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March 22, 2020

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

Re: Agenda Item 5b: Hemp Pilot Program Discussion and Possible Action Including Introduction and Waive First Reading of an Ordinance Adding Chapter 10A.18- Industrial Hemp Cultivation Pilot Program to the Mendocino County Code (Sponsors: Agriculture and County Counsel)

Dear Honorable Supervisors,

MCA recognizes that, in this time of an extreme health crisis with the COVID-19 pandemic, the Board and county staff face far more urgent calls on your time and resources than any particulars related to hemp or cannabis. We recommend postponement of this Pilot Program until the resources necessary to implement properly are available. However, when you do proceed with the Pilot Program, we ask that you consider the specific recommendations we propose in this memo.

Our recommendations regarding hemp cultivation in Mendocino County are based on the firmly shared appreciation of the branded value of Mendocino cannabis and our common desire to support that value in gaining wider recognition.

### **No Safe Distance Practicable In Mendocino County**

According to a 2019 article by James DeDecker at the Michigan State University College of Agriculture & Natural Resources, "Industry experts recommend a minimum distance of 10 miles between outdoor cannabis fields. Research has shown that pollen can travel much further than 10 miles, but the amount of pollen transported decreases logarithmically with increasing distance from the source. Therefore, the risk of pollination should be negligible beyond ten miles from a pollen source."<sup>1</sup>

This proposal does not include a minimum distance requirement. In fact, as a practical matter, it would be difficult to impose a distance that is sufficient to protect against pollen drift.

State Cannabis testing requirements are necessarily stringent to protect public health. Drift and leaching could cause contamination of cannabis in a manner that could cause test failure.

Cannabis crop loss due to seeding and failed testing is a known and real risk. Given that there is no minimum distance requirement for location of hemp producers relative to permitted cannabis farms

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<sup>1</sup> <https://www.canr.msu.edu/news/weighing-the-risk-of-cannabis-cross-pollination>

in this proposal, MCA recommends additional measures be included in the program and that strict implementation be enforced.

## **Recommendations**

**Testing Standards.** Currently cannabis cultivation undergoes among the most stringent testing requirements of any agricultural commodity in any state, and Mendocino County is known for having exceptionally clean cannabis products. We recommend applying those same standards and require that all hemp is tested in accordance with cannabis standards before it is allowed to be sold. This critical public safety measure is necessary to protect against pesticides, mold, heavy metals, and other unsafe substances. Additionally, this ensures that Mendocino County's cannabis brand quality is not diluted due to hemp produced here not meeting the same quality standards.

**Organic Cultivation Methods And Inputs Disclosure.** In keeping with the highest quality and environmentally responsible standards to which MCA members and much of our community strive to adhere, we suggest that hemp cultivators be required to grow all hemp organically, thereby minimizing the intrusion of chemical and other unhealthy products into our soil and the hemp supply chain. Additionally, hemp producers should be required to provide a complete list of inputs being used so that detection of the presence of substances that could affect California cannabis testing are flagged.

**Size Requirements.** Given that the minimum parcel size is 10 acres, and due to the expert care required to inspect and accurately identify the presence of male plants or branches, we believe the maximum acreage of hemp production per project should be 5 acres.

**Hemp Inspection Qualifications.** Identifying unwanted horticultural intruders in any agricultural field is challenging, even for those intimately involved in their plants and growing processes. Successfully roguing all male plants and branches in a cannabis hemp operation is nearly impossible. Pollen from male cannabis plants and/or branches on female plants exhibiting hermaphroditic tendencies is extremely likely to occur and go unnoticed during inspection. It is often a single branch in an obscure location. The largely held belief that cannabis is a dioecious plant species (having separate male and female plants) is not botanically accurate. The Canadian Hemp Trade Association states that "Hemp can be either of the dioecious type or monoecious type.... Prior to flowering, the sex of the plant is indistinguishable except for some general trends in growth habit." Large hemp fields raise the risk of male cross-over infestation. The county's proposal for a hemp pilot program calls for frequent inspections. At the point that these actually occur, we strongly urge you to contract with a knowledgeable cannabis cultivator to carry out these inspections. The stakes are too high and the task is extremely difficult to assign it to anyone not familiar with cannabis cultivars.

**Zoning and Land Use.** This current pilot program proposal indicates that hemp production would be allowed in any zone in which row and field crop cultivation is allowed, where the parcel size is more than 10 acres. This would include Rangeland, Forestland, and Timber Production Zones, where installation of new cannabis cultivation sites is currently prohibited, even at the maximum canopy size of 1/4 acre allowed in the county. Allowing hemp production in these zones, perhaps at scales 10 or more times the size of that allowed for cannabis with far less environmental compliance requirements, could easily and quickly have a far more dramatic environmental impact on our county than the entire cannabis program.

**Cannabis Crop Loss Presumptions.** Given the known risks of seeding and contamination through drift and leaching, hemp producers should potentially shoulder the crop loss of permitted

cannabis farmers within a certain distance of a permitted cultivation farm. We recommend creation of a rebuttable presumption of causality that creates a private cause of action where:

- The hemp cultivation is located within ten (10) miles of permitted cannabis cultivation.
- The cannabis plants or products have been seeded or failed California cannabis testing when the presence of a substance not used by that cannabis producer has been detected.
- The presumption could be rebutted by evidence demonstrating that drift, water leaching, or other process of contamination did not in fact cause the seeding or test failure.
- Nothing in this provision would create liability for the County or an obligation for the County to assert a claim on behalf of a permitted cannabis cultivator. However, the County would assist the permitted cultivator by providing inputs data and detailed inspection information.
- During a private cause of action, the hemp producer within 10 miles of the cannabis producer may introduce alternative causal evidence to rebut the presumed causality of the seeding or test failure.

**In Summary**, the majority of our members and the community more broadly share deep concerns that Mendocino County is not an appropriate place to introduce hemp cultivation. We therefore advocate for sensible regulations to accompany any pilot hemp project in order to assess the viability of hemp cultivation in our county while protecting our cannabis farmers from the irreparable and irreversible damage that could occur.

While the concept of hemp production for a wide variety of purposes is attractive and laudable, such production may be better suited to locations that don't have an existing, high quality, high value cannabis industry. Our county might be better served by enacting an ordinance (nonemergency) prohibiting hemp production for another year..If a Pilot Program is enacted, we urge the Board to also enact stringent requirements and ensure the resources for effective enforcement are available.

Thank you for your careful consideration,

MCA



