



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

December 10, 2019

Re: Agenda Item 5f for 12-10-19 BOS meeting

Honorable Board of Supervisors,

The Mendocino Cannabis Alliance (MCA) has following comments on Agenda Item 5f. As always, we appreciate the opportunity to engage in this process.

Agenda Item 5f: Discussion and Possible Action Including Direction to Staff Regarding Recommendations for Phase 3 of Cannabis Cultivation Ordinance

MCA strongly encourages the Board to analyze the questions raised in the Staff Memo in the context of several important issues that have been discussed at recent Board meetings:

- **A continued pathway for legacy cultivation should be a priority.** Phase 1 enrollment has come in far below what we all expected and very far below the levels allowed for under the MND.
- **Phase 3 deserves another look.** Regulated cultivation is much further along than when 10A.17 was being conceived. The State has implemented its licensing and Track and Trace requirements and legislation has further strengthened resource agencies' oversight. Some of the concerns that guided a measured approach have not come to pass or have had unintended consequences, such as much lower enrollment rates, slower permit processing times and redundancy with state rules.
- **A new approach to local permitting is timely.** The Board has directed the Cultivation Ad Hoc should convene a review of the ordinance to align better with state regulations. Now is the time to look at the permitting program as a whole, given under-enrollment, stricter state regulations, and slow processing times.¹

¹ MCA appreciates and applauds the recent streamlining of the application and renewal process, but those improvements are still hamstrung by detailed requirements in 10A.17 that might, at this point, be redundant or unnecessary.

- **Further stakeholder input needed.** MCA is in the process of sending out comprehensive industry-wide surveys regarding all sectors of the county's cannabis industry with an eye toward obtaining data that can help inform a fresh look at the county permitting program. However, given the urgency of obtaining data regarding cultivation, MCA's cultivation-specific survey has been distributed so that real-time responses will be available for the 12/10/19 BoS meeting.

MCA is in the process of obtaining data from the cannabis industry to help inform a fresh approach to the permitting program. Below, MCA addresses specific issues related to Phase 3 that Staff are requesting direction on. However, first we outline a strategy for resumed enrollment for legacy cultivation.

1. RESUMING ENROLLMENT FOR LEGACY CULTIVATION

Bringing legacy cultivators into the regulatory system has been a priority since day one. We can assume that some factors that have contributed to under-enrollment are due to burdens imposed by the state. However, there are very likely barriers to entry at the local level that we can address that may bring fuller participation. With greater participation, we can achieve greater accountability, more revenue for the County, and fewer cultivation sites that are not regulated.

Suggestions to increase enrollment:

1. Re-open enrollment for legacy cultivation for all parcels that were eligible (zoning and minimum acreage levels), *including* parcels in "opt-in" Combining Districts but *excluding* parcels in any "Opt-Out" Combining Districts and parcels that were specifically subject to Sunset provisions;
2. Reframe legacy cultivation in terms of the land and not the person by changing "proof of prior cultivation" to be established for the land and not to only be proved by the person.²
3. Continue efforts to streamline the application and renewal process;
4. Continue Cultivation Ad Hoc work with Staff and Stakeholders to align the current ordinance with state law and remove unnecessary provisions now that state agencies have implemented licensing and resource control provisions;
5. Extend the time allowed for permit holders to come into compliance on various requirements such as building permits that match the type of use.³
6. In continuing to work on building permit solutions. MCA suggests 3 tracks simultaneously and requests that the Board set a schedule for whatever work is directed:
 - a. Building Official works with informed Stakeholders on additional solutions to building permit requirements (for all industries) that will not require changes in state Building Code;

² Now that transfer of permits from one person to another is possible, and since the baseline included all legacy cultivation locations, this should not impact the MND.

³ MCA is suggesting this across the board for all businesses, but the issue is particularly relevant for cannabis-specific uses because building codes were borrowed from other industries that do not accurately describe the cannabis-specific activity (such as trimming).

- b. Building Official works with Stakeholders and the newly formed multi-county consortium to present a change in interpretation of current use definitions to more accurately describe the actual activity being engaged in for trimming;
 - c. Building Official works with Stakeholders, the newly formed multi-county consortium, and the Counties' lobbyists to present specific state building code changes that address actual activities specific to the needs of rural communities.
- 7. Replace Administrative Permits and Use Permits with Zoning Clearances accompanied by site-specific questionnaires. This state provided option may be available to support a local jurisdiction's categorical exemption or MND where it determined no significant impact but did not conduct site-specific reviews.⁴

Summary:

We are nowhere close to reaching the baseline established in the MND. There shouldn't be ANY expiration of the enrollment for legacy cultivation parcels except for Sunset Zones and "Opt-Out" Combining Districts. By supporting an increase in permitted legacy cultivation locations, we will not only increase County revenue and spur economic growth with greater oversight, we will also brand Mendocino as an epicenter of sustainable heritage farming.

2. PHASE 3 PARAMETERS

Expansion - In recent months, as the issue of expansion, both for legacy cultivation sites and for new cultivation sites has been raised, MCA has heard arguments for and against expansion. Both arguments have merit. Since there are strong opinions and nuanced positions taken by different components of the industry, MCA has issued a survey that will help provide data to better inform these issues. The survey will provide information on how many cultivators are for or against expansion and preferred size limits; whether legacy and/or new applicants should be included; whether the current supply chain benefits from expansion; and whether those wishing to expand have secured a market for their current and expanded production.

Rangeland -MCA strongly advocates for inclusion of Rangeland in Phase 3. We are nowhere near capacity for Rangeland under our MND, so it may not even be necessary to amend our MND. However, even if an amended MND is found to be necessary, it is important to continue to examine utilizing of RL zoned properties if we want fuller regulation of cannabis cultivation. Crops are an appropriate use for RL. In the past, the argument has been made that new cultivation is more appropriate on Ag zoned property than it is on RL. However, as stated in

⁴ It is our understanding that site-specific questionnaires have been a pathway presented by the state to local jurisdictions to fulfill CEQA requirements where the local jurisdiction has not conducted a site-specific review in their Environmental Review document and/or where a categorical exemption has been claimed. Currently, BCC has applicants fill-out such site-specific questionnaires in those circumstances. It is our understanding that a similar pathway and some alternative pathways have been presented to local jurisdictions. If this is true, then a site-specific questionnaire together with the existing MND may be sufficient to satisfy CEQA instead of reliance on APs and UPs.

prior memos, strict state testing requirements for cannabis makes native soil farming on Ag land less feasible since residues from non-cannabis farming frequently cause cannabis to fail testing.

3. CANNABIS SHOULD BE TREATED AS AN AGRICULTURAL CROP

A number of problems would be resolved if the County redesignated Cannabis as an Agricultural Crop. Not only would there be greater parity for our local cannabis farmers with non-cannabis farmers, but we would avoid potential red-herring arguments that involve government regulating cannabis greenhouses differently from non-cannabis greenhouses, or that somehow, in relation to land-use issues that cannabis as a plant being produced is different from another crop being produced.

Conclusion:

Re-examining our cultivation regulations at the local level with an eye toward getting greater participation by: allowing the state to carry the burden of intense regulation; reopening the availability of legacy cultivation properties to enter the regulated system; providing a longer compliance period for things like building permits for the types of uses that have not been accurately defined in local and state building codes; and applying the same standards for zoning as is applied to non-cannabis agriculture, would be sensible at this time and we urge the Board to help achieve success for regulated cannabis in Mendocino County.

Thank you for your consideration and for the opportunity to comment on these important issues.

Mendocino Cannabis Alliance