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Date: August 8, 2017

To: Board of Supervisors
From: Chantal Simonpietri, Environmental Consultant

Subject: MCCO 10A.17

Dear Honorable Board Members:

Thank you for your continued efforts to create, implement, and finetune cannabis cultivation regulations for Mendocino County. I submit the following comments as an environmental compliance consultant to the cannabis industry in Northern California, a former 9.31 Inspector, water resource specialist, and Mendocino County resident.

My comments can be grouped into two sections:

1. Legislative Process and recommendation of an Advisory Council,
2. Issue-specific recommendations for the current MCCO.

Advisory Council

In general, I am in support of the traditional legislative process, whereby regulations are drafted by staff, submitted for comments to the public and other agencies, then refined, passed and implemented. However, in the case of the MCCO, I have witnessed an impairment to the true legislative process in several ways.

First, this ordinance was deliberated and considered by a fraction of the elected Supervisors for our County population. Specifically, having only 3, rather than 5, elected representatives developing the Ordinance, led to an Ordinance that lacked the benefit of educated input from more voices, particularly those of two significant districts in which a large percentage of cultivators reside and do business.

Second, the process by which public comment is heard, and in particular, responded to, is stifling to the commenter. A 3-minute in person opportunity to speak on complex matters is insufficient. And, submitting letters is antiquated, time consuming, and lacks back and forth dialogue that allows the submitter to be heard or to hear why a particular point cannot be advanced in accordance with their position.

In witnessing the Board deliberate on public comment, county counsel or agency recommendations, I have felt frustrated and disappointed. I trust in the representatives that I have elected, yet I have witnessed significant issues not be taken up by the Board, or taken up and misunderstood, with the public having the least amount of opportunity to clarify what they were attempting to share.

The magnitude of permitting cannabis cultivation in our County is significant and tremendous. The breadth and depth of economic, cultural, and environmental effects, foreseen and unforeseen, warrant a slow, methodical, intelligent, and open dialogue between citizens, scientists, cultivators, and lawmakers.

As such, I am strongly suggesting that the forum for the deliberation and refinement of the existing MCCO be within a space that allows for a more free sharing of information and opinion, with increased input from more voices, than allowed in the traditional Board meeting / letter submission / 3-minute comment approach.

Therefore, following in the steps of Sonoma County, I recommend that Mendocino County create an Advisory Council. The Advisory Council would be comprised of 12 to 20 Mendocino County residents selected to provide a “diverse perspective on the impacts of cannabis and cannabis regulations and to provide information and feedback to the County for developing, amending, and funding local cannabis programs and policies.” (Sonoma County Government website) Residents with special insight into or expertise in the cannabis industry or an impacted field such as education, health care, neighborhoods, environment, tourism, or real estate, would apply and be appointed for a term of 2 years, with an appointed facilitator. The goal of the Advisory Council could be multi-fold, with a primary goal of amending the MCCO.

Issue-specific comments for the current MCCO

1. Conditional Permits and Non-Violation Verification.

- a. **Conditional Permit:** Conditional Permits will create an opportunity for cultivators to qualify for a state license next year by providing a statement of operational authorization. A compliance timeline could be attached to this authorization, that would be flexible and subject to extension on a case-by-case basis.
- b. **“Not in Violation” verification:** The County will need to provide CDFA verification that a cultivator is not in violation. The Conditional Permit can include language that specifically identifies whether a county permittee/conditional permittee is in violation or not. Building or environmental permit issues, should not count as a violation.

2. Proof of Prior Cultivation.

- a. Due to the fact that many cultivators have moved from one farm site to a new one, Proof of Prior Cultivation should be with the cultivator. The site for which the applicant is seeking permission should be allowed to provide proof of prior cultivation that may not have been cultivated by the applicant.
- b. Applicants should be able to utilize a previously cultivated upon parcel for purposes of proof of prior cultivation regardless of whether the prior parcel met 9.31 or MCCO setback requirements. The intent of the ordinance to is invite and encourage existing farmers to cross over into legal cultivation. Requiring that their proof of prior cultivation meet setback requirements established later in time, is an impediment for many potential applicants. Proof of prior cultivation should remain simply what it is, proof of prior cultivation, and not be further conditioned.

3. Tree Removal.

Changing the date of tree removal from the date of passage of the ordinance to Jan 1, 2016 places a retroactive standard upon an un-knowing, but willing to comply, group of cultivator applicants. The standard of how many trees and under what circumstances needs to be more clearly defined. Allowing permits but requiring evidence of mitigation on site would be more equitable and achieve sound environmental practices and protections.

4. Road Easements.


No other type of business faces the requirement currently being proposed that commercial operators obtain neighboring property owners approval as a condition to permitting. Increasing communication among neighbors on a shared road, creation and updating of road maintenance agreements, and creation of road associations, are better avenues toward sound road policy that requiring cultivators to obtain neighbor consent.

5. Third Party Inspectors.

As a current TPI applicant and a former 9.31 Inspector, I recommend that the Third Party Inspector role be removed from the Ordinance for multiple reasons. (i) It is a conflict of interest for a TPI to also be a consultant. (ii) Having TPis conveying information in the place of the lead County Department on this program, creates a conflict of authority and confusion. (iii) TPI inspections of cultivators burdens cultivators with additional costs that are unnecessary. (iv) In reality, TPis are functioning as consultants, have been, and will continue to do so.

6. Regional Water Board.

Water Board – I request that Lead agency please be clear moving forward as soon as possible on whether or not applicants need to apply to the Regional Water Board for a Discharge Waiver, or wait until the State Water Resources program is finalized and activated. I suggest that the Agriculture Department utilize already developed Best Management Practices for cannabis cultivation as guidelines for permit compliance in lieu of requiring Regional Water Board enrollment, and wait for the state program. As it is, Regional Water Board enrollment in many cases will not address environmental impacts during this coming rainy season. Enrollments submitted today would have 180 days until their Water Resources Protection Plan needs to be completed, and timelines for implementation can be pushed back several years. This leaves minimal protections and practices in place for the first rains of this fall which can be the most impactful for streams with sediment delivery.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.