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Mendocino County Board of Supervisors May 11, 2019
501 Low Gap Road
Ukiah, CA 95482

Re: May 14, 2019 Cultivation Ad Hoc Report/Recommendations

Dear Honorable Supervisors:

Thank you for taking the time to consider the issues and recommendations brought forth by the Ad Hoc Committee. As we consider these issues, please bear in mind the important motivations for further refinement. At this juncture further change is necessary to help effectuate a local regulatory scheme that balances the desire of oversight and resource protection with the need to preserve the economic lifeblood of our communities in a way that helps local craft cannabis businesses survive, and hopefully thrive, during these difficult initial years of a complex regulatory scheme statewide. Please remember that our maximum (flowering) cultivation permit type is a Small license type at the State level.

Please also remember that issues that are being recommended for further research or are presented for further discussion should be afforded an opportunity to be flushed out and brought back before the Board soon. If they are tabled and not prioritized for followed-up, critical components of a regulatory scheme that supports efficacy in resources by encouraging small operators to locate in enterprise zones and work through cooperatives, could be too little too late.

Previous Board Direction: Support Staff Recommendations for these areas:

- Definition of License Types- I strongly recommend we align our definitions with the State's, but I understand that Staff is concerned about the amount of work it would take to accomplish such alignment. I fully understand and support Staff's request to not engage in such an overhaul at this time, but would ask that the issue be brought back at a later time. While some current State staff members have come to understand the differences in our definitions, the State continues to acquire new staff and we perpetually have to reorient them to the differences in our definitions.
- Generators- I support an extension of time, but would also recommend that the Board ask for and accept informed and well-reasoned proposals for an updated proposed ordinance change with respect to generators. Specifically, I would request that those that have a desire to work on an updated proposal concerning generators be given a date by which proposals would be accepted by Staff and the Board, at least six months prior to the expiration of the extension, so that new proposals with supporting information can be considered. The generator policy was not revisited at any time in the past three years and was initially proposed by then Ag Commissioner, Chuck Morris, in 2016 without much input from experts or the community. I request that development of these proposals be coordinated with local environmental groups such as WEC and local cannabis business and policy groups such as MCA.

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- Tiered Nursery Permits- I support the recommendation but would request an additional Tier for a cottage Nursery, sized up to 2500 square feet, on any parcel where cultivation is allowed (even under 5 acres) if no on-site sales occur at the location. There are cultivators who can diversify their income stream through Nursery sales. Since immature plants do not smell, it seems that the main concern for Nursery activities on smaller parcels might be the impact from on-site sales. Creating an opportunity for cottage Nurseries without on-site sales could provide an avenue of diversification for local craft farmers.
- Industrial Zoning- I fully support the recommendation to the extent it adds these additional permit types on Industrial zoned property. However, since our ordinance already has an odor control requirement, it seems unnecessary to Currently, the ordinance allows for Mixed Light in Industrial zoning. To downgrade that authorization and to increase the expense for those farmers by requiring greenhouses rather than hoop houses seems unnecessary. At the very least, please consider a two-year transition period for existing permit holders (or those with valid Phase 1 embossed receipts). Not only would that give those farmer the time to afford the changeover, but it would give sufficient time for the building permits to be processed and the building to be constructed. I have clients for whom it has taken nearly a year to have their greenhouse building permit processed and issued and then, because for the timing and weather, it took another 8 months to have the buildings finaled.

Staff Recommended Clean-up Language: I support all efforts to conform to State law and I certainly hope the proposed changes would improve internal consistency or simplify the administration of the ordinance. I will look forward to review of the proposed changes.

Ad Hoc Recommendations for Ordinance Amendments:

Phase 3 Use Permits- I support this recommendation with the understanding that a full exploration of alternatives to a full Use Permit process will be engaged in by Staff. Specifically, my recommendation is that Staff utilizes the checklist/inquiry that local jurisdictions are in the process of negotiating with the State to fulfill MACURSA CEQA requirements as the basis of the process required for Phase 3. So, if there is a checklist or additional inquiry that will be conducted by the County in its application review or pre-permit inspections that have incorporated the State CEQA requirements for current permit program participants, why not utilize that as the basis of a future Phase requirement rather than overburden our systems with more Use Permits? I have proposed the same idea to Staff as it relates to coastal zone ordinance proposals.

Phase 3 Start Date: I respectfully request that any delay in the start of Phase 3 contain an exemption for cultivators that were either renters or owners who had proof of cultivation on a different parcel within the County prior to 1/1/16. In some instances, renters have been shut out of the permitting process because they did not own the parcel they previously grew on and therefore could not avail themselves of the extinguish and transfer option. Likewise, landowners who were long-time County

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cultivators who happen to sell there property prior to the passage of our ordinance and purchased property that was being sunsetted, or the parcel otherwise did not meet the ordinance that was developed subsequent to their departure from the initial property (such as when a parcel creation was not recorded prior to 1/1/16 and therefore would not constitute a "legal parcel" under the ordinance), and, there were cultivators who could no longer afford to purchase new property that could be used in an extinguish and transfer program. In each of these instances, these folks have been waiting for Phase 3 to open. It seems that to make these exceptions would serve a social justice purpose (particularly for renters) and would support those that have been patiently waiting for a lawful opportunity when they had the bad luck of not knowing the very specific limitations our ordinance would contain in the years before it was passed.

Transferability in RL, FL, and TPZ: I strongly support this recommendation.

Transferability in Other Zoning Districts: I strongly support this recommendation so long as it also does not require and Administrative or Use permit. I would also recommend making clear that transferability in "other zones" includes accommodation zones that have been created for the allowance of cultivation.

Limited Extension of Sunset Period: I strongly support this recommendation and suggest that the Board define "within proximity" to encompass a certain distance or radius fro the Coastal Zone. I also strongly support the development of Cannabis Enterprise Zones. I respectfully request that the development occur with coordination with the Economic Development Ad Hoc as well as cannabis business and policy organizations such as MCA.

LiveScan: I strongly request that the County mirror the State on this issue. Specifically, the State only requires LiveScans for Owners, but broadens the definition of Owner to include those who may not own a percentage of the business, but that have management and control over its operations. Owners under the State definition own 20% or more of the business or have management and control. There is no need to LiveScan each employee when **the Applicant and all Owners are legally responsible for all acts of the business**, the **applicant has agreed to indemnify the County**, and **no other regulated industry or profession requires fingerprinting of every employee or worker**. Specifically, Contractors must be fingerprinted but their employees do not. Insurance Agents must be fingerprinted but their employees do not. Even the California Department of Business Oversight, which regulates and conducts oversight of financial services (banks, brokers, etc.) limit the persons who must be fingerprinted to (a) Applicant; (b) general partners, officers, directors, and persons owning or controlling directly or indirectly, 10% or more of the outstanding interests or equity securities of the applicant; (c) other key persons involved such as managers/members [in this context LLC managers/members], trustees, any other officers with direct responsibility for the conduct of applicant's lending activities, and the persons who will be in charge of the place of business. (See, DBO-CFL- 1550). As an attorney, I had to be fingerprinted when I was licensed and then again all these years later, just recently. My employees, if not attorneys, do not have to be.

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My recommendation is to remove the employee requirement and align our definition of Applicant/Owner to MAUCRSA's: 20% or more ownership in the entity/business and/or Management and Control over the business operations.

My further recommendation is that initial LiveScan is done at the County level and then annually, the applicant and Owners must submit proof that they conducted the annual State Livescan requirement with CDFA.

I would not leave it to the discretion of the District Attorney to determine whether annual Livescans for employees or Applicant Owners are necessary. The Board was intent on eliminating the need for additional discretionary review that would necessarily come with due process rights. No annual LiveScans should be required and Applicant/Owners should be able to provide proof of their annual CDFA LiveScan having been conducted.

Social Equity Programs: I strongly support this recommendation and again suggest that development is done in coordination with existing cannabis business and policy groups such as MCA.

Issues Presented for Discussion Without Recommendation From The Ad Hoc:

Rangeland: While I support the practical approach of avoiding a clash with the Mitigated Negative Declaration, I believe that a requirement for discretionary review, through an Administrative or Use Permit (depending on size and style) could offset that concern and would also allow for careful review of the appropriateness of the specific Rangeland being proposed as a cultivation site. The impacts would be weighed. The fact is that Agriculture is a legitimate and codified use for that zoning in our codes. There seems to be little sense in prohibiting cannabis cultivation on such lands when any other crop may be grown without limitation on Rangeland.

In addition to residential, civic and other accessory uses, Sec. 20.060.010 allows for the following permitted uses on Rangeland:
(C) Commercial Use Types (See Chapter 20.024).
Animal sales and services—horse stables;
Animal sales and services—kennels;
Animal sales and services—stockyards.
(D) Agricultural Use Types (See Chapter 20.032).
Animal raising—general agriculture;
Animal waste processing;
Forest production and processing—limited;
Forest production and processing—portable sawmills;
Horticulture;
Packing and processing—limited;
Packing and processing—winery;
Row and field crops;
Tree crops.

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So, while a healthy respect for our Mitigated Negative declaration is appropriate, it seems antithetical to the conservation of resources to prohibit highly regulated cannabis crops that are subject to intense environmental regulations and still yet allow higher impact uses, such as animal waste production, or horticulture and row and field crops that can be much larger than 10,000 square feet. **Wouldn't the intense regulatory control over water use and quality, and fish and wildlife that permitted cannabis farmers are subjected to be a greater mitigation towards protecting Rangelands than allowing those lands to be used for the uses listed that don't have the same level of environmental scrutiny**? At the time we passed our ordinance, there were not yet the intense environmental rules in place at the State level. Now there are and they are being enforced. **With respect to protecting against visual impacts, I am in full support of any regulation that would apply equally to every industry, and not just cannabis.**

If Rangeland zoning s not opened up for Phase 3, then the County should provide re-zoning clinics where staff will review an applicant's parcel to determine whether it would qualify for rezoning. We all know that the county has many parcels are not zoned properly, or where rezoning could be appropriate. The County does not want to have to go through a General Plan Update where examination of the appropriateness of zoning could occur. Given the Agricultural uses that are allowed on parcels that are currently zoned as Rangeland, it seems that a review of specific parcels for appropriateness for rezoning is something that the County can help facilitate. I am recommending a preliminary review for appropriateness, and I am NOT suggesting that would in any way circumvent the regular rezoning application process. Rather, it would allow applicants to have some notion of the feasibility of rezoning their parcel without first having to hire an expensive land use consultant. If there was such a pre-screening clinic, then applicants could know whether it was worth pursuing through the normal channels.

<u>Ad Hoc Recommendations for Further Research</u>:

Cooperatives: I strongly support this recommendation and further request that this issue not be put on the back burner. The Economic Ad Hoc, Staff and local cannabis business and policy organizations such as MCA should begin to collaborate on concrete solutions to enabling the establishment and growth of cooperatives. The subtopics cut across many areas: land use, state law changes to MAUCRSA's newly created Incorporated Cannabis Cooperatives (currently the restrictions greatly limit the functionality of cooperatives and do not help them achieve the economy of scale that would most benefit regional cooperatives in Mendocino County), public/non-profit partnerships for technical assistance grants to help small farmers, tax incentives, etc. This work is crucial to the preservation of Mendocino County as a craft cannabis-producing region.

Permits Per Entity: While I appreciate the intent behind this topic, I caution that care must be taken to not accidentally prevent informal cooperative agreements (since the state currently has limited the ability of persons with more than one Small state license from participating in a cooperative and prevents the cooperative from having

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members that hold more than a cumulative 4 acres in licenses) from proceeding. Right now, the only economy of scale is for our small craft producers through formal coops that currently have the above-referenced limitations, or through other contract/business relationships. Given that our farmers have a maximum cultivation right of 10,000 square feet and they are competing with other state license holders that have a much larger scale, we want to allow our farmers to enter into relationships that support one another. It is also generally a dangerous path to try to regulate business intent rather than an act or failure to act. With that said, I understand the concern this topic was intended to address and wholeheartedly agree with the promoting Mendocino County as a small craft farmer region. Rather than attempt to limit contracts where it could have unintended negative consequences for our small farmers, we should be spending the effort on measures which will promote and support the small craft farmer in our region.

Secondary Memo Re: Tree Removal:

I support the recommendations but ask:

1. Would care be taken to ensure that the elimination of the initial parcel in example one not eviscerate the “legal parcel” status of the parcel if the initial parcel was used as a part of a legal parcel?
2. Given our recent fire tragedies, should we revisit language to ensure exceptions to the tree removal prohibition for good forest practices of thinning and fuel breaks?

Thank you for all of your hard work and for consideration of these issues.

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