



August 7, 2017

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

*Via email: bos@co.mendocino.ca.us*

RE: Board of Supervisor Meeting August 8, 2017 and Agenda Item 5a

Dear Honorable Supervisors:

Thank you for considering and addressing issues that have arisen during the implementation of Phase One of the Mendocino County Cultivation Ordinance. Our office represents many cultivators in Mendocino County with permit applications pending with the county. For many of our clients, the transition from patient collectives to commercial operations has been a leap of faith. Some of the latest proposed changes to the ordinance could have devastating impacts to many applicants. We urge the Board to find solutions that will work for all interested parties, especially cultivators who are trusting the government as they come into the regulated cannabis marketplace.

Since first starting to develop the cannabis policy, the message from Mendocino County to promote cooperation and to help ensure that operators follow best management practices for cultivation, bring their sites into compliance and obtaining all necessary permits. During the ordinance implementation process, the county held several workshops where county staff confirmed that the county would work with existing cultivators to bring their properties into compliance with all of the new rules and regulations. Cultivators relied on those representations when they applied for permits to cultivate in Mendocino County. Some of the proposed changes to the ordinance could challenge the spirit of cooperation and compliance.

Ultimately, we hope the county will adopt policies that will continue to encourage operators to come forward and process their permits while mitigating any environmental issues onsite and promoting health in safety. With that in mind, we highlight various issues of concern and propose solutions for the Board's consideration.

### **Issue: Tree Removal**

During the July 18, 2017 meeting of the Board of Supervisors, the Board directed staff to clarify Chapter 10A.17's prohibition on tree removal. The prohibition on tree removal stated in Section 10A.17.040(I) would remain unchanged. Section 10A.17.090(T) is proposed to be changed as follows:

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. 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, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

### **Concerns**

While the issue of tree removal should be seriously addressed, many operators have been confused about their rights and obligations regarding tree removal prior to the cannabis ordinance. Policy should promote compliance and encourage mitigation of potential environmental effects; rather, than prohibit cannabis permitting and punish for previous actions. What is the motivation for operators to improve their land if they are excluded from the cannabis permit process? The public and environment would be best served by a policy that encourages operators to repair the land and work with agencies to mitigate potential issues onsite.

For operators currently in the permitting process who previously removed trees, the county should promote compliance and mitigation of any issues onsite. We encourage the county to draw a bright line at May 4, 2017, the date the cannabis ordinance went into effect, for the prohibition of tree removal.

Throughout the ordinance the date of January 1, 2016 delineates prior cultivators from other operators. However, that date has become less and less important with the

continued developments of state law. The date MCRSA was effective should not be the hard and fast line for all future policy, especially since the recent Senate Bill 94 repeals MCRSA. For the issue of tree removal, this could not be more important. For example, an operator that held a 9.31 permit in 2016 now has a permit pending under the new ordinance. That operator was not cultivating prior to January 1, 2016 and removed trees in early 2017 without a timber conversion permit. The operator is willing and able to work through the process of mitigating the environmental issues onsite, but under this new policy would not be able to get a permit.

The tree removal requirement has not been clearly relayed to operators, and many applicants are not aware that their pending permit is in jeopardy based on the proposed changes to the ordinance. This requirement was not clearly relayed during any county or state workshops pertaining to cannabis cultivation, and operators have no idea of the severe consequences for any such activity.

Operators have paid their permit fees, set up gardens, hired staff and have demonstrated a willingness to comply with local and state rules and regulations. Some of these operators may have removed trees before the ordinance was enacted, and now their entire operation is at risk because the county wants to establish new rules and based on arbitrary dates. Please do not punish operators by precluding them from participating in the permitting process because they made mistakes during a time when local and state rules and regulations were changing rapidly.

### **Recommendation**

We urge the Board to adopt the alternative language as follows:

After May 4, 2017, no application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

### **Issue: Permits/Code Compliance Remediation Plan**

Staff has proposed to modify Section 10A.17.100, subparagraph D to:

- clarify and amend the remediation plan requirement to specify what it is, how it is formed, and how it may be used; and
- removing language that may have been interpreted to limit this paragraph to violations discovered only during the “pre-permit site inspection”;
- clarifying the language to explicitly make this paragraph apply whenever a code violation is known to exist prior to an issued Permit for an entity in the application process.

- Clarify the remediation plan will be the primary mechanism to obtain code compliance for entities in the application process, but such process does not prevent the county from using other tools, i.e. administrative citations; and
- Clarify timelines for remediation plan and who has authority to dictate those timelines and authorize extensions.

### **Concerns**

Similar to the tree removal issue, our primary concern is the county's application of new rules and changes to existing rules that would impact operators with pending applications. While rules and regulations for cannabis operators are consistently changing, applicants deserve to have some surety that the original ordinance provides them guidance.

### **Recommendation**

Please clarify these issues while not impacting the pending applications and allow for operators to develop and execute a restoration plan, if required. Also, please allow for an extension if additional requirements are included in the revised ordinance.

### **Issue: Enforcement**

County counsel has proposed changes to Section 10A.17.140 as follows:

- Amend code enforcement provisions based on changes to role of third party inspectors;
- Clarify that an administrative citation may be issued at any time a violation is discovered by the county;
- Identify explicitly the reasons a Notice to Terminate may be issued, other than one already listed.

### **Concerns**

We are concerned about the second point presented regarding the ability to issue a violation at the point of discovery. The county has created a process for coming into compliance and operators should be given notice and opportunity to correct any violations onsite prior to being issued a violation.

### **Recommendation**

To encourage compliance, we urge the Board to require notice and opportunity for corrective action prior to issuance of a violation.

Additionally, our clients have ongoing concerns they desire the Board to consider.

**Request for Review: Please Allow Entities to Obtain Cultivation Permits**

The Mendocino County Medical Cannabis Cultivation Ordinance Section 10A.17.020 defines “person” as “an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.” Under Senate Bill 94, state law defines “person” in the same language for the purpose cannabis licensing. Therefore, both Mendocino County and California State Law allow for-profit business entities to apply for commercial cannabis permits and licenses.

This policy is extremely beneficial during the transition of cultivators from not-for-profit patient collective to commercial enterprises. As allowed by Mendocino County and state law, operators should be allowed to obtain permits as for-profit entities with a member or owner included as the responsible party for the permit. Given the prohibition on transferring permits in Mendocino County, this issue is of immense importance to many of our clients.

This period of transition requires flexibility and foresight, which the county has embraced by allowing for-profits to apply for and obtain cultivation permits. While current operations must remain not-for-profit until temporary state licenses are issued, our firm has established practices and agreements to assist operators in navigating this transition. We urge the county to continue to allow operators to set up business structures in anticipation of state licensing.

**Recommendation**

Please direct staff to allow entities to apply for and obtain medical cannabis permits in Mendocino County, so long as a member or owner of the entity is the responsible party on the permit application.

**Request for Review: Allow Greenhouses as “U” Occupancy Classification**

Over half of the pending permit applications were filed as mixed-light greenhouses, likely due to the increased productivity in greenhouses. Given the increased productivity and large number of pending mixed light cultivation permits, mitigating costs for greenhouse operations is imperative. Without greenhouses, operators will generate less medicine for patients, less revenue, and therefore less taxes for the county. It is in the best interest of operators and the county to promote and support the use of greenhouses.

If the county classifies greenhouses as factories or processing structures, the costs for building and system requirements are exponentially higher than if the county were to determine that greenhouses qualify as agricultural buildings. For applicants that propose only cultivation activities inside the greenhouse, with no processing in the

greenhouse, the building should be permitted as a Group U occupancy. For the obvious reason that proposed greenhouses are for growing plants, this policy makes sense for operators as well as the county. Additionally, by classifying greenhouses as agricultural structures, the county can avoid requiring costly sprinkler systems for greenhouses.

**Recommendation**

Please allow greenhouse structures, with only cultivation activities inside, to be classified as agricultural buildings in Group U occupancy.

**Request for Review: Proof of Prior Cultivation**

By nature, cannabis cultivation is very transient. Gardeners may grow on one property then move to another the next year. The policy should be to encourage permitting of applicants and compliance for as many cultivation sites as possible. While we understand the county's desire to restrict expansion of new cultivation sites in Phase One of permits, we urge the Board to allow proof of cultivation to be more fluid.

**Recommendation**

Please allow applicants to prove cultivation for themselves and proof that the property was also cultivated on prior to January 1, 2016. Essentially, the applicants should be allowed to "marry" proof to demonstrate prior cultivation.

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

Sincerely,



Julie Mercer-Ingram  
Attorney