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

November 4th, 2019

Re: Agenda Item 5C 11-5-19 BOS meeting

Honorable Board of Supervisors,

The Mendocino Cannabis Alliance has reviewed the following agenda item and respectfully submits these comments. As always, we appreciate the opportunity to engage in this process.

Agenda Item 5c
Discussion and Possible Action Including (1) Adoption of Resolution Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission, Consisting of an Amendment of the Mendocino County Coastal Zoning Code (Title 20-Division II of Mendocino County Code) (OA_2019-0001) to Establish a Coastal Cannabis Cultivation Ordinance (Chapter 20.537) to Govern the Cultivation of Cannabis and a Coastal Cannabis Facilities Ordinance (Chapter 20.538) to Govern the Commercial Processing, Manufacturing, Testing, Dispensing, Retailing, and Distributing of Cannabis in the Unincorporated Areas of the Coastal Zone of Mendocino County and (2) Review of Proposed Corresponding Changes to Mendocino County Code Chapters 10A.17 and 6.36 to Add References to the Proposed New Chapters 20.537 and 20.538 (Sponsor: Planning and Building Services)

To ease topic density, we have broken our comments into two main sections: Cultivation and then Facilities. We first follow the Staff Memo and then the detailed California Coastal Commission letter (Exhibit H) regarding Cultivation and then repeat that format for Facilities.

I. COASTAL CANNABIS CULTIVATION ORDINANCE

A. Staff Memo

1. (Item a): We are in full support of the removal of the setback from an access easement.

2. (Item b): We request removal of the January 1, 2016 date to mark whether a parcel is a "legal parcel" for purposes of the coastal cultivation ordinance. Every single cultivation application will be subject to discretionary review and there is not a "proof of prior" cultivation required under the proposed ordinance. More importantly, the process of obtaining a coastal lot line adjustment or creation of a new parcel in some other manner may be considerably longer than the creation of a legal parcel inland. Finally, the CCC letter seemed to indicate that a more appropriate date would be the Coastal Act or Conservation Act.

3. (Item c): MCA continues to advocate to keep the 2-acre minimum parcel size. However, if any increase of minimum parcel sizes is made, it is imperative that the possibility of a reduction is available to coastal cultivators.

    a. ***The Tiniest Cultivators: 2500 Sq. Ft.***
    Changing the minimum is unnecessary because of the discretionary review process. The CDP and CDU process provide an avenue for input by affected neighbors and the ability to require reasonable conditions to address any concerns that arise. Coastal zoning codes restrict development to 15% of a 2-acre parcel, or .3 of an acre. If allowed to fully develop a 2-acre parcel, a different applicant for a CDP (such as a hog farmer or lavender farmer) would be allowed to develop 13,200 sq. ft! Surely a 2500 sq. ft. cultivation site has nowhere near that kind of adverse impact. At the very least, if the Board decides to increase the minimum to 5 acres, it should allow for a potential reduction to 3.5 acres under the same conditions as is allowed for reductions inland. Even with a potential for reduction to 3.5 acres, Staff identified 638 parcels between 2 and 3.5 acres that would be ineligible for cultivation and excluded.

    b. ***5000 Sq. Ft. Cultivation Reduction Possibility***
    The Planning Commision went even further than to increase the minimums to 5 acres for both cottage level (2500 sq. ft.) and Type 1 (5000 sq. ft.) cultivators. The Commission recommended the elimination of any application for a reduction to 3.5 acres, even though the proposed requirements for a possible reduction would not make every 3.5 acre parcel eligible. As stated above, the discretionary review process provides protection for neighbors. The lack of parity not only with inland cultivators, but with coastal zoning code development maximums (.75 acres or 33,000 are allowed to be developed on a 5-acre parcel by any other kind of endeavor) is striking, especially given that coastal cultivators have been waiting nearly 4 years for an opportunity to become legal.

4. (Item d): We strongly support the Planning Commission's recommendation to eliminate the requirement that applicants provide the approximate dates that cultivation has occurred. MCAencourages further scrutiny of other application requirements that may no longer be necessary given the stringent State regulatory framework and the accountability it enforces through Track and Trace.

5. (Item e): We request that the additional sensitive receptor of Coastal Access Points NOT be added. Parks are already listed. The mandatory discretionary review process of every application can address specific concerns. The CCC did not request this addition (Staff recommended it to the PC), and it gets further away from the desire to align with State requirements.

6. ***Issue of penalties and fees associated with after-the-fact CDPs and CDUs***
In the report to the Planning Commission, Staff pointed out that existing cultivators would be treated the same as any applicant who is required to apply for a CDP or CDU after the development has occurred. The applicant would apply for an after-the-fact CDP or CDU (see Staff Report to PC from 7/18/19 on OA-2019-0001, Page 3, #4). MCA is concerned that there may be penalties or additional fees associated with an after-the-fact CDP or CDU and urges the Board to consider the fact that coastal cultivators have been waiting patiently for nearly 4 years for movement on a coastal cultivation ordinance. In those 4 years, the fee schedules have sharply risen. Please consider this as applied to our legacy cultivators.

B. California Coastal Commission Letter (Exhibit H)

1. **Agricultural Resource Protection**

   a. Responses to the CCC's requests for information should include advocacy. The information requested surrounding development should provide an accurate comparison to other types of development and non-cannabis agriculture. If the number and size of greenhouses and other structures are not required to be limited for inside structure farming of non-cannabis goods, then the County should advocate that cannabis farmers should be treated equally with respect to development of structures.

   b. Please consider the impact of only allowing soil-dependent cultivation on prime lands and the impact of a prohibition on removal of native prime soils and replacement with non-native soils (p.4). Specifically, State required cannabis testing is so stringent that many cultivators growing in native soil are failing tests because non-cannabis agricultural practices left "prime" native soil contaminated. Not all agricultural native soil is suitable for cannabis cultivation, and perhaps not suitable for any type of organic farming. If cultivation in structures is not favored on "prime" soil land, but native soil or cultivation without drift protection could result in test failure, then cultivators will be effectively shut-out of Ag lands. It could be that further clarification that the quantity of the impact, of either growing in structures or using non-native soil to protect the crops for testing standards, can be demonstrated to be insignificant given the sizes of cultivation allowed here as compared to other counties that have required cultivation off of prime soil properties. This issue might also inform the need to continue to allow cultivation on TPZ, FL and RL (see below).

c. The CCC notes that cultivation in structures may have impacts similar to industrial use, and therefore suggests that cultivation be allowed on industrially zoned property (p.4). Whether this is true or not, it may support allowing cultivation in the broadest spectrum of zoning types. Footnote 1 on page 2 makes clear that when CCC refers to "indoor" cultivation, it is not referring to the light source, but only to whether there is a structure.

d. CCC requests additional protections and standards for protecting resource lands such as locating cultivation on non-prime soils or non-productive lands *where feasible*, clustering structures, and removing abandoned structures and notably argues that *ideally, these standards should apply to ALL structural development on Ag lands and NOT just be limited to structures used for cannabis*. MCA is not sure if additional standards would result in achievement of the stated protection goals, especially given the comparably small footprint of Mendocino County cultivation as compared to the size of the parcels and as compared to other counties. We strongly support the idea of parity and equal treatment with respect to all agricultural development.

2. **Timber Resource Protection**

a. The CCC letter asserts that Mendocino County's proposed allowance of cultivation on timber lands is a departure from other coastal area cultivation proposals. However, the size limitations in Mendocino County must be considered when making this comparison because the relative impact is very small. CCC suggested adding additional requirements to ensure long-term productivity and that cultivation is compatible with timber growing and harvesting. The coastal zoning code already limits development. The discretionary review process ensures that specific concerns can be addressed, and only a fraction of the acreage would be used for cultivation. MCA requests that additional requirements, if any must be utilized, are narrowly tailored and take into account the relatively small footprint of cultivation on timber lands. We also urge the Board to begin the process of updating the General Plan and the associated Coastal Plans to more accurately reflect zoning of parcels that may be inappropriately designated as resource lands.

3. **Other Considerations**

a. **Language**: CCC requested a change from "identified" to "exists" with respect to the environmentally sensitive habitat buffers. MCA asks if this would create an additional mapping requirement for the applicant? Additionally, would this requirement be applied to non-cannabis agricultural development as well?

b. **Water:** MCA has no objection to clarifying the "no-trucked-in water" issue so long as the change in language makes clear that springs and wells (with the appropriate water rights and proof of adequate water) are specified as allowable along with water company or district service within the boundary of the service area.

c. **Fencing:** It is one thing to require fences that block views of the ocean or other public views, but is seems quite onerous to require details on color, design, and building materials if the fence is in no way obstructing any view. Please resist the need for additional information if the location does not warrant a view protection, especially since CCC admits that there are minimal fencing restrictions in the coastal zoning code.

d. **Visual resource impact:** As with the fencing issue, any additional conditions should only apply to areas visible from a public road.

e. **Stand alone ordinances:** It makes sense to allow the coastal cannabis ordinances to stand alone, but in modifying the language to accomplish this goal, please be sure to use the most up-to-date definitions and language from recent amendments.

II. COASTAL FACILITIES ORDINANCE

A. Staff Memo

a. **Legal Parcel Creation Date:** Please see our comments regarding this issue in the cultivation section above. Additionally, the Inland Facilities ordinance does NOT have any legal parcel creation date requirement. Why is one necessary for the coastal facilities ordinance?

b. **Allow all cannabis activities except testing in AG zoning:** The Board recommended to allow all activities except testing in AG zoning, but the Planning Commission recommends severely limiting activities to only Processing and Distribution. That means no non-storefront retail (delivery) and no non-volatile manufacturing and no Microbusinesses on AG zoned property unless it is limited to an accessory use to cultivation (and even then, there are further suggested restrictions). Staff pointed out in its report to the PC that such uses were NOT inconsistent. If these standards were applied to non-cannabis farmers, a berry grower could not make jam using non-volatile processes! These should be allowed uses on AG land. If there are restrictions, such as limiting to cottage industry or home occupation limits, all activities (except testing) should be an allowable accessory use. Even CCC supports all activities as an accessory use since it would be subject to a CDP or CDU.

c. Have all Processing and Testing subject to CDP instead of CDU:

i. The Board recommended to allow this and the Planning Commission agreed except for all RR zoning. MCA strongly supports the use of CDP instead of CDU, including in RR zoning. The CDP still requires a discretionary review process that can address any concerns. In addition to the CDU being automatically appealable to the CCC, there is a COST difference and probably a TIME difference. CDUs tend to be more expensive and take much longer. Perhaps the same cost and time for processing can be guaranteed to applicants for a CDU as they would have for a CDP?

ii. **Allow for Processing and Testing in RV and C zoning:** Again, the Board recommended this and the Planning Commission recommended against it. MCA strongly supports the Board's initial recommendation and strongly disagrees with the PC recommendation. The mandatory discretionary review process can address any concerns in a particular case. Additionally, it appears that the PC made assumptions regarding the potential impact of allowing Processing and Testing in Commercial zoning without any data regarding fear of displacement of other commercial businesses and perhaps without a good understanding of the specific activities that each license entails. This Board has been much more involved throughout the years and has a better understanding of the actual activities the licenses are comprised of and its initial recommendation should stand.

iii. **Allow Microbusinesses where they are allowed Inland:** This Board recommendation was not followed by the PC, and instead the PC recommended further restrictions rather than expanding potentially eligible zoning areas. Specifically, the PC recommended removing RV as an allowable zoning for Micro Businesses. MCA suspects that the PC does not fully understand what a Microbusiness is and the limited impact it might have.

d. **Do not require Retail to still be a primary use for Microbusinesses in Commercial zoning:** The Board directed an evaluation of whether this was still necessary. The PC recommended to keep the restriction. It based its recommendation on its understanding that there is a limited number of commercially zoned properties. However, no data was referenced with respect to commercial occupancy rates in each commercial area. Additionally, non-storefront retail is allowed, so why shouldn't other non-public facing cannabis activities be allowed?

e. **Remove the 5-User cap on Shared Facilities:** MCA strongly supports this removal and recommends that we align with the State in this regard and do not require any cap. Additionally, we urge the development of other shared facilities licenses. At recent CAC meetings in Burlingame, expanded use of shared facilities, especially for rural and equity applicants

was discussed and recommended by the CAC. MCA suspects that a movement towards additional shared facilities is gaining momentum and we recommend that as we have done with "mix and match" cultivation styles under one permit, the County takes a leadership role in this effort by creating additional shared use licenses for additional licensed cannabis activities.

f. **Do not remove RV from eligibility for all licensed cannabis activities:** The Planning Commission recommends removing all licensing possibilities for RV zoning. Its rationale was that it could cause displacement or economic imbalance. There was no data to support this theory. Perhaps licensed cannabis businesses could bring additional economic benefit to those communities. The mandatory discretionary review process would give an opportunity to review any actual detrimental impact.

B. California Coastal Commission Letter

a. (G on p.10): CCC agrees with the accessory use tool for cannabis activities such as non-volatile manufacturing, distribution, etc. as an accessory to cultivation, but argues that uses that are accessory to agriculture (cultivation) cannot be used on TPZ or FL because those zonings require a conditional use permit for agriculture and therefore agriculture cannot be the primary use to which the other accessory uses are based upon. While MCA does not know if that logic holds true for these examples, we do appreciate the fact that CCC went on to point out that the other primary uses, such as Residential, might form the basis for accessory uses (such as non-volatile manufacturing, distribribution, etc.) in TPZ and FL. The critical point is that while the specific ordinances and definitions are extremely complicated and may serve to limit activities based on one definition or use description, a different code section, definition or use description may in fact provide the necessary framework to accomplish the same thing. MCA requests that careful and creative analysis be conducted to ensure maximum participation in all sectors of the cannabis industry in the broadest zoning areas possible.

b. (I on pp.11-12, items a-d): These sub-topics are another good example of the need for creative analysis and re-examination of use types that are applicable which wouldn't unnecessarily eliminate activity that might properly qualify under a different code section or use type.

c. (K on p. 12): Do not limit a manufacturing component of a Microbusiness under Home Occupation or Cottage Industry restrictions to that which is made from product grown on the premises. MCA believes that CCC in making this suggestion, is unaware of how much raw material it can take to manufacture a product or how uniformity of material strain or characteristics is desirable when manufacturing products. Why not let a Cottage Industry cultivator who is also conducting non-volatile

manufacturing source material from their neighbors and other local small farmers? Crop failure and other components of farming that render it unpredictable could easily create the necessity for a tiny manufacturer to source materials from outside of their own farm. MCA does not believe that the County would support such restrictions on vineyards who make wine, or any other business. Additionally, as the State moves towards allowance of one or more of the Microbusiness activities to be conducted by a rural or equity applicant at a shared facility, such a requirement becomes even less appropriate.

d. (L on p. 12-13): CCC is requesting clarification that while accessory structures are ok to use in cultivation, that cultivation is not an accessory use. MCA cautions that cultivation might be an accessory use if, for example, a Microbusiness requires Retail as its primary use because of the zoning it is in.

e. (item 3A, p.14): Other requirements:
    i. Medical and Adult Use cultivation should BOTH be an accessory use to Residential and Agricultural uses so as to afford the greatest flexibility in its ability to allow people their state guaranteed rights of personal Adult or Medical use and cultivation.
    ii. Medical and Adult Use cultivation should be allowed on ANY legal parcel, not just residential.
    iii. The issues raised on p.14, Item 3 A, subsection c, with respect to multiple owners should mirror the Inland ordinance.

f. (Item 3C, p.15): In answering CCC's questions, the County should provide the broadest possible allowances so that manufacturing and Microbusinesses could be permitted as an accessory use for greater than Home Occupation limitations allow. Processing and Retailing should be allowed as Cottage Industries.

g. (Item 3F, p. 15): In responding to CCC questions regarding existing cannabis activities, MCA requests that implications of after-the-fact CDPs and CDUs are carefully considered and that the impact on providing an avenue for heritage cannabis farmers and businesses, that have been waiting years for some sort of regulations, is taken into account and advocated for.

We appreciate your time to review our suggestions and comments.

Sincerely,

The Mendocino Cannabis Alliance