

August 21, 2017

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To: Mendocino County Board of Supervisors  
[BOS@mendocinocounty.org](mailto:BOS@mendocinocounty.org)

Re: Proposed Changes to the Medical Cannabis Cultivation Ordinance

Dear Chairman McCowen and Members of the Board;

The following are comments of the Willits Environmental Center regarding proposed changes to the Medical Cannabis Cultivation Ordinance, specifically addressing the issue of “transferability”, tree removal and other comments. (Comments regarding “transferability” were also sent to you previously via email on 8-14-17.)

**“TRANSFERABILITY”**

The Willits Environmental Center Board has given considerable thought to the issue raised at last Tuesday’s Board meeting (8-8-17) regarding the “transferability” of the right to seek a permit to cultivate commercial cannabis in the RL zoning district to new owners. We urge the Board of Supervisors not to make this exception for existing cannabis cultivators now operating on RL for several reasons.

One of the goals of the Ordinance is to re-direct commercial cannabis cultivation away from RL (and TPZ and FL) and over time to direct future cultivation to more appropriate zoning Districts (AG, RR 10 and above and UR) where water availability is better understood and regulated, where development impacts to the environment have already occurred for the most part, where infrastructure is in place to serve the population such as roads, and utilities, and where access for employees, transport of product, inspections and monitoring would be easier and less costly and where access for emergency services such as fire protection would also be faster and less costly.

The Ordinance did however provide existing growers on RL properties the opportunity to apply for a permit and come into compliance with the new regulations. In addition, the Ordinance extended that right to continue growing in an otherwise restricted zone to descendants and family members indefinitely into the future. The purpose was to bring as many existing growers into compliance as possible. It was not to encourage or perpetuate commercial cannabis cultivation in the more remote, drier, less geologically stable harder to serve regions of the County. We feel that, in essence, to “transfer” this right with the property will undermine this important and environmentally justifiable goal of the Ordinance.

There also arises the issue of perceived fairness, which has the potential to upend some of the underlying justifications for the acceptance of the Mitigated Negative Declaration for the Ordinance, specifically the adoption of exclusionary zones. As the Ordinance stands, existing growers on resource lands (RL, TPZ, and FL) and their family members can apply for a permit and theoretically cultivate cannabis indefinitely. Now, however, some of these growers also want the additional benefit of passing this right on to any new owner of their property in order to capture the economic benefit, not just from prior and continuing cultivation, but also in selling the property. RL owners who did not grow cannabis prior to 2016 and cannot grow under the Ordinance are arguably now denied two opportunities for added economic benefit.

We understand the desire to make a good return on one's investment, including the investment in the permitting process. However, some of those calling for "transferability" may simply want to sell at the highest possible price now, before the market price for cannabis drops further as a result of legalization and regulation, yet while the window to cultivate during this current "grace period" without a completed permit is still open, and before the cultivator has fully invested in and completed the permit process. We caution against making changes to the Ordinance with possible broad ramifications and unintended consequences based on what may be a very narrow and short term interest for some cultivators.

We are presently recommending some less problematic changes to the Ordinance that might accomplish bringing more people successfully into the permitting process, address the legitimate economic fears of some growers who, though committed to the goals of the Ordinance, need some flexibility, while keeping the basic framework and environmental integrity of the Ordinance intact and on track.

The following is a summary of three avenues that we think are worth pursuing soon and vigorously. The Environmental Center is in conversation with some cultivator groups and individuals in hopes of coming together on some or all of these points.

1. Allow existing growers who are operating in zones (RL, TPZ, and FL), where new cultivators will not be permitted, a non-operation option (of one to three years?) without forfeiting the opportunity to apply for or renew a permit after that "non-operation" period. Not only would this give the farmer (and the cultivation site) an often much needed time-out, it allows the farmer to respond to family emergencies or economic circumstances that prevent her/him from operating the business for a period of time. This "non-operation" hiatus would also give the cultivators, and in particular the older cultivators nearing retirement age, time to evaluate their personal finances in the present market for both cannabis and rural property, how long they can continue to physically operate the business, and what options are best for them economically, all while retaining the opportunity to be permitted. (This may also ferret out those who don't intend to complete the permit process, but rather intend to sell while cannabis cultivation property is perceived to be more valuable than restricted properties. Please note that we do not automatically accept that property in zones where cannabis cultivation will not be allowed has "no value" or is even significantly reduced in value as claimed by some last

Tuesday. If there is a significant difference now, that difference could shrink dramatically over the next five to ten years as cannabis cultivation normalizes.)

2. We strongly support reducing certain fees and streamlining the permitting process for those growing up to twenty-five to fifty plants (<2500 to 5000 sq. ft.). Significant streamlining and fee reduction could arguably bring in enough additional permits applicants to balance the reduction in revenue coming into the County. It stands to reason that very small cultivators are less likely to harm the environment or tax the energies and resources of County administrators, code enforcers, planners and inspectors than larger operations. Lower fees and a streamlined process encourages more people to come into compliance who are currently concerned that the investment to get permitted, licensed and pay taxes is out of reach in proportion to their anticipated income. This may be especially true for cultivators nearing retirement who will not have very many growing seasons to recuperate their investment in a permit. It may also ease the urgency for those who feel the need to sell their property now, at the highest possible price because they neither have a retirement reserve nor can they afford to invest in the permitting process.

3. An alternate path for those cultivators asking to change the Ordinance so that they can sell their RL property with the right to apply for a permit attached would be for those cultivators to appeal to the County for a zone change to one where future cultivation by a new owner is allowed. We understand that this can be an arduous and time-consuming process. However, it does happen. We have studied the County zoning map for the Covelo area, and to some extent for Laytonville, the Spy Rock and Bell Springs areas. There are RL properties that are adjacent to and in some cases bounded on two or more sides to AG zones (especially in Covelo), and to UR zones, and possibly to RR 10 zones, where cultivation is allowed now and in the future. Some of these properties may have most of the attributes that make their neighboring properties suitable for cannabis cultivation. These properties might be good candidates for a zone change. In situations where several RL properties are clustered in an area and also have attributes comparable to UR parcels, the neighborhood may be a candidate for an “overlay district” similar to those areas being investigated by the County for RR5 and smaller parcels which are clustered together and where property owners share acceptance and support for cannabis cultivation. We encourage the County to invite and expedite appeals for zone changes in these areas as a way of furthering the goals of the Ordinance and accommodating the reasonable desires and economic expectations of the residents, while at the same time, as stated above, keeping the environmental underpinnings of the Ordinance and goals of the Ordinance “intact and on track”.

## TREE REMOVAL

We agree in part with Deputy County Council’s proposed language to clarify “lawful” tree removal for the purpose of creating a cannabis cultivation site prior to 5/4/17. However, tree removal for “defensible space” does not usually require the removal of all trees, or the removal of older taller trees which are providing a canopy, unless such trees are in close proximity to an inhabited structure. In the latter case, the presence of such trees would generally not be in conflict with a cultivation site. Therefore, we do not

agree that cutting trees to create defensible space should be a valid and lawful reason to cut trees for the purpose of creating a cannabis cultivation site. We recommend striking any reference to “defensible space” in the context of tree removal regulation for cannabis cultivation.

Further, we recommend that the Ordinance include language that makes it clear that tree removal after 5/4/17 to create a cannabis cultivation site is prohibited and will result in a permit denial.

We are open to discussion regarding fines and verifiable remediation measures for “unlawful” tree removal prior to 5/4/17 rather than automatic permit denial, depending on the extent of the environmental losses resulting from the unlawful tree removal. The clear definition of pre-5-4-17 lawful tree removal and the clear prohibition of post 5-4-17 tree removal could prevent further unlawful cutting, assuming the cutting dates can be accurately determined. The key, of course, is that these regulations are aggressively enforced.

#### REDUCED FEES

We fully support proposals aimed at making legal cannabis cultivation for the small family farmer in Mendocino County economically feasible. As we are all recognizing, this will be a challenge due to the falling price of cannabis in the Statewide marketplace that is accompanying legalization. We support many of the specific proposals brought to you by the small farmers regarding reductions in fees, changes to the tax structure, elimination of duplicate fees where the State and County have parallel processes, and the dramatic reduction of costs for co-operatives of very small farmers.

Specifically, we support a significant reduction or elimination of the nearly \$1000 fee for the “Mendocino-Grown”, sustainable label. This high cost, universally applied regardless of size, especially penalizes the smallest growers who are not only doing the right thing, but whose survival depends on the added value of this label.

Thank you for your consideration of these comments.

Sincerely,  
Ellen Drell, for the Willits Environmental Center