



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

August 2, 2020

Re: Agenda Item 5b)

Honorable Supervisors,

**I. THE STATE ANNUAL LICENSING DEADLINE IS PARAMOUNT AND IS
THE LENS THROUGH WHICH ALL ISSUES MUST BE EVALUATED**

The Staff Memo of the Mendocino County Board of Supervisors' August 4, 2020 meeting agenda advocates for abandonment of the current ordinance and adoption of a land use-based permitting system, with a proposed "transition" timeframe for all current applicants and permit holders. MCA strongly believes that none of the recommendations put forth within the Staff Memo can be considered outside of the context of the urgent State Annual License deadline facing current cannabis permittees and applicants. This deadline **MUST** be the lens through which all other issues are considered.

Whether under the current Cannabis Permitting Program or under a new land use-based program, TWO items to fulfill CEQA requirements must be performed before a State Annual License will be issued: The Sensitive Species and Habitat Review ("SSHR") and the site-specific review. Under both the current ordinance and the suggested land use program, the Staff Memo offers no assurance that the existing cohort of applicants and permit holders will have both of those processes completed prior to the deadline to obtain State Annual Licenses (January 1, 2022). While the Staff Memo focuses on that Department's clear preference for switching to a land use-based system, it fails to address the paramount question of whether the County will be able to conduct those tasks for all applicants in time.

While specific issues regarding how to troubleshoot the mechanics of processing all of the applicants and permit holders is important, principal consideration must be given to the State Deadline issue. Applicants and permit holders **MUST** be able to know, with certainty, if the County is unable to conduct the necessary reviews before the deadline for State Annual Licenses. These applicants have

poured their life savings, blood, sweat and tears into wrangling the complex and expensive regulatory process on the basis of believing that if they did everything required, they would be eligible for a State Annual License.

At this time, we cannot simply blame state regulatory agencies. We must act. We also cannot simply look to the California Legislature to rescue us. The legislative session for this year is ending in 5 weeks and, due to the Covid-19 pandemic, many of the current bills have inadequate time to proceed. Even if the matter is introduced next year, unless the County does everything in its power to try to resolve these problems *before* turning to the Legislature, the request is likely to fall on deaf ears. We cannot operate on the assumption that a bill extending provisional licenses will be introduced next year, and we cannot be certain whether such a bill would pass until at least 13 months from now. That is a gamble that is far too risky, and will most assuredly negatively impact licensed, tax-paying businesses. We must push forward with solutions at the local level.

II. THE SPECIFIC ISSUES ARE COMPLEX AND REQUIRE MUCH MORE DETAILED INFORMATION THAT WOULD BE BEST MANAGED BY AN AD HOC COMMITTEE WORKING WITH STAFF AND OUTSIDE AGENCIES

At this time, due to insufficient information surrounding key issues, there is no clear direction to take. Additionally, many of the issues to resolve are complex and interrelated. Individual decision points taken in isolation, before gathering missing information, could prevent many from obtaining State Annual Licenses and would likely result in additional unintended consequences.

Specific Issues for Resolution:

1. With respect to the SSHR:
 - o If the CDFW Pilot Program is approved and implemented, how much time would each screening take and how would that impact the ability to get through all of the files in the current cohort?
 - o The threshold for referral appears to be quite low. Would CDFW have the capacity to process referrals?
 - o What happens if four months down the road, CDFW decides the Pilot Program is not working well enough to continue to have the County do the initial SSHR screening?
 - o The Staff Memo stated “there will be cultivation sites that will not demonstrate a ‘less than significant impact’ to Sensitive Species.” How do they know this and how many of the sites?
 - o How will the County and CDFW work out issues related to County Staff training, more articulable criteria to determine

- whether a review must be kicked back to CDFW, and clear criteria regarding when CDFW can require further studies?
- o There are many detailed issues that arose in the Pilot Project materials which are too technical to detail in this memo.
2. With respect to the Site-specific review provided by Appendix G:
- o The Staff memo makes the case for switching to a land use-based system, in part due to planners being practiced in reviewing project descriptions in the normal course of their work. If this is true, why did the time estimate to complete Appendix G increase from 2 hours to 11-40 hours when the only additional information requested by CDFA was related to the project description narratives? The March 2019 CDFA Guidelines were issued before the negotiated Checklist was drafted. Even still, the CDFA Guidelines (Attachment C), provide a very straightforward project description for a rural project. A professional who prepares much more complex and technical Project Descriptions for LSA and Water Board Site Management Plans have indicated that the likely number of hours is more in the 2-8 hour range.
 - o The Staff Memo lists only three possible options for completing the Appendix G Checklist. Are those options the most efficient and cost effective, and are they the only options? And will they result in completion of the Checklists in the timeframe required for *all* pending applicants and permit holders?
3. With respect to the transition of current applicants to a new land use-based system in some period of time:
- o Presuming no changes in the applicant's site or activities from the time the SSHR and Appendix G site-specific review is conducted under the current system, would the SSHR and site-specific review be usable when they apply for a discretionary permit later?
 - o If a current applicant or permit holder did want to take advantage of the 10-year discretionary permit by switching to a land use-based system, wouldn't it create an unintended incentive for them to expand cultivation or non-cultivation structures to further develop their business to include on-site processing facilities, or other development?
 - o Staff has referred previously to creating a streamlined system to transition current applicants. What are the details of that streamlined system?
 - o If an applicant opted to switch to a land use-based system right away, can they be guaranteed to make it through that process before the State Annual License deadline? If so, how would that

be guaranteed at the same time that those who opt to remain in the current system are not guaranteed to be processed in time according to the Staff Memo?

III. A LAND USE-BASED SYSTEM IS APPROPRIATE FOR BRAND NEW CULTIVATION OR EXPANSION BUT NOT FOR LEGACY CULTIVATORS

MCA believes that a land use-based system for brand new cultivation sites and for any expansion above 10,000 square feet for current or future permit holders could be appropriate. In fact, MCA submitted a memo in February of this year, outlining its recommendations regarding Phase 3 (new cultivation) and expansion beyond 10,000 square feet, which stated MCA's support for limited expansion and accommodating new cultivation. In a more recent memo, MCA presented the current concerns regarding the delays in conducting the SSHR and site-specific reviews and refined its position, in light of those concerns, to address new and expanded cultivation once the crisis facing legacy cultivators is addressed.

We continue to support the limited expansion and new cultivation under those recommendations once the crisis concerning legacy cultivators is addressed. However, switching the current system for legacy cultivators at this point in time will compound the crisis they face with the State Annual License deadline.

The current cohort of applicants and remaining legacy cultivators who qualify under the existing system *must* have a certainty that all resources are directed to processing their files before the State Annual License deadline. This must occur before a land use-based system is considered.

- o A land use-based system will need to address zoning, size adjustments, articulate reasonable conditions, and requires other changes to address concerns regarding brand new cultivation sites or expanded cultivation on existing sites.
- o A land use-based system will take time to develop and enact into law. Additionally, the site specific review and SSHR that must be done to satisfy CDFA, will still have to be done in a land use-based system, so there would be no time savings. The Staff claim that this work would be faster in a land use-based system is erroneous and must be verified.
- o Reimbursable costs cannot be the basis for any decision made to switch legacy cultivators to a land use-based system when the failure of the current ordinance process was not theirs, and given the looming State deadline.
- o PBS was already given the budget to hire 8 Planners, in part based on the need to continue to process Cultivation files. Both

the site-specific review (Appendix G) and bringing the SSHR review in-house were being negotiated for more than a year. Therefore, the budget approval for 8 Planners must have included that scope of work.

IV. RE-OPEN PHASE 1 IN LIGHT OF EQUITY FUNDING

Staff recommends against re-opening Phase 1, and also recommends closing Phase 2. MCA strongly disagrees. The Equity Grant funding awarded by the State was intended in part to allow insufficiently-resourced cultivators impacted by the War on Drugs to participate in the regulated market. If Phase 1 is not reopened now, while this grant funding is available, those cultivators will likely be shut out of the process. The Board has indicated a willingness to re-open Phase 1 for this reason. Additionally, Equity Funding should not be used to correct failures in program administration, but should be reserved to fulfill the intent of the grant. As stated in the Mendocino County Cannabis Local Equity Program Manual approved of by the State:

The Mendocino County Cannabis Equity Assessment (2020) established that Mendocino has been hit hard by the criminalization of cannabis, and a targeted, data-driven and well-funded equity program can help certain populations and neighborhoods, particularly small growers and those impacted from past policies that may be left behind, into a legal sustainable economic future.

A failure to embrace those legacy cultivators, who only now have an opportunity to receive financial and technical assistance to participate, would be tragic. To rob the Equity Grant funding in order to correct the failure to process applicants in a timely manner would be reprehensible. It would be preferable to use the mandatory Cannabis Taxes that have been levied against people who believed they would be eligible for a State Annual License.

V. FAILURE TO PRIORITIZE AND PROCESS THE LAST TWO STEPS NEEDED FOR ANNUAL STATE LICENSES BEFORE THE DEADLINE COULD BE WORSE FOR THE ENVIRONMENT AND LAW ENFORCEMENT RESOURCES

Cultivators who participate in a regulated system, which imposes rigorous local and State requirements and environmental controls, must not be discarded or dis-incentivized. To do so would only strengthen the underground market option and diminish the prospects of bringing more people into the legal marketplace.

Full and robust support of existing permitted cultivators and applicants must be strengthened, regardless of which pot of money the County draws from to

process the current files; admit Equity Grant-eligible legacy cultivators; and subsequently create a different system for new cultivation and expansion beyond 10,000 square feet.

Negative impacts to the environment are made more possible when cultivators are not regulated. Now, in these times of Covid-19, we can ill afford to further strain law enforcement resources to implement enforcement against an expanded group of illegal grows. Should the County not take responsibility for, and control of, the current looming State deadline crisis, cultivators will abandon the regulated system. These are high stakes requiring that the County do the right thing.

VI. SUMMARY

MCA strongly supports the immediate creation of an Ad Hoc that can dig deeper into the issues that still need to be resolved, and obtain the information necessary for the Board to make wise decisions in this precarious moment in time.

The urgency of the situation must not be diminished, and the County must not wait to see if the State will rescue us. The County must rise to the occasion and fulfill its desire to provide local regulation in exchange for the ability of cultivators to secure Annual State Licenses, thus continuing their contributions to the economic health of our County through their considerable taxes.

MCA supports re-opening Phase 1 so that equity-eligible applicants can utilize the long-awaited grant funding that has been awarded to become compliant and participate in the legal industry.

MCA will be submitting additional memos addressing more technical issues concerning the proposals. However, before those issues can be fully analyzed, the preliminary question of whether the County can and will fulfill its commitments to locally regulate commercial cannabis cultivation in exchange for taxes and adherence to County-desired rules must be answered.

We look forward to working with the Board and Staff to find sensible solutions to difficult problems.

Thank you for your consideration.

Mendocino Cannabis Alliance

Chantal Simonpietri Consulting

Mendocino County Board of Supervisors and Staff

August 2, 2020

Re: CEQA checklist and Project Description

Dear Board of Supervisors and Staff,

The August 4, 2020 Memorandum from the Department of Planning and Building Services' Director Schultz to the Board of Supervisors discusses the CEQA checklist required by CDFA. The Memorandum states that the County prepared a CEQA checklist and provided two completed samples to CDFA for their review. CDFA then reviewed these sample checklists and "are requiring substantial additional information for the "Project Description" on each cultivation site." The Memo goes on to state that the Annual State application and County cultivation permit application materials "have never required this level of detail for the project description that CDFA" is now requesting. County staff estimate that one completed CEQA checklist with a detailed project description will take County staff "16-40" hours to complete per application. In my opinion, the time estimate by County staff of 16-40 hours to prepare a checklist and Project Description seems excessive.

My claim stems from professional experience as an environmental compliance consultant in the cannabis permitting process for 5 years. In this role I regularly draft written materials for review by state agencies. A Site Management Plan (SMP) required by the State Water Resources Control Board is an example document. SMPs include a diverse array of required, specific information, and recommended treatments, for road conditions, water sources, storage, and use practices, cultivation locations and styles, buildings, petroleum and nutrient use and storage, domestic water supply and wastewater treatment, plant waste processing, etc. With a developed template, and specifically requested information provided by the client/applicant in advance, I am able to write a complete SMP in 3-6 hours.

Similarly, preparation of a Notification for a Lake and Streambed Alteration Agreement (LSA) with the CA Department of Fish and Wildlife is a process of gathering information

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on an array of features and practices, and assembling them into the formatting preferred by CDFW. LSA Notification preparation can range from 4-12 hours per property depending on the quantity and complexity of the features needing to be described to CDFW.

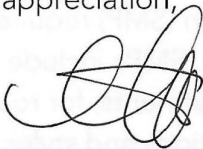
My review of the County-developed CEQA checklist (Attachment B to the Memorandum) and the Project Description contained in the samples provided by CDFA (Attachments A and B to the Memorandum from CDFA to Local Jurisdictions), leads me to estimate that development of a comprehensive checklist and project description for client/applicant properties could take 2-8 hours to draft.

Given the discrepancy between my assessment (2-8 hours) and that of County staff reported in the Memorandum (16-40 hours), I am interested to know how County staff came up with their time estimate. I understand that the span of information needed is broad, but the detail is minimal and format succinct, so am curious where I may be underestimating the time required to prepare the checklist with project description.

Also, I would like to suggest that in order to create a more efficient processing time, if County staff is going to develop and certify the document to be provided to CDFA to demonstrate CEQA compliance, that applicants be provided with a clear data collection template that applicants could return to Staff in a complete form. Being given the material in a consolidated and accurate format could greatly assist in shortening the estimated processing time.

Thanks for your time, consideration, and thoughtful work you and all the Staff do.

In appreciation,

A handwritten signature in black ink, appearing to read 'Chantal Simonpietri', with a stylized, cursive script.

Chantal Simonpietri, J.D.

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