



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

June 7, 2020

Re: Agenda Item 6a) Discussion and Possible Action Regarding Recommendations of the Cannabis Cultivation Ad Hoc Committee (Sponsor: Cannabis Cultivation Ad Hoc Committee (Supervisor Haschak)), AND 6b) Discussion and Possible Action Including Direction to Staff Regarding the Potential Re-direction of the Cannabis Cultivation Program(Sponsor: Supervisor McCowen)

Honorable Supervisors,

Mendocino Cannabis Alliance has spent scores of hours researching and thoughtfully considering the current state of the cannabis permitting program. At this time, we have come to the very sad conclusion that current State deadlines, staffing shortages, and capacity of the County, especially in these times of pandemic, require us to advocate for a very narrow focus and prioritization of efforts.

Here is what our extensive research has informed us:

1. CDFA has stated that the Appendix G questionnaire to effectuate the remaining CEQA compliance is viable for Phase 1 participants from their perspective. Substantive changes to our County's cannabis program could jeopardize the ability to use Appendix G to transition existing operators from Provisional to Annual State licenses, because it was developed taking into account specific language in our ordinance. In essence, the restrictiveness of our existing ordinance now helps us use a tool like Appendix G. Above all else, the State cautioned that before we contemplate ANY changes to our program, we consult with them. In fact, it is not only the ability to transition from State Provisional licenses at stake, but the existing Provisional licenses were issued by the State based on the fact that the State and the County were working to develop a

site-specific questionnaire to get over the CEQA hump. State law only allowed Provisionals to be issued in the first place to applicants who were in the process of doing their CEQA compliance. While everyone at the State and local levels want to make sure Phase 1 participants do not lose their Provisionals, it is imperative that any changes contemplated be first vetted with the State to see if the existing agreed upon path to finish the CEQA component (at this point the questionnaire) would be undermined or could be adapted to achieve the goal intended.

2. Transitioning existing Phase 1 permittees and applicants through a land use based discretionary review process to meet CEQA compliance is problematic for a number of reasons.
  - County bandwidth will not support the transition before the statutory end to the State's Provisional license program before January 1, 2022. We believe that there are about 790 applications under review currently<sup>1</sup>. PBS is seeking 8 more planners, but we understand Humboldt has 14 planners and processes only 70 land use permits per year. In Lake County it's not much better.
  - Even with a streamlined process, which has not yet started to be developed, there would easily be years of work transitioning existing operators before any new applications could be processed. If Staff prioritized only Phase 1 applicants, no applications outside of Phase 1 would be processed. If Staff does not work exclusively on processing Phase 1 applicants, the time delay for Phase 1 applicants would be further exacerbated.
3. CDFA stated that reopening our current program and leaving 10A.17 substantially as is, would not jeopardize the use of Appendix G to address the CEQA site specific review for Phase 1 applicants. We specifically asked CDFA two questions regarding potential changes: Could Phase 1 reopen without jeopardizing the use of Appendix G to address the site-specific CEQA review? And, would change of the definition of "proof of prior cultivation" from being tied

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<sup>1</sup> The 6/5/20 list from the County website contains approximately 1118 applications that are not denied, withdrawn or transferred. Of those, about 328 have been issued, are approved to be issued, are on hold or have filed a Notice of Application Stay. Even if none of the applications that are on hold are considered, and assuming that those listed as approved have made it all the way through the SSR review, there are approximately 790 applications that are still under review to one degree or another. It is unclear how many of those are only waiting on the SSR. It is worth noting that nearly ALL of the 1118 would have to have a site-specific questionnaire completed (except for those that have already had a site specific review through a Use or Administrative permit)

to the person and the property to only being tied to the property affect the use of Appendix G to address the site-specific CEQA review? CDFA indicated that neither change would remove the availability of the use of Appendix G for the site specific CEQA review.

4. According to County staff, the primary issue getting people permitted is the Sensitive Species Review (our shorthand term for the process outlined in 10A.17.100 (A)(2) that, under our ordinance, requires an SSR to be conducted by CDFW, or by the County by way of a program approved by CDFW). County Staff has provided a program proposal to CDFW for approval so that County staff can conduct the reviews, but there has been no CDFW response in a very long time. An additional problem is that our ordinance allows CDFW to require further studies and shifts the burden to the applicant to prove no significant impact if review or further study suggests that there might be any impact. It is estimated there are approximately 600 applicants waiting on this Sensitive Species Review. If CDFW would approve the County program then we would have more control over completing the process.
5. We are told that Appendix G<sup>2</sup>, asks detailed information about the conditions of the site. CDFA believes that if an applicant made it through the gauntlet of requirements in our ordinance, it is likely that the information in the questionnaire would support the conclusion that there was no significant impact. We have also been told that Appendix G has a box to check indicating that the Sensitive Species Review has been conducted. It is very likely that CDFA does not care whether the County biologists or even third party qualified professionals does the review or if CDFW does the review, but because our ordinance requires it to be done by CDFW (or a program approved by them which has not yet been responded to by CDFW), that box on Appendix G cannot be checked. Therefore, the Appendix G could not be completed. The county could amend 10A.17 to not specify that the Sensitive Species Review be done by CDFW (or a county CDFW approved program) and just require that it be done. Then County Staff could get going on doing the SSRs, or hire qualified private sector professionals, both options alleviating the current bottle-neck. We would need to verify with CDFA that they are fine with having a qualified person (County Staff or outside professional rather than only CDFW or through a CDFW approved program) that

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<sup>2</sup> Appendix G has not been released and MCA has not had the opportunity to review it. We strongly advocate for its public release and our positions and recommendations are conditioned on that review. If, for example, the use of Appendix G has negative impacts on legacy cultivators, we may not support the use of this “solution” to the site-specific review process.

can conduct the SSRs without affecting the ability to use Appendix G. We also need to determine whether changing the ordinance in that fashion would require an amendment to the MND.

6. An alternative to changing the ordinance to remove CDFW as a required part of the SSR process, would be to garner political assistance in getting CDFW to approve the program (or a modified version of it) that was already prepared and submitted to CDFW for approval.
7. While a land use-based system might take care of CEQA in the long run, there is simply not enough time to transition all existing Phase 1 participants in time before their Provisionals expire. Additionally, CDFA indicates that if the ordinance under which they were granted Provisional licenses and upon which the pathway to CEQA compliance was fashioned is changed, those participants could actually lose their Provisional licenses and not merely be prevented from obtaining their Annual state licenses.
8. County staff agrees with MCA that there is limited capacity to both operate and/or develop multiple programs at the same time. We recognize the following competing objectives:
  - Resolving the existing Phase 1 / Appendix G / Sensitive Species Review conundrum
  - Processing new applications under 10A.17 (Phase 1 or Phase 3, with or without amendments)
  - Developing and operating the Equity Program
  - Developing and operating a land use based discretionary review program

Based on the comments above and other details, it seems that we must advocate for existing Phase 1 participants as a primary (or even singular) focus to resolve the CEQA conundrum, which we believe is well within reach. In addition to the need to assure that Phase 1 participants make it over the finish line to State Annual licensing, we must be careful to not endanger their existing Provisional licenses. After confirming with CDFA that additional Phase 1 participants would also be eligible for the Appendix G solution to CEQA, we remain constant in our advocacy for re-opening Phase 1. It is imperative that we continue to address legacy cultivators especially because of the funds that can be leveraged from the Equity Grant. We would like to explore other items that might be possible to change in 10A.17 without jeopardizing the availability of the Appendix G solution for Phase 1 participants. MCA is committed to working diligently to help the

County overcome the current SSR logjam, and will leverage our resources to resolve any outstanding issues.

At this point, without having seen the details of Appendix G, we advocate the following priorities:

1. Fix SSR logjam through either ordinance change or getting CDFW to approve the program submitted by Staff which would allow the SSR to be conducted by County Staff or others.
2. Ensure that any changes to the ordinance are reviewed with CDFA so that the availability of the Appendix G remains intact for all Phase 1 participants.
3. Re-open legacy cultivation (after re-confirming CDFA's statement that this would not impact the use of Appendix G).
4. Change the definition of “proof of prior” from the person to the property (after re-confirming CDFA's statement that this would not impact the use of Appendix G).
5. Develop and implement the local Equity Program.

This is not at all to say that either an entire overhaul of 10A.17 or switching to a land use based discretionary review process should not be examined for future cultivation when there is Staff capacity. We can all agree that the current system is not functional. However, we cannot, in our enthusiasm to fix what is broken, take the chance that all of those who have persevered and suffered each transition and iteration, will run out of time to transition to a State Annual license, or worse, lose their Provisionals. It seems almost certain that attempting a major shift in our ordinance right now, or even directing staff to shift their focus to exploring the option, even if sensible in the long run, could critically jeopardize legacy cultivators in Mendocino County.

In summary, we strongly believe that given the limited resources, the obvious number of hours that development and implementation that any new process might take, and the fact that there would be insufficient hours to get everyone through before the cutoff time, we must severely limit our focus. As much as we had hoped to affect substantial change in the current system, whether through switching to a land use based system or substantially modifying 10A.17 to be more functional, we must bear in mind that risking the State licenses of everyone that has gotten this far is not worth it. Instead, we must

focus on getting the SSR logjam fixed either through changing the ordinance or getting the County submitted program approved by CDFW.

We must check with CDFA to ensure that anything we might do, such as remove CDFW from the equation for the SSR, re-open legacy cultivation under Phase 1, or change proof of prior from the person to just the land, will not negatively impact the availability of the use of the questionnaire. We have been told that reopening and changing the proof of prior would not be a problem, but it is imperative that at this juncture, clear written confirmation of the availability of the crafted solution to CEQA would not be negatively impacted. Finally, we must move forward with the Equity Grant program. Given that scope of work, it seems unlikely that Staff can handle more at this time. We genuinely look forward to the time when we can look beyond the existing limitations and we appreciate your leadership in attempting to find a better way forward.

Thank you for your consideration and for the opportunity to comment on these important issues.

Mendocino Cannabis Alliance