

August 2nd, 2020

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To: Mendocino County Board of Supervisor
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Re: Proposed Changes to and/or Repeal of All or Portions of the Cannabis Cultivation Ordinance and Related Matters, Agenda Item 5b

Dear Chair Haschak and Members of the Board;

The agenda item before you today regarding proposed changes to the County's cannabis cultivation regulatory framework is dense with new ideas never aired in public or before the Board of Supervisors. The Staff Memo contains revisionist history of previous Board directions, and appears to be the product of the biases of certain elements of the cannabis industry and Staff. It contains half-truths. It hints at unspoken agendas, and makes unsubstantiated claims of exorbitant costs and State regulatory roadblocks to justify the need for this proposed regulatory upheaval. Staff then recommends that the Board direct it to “initiate the steps needed to create a land use ordinance for commercial cannabis discretionary permits...”. (What in fact is a “land use ordinance”!?)

Is Staff assuming that the Board, and the public, have no interest in digesting and understanding this proposal before acting; have no interest in considering all its ramifications; and that the Board feels no responsibility to first discuss the proposal with the public before taking action to set the proposal in motion? Is Staff assuming that the Board is not interested in knowing what parties helped to draft this proposal; is not interested in seeing documentation to justify certain claims; and that Board members are not serious about wanting to see the Staff's communications with state agencies, which issues Staff claims are at the crux of the need for this monumental change?

We urge you not to take the recommended action regarding this proposal. Rather, we urge you to direct Staff to enforce the existing Cannabis Cultivation Ordinance and cease its three-year effort to cripple the Ordinance by turning a blind eye to obvious violations, misrepresenting its provisions to applicants and the public, and by ignoring reasonable requests from State agencies for clarifications of the County's procedures.

We do urge the Board to direct the Cannabis Program Staff to “prioritize responsibilities to focus on existing permit holders...” who must have a site specific project description satisfactory to CDFA by January 1, 2022 in order to obtain a State Annual license, and who must have a completed “CEQA checklist” to verify compliance with that statute.

We think it equally urgent that the Board direct the Cannabis Program Staff to begin the process of sorting out the approximately 800 applications “in review” at the County. These applications were accepted into the Cannabis Program, some of them two or three years ago. Applicants paid their fees were given their embossed County receipts, and with it, the green light to operate. Some applicants may fully intend to perfect their permits. These applicants deserve to have their applications move through the process, whether they are waiting to begin operations, or have already been operating, some in compliance with the Ordinance, some not. Also, the public deserves the assurance that these operations are in compliance, or are coming into compliance with the Ordinance, as quickly as possible.

We have documented numerous cases where applicants were accepted into the program and apparently given their embossed receipt, and green light to operate, despite the fact that their applications were in obvious violation of the most basic provisions of the Ordinance, such as violations of zoning restrictions, or new growers’ applications being accepted during Phase 1. Many of these applicants may have no intention of getting a County permit (or a State annual license) and have become the source of many of the complaints and ongoing and accumulating environmental damage. Water trucks are grinding up and down rural roads. Thousands of pounds of plastic are being spread across the landscape. Water diversions are draining springs and creeks. Tons of bagged soil and fertilizers are entering the watershed. Poisons continue to threaten wildlife. Garbage is accumulating on rural properties. These growers are using their embossed receipts from the County to legitimize their operations in the eyes of State and escape law enforcement, which, understandably, is prioritizing clearly illegal growers. Staff must shoulder the responsibility for this mess, and the Board must direct the Staff to make cleaning it up a priority. This growing environmental assault, fostered by Staff’s accepting applications but failing to enforce the basic parameters and environmental protections of the Ordinance threatens to undermine the validity of the IS/MND baseline.

Both these predicaments can be remedied. First, in recent weeks the pathways for permitted growers to satisfy the state agencies, to get their state annual licenses and be assured that they can continue their cannabis businesses have become clear, despite Staff’s inexplicable efforts to derail these processes.

We have studied the CDFA CalCannabis May 29, 2019 correspondence regarding requirements to demonstrate site specific compliance with CEQA as well as recent correspondence to the Mendocino County Cannabis staff noting the details still missing from two test-case applications. We have also studied the “CEQA Checklist” for Mendocino County permit holders which was prepared last year by the Cannabis Unit staff. This checklist, the mysterious “Appendix G”, confirms for CDFA/CalCannabis that a Mendocino County permit holder is in compliance with the County’s Ordinance and its mitigations and therefore can state affirmatively that her/his project will not have a significant negative impact on the environment. In addition, we have studied the CDFW/County staff draft pilot project for sensitive species review of cannabis cultivation applications, attached to this agenda item, and we have been in contact with CDFW directly regarding progress toward a resolution of this process.

We think that resolutions to both issues are clearly within grasp. Regarding the first, it is our understanding that County permit holders can complete the CEQA checklist/Appendix G themselves and send it directly to the State. The County need only review it and keep a copy on file with the associated application. As far as providing the State with additional detail that would affirm site specific CEQA compliance for each applicant's project, as CDFA outlined over a year ago, CDFA/CalCannabis expects every application to describe the topography and land uses of the site, general land uses of surrounding properties, and a detailed, properly scaled map showing the locations of project-related buildings, other infrastructure, roads and natural features. The State doesn't specify what entity should prepare the description, and actually assumes that the applicant will prepare the document in many cases. We understand that permit holders with State provisional licenses have already provided this information to the State. The County's 2017 Cannabis Application Packet sample site plan includes much of the required information, except the topography and description of current and neighboring land uses. (We assume that the current application packet is not less thorough.) It is likely that in most cases permit holders could themselves provide the County and the State this additional topographic and land use information. County staff need only confirm its validity and add it to the permit holder's file.

Clearly satisfying these State requirements, in the vast majority of cases, should not take more than a few hours, at most, and not the 40 hours per application claimed by staff in its 8-4-20 Agenda Memo.

We think the path to implementing a process acceptable to CDFW and the County for vetting each application for possible impacts to sensitive species, as required in the MND, is also now open and reasonable. It is outlined in Attachment A. We urge the Board to direct Staff to begin this process as well. Staff should send to all permittees, and to all applicants still in review, the sensitive species habitat questionnaire (SSHQ) to be completed and returned to the County for review. A "yes" answer to any of the questions might indicate possible unique site conditions or concerns that would trigger the County to investigate the site further using data bases routinely available to planners, biologists or others trained in the use of these data bases. If the County thinks a referral to CDFW is necessary, the application will be sent on to CDFW with the relevant documentation. CDFW has agreed to respond with its determination regarding impacts, or the need for a site visit, within thirty days.

With a qualified person on staff capable of using the several data bases developed for determining the presence, or possible presence, of sensitive species and habitats, and the SSHQ completed by the applicant as part of the application process, determining which applications should be referred to CDFW and why should not take more than 2 to 4 hours per application by a qualified reviewer, but certainly not days. The project sites are relatively small and contained and land uses and mapped natural features tell a great deal. Based on our understanding of other Counties' processes, once our program is running smoothly, and CDFW and the County agree on what constitutes a qualified professional, CDFW might agree to the applicant's hiring a qualified professional to do the initial survey when an SSHQ identifies a potential for impacts. This would leave Staff to simply make the referral to CDFW based on an independent professional's determination provided by the applicant. As with CDFA and its requirement for site specific CEQA compliance, the State does not appear to require the County to do the actual work, but

just that the County be able to demonstrate that sensitive species and habitats are being protected. Our Ordinance calls for collaborating with CDFW on **a process**. Once CDFW and the County have established mutual trust, CDFW may be flexible regarding what entity does the pre-CDFW referral review, thus relieving staff of that step in the process.

If the Cannabis Program staff begins these processes immediately most County permit holders should get over the finish line with an annual State license before the State provisional licenses expire January 1, 2022. This should be the Board's and staff's #1 priority. These cultivators are the gold standard for legal commercial cannabis businesses in the County. Many participated in crafting the Ordinance. They were the first to come forward. They trusted the County to be fair and reliable. Many spent small fortunes to comply in every respect with often growing and changing demands of the State and the County as County staff went through several transformations. They are the fee-paying, tax paying, environmentally responsible businesses willing to embrace the idea of a small scale, truly local, impeccable quality product that will survive the inevitable boom and bust markets elsewhere. These permit holders should not be fearing for their State licenses because staff, after years of resisting the Ordinance, now wants to steer the Board in another direction. An overhaul of the County's cannabis regulatory framework will undoubtedly entail a new environmental impact analysis, setting back our resolving understandings with the state agencies, and confounding the efforts of permittees to obtain state annual licenses.

The Board should also direct Staff to simultaneously begin the house cleaning of the 800 applications in cold storage. As stated above, many of these operators are causing serious environmental damage under cover of an embossed receipt. The staff should immediately contact these applicants whose applications are still in review and instruct them of these new requirements. This could help cull the serious applicants. Staff should terminate those applications that were wrongfully accepted due to unvetted claims, or Staff's apparent willful dismissal of the Ordinance's restrictions.

Only when these tasks are complete should the Board open discussion about Ordinance changes. For now, with resolutions with the State agencies at hand, keeping the existing Ordinance is the surest way to State licenses and economic viability for permitted growers, and protection of the natural environment of the County - the twin goals embraced by the majority of Mendocino County voters in 2016. The existing Ordinance, can achieve these goals. If the present Staff is unwilling to accept this Ordinance and enforce it, perhaps it is with Staff where the changes need to occur.

Thank you very much for your serious considerations of these comments.

Sincerely,
Ellen Drell for the Willits Environmental Center

