Hannah L. Nelson
Attorney at Law

31452 Airport Road, Fort Bragg, CA 95437

(707) 962-9091 - hannahnelson@hannahnelson.net

Mendocino County Board of Supervisors October 3, 2017
Re: Agenda Item 5G on 10/3/17

I greatly appreciate the enormous amount of work that went into the Staff prepared documents. I also greatly appreciate the Board's leadership on refocusing the issues to see what is POSSIBLE rather than only what is not possible. As we proceed, I ask that the Board bear in mind:

The General Plan And Specific Policy Objectives Often Have Tension With One Another And Such Tension Does Not Necessarily Constitute A Significant Impact And Therefore Does Not Eliminate The Ability To Implement Specific Changes

In re-reading the General Plan, I noticed how many times there was a tension between specific proposals or policy goals and broader plan objectives. The way it was handled was to assess whether or not those differences created a significant impact that would change the EIR or not. In all cases listed, the tension was recognized and determined to not create a significant impact. There is no reason why that process (of determining no significant impact) cannot take place where tension may exist between the outdated General Plan and new specific policies to be pursued so long as the new policies serve objectives outlined in the General Plan, and so long as there is no significant impact.

With that in mind, in addition to the Commercial and Industrial Development Policies listed in the Staff Memo as support for the creation of Cannabis Facilities Ordinances, I would like the Board to also focus in on Community Specific Policies In Section 6 of the General Plan such as:

Anderson Valley: CP-AV 7, 8, & 9 where the local community policy was to *promote and encourage diverse agribusiness and agricultural endeavors as well as wine production and sales and local food production* and the County was to support that community in its efforts to enhance its efforts, *including the expansion* of such endeavors.

Covelo: CP C8, 9, & 10 where the expansion of the economic vision of Round Valley was of upmost concern and the policy of *encouraging the commercial and light manufacturing* uses were put forth.

Laytonville: CP-L6-9 where the County stated it would *support local industries which would maintain the rural and unique character of Long Valley and create job and sustainable economic development through light industry and the possible creation of a business park*.

The Board Should Carefully Scrutinize The Both The Zoning Issues and The Specific License Requirements To Ensure They are Necessary And Not Overly Restrictive

The Board should **commit to a General Plan Update** but in the mean time, seek methods to ensure that existing Plan Policies, even if there are some tensions with new proposed uses, can be creatively implemented in a manner that is upheld by the Environmental Report and supported by the various objectives stated that do support these kinds of activities. This balancing act must be done in a manner that does not create a de-facto prohibition on the activities in the areas they are needed most to keep this industry alive in our county. So, for example, in Section 20.243.050 (E) of the proposed ordinances, there is a list of General Limitations specific to the types of structures that can be used. **I ask you to review them**

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carefully and as yourself whether such limitation is actually necessary to achieve the goal and whether there are less restrictive ways to accomplish whatever goal it is seeking to protect. So, for example, why, when a temporary circus tent is allowed to be used for a month when it is in town, or serving a festival, **shouldn't a temporary tent or other temporary building be allowed during harvest** to process cannabis? Or why shouldn't a temporary building be rolled onto the appropriate property and then leave?

Specific Comments on the Staff Memo and the Language of the Proposed Ordinances:

Item 3 (c) (3), Staff Memo (p.4):

a) If Processing is an Agricultural Use Type, why must there be a Minor Use Permit in zones where Agricultural Uses are allowed?
b) I support the Planning Commission's recommendation for Zoning Clearances for retail.
c) Please remember that the State will not require that a Microbusiness conduct each and every activity that is allowed. I would respectfully disagree that in Industrial zoning manufacturing would HAVE to be the primary use, or even that it would have to have a single primary use. Someone applying for an Indoor cultivation permit could choose to have the cultivation be the primary use and the manufacturing could also be a primary use since it is zoned for either. If for example, someone in Industrial Zoning wanted to do both Indoor Cultivation And Manufacturing. Wouldn't they BOTH be primary uses in Industrially zoned areas, so long as separate permits/licenses were obtained?

Item 3 (c) (4), Staff Memo (p.5):

a) I applaud making provisions for processing grown on-site, but question whether it needs a separate license. However, as will be noted in a later comment, I fear severely limiting where Processing (which is very different than manufacturing) may occur will spell disaster for the permitting and licensing programs. Can we expand "on-site" to include neighboring licensed properties within a certain radius of the processing facility so that people can cooperatively process on one permitted farm and thus avoid the proliferation of infrastructure that would further impact rural lands.

Item 3 (c) (5), Staff Memo (p.5):

a) Please be sure to incorporate the State definitions that specifically exempts mature plant stalks from the definition of cannabis (under MAUCRSA) aand as such, the State has indicated that is will be revising the proposed regulations concerning waste disposal, composting, etc. (See, CDFA Comment Summary and Response to Public Comments on Proposed Regulations which was issued by CDFA last Thursday (9/28, so as to give some guidance on how the State is thinking as it withdrew the proposed regs under the Safety Act and is now preparing Emergency Regs under Maucrsa).

Item D (2), Staff Memo (p.6):

a) Home Kitchens are critical for the survival of the small cannabis businesses permitted and licensed in Mendocino County. This is even more true now that the CDPH stated that until the Legislature amends MAUCRSA, shared facilities will not be

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possible, which means, commercial kitchens shared by different permit or license holders will not be allowed under State law until the law is amended (see, CDPH Comment Summary and Response 9/28/17). I urge the Board to direct Staff to facilitate this necessary component of the licensing scheme. Farmers rely on value-added services such as production of tinctures, edibles, etc. in order to compete with cannabis businesses elsewhere who are allowed to grow 2-4 times as much as Mendocino County allows. The State will be regulating the edible industry in detail. There is no reason why if otherwise allowed as a home kitchen for a cottage industry; a home kitchen could not produce safe products.

Item D (3), Staff Memo (p.6): The Planning Commission understood how critical it is for local cannabis businesses to have provisional licenses. Contrary to Staff's claim that the State provisional licenses are predicated on local approval because "certain hoops" have been jumped through (and that somehow the State relies on the local government's hoops), the reality is that the State merely wants to prevent provisional licenses in locations where there has been a ban. In fact, the reason why the term "or other authorization" was inserted I the State provisional license prerequisites is because the State understood that not all jurisdictions had their full laws for permitting or licensing up and running. Additionally, there are plenty of "hoops" that the cultivation cannabis business has to jump through to get a authorization to cultivate while awaiting full processing of a permit. There is no reason why the same "hoops" (submission of the necessary documents, etc., cannot occur in the noncultivation arena. If compliance plans are possible there, why not here? **Our local businesses will DIE if they do not get a provisional license or "other authorization"** which will allow them to conduct business throughout the very lengthy process that they will surely endure with PBS, EH, and other Departments and agencies. If they don't have a means of operating or qualifying for a State provisional license (with proof of "other authorization" from the County), and later if they do not have a mechanism to prove good standing in such a way as to qualify them for priority processing (if that wills still be implemented at the State level), they will not survive.

Item D (4), Staff Memo (p.6-7): See comments to Item D (2), above.

Item D (5) Staff Memo (p.7): Administrative Permits related to Cannabis businesses already are being treated very differently by PBS. The level of review and even notice to neighbors goes far beyond what is indicated in writing regarding that process (which is in the discretion of the Planning Official). The time frame for obtaining a Use Permit (Minor or full), is tremendous. Add specific findings to the issuance of the AP, but please consider addressing the concerns you may have with respect to the issues that must be reviewed in the context of findings rather than a higher permit level.

Item D (6) Staff Memo (p.7): Please consider expanding this clarification to ALL existing cannabis businesses. There are several businesses that are licensed as botanical extractors or manufacturers that should receive the same benefit, together with the same requirements to meet the general limitations.

Item 5, Staff Memo (p.9), Conviction History: I strongly urge the Board to eliminate the criminal conviction review since the State will be requiring it no matter what. If, however, the Board elects to continue the background checks, then PLEASER comport with CURRENT State law and provide a mechanism to review the applicant's situation and allow for a

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determination that they need not be denied a license. If you continue with the requirement, it should mirror the State's process. Given that this ordinance will not become effective until November, it seems to make a lot more sense to remove the requirement and have the applicant 's criminal conviction screening and process to consider that it might not be a bar to licensing fall to the State.

Item 6 Staff Memo (General Plan Consistency (pp.9-11): I refer again to the comments made at the top of this memo regarding the fact that a natural tension between goals and the General Plan do not in and of themselves mean that the proposed use or expansion of activities in certain zoning is incompatible with the General Plan. Remember, many tensions did NOT trigger a significant impact.

Additionally, **Distribution should be allowed in Commercial zones without much ado**. On page 10 of the Staff Memo, General Commercial use is referred to as consistent with the General Plan's intent. **Section 20.024.005, which defines General commercial, INCLUDES Distribution**!

Processing should also be considered. If Utility Installations are allowed, and mixed uses are allowed in General Commercial, why not processing? Also, please consider LEVELS of processing. It is worth asking **what is specifically included in processing**. Perhaps there are **levels of processing that ARE appropriate to other zoning types**.

Comments on Language in the Proposed Ordinances:

6.36.010: Cannabis Facility Business License does not include Processing, but Cannabis Facility does. Also, perhaps further refinement of a processing location should be added since theoretically, a cannabis farm can have processing for cannabis grown on-site, but should not have to obtain a separate permit for such processing done on site.

6.36.030: Perhaps Microbusiness should not be its own category, but rather be a designation of one of the other permit types (much like how A will now be for Adult Use cannabis and M will now be for Medical cannabis). Since each separate activity licensed must have a separate license or permit, it makes more sense to have Microbiz as a designation if one is applying for a permit or license for an activity along with any other activities. At any rater, there should be care to not charge for permits or licenses already paid for. So, if one were to get a manufacturing and retail and cultivation license/permit as a microbusiness, would I be charged a speaparte microbusiness license fee even though I have to apply for and obtain separate manufacturing, retailing and cultivating permits/licenses?

6.36.060: I implore the Board to direct Staff to solidify a specific list of what will be needed (by an applicant in the application process. The roll-out of the cultivation permitting program resulted in inconsistent application of standards, changing rules, and a lot of confusion because these issues were not investigated by the various affected departments in advance of the ordinance. Of course, things will have to change and be modified. However, it seems that more information up front to the applicant would greatly help reduce everyone's stress and would more effectively bring candidates that were well positioned to carry out the obligations.

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6.36.080 (B): Please clarify that a separate cultivation permit violation at a premises separate from a non-cultivation license, even if by the same permit/license holder, would not constitute a violation of the non-cultivation premises license (unless the violation was in fact connected to that separate license or site) and vice versa (a violation at a retail store does not necessarily mean a violation at a cultivation site, etc.).
6.36.130 (B): Please clarify how much NOTICE does one get before the hearing? It is clear that there are 10 days after the hearing and before the Board makes a finding, but it is not clear how much notice is given before the hearing. Also, please be sure to exempt those that are acting in accordance with an approved Compliance Plan.
6.36.130 (C) (2): Please specify that a delay by the State in processing an application, or a failure to qualify for priority standing, which might then substantially delay a State license, does not constitute a basis for revocation.
20.243.030/ Microbusiness: Please include "and/or" (instead of just "and") before the word retailer and add processing into the list as well.
20.243.040 (B) (2) (a) (i): Please consider expanding the residency requirement to any owner of the business and/or family member of the owner(s) of the business.
20.243.040 (B) (2) (a) (ii): Please consider expanding to Type 1, 1B or 1A. The amount of raw material needed to make relatively small quantities of product is quite significant even though the "home" processes for the production can be quite safe.
20.243.040 (B) (2) (a) (iii): As stated above, there is no reason why a home kitchen that is separately permitted as a cottage industry food kitchen cannot be used.
20.243.050 (E): Please allow for non-permanent buildings to be used, especially in processing (where it can come and go in accordance with harvesting). Also please remove the cargo container prohibition. If you make the cargo containers an Ag Exempt building or in some instances, needing to be commercially permitted, there is no reason why they cannot be used. Other mobile structures should be allowed and encouraged to avoid overdevelopment in rural areas.
Table 1 (page 8): While it is true (and I hope the public remembers during public comment) that the chart does not include the processing allowed as ancillary to cultivation and the home manufacturing allowed under that criteria, this chart is still woefully inadequate to serve the cannabis businesses that need to conduct these non-cultivation activities. Please try to review the chart and see if there can be a judicious use of requiring Findings in an Administrative Use permit setting that would satisfy the need to ensure public health and safety rather than the extensive use of full Use Permits and the severe limits on the zoning that most activities are allowed in.

Respectfully submitted,

Hannah L. Nelson