



Hannah L. Nelson
Attorney at Law

31452 Airport Road, Fort Bragg, CA 95437

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

MEMO FOR AGENDA ITEM 5A August 8, 2017
RE: BUILDING ISSUES

Dear Honorable Supervisors:

First, I would like to thank Mr. Mike Oliphant for taking an enormous amount of time to speak with me regarding a variety of issues pertaining to the Building Codes and the permitting process. He has indicated a strong desire to implement the Board's direction to be practical and flexible while maintaining adherence to necessary safety issues as well as state regulatory constraints. **Unfortunately, perhaps due to understaffing, the Department has only addressed specific issues directed by the Board to be addressed and has not undertaken a summary of the other potentially viable solutions to two separate problems.**

Drying Sheds/ Ag "Exemption"

The first problem is whether buildings used for drying only or other limited purposes may be Ag Exempt. Mr. Oliphant has partially addressed this by suggesting a change to the Ag Exempt Permit program. It is worth noting that **the suggested change still requires a permit and does not exempt the applicant from obtaining one**, something that may or might not be ideal. Humboldt County for example, has chosen the route to exempt from permitting Ag buildings, but then has restricted the zoning where that can occur. **The pros and cons, as I understand it, are that exempting a permit may relieve the County of enforcing Accessibility laws for commercial structures. The exemption would not alleviate the person's requirements under accessibility laws, but would take the County out of the position of enforcement of those laws.** I am not sure why there was a limitation of which zoning could allow for Ag Exempt buildings. I do not know why the proposal here is to still require a permit. How is it an exemption from a permit if we still require a permit? It seems that if we retain that feature of the proposal, we might not be releasing the County from its responsibility of enforcing accessibility laws.

Additionally, **as proposed, the language would not work to even cover the limited circumstances of only drying structures.** Item number 1 specifically limits the application of the provision in two ways that could prevent usefulness in the context of commercial cannabis operations: First, the structure must be **"designed and constricted primarily for use in housing livestock, poultry, hay or grain..."** **Aside from the fact that drying cannabis does not fit into those design and construction purposes, something that can easily be amended to change hay to plant material, the question is whether a shed constructed for another use could now be used for this purpose?** Then second limitation in item 1 is that the structure be **"located on a parcel of land that is currently zoned or primarily used for agriculture and/or growing of plants."** **Unless one is zoned Ag, is it possible to have a primary use for agriculture and/or growing of plants? If one is on UR, isn't the primary use still residential?** Finally, on item number 2, would **drying or dried cannabis be considered to be storage warehousing of processed products?** Doesn't it make sense that secure structures that could safely store already dried, and maybe even store already processed cannabis should be utilized to their potential? Why create more development of an additional secure storage facility? Most cannabis is not sold all at once but in batches.

Is the Ag Exempt Permit only temporary? Item number 13 of the proposed policy seems to indicate that. If so, why was the proposed policy reduced from a 3-year temporary period in the original policy, to a 1 year period now? It seems that if we are going to try to give people a reasonable amount of time to undertake a non-exempt building, we need to give more time. Also, **what kind of non-exempt building needs to be in place by the end of the period?**



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Other “Ag Exempt” Structures?

The second problem is the issue of **greenhouses, hoop houses, processing or trimming structures**. With this second category, there may be a **need distinguish between those structures that serve the public, those that don’t serve the public but have employees and those that neither serve the public nor have employees**.

Before we limit Ag Exempt to only drying sheds, grain and hay storage and livestock or poultry housing, it seems we might want to analyze whether any other category of structures could be included. What about Hoop Houses? If “no employees” is the issue, what about any structure used in cultivation, drying and processing that does not have employees? Why in Item number 5 in the proposed policy are commercial greenhouses, trimming and processing excluded? Finally, does Item number 6 refer to add-on to an existing structure or additional structures?

Other Potentially Helpful Avenues To Pursue:

1. Grant 180 Days Instead of 60 Days to Submit Plans

Mr. Oliphant was very helpful and very direct in his desire to find out what barriers might exist for commercial cannabis permit applicants. I told him that modifying the suggested policy of delayed submission of plans from the initial staff recommended 60 days to 180 days could help while we sort through these other issues. He seemed to favor that modification.

2. Changes/Clarifications to Hoop House Policy

In speaking with Mr. Oliphant it became clear that a few items that folks might believe are an impediment by the way the current policy is written are not really impediments at all, but the policy does not inform folks fully of the allowances. For example, **there is apparently an allowance for UNDER 50 volts of electricity**. Making this known could alleviate a lot of people’s fears that they cannot use hoop houses for minimal light to keep plants in a vegetative mode in the Spring before planting them outside. If we can add language to the written policy that informs folks of that exemption, it may allow more people to come forward with commercial cannabis permitting knowing they can still use little florescent or LED lights under 50 volts. Likewise, apparently, some folks have established **pedestal outlets outside of the structure and have also kept fans in the doorway just outside the structure, something that is not prohibited but may not be understood as a permissible technique**.

3. Tents and Membrane Structures

During my meeting with Mr. Oliphant, we utilized a number of reference books and manuals he has. In one of them, Chapter 31 (Section 3103) of the California Fire Code (2016) was visible. After seeing it, I asked if Tents or Other Membrane Structures could be employed. After all, circuses, events, and other situations call for use of tents and membrane structures even with the use of electrical cords. **In fact, the code section seems to EXEMPT all tents and membrane structures under 400 square feet from any permit or fire marshal requirements.**

4. Cargo Container Policies

An updated Cargo Container Policy for use in a commercial operation should be written. The County has a very old cargo container policy (#3) for personal storage, but none for commercial or business use. There should be a distinction between cargo containers that are used solely by the owner of the commercial endeavor versus that which might be used by employees. There also should be a distinction between uses that involve electricity (again, is 50 volts exempt for separate permitting?) and those that do not. It seems that there may also be a useful distinction between temporary and permanent cargo container facilities. In drafting any policy, please distinguish between use for simple commercial storage (no employees), use for simple dry shed (no employees), use for drying with limited electrical (no employees), use for processing (no employees), use for growing (no employees) and all of those categories with employees. Please also distinguish between requirements under the fire code, building code, and/or accessibility laws. So, for example, a permanent cargo container that has been midwived to include a second safety door (so people can’t accidentally get



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locked inside), might or might not require engineered plans. According to Mr. Oliphant, they do not necessarily require a foundation, but might require a flat area and a base rock or gravel on which to set it. Whether it needs a separate electrical permit is probably dependent on the 50 volt threshold. The point being any new or modified policy should be specific and clear and should give examples if possible.

5. Trailers and Other Structures on Wheels

This category is not so much relating to building permits, but perhaps relates to cross-over issues for Business Licenses and Code Enforcement/Land Use issues. For the most part, things on wheels do not require a permit from PBS. DMV, HUD and other state agencies may govern things on wheels. However, I believe that the County has rules regarding itinerant businesses (food trucks or other mobile facilities) and the storage of movable trailers, etc. Perhaps a review of existing rules touching on both mobile facilities and storage and use of otherwise mobile facilities at a particular location (on someone's property) should be looked at as another creative path forward?

6. What Happened to the Undue Hardship Analysis for Commercial Facilities?

Still outstanding is the question of WHEN can the "undue hardship" analysis apply to facilities? If greenhouses with employees or processing facilities with employees cannot find an exemption or a creative alternative solution, then we still must break down exactly WHAT are the accessibility requirements and whether we can treat unpermitted structures as existing or not for purposes of application of that analysis. We still don't have a good explanation of why the analysis cannot be used for NEW construction (in case we still must treat existing unpermitted structures as new when they apply for a building permit), but at the very least, we should see if we can treat unpermitted existing structures as existing when they come in to get permitted and how the undue hardship analysis might apply.

6. Can We Create Fact Sheets With The Commercial Building Requirements?

In looking at the PBS Handouts on the website, I could not find any list of requirements specific to commercially permitted structures. It would be helpful for people to know what might be required up front. Separating out building code requirements from accessibility requirements and distinguishing between facilities that serve the public and those that don't (and further distinguishing between those with employees and those without if applicable) would be helpful.

In short, as with Environmental Health, there may be a need to dedicate more resources to trouble shoot these issues and move forward on more than one front. There are many policies and perhaps regulations to pursue modifications of. A working group should be established and be given assistance and proper resources to keep these issues on the front burner. If we do not come up with timely, practical solutions, the commercial cannabis permitting system will fail and will bring our local economy down with it.

Thank you for your careful considerations of these issues.

Respectfully submitted,

Hannah L. Nelson