it) any procedures with respect to an appeal of the denial of an application to be permitted. There are procedures for the termination of a permit, but I could not find **procedures related to the denial of a permit.**
3. **Section 10A.17.110 E (page 29 of new draft)**: It was my understanding that previous drafts and certainly the former Ag Commissioner's stated suggestion, was to include a phase-in period for compliance with the generator as a back-up only requirement. While I fully appreciate the desire to end the use of the reliance on fossil fuels, **not providing a period of time** for people who have to upgrade their solar systems or to bring PG&E to their property, **would severely limit the number of small family cultivators that could participate in this program. Please consider adding language that would allow for a period of time for complete compliance with the use of a generator as ONLY a back-up.**
4. **Section 10A.17.030 (B) (page 6 of new draft)**: There is a reference to "for medical use only." I suggest modifying that phrase since it also refers to personal use under Prop 64 in the future and the County may want to integrate recreational commercial cultivation into these codes. A simple removal of the term "only" could fix this problem without committing to non-medical cultivation rules.
5. **Section 10A.17.050 (A) (page 9 of new draft)**: As stated in my previous memo for the 1/24/17 Board Meeting, please consider amending the language to account for the possibility that the T & T programs may require certain styles of cultivation (seeds, clones, etc.,) to be identified in "batches" or "lots." Please change the language to require conformance with the T & T program requirements and not specifically limit the affixing of the unique identifier to the base of each plant in all situations. Again, the only reason for this suggestion is to allow for conformance with the T & T program requirements, not to prevent strict adherence to whatever those requirements wind up being.
6. **Section 10A.17.050 (A) (page 10 of new draft)**: At the risk of sounding like a broken record, I respectfully request that the phrase "until such time as otherwise allowed under State law" to the existing language. As it reads now, even when the State law changes to allow for-profit "commercial cannabis activity" in the context of a business other than a collective, Mendocino County would require that the entity not make a profit. Such a result would be contrary to the intent of State law and would be contrary to the impression voters were given when the taxation measures were passed.
7. **Section 10A.17.080 (A) 5 (page 13 of the new draft)**: Please clarify that the reference to "these zoning districts" on the 5th line of this provision is intended to mean the zoning districts that otherwise would NOT allow cultivation (except under the specific limited conditions related to a type C permit with

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the requirements set forth in this section). As it reads now, it could be interpreted to read that the restrictions could apply to any type C permits in any zoning which I believe would be contrary to the intent to address only the locations where permits with these restrictions may be granted to the persons in the zoning districts that otherwise do not qualify if they adhere to the specific requirements and limitations in this section.

8. **Section 10A.17.080 (B) 5 (page 14 of the new draft)**: As requested in a prior memo, please be more specific with respect to the conversion language. As it stands, this language is so broad as to render it difficult to apply consistently. Would a conversion 20 years ago prevent the current permit applicant from being eligible?
9. **Section 10A.17.090 (new draft pages 22-23)**: With respect to Air Quality Management and CDFW referrals, please see the Coalition letter that I participated in drafting and signed onto.
10. **Section 10A.17.090 (C)(new draft page 24)**: Please add "if appropriate" after the word "collective" since the collective model will not be necessary when state licenses are available.
11. **Section 10A.17.090 (D)(new draft page 24)**: I have concerns about the broad language with respect to "all areas of ground disturbance" and with respect to showing distances from churches etc., for ALL permit applicants. The site inspections (both pre-approval and post approval) as well as the NCRWQCB and other agency requirements ensure that issues related to ground disturbances are addressed, so there is no need to require the site map to include every culvert or some other ground "disturbance." Likewise, the inspections will verify that the location is not within the set back prescribed for youth facilities, schools, churches, etc., so it is also not necessary to plot them on the site plan. Perhaps if one is located within a certain distance form those enumerated places, one should state the distance from the enumerated place (the application is signed under penalty of perjury).
12. **Section 10A.17.090 (E & F)(new draft page 24)**: I continue to maintain my objection to the necessity of having to provide photographic evidence top prove prior cultivation. As stated previously, there is a 3 year statute of limitations of State crimes and a 5 year statute of limitations on federal crimes. One should not have to provide incriminating evidence in order to come into the light and adhere to strict regulations. If any photographs are required, there should be flexibility in the application of this requirement with respect to the ability to obtain each of the demanded views. Allowing the Ag Department to demand additional information and the allowance for alternate evidence of prior cultivation would necessitate a softening of these strict requirements in such specificity. Also, why would they need to provide as it currently exists
13. **Section 10A.17.090 (G)(new draft page 24)**: As stated above, the Ag Commissioner has no objection to reverting to the intent to provide an ALTERNATE form of evidence as opposed to an ADDITIONAL form as currently worded.
14. **Section 10A.17.090 (H)(new draft pages 24-25)**: Please clarify which circumstances and specific zoning districts will require the additional setbacks

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and permitting requirements instead of just referring to "these zoning districts" on the last line on page 24.

15. **Section 10A.17.090 (M)(new draft page 25)**: Please better define or qualify the term "impacts" in the 2nd line. Perhaps "substantially impacts" could be used? Otherwise, there is an unclear standard of what constitutes an impact to a bed or bank. I believe that if you simply reference whatever standard CDFW uses to determine if a streambed alteration agreement is necessary, there would be less confusion.
16. **Section 10A.17.090 (R)(new draft page 26)**: As previously stated, a Partnership Agreement is a private document and should not be subject to disclosure in order to get a permit.
17. **Section 10A.17.090 (S)(new draft page 26)**: Please add "until a permit holder receives a State license" so that when the State begins to issue licenses, this requirement is no longer necessary since the collective model will no longer be necessary at that point (it will remain a viable defense for an additional year, but it no longer will be necessary as soon as licenses are available.
18. **Section 10A.17.090 (AB)(new draft page 27)**: Please specify whether the "Cortese List" search is conducted by the Applicant BEFORE submission, or if it is conducted by the Ag Department after submission and modify the language in accordance with the specific determination of which is appropriate.
19. **Section 10A.17.090 (AC)(new draft page 27)**: It seems that this expanded from water to water and sewage. I do not believe it is appropriate to require sewage will-serve letters since all buildings will have to be permitted and as part of that permitting, they will have to prove sufficient sewage capacity/service. This is an unnecessary expansion.
20. **Section 10A.17.100 Portion Related to T &T (new draft page 28)**: Beginning at the top of page 28 there is reference to the T & T program and the unique identifiers being affixed to each plant. As previously stated, please consider altering the language to allow for the possibility that the T & T programs might choose to use other units such as "batches" or "lots."
21. **Section 10A.17.120 (A)(new draft page 31)**: I am reasonably sure that it is the Bureau of Medical Cannabis Regulation (not (of marijuana control).
22. **Section 10A.17.140 (new draft pages 33-34)**: As stated previously, I request that there be better language to describe what is required when referring to the need to "facilitate" various things including inspections. If you are requiring that applicants be the one to schedule, then please say that. If there is something else meant by this, please be more clear. It is difficult to be subjected to penalties for non-compliance when there are not clear definitions of what is required or what might constitute a violation.
23. **Section 10A.17.180 (new draft page 35)**: Please limit this provision or modify the information required to apply. As previously stated, there is a 3-year State Statute of limitations and a 5-year Federal statute of limitations. In addition, there are cannabis nuisance ordinances and other proceedings under which a citizen can act on behalf of the County to enforce provisions. As stated in the Coalition letter that I helped to draft and signed onto, we

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believe that no evidence provided by an applicant should be use to incriminate anyone.

Thank-you for your continued dedication and careful considerations of the issues. As I stated at the beginning of this memo, I hope that you will take these requests seriously since the impact for each item is real.

Respectfully submitted,

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Mendocino County Board of Supervisors
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January 23, 2017

RE: Ag Commissioner's Memo & Revisions to Draft Ordinance □

Honorable Board Members:

My comments may seem extensive and detailed, but I hope you understand that the changes I request or the questions I ask relate to issues that will have a significant impact on how the ordinance is implemented. Please have patience and carefully consider the items I list even if it seems to be detailed or tedious.

Section 10.A.17.040 C
(Page 8, line 8): "If no grid power is available… supporting both the required legal dwelling…" **Please insert "if required" after the term legal dwelling. Not all cultivation locations will require a legal dwelling.**
(Page 8, Lines 11-14): "permitee shall actively research and install…" **Please remove "actively research and" since all that matters is that they install, and there is no good way to prove whether they have researched or not. If any lenience or extension of time is granted based on the need to diligently show progress, then that could be stated, but if all you care about is the actual installation, then the rest is unnecessary.**
(Page 8 lines 14-16): "fully meet the combined needs of the cultivation operation and the..." **Please replace "the" with "any" since not all cultivation locations will require a legal dwelling unit.**

Section 10 A.17.050 (A & C)
(Page 9, Subsection A, line 2): "…affixed to base of plant…" **Please insert "or other unit/measurement as required by T&T" (i.e., lot, batch, tray, etc.). At this point, it is unclear whether the T&T system that might be used would actually be assigning a unique identifier to the base of each plant in all indoor or mixed light operations. Rather, it may be, that because plants are small, that batches, trays or some other unit is used to determine how many unique identifiers shall be used (rather than for each plant).**
(Page 9, Subsection B, lines 8-9): Same issue as above, but for voluntary zip ties. Currently, indoor or mixed light operations have zip ties for square footage not for each plant. They are affixed to the inside wall and then move with the plants if the plants move. If the plants go from indoor or mixed light to outdoor, then each plant gets a zip tie, but if the operation is only indoor or mixed light, the zip ties are assigned to the square footage (1 zip tie per 100 square feet).

Section 10A.17.060, Subsection A (Page 10): **Please insert "until such time as California law provides otherwise." I have repeatedly requested this change since it is likely that either AB 1575 or AB 64 will clarify that there is no**

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nonprofit requirement. Additionally, when implemented, Prop 64 will have no such requirement. Should this additional language not be inserted, the County is likely to be out of step with State law and could subject itself to unnecessary litigation. If the County is insisting on the nonprofit requirement after the State has lifted that condition, then I am not sure how it expects commercial cannabis activities to be able to pay the fees and taxes the County wishes to impose on top of the costs of compliance with every other requirement at the local and State level.

Section 10A.17.080 Subsection A (Page 13):

Item (5) (lines 5-6): "shall not increase in canopy area and shall only be issued if the existing cultivation site was..."

(1) **Please correct for allowance for additional canopy area: Persons who chose to NOT participate in the Urgency Ordinance and instead chose to register under the Voluntary Registration program in order to maintain priority standing for applying this year, were SPECIFICALLY TOLD by they would be allowed to expand to the legal limit. I personally verified this with the Ag Commissioner BEFORE the Urgency Ordinance was cut off. So, if a cultivator only grew 15 outdoor plants, they would be allowed, under the C (small outdoor permit) to apply to grow 2500 square feet and would NOT be limited to 1500 square feet. I have multiple clients who intentionally verified this because they wanted to start small so they could handle the costs and efforts of compliance but did not want to lose the ability to expand this year. They should not be punished for being circumspect in how they achieved compliance and they should not be required to apply for a bigger permit if they want to stay at the cottage level but grow more than they did (such as 15) up t the limit for this permit type.**

(2) **Please change "was..." to "is..." If someone is NOW complying or willing to now comply with conditions A-I, it should not matter if they did previously conform to those requirements.**

Item (6): Please consider the following problems with this subsection:

1. **Please consider exchanging the word "facilitate" for a different, more specific word ("request"?). It is very difficult to know whether someone would not be in compliance if we do not get specific. SO either define "facilitate" or please use a better word or group of words.**
2. **Please better define "if deemed necessary." By whom, the Ag Commissioner, the Third Party Inspector, some other Department?**
3. **How is one to determine who the "appropriate County official" is? Why not just state the Ag Commissioner or its designee?**
4. **Though it states they should notify at least 30 days before harvest, it is worded in a way that makes one think that they have to wait to notify until just before 30 days before harvest. If you insert "at any time" it may help to clarify that they can request the inspection well**

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before that. If it was intended that they not have an inspection until closer to harvest, then please consider a specific time range since it is sometimes difficult to know when harvest might be 30 days away since it can be largely up to conditions and factors out of the control of the cultivator.

5. **How does the cultivator determine who "the appropriate County official" is? Please change to "Ag Department designee."**

Section 10A.17.080 Subsection B (Page 14):

Item (3): As stated in a section above, legal dwellings may not be required at every location depending on the zoning. In addition to the expansion of the zoning areas where a legal dwelling unit is not required recommended by the Planning Commission, (in addition to TPZ and FL, the Planning Commission recently recommended the removal of the requirement for UR and to allow for an exemption from the requirement on RR-10 through an administrative use permit process). **Please amend to reflect the fact that a legal dwelling unit may not be required in various zoning areas (in addition to Industrial).**

Item (5): ..."that has undergone a conversion..." **Please modify to specify when. As written persons who bought a property that at some time in the past had undergone a conversion could be deemed in violation even if they did not know of it or continue it.**

Item (8): "shall not allow for any increase in canopy..." I was unaware that there was ever a restriction of increasing canopy size so long as the cultivator stayed within the allowable size limitation for the permit type. **In fact, I personally check with the Ag Commissioner that persons who Voluntarily registered last year, who wanted to start out small so they could handle getting all of their water issues and other compliance matters in order, would be allowed to increase to the allowable limit this year under the new permit system. While there may not be many people who grew less than the Cottage level amount last year, if there are, they should be allowed to expand up to the Cottage level limit if that is the permit they are applying for. Likewise, those that grew less than the limits now being instituted under the new ordinance for the permit type they will apply for want to expand to the maximum allowed for the permit type they are eligible for and want to apply for, they should be allowed to do so. A restriction of keeping to the same canopy size as previously would prevent that.**

Item (9): Same issues as in item (6) on page 13, above, with respect to the term "facilitate" as well as "as deemed necessary", "appropriate County official", and need to clarify if they can request an inspection much sooner than 30 days before or if it was intended to be within a time period of harvest, in which case a better time range would be more appropriate.

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Section 10A.17.080 Subsection C

Item (2) (Page 15): Same issue with respect to dwelling unit as described in 10A.17.040 C on page 8 as well as 10A.17.080 B on page 14, and as indicated throughout the ordinance.

Item (5) (page 15): Same issue as 10A.17.080 A, Item (5) on page 13, with respect to no increased canopy and with respect to replacing "was" in conformance with A-I with "is" in conformance with A-I.

Item (6) (page 15): Same issues as 10A.17.080 A, Item (6) on page 13, as well as 10A.17.080 B, Item (9) on page 14, with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Suggestion re: difference between "on-site compliance" inspection and "consultation" inspection: Perhaps it would help if these two terms were defined in the definitions sections. Presumably, the difference is that one is conducted by the Ag Department and the other type is conducted by a Third Party inspector, but it is unclear. Both types of inspections are mandatory.

Section 10A.17.080 Subsection D

Item (4) (page 16): Same issue with respect to dwelling unit as identified in 10A.17.040 C (page 8), 10A.17.080 B (page 14), and as indicated throughout the ordinance.

Item (5) (page 16): Same problem with term "facilitate."

Item (6) (page 16): Same issue as 10A.17.080 A, Item (6) on page 13, 10A.17.080 B, Item (9) on page 14, and 10A.17.080 C, Item (6) on page 15, with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Section 10A.17.080 Subsection E

Item (5) (page 17): Same problem with term "facilitate."

Item (6) (page 17): Same issue as 10A.17.080 A, Item (6) on page 13, 10A.17.080 B, Item (9) on page 14, 10A.17.080 C, Item (6) on page 15, and 10A.17.080D, Item (6) on page 16 with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Section 10A.17.080 Subsection F

Item (4) (page 17): Legal dwelling issue.

Item (5) (page 17): Problem with term "facilitate."

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Item (6) (page 18): Same issues pertaining to "facilitate", "if deemed necessary", "appropriate County official" and the 30 days before harvest issue.

Section 10A.17.080 Subsection G

Exact same issues with Items (4), (5) and (6) (page 18) as the items listed above for subsection F, etc.

Section 10A.17.080 Subsection H

Exact same issues with Items (5) and (6) (page 19) as listed above.

Section 10A.17.080 Subsection I

Exact same issues with Items (4), (5) and (6) (page 19-20) as the items listed above for subsection F, G, etc.

Section 10A.17.080 Subsection J (Nursery)

QUESTIONS:
Can an applicant use 10,000 square feet for outdoor or other allowable cultivation and the remaining 12,000 square feet for Nursery cultivation if they are located on property that otherwise meets the Nursery and regular cultivation requirements?

Is it possible to clarify item (8) regarding canopy cover and what is intended? Perhaps examples of what can or cannot be done or an explanation of what is trying to be avoided?

Item (6) (page 20): Legal dwelling issue.

Item (9) (page 21): Legal dwelling issue.

Item (11) (page 21): TPZ or FL Nursery producers are limited to sell to other permit holders whereas other nursery permit holders (on parcels not zoned TPZ or FL) are allowed to sell to other permit holders OR to exempt individuals. Why can't nursery producers who grow from seed sell to exempt persons if all other record keeping and controls are in place?

Item (12) (page 21): Please insert the word "reasonable" in front of the word "requirements". One should not have to commit to abide by any requirements that are not yet established unless they have an assurance that they need only abide by all REASONABLE requirements established.

Item (14) (page 21): Same issue with respect to "facilitate", "if deemed necessary", "appropriate County official" and the 30 days before harvest issue.

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Section 10A.17.090:

1st Paragraph (page 22): Please remove "by both the Applicant and.." since it can be presumed that the Applicant will have to sign the application and it is impossible to otherwise determine whether the Applicant in fact reviewed it for accuracy. The main point is that the Ag Department will review it for accuracy. Obviously, if there are mistakes, the Ag Department can kick back the application or accept changes as they are discovered.

Subsection D (page 23): The site plan shall include... associated with cultivation... Please insert "cannabis" before the word cultivation. Also, the last sentence should be narrowed to apply to only those who are within some distance of one of those listed facilities or places (such as within 1500 feet). Otherwise, to require every site plan to determine where the nearest facility/place listed, even if they are miles away form one, would be unnecessarily burdensome.

Subsection F (page 23): Aren't cultivators supposed to WAIT to start planting until they have been approved after the 1st site inspection? If so, how could they submit pictures of "existing" cultivation (here, the term existing is NOT used to reflect prior to 1/1/16, but contemporaneous to the application).

Subsection G (page 23): Here is once again a long-standing objection to the requirement that applications require aerial/satellite date-stamped photographs that could incriminate them. The problem has been repeatedly compounded by Staff's incorrect insertion of an alternative type of proof as an **ADDITIONAL** requirement instead of as the **ALTERNATIVE** requirement that the Board approved of. PLEASE, **correct this mistake to allow alternative proof to date-stamped satellite pictures proving cannabis cultivation prior to 1/1/16**. How are people who grew indoors supposed to fulfill this requirement? Given that the District Attorney is now charging people with FELONY CONSPIRACY charges because he believes that the reduction to misdemeanors and Infractions under Prop 64 is too lenient, this issue takes on an even more critical status.

Subsection H (page 24): The requirement that **on TPZ and FL there must be proof of that applicant on that land is not consistent with the current laws** that still allow, and in fact **require that persons grow in collectives**. For example, if one cultivated with other persons who were known and listed on the Urgency Ordinance application as other people part of the management (or were added as such), but were not listed as co-applicants because the form was confusing or because people were in a rush to get the form in at the deadline, or even if they just did not think that someone else who was known to be growing with the applicant would not be able to replace the applicant (if they qualified) on the same cultivation site, is unreasonable. I know of two situations where **an adult child or other relative of an aging person wants to continue the permit even though the aging person is retiring or otherwise unable to continue as the applicant.** I also know of several situations where because the District Attorney took the position that some that made a plea agreement were not allowed to participate in the Urgency Ordinance permitting

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program, they were unable to be listed on a permit at their own home (they had to temporarily move), but **now either because their probation has been successfully completed or because Prop 64 reduced or terminated their sentence, they are now eligible to return to their own home and restart to cultivate** (the property continued to be cultivated so there is proof of the prior cultivation). There is no way they should not be allowed to cultivate just because their name could not be on the application in the past year.

(Continuation of Subsection H) Also, **what additional setbacks are required**? I looked at the 20.242 of the Municipal Code and could not discern what additional setbacks were applicable. **Please specify the exact additional setbacks and please enunciate when or how these were added as a requirement in this situation.**

Subsection R (page 25): **Partnership Agreements are PRIVATE documents** and are not relevant to the application process. Unlike Articles of Incorporation, which are a single page and filed with the Secretary of State as a public document, Partnership Agreements are usually many pages and are never filed with any State Agency. While requiring listing each partner may be very reasonable, **asking people to divulge private contracts pertaining to how their partnerships work is inappropriate and unnecessary.**

Subsection S (page 25): This section **seems to ignore the fact that patient collectives are still legal and required in California until 2018**. It is still lawful to collectively cultivate without being a dispensary or a processor, and it will still be a defense until one year after the State puts notice on its website that licenses are being issued. **In other words, the applicant can be a group; it does not have to have contracts with a group**. I have clients who have lawful collectives that still provide medicine to their own members. That is completely lawful. Now, you just have to have a permit or a license. **Also, see Item U which requires a Sellers permit if they are selling directly to patients! That means you do not have to have a contract with another business**, but the member must have a valid recommendation and be a member with your collective.

Subsection V (page 25): "Other appropriate agency representatives..." Who is "appropriate?" Please instead state "any designee of the Ag Commissioner."

Section 10A.17.100 (page 27): Please give deadlines/timeframes by which the Ag Department will: a) review an application after it has been submitted, b) contact the applicant to schedule and conduct a site inspection after the review has been conducted, and, c) issue the permit after the site inspection if it is eligible to be approved.

Section 10A.17.110 (page 27-28):

Subsection A (page 27): Please insert: "Any changes to site plans require written approval by the Ag Department." Please allow for the possibility of changing site

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plans/locations of cultivation, especially as people are able to prepare more environmentally appropriate locations on their land or as they make other improvements that they may not be able to finish before the site plan was submitted.

Subsection C (page 28): **Please consider changing from "affixed to each...plant" to "each ...unit required by T & T.**" It is possible that T & T systems (the one the County chooses or the State one, may use **units such as "batch", "tray", or "lot", especially for closely cultivated indoor crops**. Please allow for this possibility. It still can be as required by the T & T system, but since we don't yet have the T & T system, it does not make sense to limit the type of unique identifier unit to each plant when that is unknown at this time.

Subsection E (page 28): Please define "when under certain conditions" or remove that phrase. What are they? Also, the sentence containing the phrase "the containment area construction and dimensions..." does not make sense. Was it intended to use the word "construct" instead of "construction"? Finally, I suggest that reference be made in this section to the phased-in time frames as indicated earlier in the ordinance for clarity.

Subsection K (page 29): Issue pertaining to "facilitate."

Section 10A.17.130 Third Party Inspectors (page 31-32): Please consider inserting a provision regarding prevention of conflict of interest.

Section 10A.17.140 (page 33) First full sentence on the 2nd-3rd line on page: Ag Commissioner may amend amount of time if "deemed inappropriate." Please remove "if deemed inappropriate" and simply state that Ag Commissioner can amend the amount of time. That way if the Commissioner thinks it's appropriate; they can amend it (not just if inappropriate).

Further into the same paragraph, the term "facilitate is also mentioned again and is problematic without more specificity (or change to "schedule" or "request").

Line 6 of the same paragraph mentions a "failure to request... " Please insert a specific time frame by either stating to request within X time of X, or by stating the unscheduled visit will be within X time of X.

Second paragraph, first sentence: Please replace "If the" with "If any" non-compliances and specify within what specific time frame.

Second paragraph, line 8: The final re-inspection... has cured all issues of non-compliance." Please add: or has demonstrated to the Ag Commissioner's satisfaction, legitimate reasons why completion of such cures will take additional time."

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Second paragraph, line 10: "...to cure any items of non-compliance..." Please insert "or obtain a written extension of time for completing the cure" after the word " non-compliance" and before the word "shall...".

Second paragraph, line 14: Date "when" not "where."

Last part of second paragraph: Please insert a tolling provision whereby the per day fines are held in suspension during the appeal process. One should not be dissuaded from appealing a legitimate issue just for fear that the appeal itself will add so many additional days of fines.

Section 10A.17.150 (page 33): Please specify 10 business days (not calendar days). Please make it 3 business days (or U.S. mail delivery days) added for mailing.

Is the fee refundable if the person wins?

Section 10A.17.160 (page 34):

First paragraph, line 5: "where a permit is not required"? How can it be a violation of the Chapter if a permit is required? If trying to refer to 6 personal plants, then please be more specific. Was this a typo and it meant where a permit IS required?

Second paragraph, line 4: What does "prohibiting the maintenance of the violation of this Chapter" mean? I am an attorney used to reading statutes and other very complicated writings. I have no earthly idea what that sentence means.

Thank-you for your continued dedication and careful considerations of the issues. As I stated at the beginning of this memo, I hope that you will take these requests seriously since the impact for each item is real.

Respectfully submitted,

Hannah L. Nelson
Attorney At Law

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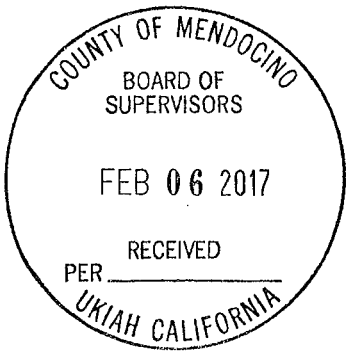


February 2, 2017

Board of Supervisors
County of Mendocino

RE: Directing Corrections of the Proposed Marijuana Ordinances to Protect Residential Neighborhoods, etc.

Dear Members of the Board,

One of the main reasons Mendocino County voters soundly voted down local Measure A-F [while still soundly supporting statewide Proposition 64] was to protect local residential neighborhoods and the quality of life in those communities. A second main reason was to limit [and not expand] the environmental damage and public safety hazards caused by commercial marijuana grows.

In this regard, the CEQA review process appears to utilize a "baseline" definition and methodology that are legally erroneous and factually inaccurate [see, last full paragraph, page 2, of letter from Senior Planner, Mary Lynn Hunt, dated February 7,2017].

Nevertheless, if your Board chooses to continue down this "easier" path of adopting a "Mitigated" Negative Declaration without a full EIR, in order to not invite further litigation, your Board must actively direct steps that actually mitigate neighborhood and environmental degradation from both new and existing grows. No one has any vested rights to continue to maintain a neighborhood nuisance whether "legal" or not.

As guardians of our local public health, safety and welfare, I would respectfully request that, <u>at a minimum</u>, your Board give direction to staff as follows:

A. <u>Planning Commission Recommendation 4C - "Residential" Neighborhoods</u>:
   1. Clarify that no new cultivation permits be allowed in any residential zones of RR-2 or less (e.g. R-1, R-2, RR-1, SR, etc.). Logically, the smaller and related zones should also be protected. This appears to be a drafting error which does not match the intent of your Planning Commission.
   2. Eliminate the sunset provision in these residential grows as there is no factual or legal basis for some sort of "vested right" to maintain a neighborhood nuisance. Besides, the 2017 crop has not yet been planted outdoors.
   3. Specify the unnamed but anticipated "community-based exemption" areas (e.g. – Laytonville? Covelo?) so that those communities can request special zoning, control it or oppose it.

B. Planning Commission Recommendation 4B - "Due Process for Everyone":
Here, as in other areas of the proposed ordinances (e.g. - Section 20.242.070 (E)(3) and Section 20.242.050, etc.), due process must also be provided to the affected neighborhoods when any administrative "exception" (or other similar "variance" process) is being considered. Otherwise, the standards ultimately adopted will be meaningless. Please direct staff to specifically add a notice provision for neighbors within 1,500 feet of the applicant's property, along with providing an opportunity to be heard.

C. Planning Commission Recommendation 1A-Security Lighting
This is a good change, but it needs to be applied to all grows including outdoor grows. Twenty-four hour security lights do not belong in quiet country neighborhoods. Some suggested wording follows [see also, Mendocino County General Plan, Dark Sky Policies, Policy #RM-134]:

> All lights related to the cultivation of cannabis shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow glare to exceed the boundaries of the legal parcel upon which they are placed.
>
> The lights shall be on motions sensors set to detect only human activity and not be constantly illuminated during hours of darkness. The light shall also strictly comply with lighting provisions set forth in the local coastal plan ordinances to preserve night views of the stars, conserve energy, and allow sleep full nights.

Thank you for your time and attention to these requests for clarification and direction. The County has a responsibility to prevent garden raids and home invasions in residential areas.

Sincerely

Vincent T. Lechowick

To: Mendocino County Board of Supervisors
From: Dwight Cawthon, Deerwood Resident
Date: Feb. 6, 2017
Re: Commercial Cannabis in Residential Neighborhoods
CC: County Counsel, Clerk of the Board, Carmel Angelo

Dear Supervisors,

I am deeply concerned about the negative effects of existing and potential commercial marijuana cultivation in our community. Ten years ago, my wife and I chose the Deerwood Subdivision as an ideal place to raise a family. Commercial cannabis--whether cultivated indoors or outdoors--threatens personal safety, lowers property values, and adversely affects quality of life. Residential neighborhoods are not the appropriate location for commercial marijuana. Please **eliminate commercial marijuana cultivation and production in RR5 and lower.**

Thank you for your time and consideration.

Sincerely,

Dwight Cawthon
dwightcawthon@hotmail.com

- Marijuana Ordinance letter for February 7, 2017

From: "Hal - Gmail" <halwagenet707@gmail.com>
To: <bos@co.mendocino.ca.us>, <mccowen@co.mendocino.ca.us>
Date: 2/6/2017 2:49 PM
Subject: Marijuana Ordinance letter for February 7, 2017
Cc: "Devon Jones - Farm Bureau" <director@mendofb.org>, "TROUETTE" <mendodee...
Attachments: MJ - Ordinance Coalition letter.docx; MJ - Ordinance Coalition letter.pdf

Mendocino County Board of Supervisors;

The attached letter provides input to the Marijuana Regulation ordinance that will be considered by the BOS on Tuesday, February 7, 2017. Please distribute it to the Board of Supervisors and the public as required.

This document is the result of many hours of thoughtful interactions by those who will be directly affected: the growing community and citizens of Mendocino County.
This has been a coalition of broad interest groups and the BOS should take note that several of these groups have cooperated fully in preparation of these remarks, despite historical divides and constituent members with oppositional views.

The signers are responsible for the content.

I am acting as scribe for the group.
I may be reached for any questions related to the process by which this document was created at the sender's email address above or by phone at 707-391-5101.

I would appreciate email confirmation that you have received the letter in good condition.

Thank-you,

Hal Wagenet

February 6, 2017

Mendocino County Board of Supervisors

RE: Cannabis Cultivation and Zoning Code Ordinances

Dear Board Members,

The signers of this letter have reviewed the draft cultivation and zoning code ordinances, the Initial Study, the Mitigation Monitoring Program, the Planning Commission Resolution, and other relevant documents. Each of our organizations has approached this discussion from our own perspective and with our own concerns. We are also aware that no individual or group is likely to see all of their concerns addressed in the way they might prefer. Despite our differing perspectives, we are in general agreement on a number of key points. We speak with complete unanimity in support of some positions. In other cases, we recognize the likely direction of the ordinances and advocate for modifications that help address our concerns.

We recognize too that we are at the beginning of a major transition period. Our understanding of the impacts and how they can best be mitigated will continue to evolve. In that respect, it will be important for the County to accurately compile comprehensive data about the permitting program, beginning with review of compliance and enforcement data generated in 2016.

Among the many points to be considered, we have discussed the following issues in detail and offer our recommendations for your consideration.

1) We recommend Mitigation Measure BIO-1 (Section 1.C.) not apply to Phase 1, which consists of existing growers, but be revised to require referral only for new cultivation sites and relocated cultivation sites. BIO-1 should also not be necessary if the relocation site has an existing garden site that does not require new grading or land clearing. We share a general concern that increasing the regulatory burden will discourage many cultivators from applying for permits. We believe the negative environmental and community impacts of unregulated cannabis cultivation will best be addressed by bringing a majority of cultivators into a regulated system.

We share the concern about potential impacts to sensitive species and habitat but believe Phase 1 impacts are less than significant because the impacts of site development have already occurred. Existing impacts of Phase 1 sites, including modest expansion, will be addressed through the permit compliance process. Existing cultivators will be required to enroll with the State Water Board and/or adhere to applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects"; will be advised by approved third-party inspectors; and will be inspected by County Agricultural Commissioner staff members, who are four year college graduates and trained biologists.

We believe County staff, by reason of their education, training, and experience, and by utilization of relevant database listings, including the CDF&W California Natural Diversity Database, California Native Plant Society rare plant lists, and the United States Fish and Wildlife Service List of Threatened and Endangered Species, are qualified to determine if Special Status Species and their critical habitat may be impacted by Phase 1 cultivators, and make appropriate recommendations, including requiring consultation with CDF&W if applicable.

2) We recommend that the County not approve any Phase 1 cannabis cultivation permit that would result in removal of any true oak tree species prior to adoption of an oak woodland protection ordinance. We recommend that this condition would prohibit any Phase I cultivator from removing any true oak tree species on cultivation sites where cannabis plants are grown. We believe the Planning Commission recommendation, and the expanded mitigation suggested here, provide further assurance that automatic referral of Phase 1 cultivators to CDF&W is not necessary to assure protection of sensitive species or habitat.

3) Consistent with the Mitigation Measure suggested in point 2), we do not support tree removal or the conversion of timberland to allow cannabis cultivation. For that reason we recommend modification of Mitigation Measure AG-4 to specify that no permits shall be issued if the cultivation would require a Less-Than-Three-Acre Conversion Exemption or Timberland Conversion Permit. We support retaining the requirement that unauthorized conversion of timberlands prior to enactment of this ordinance be required to provide evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including Cal Fire, the North Coast Regional Water Quality Control Board and CDF&W. Any unauthorized conversion of timberlands occurring subsequent to enactment of this ordinance shall result in a denial for any permit application.

4) We recommend the following for Phase 3 only new cultivation sites: The draft cultivation ordinance allows no more than two permits to any one individual or entity. At the January 19 Planning Commission meeting, staff introduced the concept that an owner of multiple parcels could lease out any number of parcels to be used for cultivation sites. We are concerned that this condition is already fueling land speculation and, if allowed to stand, will result in a concentration of permits under the control of a single individual or entity. We strongly support a condition for Phase 3 new cultivation sites only, that would limit any individual or entity to having a financial stake in no more than two cultivation sites, irrespective of whether they are the permit holder or a lessor who leases land to permit holders. For purposes of this ordinance, collectives and cooperatives of cultivators holding pre-existing permits shall count as a single lessee.

5) We are concerned about the Planning Commission recommendation (Section 4.C.) to allow a continuation of cultivation in the RR-2 zoning district but with a two year sunset clause after which the cultivator must relocate to a new cultivation site. This condition may have the unintended consequence of discouraging legally compliant cultivators from applying for permits which will perpetuate the black market and limit the

effectiveness of the ordinance. Further, many of these cultivators will not be able to relocate or will not be able to do so within two years. Finally, this condition will put additional pressure on Agricultural zoned land which will already be subjected to strong pressure when Phase 3 permits become available in 2020.

We understand the concern about allowing commercial marijuana cultivation in residential neighborhoods but we also believe many neighborhood grow sites are not in compliance. Effective enforcement of existing rules would address most of the perceived problems.

However, if the Board supports Planning Commission recommendation 4.C., we support the following recommendations applicable to RR-2 and smaller: A) extend the sunset period to 3 years to allow a reasonable time for relocation: B) create the opportunity to apply for an Administrative Permit that would recognize existing cultivators as legally non-conforming if they can: comply with Phase 3 setbacks, or have no immediate residential neighbors; or can otherwise demonstrate that they are not causing neighborhood impacts; C) actively pursue the creation of overlay zones or community based plans to identify communities or neighborhoods where cultivation is not considered a problem: D) provide effective enforcement to identify and abate illegal neighborhood growers on a complaint driven or public visibility basis. E) seek to identify appropriate relocation sites and/or business models, such as cooperatives, that may facilitate the ability of growers to relocate, including financial participation of relocation site owners consistent with the philosophy expressed in our paragraph 4), above.

6) We endorse prohibition of new cultivation permits in Rangeland, TPZ and Forestland. We believe these mitigations will limit speculation, fragmentation, removal from production, and potential adverse environmental impacts to these lands. We share a concern that this prohibition could exert pressure on the Agricultural zoning district. However, we believe these mitigations support the Initial Study and are essential in making the ordinance legally defensible.

7) The Planning Commission recommended consideration of future amendments (Section 4.I.) to allow cultivation in Rangeland, TPZ, and Forestland zoning districts. We understand the Board may consider future amendments on this or any other issue if it chooses to do so, but signaling an intention to do so now will only fuel speculation in these zones. We do not support the Planning Commission recommendation for the reasons stated in number 6).

8) Given the timing of ordinance adoption; uncertainty around the number of applicants; and the time required to process and review applications, we support the necessity for some type of provisional permit approval. In addition to a completed application, payment of required fees, and an agreement to obey all laws, applicants for a provisional license shall also be required to submit a detailed plot plan, photographs of the cultivation site (including any expansion area).

9) For the same reasons that we support provisional permits, we also recommend that applicants be required to enroll with the State Water Board and apply for other required permits, but not be required to receive those permits as a condition of receiving a local permit.

10) Effective enforcement of this ordinance is essential. We recommend that the primary agent for enforcement of this ordinance shall be the Agricultural Commissioner. We recommend that the County identify and provide adequate sources of funding to the Agricultural Commissioner to assure that all required conditions are met and that those who fail to comply will be required to cease cultivation. The County must also identify a lead agency for enforcement of illegal neighborhood grow sites on a complaint driven or public visibility basis. Finally, the Sheriff's Office must be adequately funded to eradicate trespass grows on public and private lands. Effective enforcement may result in reduced impacts that will assist in the evaluation of what is needed in terms of additional oak woodland protection and grading.

11) We reiterate the necessity of collecting accurate data which, in addition to effective enforcement, will also assist in evaluating the need for changes to the regulatory program. We recommend that the County compile data, including but not limited to: the number of applications received and permits issued for each permit type, the number of permits per zoning district, the parcel size; the geographical distribution, and the number of applicants that fail to comply with conditions. This information is especially critical to inform the initial period of regulatory structure and enforcement protocol. We recommend an annual report on these features by the end of each calendar year, to enable timely modification and issuance of permits for each succeeding year.

12) Proof of prior cultivation shall be held in confidence by the County and shall not be used for any other purpose or in any other proceeding.

Approved on February 6, 2017 and authorized for submission to the Mendocino County Board of Supervisors by the following individuals and organizations:

Paul Trouette, President and Hal Wagenet, Secretary, Mendocino County Blacktail Association (MCBA),

Ellen and David Drell, Willits Environmental Center (WEC),

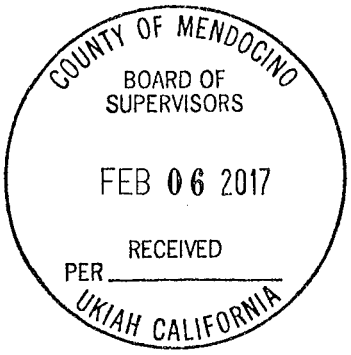
Casey O'Neill, Vice President, California Growers Association,

Traci Pellar, Mendocino Wildlife Association,

Allan Harris, Coastal Interests

Christopher J. Neary, Attorney

Hannah Nelson, Attorney



February 6, 2017

Mendocino County Board of Supervisors

RE: Cannabis Cultivation and Zoning Code Ordinances

Dear Board Members,

The signers of this letter have reviewed the draft cultivation and zoning code ordinances, the Initial Study, the Mitigation Monitoring Program, the Planning Commission Resolution, and other relevant documents. Each of our organizations has approached this discussion from our own perspective and with our own concerns. We are also aware that no individual or group is likely to see all of their concerns addressed in the way they might prefer. Despite our differing perspectives, we are in general agreement on a number of key points. We speak with complete unanimity in support of some positions. In other cases, we recognize the likely direction of the ordinances and advocate for modifications that help address our concerns.

We recognize too that we are at the beginning of a major transition period. Our understanding of the impacts and how they can best be mitigated will continue to evolve. In that respect, it will be important for the County to accurately compile comprehensive data about the permitting program, beginning with review of compliance and enforcement data generated in 2016.

Among the many points to be considered, we have discussed the following issues in detail and offer our recommendations for your consideration.

1) We recommend Mitigation Measure BIO-1 (Section 1.C.) not apply to Phase 1, which consists of existing growers, but be revised to require referral only for new cultivation sites and relocated cultivation sites. BIO-1 should also not be necessary if the relocation site has an existing garden site that does not require new grading or land clearing. We share a general concern that increasing the regulatory burden will discourage many cultivators from applying for permits. We believe the negative environmental and community impacts of unregulated cannabis cultivation will best be addressed by bringing a majority of cultivators into a regulated system.

We share the concern about potential impacts to sensitive species and habitat but believe Phase 1 impacts are less than significant because the impacts of site development have already occurred. Existing impacts of Phase 1 sites, including modest expansion, will be addressed through the permit compliance process. Existing cultivators will be required to enroll with the State Water Board and/or adhere to applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects"; will be advised by approved third-party inspectors; and will be inspected by County Agricultural Commissioner staff members, who are four year college graduates and trained biologists.

We believe County staff, by reason of their education, training, and experience, and by utilization of relevant database listings, including the CDF&W California Natural Diversity Database, California Native Plant Society rare plant lists, and the United States Fish and Wildlife Service List of Threatened and Endangered Species, are qualified to determine if Special Status Species and their critical habitat may be impacted by Phase 1 cultivators, and make appropriate recommendations, including requiring consultation with CDF&W if applicable.

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effectiveness of the ordinance. Further, many of these cultivators will not be able to relocate or will not be able to do so within two years. Finally, this condition will put additional pressure on Agricultural zoned land which will already be subjected to strong pressure when Phase 3 permits become available in 2020.

We understand the concern about allowing commercial marijuana cultivation in residential neighborhoods but we also believe many neighborhood grow sites are not in compliance. Effective enforcement of existing rules would address most of the perceived problems.

However, if the Board supports Planning Commission recommendation 4.C., we support the following recommendations applicable to RR-2 and smaller: A) extend the sunset period to 3 years to allow a reasonable time for relocation: B) create the opportunity to apply for an Administrative Permit that would recognize existing cultivators as legally non-conforming if they can: comply with Phase 3 setbacks, or have no immediate residential neighbors; or can otherwise demonstrate that they are not causing neighborhood impacts; C) actively pursue the creation of overlay zones or community based plans to identify communities or neighborhoods where cultivation is not considered a problem: D) provide effective enforcement to identify and abate illegal neighborhood growers on a complaint driven or public visibility basis. E) seek to identify appropriate relocation sites and/or business models, such as cooperatives, that may facilitate the ability of growers to relocate, including financial participation of relocation site owners consistent with the philosophy expressed in our paragraph 4), above.

6) We endorse prohibition of new cultivation permits in Rangeland, TPZ and Forestland. We believe these mitigations will limit speculation, fragmentation, removal from production, and potential adverse environmental impacts to these lands. We share a concern that this prohibition could exert pressure on the Agricultural zoning district. However, we believe these mitigations support the Initial Study and are essential in making the ordinance legally defensible.

7) The Planning Commission recommended consideration of future amendments (Section 4.I.) to allow cultivation in Rangeland, TPZ, and Forestland zoning districts. We understand the Board may consider future amendments on this or any other issue if it chooses to do so, but signaling an intention to do so now will only fuel speculation in these zones. We do not support the Planning Commission recommendation for the reasons stated in number 6).

8) Given the timing of ordinance adoption; uncertainty around the number of applicants; and the time required to process and review applications, we support the necessity for some type of provisional permit approval. In addition to a completed application, payment of required fees, and an agreement to obey all laws, applicants for a provisional license shall also be required to submit a detailed plot plan, photographs of the cultivation site (including any expansion area).

9) For the same reasons that we support provisional permits, we also recommend that applicants be required to enroll with the State Water Board and apply for other required permits, but not be required to receive those permits as a condition of receiving a local permit.

10) Effective enforcement of this ordinance is essential. We recommend that the primary agent for enforcement of this ordinance shall be the Agricultural Commissioner. We recommend that the County identify and provide adequate sources of funding to the Agricultural Commissioner to assure that all required conditions are met and that those who fail to comply will be required to cease cultivation. The County must also identify a lead agency for enforcement of illegal neighborhood grow sites on a complaint driven or public visibility basis. Finally, the Sheriff's Office must be adequately funded to eradicate trespass grows on public and private lands. Effective enforcement may result in reduced impacts that will assist in the evaluation of what is needed in terms of additional oak woodland protection and grading.

11) We reiterate the necessity of collecting accurate data which, in addition to effective enforcement, will also assist in evaluating the need for changes to the regulatory program. We recommend that the County compile data, including but not limited to: the number of applications received and permits issued for each permit type, the number of permits per zoning district, the parcel size; the geographical distribution, and the number of applicants that fail to comply with conditions. This information is especially critical to inform the initial period of regulatory structure and enforcement protocol. We recommend an annual report on these features by the end of each calendar year, to enable timely modification and issuance of permits for each succeeding year.

12) Proof of prior cultivation shall be held in confidence by the County and shall not be used for any other purpose or in any other proceeding.

Approved on February 6, 2017 and authorized for submission to the Mendocino County Board of Supervisors by the following individuals and organizations:

Paul Trouette, President and Hal Wagenet, Secretary, Mendocino County Blacktail Association (MCBA),

Ellen and David Drell, Willits Environmental Center (WEC),

Casey O'Neill, Vice President, California Growers Association,

Traci Pellar, Mendocino Wildlife Association,

Allan Harris, Coastal Interests

Christopher J. Neary, Attorney

Hannah Nelson, Attorney

To: Mendocino County Board of Supervisors
From: Ukiah Area Rural Residential Concerned Neighbors
Re: Mendocino County Medical Cannabis Ordinance

Date: February 7, 2017
Cc: CEO, County Counsel
Cc: Chief Planner Mary Lynn Hunt

Dear Members of the Board of Supervisors:

We are neighbors in the eastern hills outside of Ukiah City limits. We live in the neighborhoods of Deerwood, El Dorado, Rogina Heights and Redemeyer Road.

We understand that development of new cannabis regulations is very complicated and the Board of Supervisors has been inundated with diverse opinions. Neighborhood concerns have been represented at the County meetings by numerous speakers with additional community members in attendance to show support. The negative impacts of commercial cannabis cultivation in residential neighborhoods has been well documented in individual letters and petitions from neighborhood groups that are included in the public comment file.

We bought homes in quiet residential neighborhoods so that we could enjoy living and raising our families in a peaceful environment. We now feel that we may be forced out of our homes, in some cases after thirty or more years of living in the same house in harmony with our neighbors because of the negative impact of marijuana operations in our area.

The defeat of ballot Measure AF was an overwhelming rejection of the idea that commercial marijuana cultivation ought to be a "principle permitted use" in virtually every zoning district in the county. We strongly support regulation of cannabis, which is long overdue, and we believe regulation must protect our neighborhoods from the harmful impacts that arise when commercial cannabis is grown in our residential neighborhoods.

Some of the Issues:
Loss of quality of life
Loss of property values
Safety
Home invasions
Drug traffickers
Guard dogs
High fences
Bright lights

Fires
Explosions

Based on comments from Commissioners, the Planning Commission understands that commercial cannabis cultivation simply does not belong in residential neighborhoods. Many in our community have asked for the elimination of commercial cannabis operations in RR5 and lower. We believe we clearly heard a majority of the Planning Commissioners advocate in favor of excluding commercial cultivation in RR1 and RR2, including sites with existing grows, and there was also some support for the exclusion of cultivation from RR5 and RR10, also for existing grows.

There was also discussion of creating "overlay zones" for specific neighborhoods (like Laytonville) where a less stringent standard might be consistent with existing conditions and the preference of the local residents. We support allowing exceptions to the rule for local communities where doing so makes sense. This allows the Planning Commission to provide direction to the Municipal Advisory Councils for determining the location of these overlay zones. However, the default position should be zero commercial cultivation in residential neighborhoods.

To reiterate, cannabis cultivation and production is incompatible with the rural residential zoning districts. A majority of Planning Commissioners have voiced support for the elimination of all cultivation on RR1 and RR2. Just because a neighbor may have previously tolerated a thoughtless grower does not justify allowing the situation to continue, especially when all the rules are changing and appropriate zones are being established for commercial cultivation. We strongly urge the Board of Supervisors to eliminate commercial cannabis cultivation in RR5 and lower for existing as well as future cultivation sites.

We believe the following points address the concerns of most residential neighbors:

1. Prohibit all commercial cultivation of cannabis, including existing grows, in RR1, RR2, RR5 and lower, which includes R1, R2, R3, SR, RC.

The elimination of cannabis cultivation in RR1, RR2 and RR5 and lower needs to be absolute and apply to existing as well as future operations. We believe that few, if any, growers on these smaller parcels have been growing in conformance to all the required conditions that have been on the books since 2010. Because they have rarely been "legal" and never could be, they are not entitled to any special consideration. A sunset clause is not acceptable and rewards illegal activity. Residents paying property taxes for 2, 3, and 4 decades, now need support to maintain the peaceful neighborhoods we have invested in.

2. Prohibit all *Indoor* commercial cultivation of cannabis in RR1, RR2, RR5 and lower on the same basis as discussed above.

Allowing or even encouraging indoor cultivation as an alternative to outdoor cultivation defeats the purpose of excluding cultivation in residential neighborhoods. Indoor cultivation presents all of the same threats to neighborhood peace and safety as outdoor cultivation, including the increased risk of home invasions. All of the other negative impacts, including decreasing property values and limiting housing availability, will still be present with indoor cultivation.

3. Prohibit commercial cultivation of cannabis (including existing) in *all* residential zones, including R1, R2, R3, SR, RC.

The focus of this discussion has been on Rural Residential zones, because these are some of the zones where future commercial cultivation of cannabis has been listed as allowed under the draft ordinance. Obviously, if it makes sense to preclude commercial cannabis cultivation in RR zones, it makes equal or greater sense to preclude it in Residential zones where the average parcel size is even smaller. New cultivation sites in these zones are already disallowed, and should be prohibited for existing grow sites as well.

In summary, we encourage the Board of Supervisors to separate commercial cannabis cultivation from residential neighborhoods so the neighbors can enjoy the safety and peace of their neighborhoods. Growers are farmers and should not commercially farm on residential properties. The growers can grow, but in more appropriate areas.

This will also have the additional benefit of preserving property values and housing availability in residential neighborhoods for families – not grow houses.

We strongly urge the Board of Supervisors to eliminate commercial cannabis cultivation in RR5, RR2, RR1 and lower.

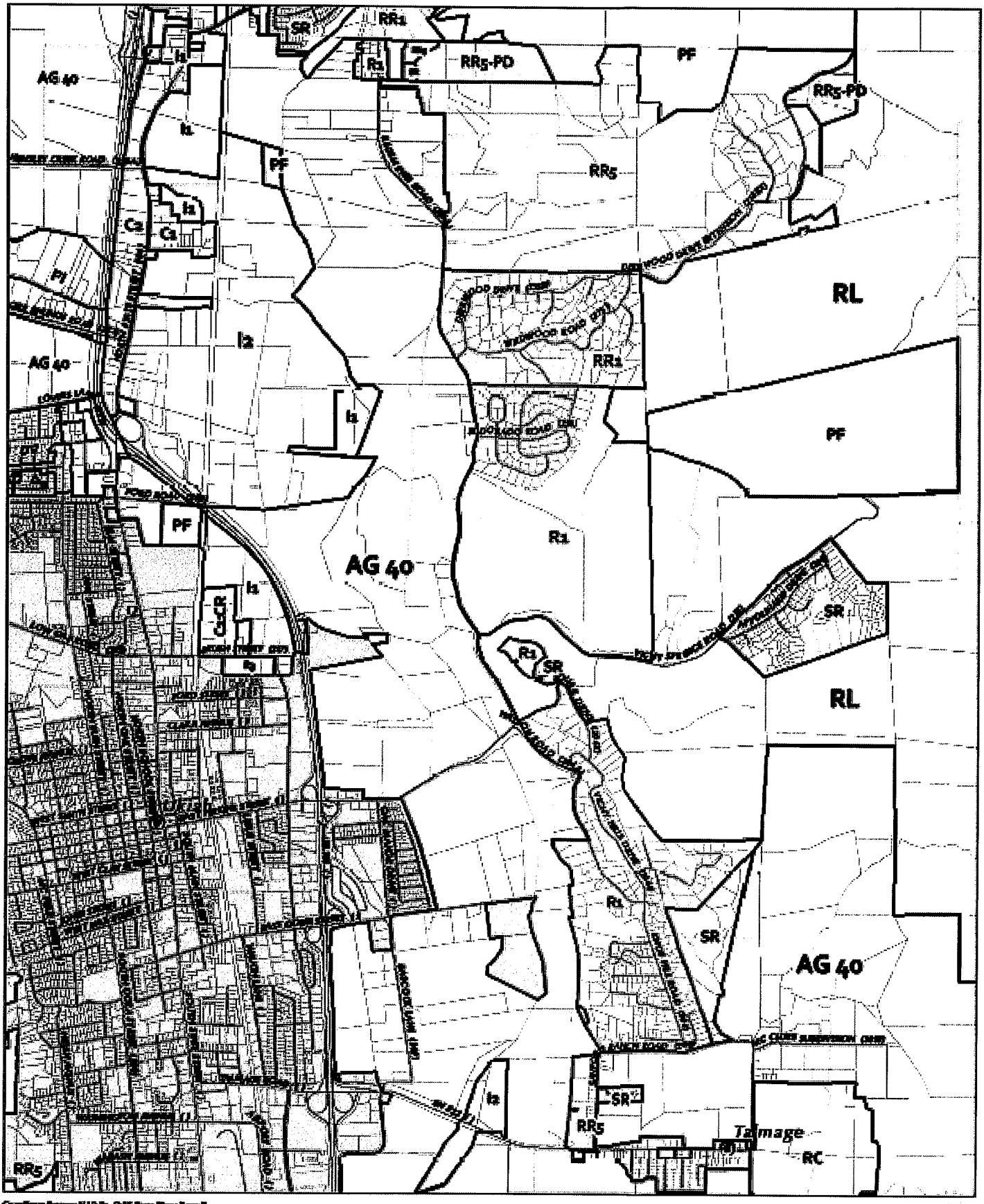
Thank you for your careful consideration of these very important points.

Signed:

Ukiah Area Rural Residential Concerned Neighbors

Todd & Misty Allenbaugh
Candie & Damon Dickinson

Bob Frassinello
Donna Mecca
Jerilyn Harris
Pat & Larry Hartley
Ted & Carole Hester
Evan & Gail Johnson
Marsha Little
Barbara McLean
Karen & John Moon



Major Towns & Places

Incorporated City Limits

Zoning Districts

0 1,200 2,400 Feet

0 0.2 0.4 Miles

EAST SIDE UKIAH ZONING DISTRICTS