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MEMO FOR AGENDA ITEM 5A August 8, 2017
RE: MCCP/Deputy County Counsel's Memo

Dear Honorable Supervisors:

In addition to a request for you to carefully review the detailed Memo I prepared and submitted for the last Board Meeting, (7/18/17), I ask that you consider this Memo which addresses items brought up in County Counsel's Memo for the 8/8/17 Board Meeting.

Item 1. Permits/Code Compliance Remediation Plan: The suggestions seem reasonable, but the devil will be in the details. Without a draft of the proposed language to look at, it is difficult to comment on practical impact of the proposed changes. So, for example, it will be of critical concern to know the specifics of the remediation plan requirements and especially, "how it may be used."

Item 2. Revisions to Application Process: **It will be critical to the success of this change, if it is to be implemented, to ensure that PROPER and COMPLETE information is given at the counter!** I have had multiple clients report to me that they were told that even if they are only applying for an Administrative Permit, all of their neighbors will be notified (something that I believe is not usually the case except in rare instances and certainly for Use Permits), and many have been told it will taken "at least 9 months" to process the Administrative Permit and were then asked "are you sure you really want to do this?" Even at the Ag Department, where everyone is trying very hard to be helpful, inaccurate information is disseminated (for example, regarding the need to have a Streambed Alteration Agreement (not always applicable even though people are being told they MUST have it), or people are dissuaded from using the consultants they have hired already (which would be fine if all of the changing regulations at the local and state levels were fully understood by all staff, but that is just not the case and can have serious ramifications for people later). **In a perfect world, this approach (see PBS first) would have made sense to begin with. However, now, with the Department so far behind, not always forthcoming with accurate information, and sometimes even downright dissuading, there is a danger that further delays in getting SAFE from law enforcement (by filing an Ag Application as soon as practicable) might be jeopardized**. I recently had an instance where I included specific helpful and timesaving information in a cover letter to PBS (with an Administrative Permit) and the Planner receiving it at the counter REFUSED to look at it, even when my client explained that it contained information relevant to their inquiry and that it might save them time later. **Given these instances, I am skeptical that the change in process would do anything other than dissuade people from getting their Ag Dept. application turned in. Perhaps a simpler method would be to provide a more comprehensive list of what might be required UP FRONT.** Last week, people started getting letters from PBS stating that they now, after 6-8 weeks after having submitted their applications to PBS, needed to provide either an archeological study or a check to Sonoma State University for $75 for research as to whether an study would be required in order for their application to continue to be processed. As far as I know, this is not a new requirement, but has always been in place and yet, NOWHERE was it listed in the existing checklist provided to cannabis AP or UP applicants regarding what would be needed. **Maybe a better idea is to have the Cannabis Unit Manager staff the Cannabis Unit with someone who can be an expert and liaison to provide potential applicants with comprehensive checklists based on a review of all County Department requirements, together with the current (emphasis on *current* since they are changing) State requirements related to specific State Departments such as CDF, F&W, SWRQCB, Accessibility Laws for commercial and non-commercial structures, and all other relevant issues pertaining to criteria for eligibility AND compliance under the County's Commercial Cannabis Permitting Program?** Both comprehensive and accurate information is challenging for the potential permit applicant to obtain. Potential applicants should be able to discern the

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myriad of compliance and regulatory issues they will be voluntarily signing up for (often without a mechanism to no longer be held to account for them even if they withdraw from the commercial cannabis permit program. If Staff wishes people to not rely on consultants or the **County otherwise wants to ensure applicants know what they need to do, providing comprehensive information that is accurate in one forum is the single most helpful thing that the County can do.**

Item 4. Tree Removal: **All unauthorized tree removal prior to the ordinance passage date should be eligible for the remediation plan**. To this day, there is a lot of misunderstanding about when timber removal permits are required (apart from cultivation or no cultivation). It is literally through this ordinance that many people are first learning of ANY requirement for a timber removal permit. Many people believed that if it was on their property and they were not selling it, they could cut it down, especially if they were not zoned TPZ or FL. During the development of the ordinance, there was a huge concern that if we provide no path for previously unauthorized tree removal, we would severely limit the number of applicants and hence, have fewer people get into compliance This was of such concern, that it was a specific topic of the Coalition that came together just before the passage of the ordinance. The Coalition letter was specifically conditioned on the understanding that prior unauthorized tree removal, whether for a cultivation area or not, was remediable and would NOT prevent an applicant from obtaining a permit. This was true especially since in many instance, there might have been prior unauthorized tree removal by a different person! . **Remember, there are still CDF consequences regardless and in fact, the way CDF is learning of these prior unauthorized tree removals and able to seek consequences is through the cannabis permitting process. If we exclude everyone who had prior unauthorized timber removal, after 1/1/16, none of those people would bring any of their properties into compliance and CDF, F&W, SWRQCB and othr agencies, including Code Enforcement, would become aware of them and require that they remediate, and come into compliance with a variety of issues.**

Item 5. Multiple Permits on One Parcel: **The proposed presented is NOT consistent with Board direction**. Specifically, the Board decided that so long as the maximum size limit per parcel was not exceeded, applicants could **mix & match as many growing *styles* as they wanted to provided, however, that any requirements particular to a growing style was also adhered to in addition to the maximum square footage for the parcel**. Even if Nursery Permits are recognized as additional and separate permits that are permissible as a second permit on the same parcel (and the maximum canopy was, in that instance, limited to 22,000 square feet if combined with a traditional cultivation (up to 10,000 sq. ft.) permit (something that seems inconsistent with the maximum density of 1 permit per parcel), the remaining (up to 10,000 sq. ft.) "traditional" cultivation permit should not require separate permits for separate styles and as written, the proposed change would require someone to use up two separate permits for the "regular" (non-nursery) cultivation if they wanted to do mixed light and outdoor. Additionally**, it would prevent someone from being able to do all three cultivation styles (mixed light, outdoor and indoor)**. **There is NO REASON to not allow all three so long as requirements for each style are adhered to and the total canopy does not exceed the legal limit for the parcel. It is also ridiculous to require separate permits for that kind of mix and match of styles. Requiring a separate permit for a nursery is reasonable, but there is no good reason to require separate permits for a combination of growing styles on the same parcel.**

Item 6. (B): Qualified Patients: I have two strong concerns regarding patients. I believe that proper protocols are not in place to safeguard protected medical information in the requirement of patient registration. Also, I am concerned that the language (throughout the ordinance) regarding medical patients refers only to "identification cards" and not to recommendations. It should not be necessary to obtain a state medical Cannabis ID card in order to exercise one right to medical cannabis cultivation for personal use. A valid, up-to-date recommendation should be all that is required. Finally, there is so much confusion about not only the

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different local rules (medical personal, adult use personal, commercial medical, and probably later, adult use commercial), but also the State law that it seems like a recipe for disaster to have different requirements at the local level than the State level. We have already seen this year a raid that was conducted because law enforcement thought that plant count was still the determinative factor. Why not simply and follow State law?

Item 7. Proof of Prior Cultivation: **We should allow Prior Cultivation to be proved independently by the cultivator and for the property**. So long as the dual purposes of adhering to our Environmental Assessment and protecting local, Mendocino County farmers are accomplished, there is no reason to disallow proof of prior cultivation by the local grower to be proved independently of the proof of prior cultivation of the property. Not only is it unfair to renters and others that have had to move sites over the years, and as such constitutes a social justice and low-income parity issue, but it is also unfair to property owners who have a long history of cultivation in Mendocino County but have moved sites to more environmentally appropriate sights, or sites with better zoning. **The proposed change to require place the burden on the applicant to prove that a cultivation site was or could have been in compliance with a setback requirement is not only impractical (how does one prove it might have been in compliance?) but is contrary with the goal of getting everyone into compliance NOW.** The relevant issue is whether people are in compliance or can get into compliance NOW. Proving proof via satellite images is not always practical, especially for grows that were hidden in trees. How is one to demonstrate this "might have been" in compliance with requirement?

Item 9. State Felony Requirements: additional changes ARE needed regardless since the ordinance contains a prohibition on current felony probation or parole even if it is unrelated to that which might be prohibited at a State level and even if the term of the probation or parole does not prevent the potential applicant from obtaining a commercial cannabis permit. It is imperative that we follow the will of the people of the State of California and use the provisions enacted as part of the integration of the MCRSA and AUMA. It is worth noting that places like Oakland are creating INCENTIVES for victims of the War on Drugs to apply for permits, and for permit holders to get priority based on hiring War On Drugs Victims. Instead of looking to preventing applicants who would otherwise be eligible for a State license, we ought to concentrate on a reparations program of our own to incentivize Victims from the War on Drugs to apply for permits.

Item 10. Relocation and Extinguishment of Prior Cultivation Site: While I appreciate the interpretation that there is no prohibition on moving "to" (see last word of 2nd to last line of this item in CC's memo), my original question was to ensure that there was no limitation on where one can relocate FROM. So, can one who is zoned UR, and not subject to the sunset Provision, still extinguish and transfer to a properly zoned parcel?

Item 13. Additional Issues: In addition to the remaining items addressed in my 7/18/17 Memo, I ask that the Board discuss and provide direction to Staff to present a draft of some specific basis for denial of a permit AND to develop an Appeals Process for such denial.

For your convenience, I have resubmitted my Memo from 7/18/17.

Thank you for your careful considerations of these issues.

Respectfully submitted,

Hannah L. Nelson