



**beck | law** PC

August 21, 2017

VIA email:

[bos@co.mendocino.ca.us](mailto:bos@co.mendocino.ca.us)

Mendocino County  
Board of Supervisors  
501 Low Gap Road  
Ukiah, California 95482

RE: Board of Supervisor Meeting August 22, 2017 and Agenda Item 5a

Dear Honorable Supervisors:

Our office represents many cannabis cultivators in Mendocino County, and we would like to provide feedback and public comment in response to the Board of Supervisor Agenda Item 5a set for August 22, 2017, as well as the attachments provided in support of that agenda item.

We understand and appreciate all of the hard work and dedication by the Board of Supervisors and other Mendocino County staff members toward local policy development and implementation of the cultivation ordinance. However, as with any new regulations, adjustments need to be made during the implementation process to work out issues that were not necessary foreseen when the ordinance was created. It is our belief that any changes proposed during the process should not impact the existing applications already on file that were submitted based upon the requirements in the ordinance adopted in May 2017.

The proposed amendments to the ordinance, relating to tree removal activities that occurred between January 1, 2016 and the time when the ordinance was adopted in May of this year, will be detrimental for local cannabis cultivators. As we all know, this industry is coming out of the shadows and into the light, resulting in inspections and extensive regulations by many different local and state agencies. During the inspections, operators will find they have inadvertently made mistakes during years of prior cultivation on their sites, and now the resulting issues need to be corrected. These

operators must be given the opportunity to restore their sites and proceed with local permitting and state licensing.

If the proposed amendments are adopted in the updated ordinance, we urge the Board to include additional language stating the following:

Any operators with a pending application shall not be subject to the new amended ordinance. Applicants with pending applications shall be subject to the language that existed in the ordinance at the time their application was submitted.

**Proposed Ordinance Making Certain Amendments to Chapter 10A.17 – MEDICAL CANNABIS CULTIVATION ORDINANCE**

**Section 6.** Section 10A.17.090 is hereby amended to read as follows:

**Sec. 10A.17.090 – Cultivation Permit Application and Zoning Review**

No application shall be approved which identifies or would require the removal of tree species listed in paragraph (l) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to January 1, 2016, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

**Comment:** After the ordinance was adopted, county staff held workshops for cultivators and encouraged them to come forward for permitting, despite any mistakes they may have previously made. Cultivators were told that this is the year of transition, and they will be given time to bring their operations into compliance with newly emerging regulations on both local and state levels.

Cultivators could not get local permits for commercial operations, and many of them unknowingly caused environmental damage while they improved their cultivation sites and starting preparing them for commercial operations before the ordinance was adopted in May 2017. Those cultivators should not be subject to a new requirement that is retroactive to a time before they submitted their permit applications. Many cultivators have been working on preparing their operations to be converted from a collective to a commercial model, and they have spent a significant amount of revenue to prepare their sites and comply with local ordinances and state regulations. Those operators should not now be forced to cease operations because the rules have changed, and now they are subject to a requirement that was not in place when they submitted their permit application.

Finally, it does not make sense to differentiate between trees that were unlawfully removed before January 1, 2016, and trees that were unlawfully removed between January 1, 2016 and May 4, 2017.

**Solution:**

Use this language instead:

No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site after adoption of the Medical Cannabis Cultivation Ordinance in May 2017, the County shall deny the application.

Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

**Addendum to the Mitigated Negative Declaration**

Due to the proposed changes in the ordinance, an addendum is needed to the Mitigated Negative Declaration that was adopted on April 4, 2017.

The Addendum to the Mitigated Negative Declaration ("the Addendum") includes language that states (under the last paragraph of the Purpose section on page 2) that:

In the case of AG-4, tree removal continues to be prohibited. The new language enhances the effectiveness of the mitigation measure by *clarifying the effective date of the prohibition and **definitively requiring permit denial if trees were removed after the effective date of the ordinance adoption.***

The proposed language in the ordinance does not match the information contained under the Purpose Section on page 2 of the addendum. The new proposed language in the ordinance requires permit denial, if any trees were unlawfully removed between January 1, 2016 and May 4, 2017, which was before the ordinance was effective.

The proposed ordinance should incorporate the same language this is contained in the Addendum, and *permit denials should only apply to those applicants that removed trees after May 2017, when the ordinance was adopted that included the prohibition for removal of trees.* This requirement should not retroactively apply to existing applicants; they should not be subject to denial of their permit for rules that were not in place at the time they submitted their permit application.

#### **Recommended Action by Staff**

Staff has recommended:

1. Adoption of Resolution Approving and Adopting an Addendum to the Previously Adopted Mitigated Negative Declaration in Compliance with CEQA and Amendments to Chapter 10A.17 of the Mendocino County Code;

2. Introduce and Waive First Reading of an Ordinance Making Certain Amendments to Chapter 10A.17 – Medical Cannabis Cultivation Ordinance.

We are concerned re: waiver of the first reading as that does not allow enough public feedback. There are many pending applicants that may not be able to obtain their permits based on the proposed changes to the ordinance and they should be given an opportunity to provide feedback.

#### **Agenda Item 4a)**

Finally, we would also like to comment on the attachment in support of Agenda Item 4a), which includes a **Proposed Letter to Secretary Laird with the California Natural Resources Agency** from the Mendocino County Board of Supervisors relating to recent enforcement actions by CDFW and Cal Fire pertaining to cannabis activities.

While we truly appreciate the county's recognition of the issues the cannabis operators are facing with regulations from so many different agencies, we are concerned that the county's focus is on protecting the "small sale cultivators who are in the permitting system" instead of all cultivators in the permitting system who are in compliance with your local ordinance as well as state laws.


Mendocino County Board of Supervisors  
RE: Mendocino County Cultivation Ordinance, Agenda Item 5a  
August 21, 2017  
Page 5

We recommend that the references in the sixth paragraph of the draft letter to "small sale cultivators" be changed to "all cultivators".

Finally, we strongly encourage all of those that are going through the regulatory process be given an opportunity to correct and restore any damages and move through the process, regardless of the size of their operation.

Thank you very much for your attention to all these issues.

Sincerely,  
Canna Legal



Daniel B. Beck, Esq.