

CORINNE POWELL  
Ukiah, CA  
SS  
COs Board of Supervisors

member  
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September 20, 2020

Dear Supervisors,

Thanks to the Ad Hoc for countless hours dedicated to making our regulated cannabis industry more secure to the benefit of our entire community. These considerations are complex and often compounded by state decisions made without Mendocino priorities in mind.

I offer my thoughts and recommendations re: agenda items to be discussed at your meeting September 22, 2020. I also request, as others have requested in the past, that the Board complete their discussion of the agenda item(s) **before** public comment is received.

Item 5g):

Please add the Cultivation Ad Hoc's recommendation to include support to extend Provisional Cannabis cultivation licenses until at least January 1, 2023, to the County's Legislative Platform. We must allow sufficient time for current provisional license holders to secure Annual State licenses. The rationale to do so is obvious and stated by the Ad Hoc in their Memo pertaining to item 6g).

I strongly support the MCA recommendation that the County also add to our legislative platform, the revision to state law that categories cannabis as product and not an agricultural crop. Please lobby and collaborate wherever possible to change cannabis definitions in state law to reflect reality and fairness.

Item 6g):

The Ad Hoc has included multiple topics in these recommendations. I felt deep de ja vu when reading their Memo as some of this ground has been covered before, with Board direction given, only to be met with lack of staff performance to fulfill directives. This trend needs to stop as it is a colossal waste of time and money for all of us! **Staff works at the direction of the Board, not the other way around.**

My understanding of most recent Board directives were: 1) Protect small farmers (all permitted cannabis farmers in Mendocino County are "small farmers"); 2) Find a pathway for current Provisional Licensees and permittees to secure Annual Licenses; 3) Assign Ad Hoc to explore and resolve CDFA and CDFW obstacles to Annual Licenses; 4) Indulge Sup. McCowen's insistence that a use permit system be developed by Planning and Building Services—which will likely pertain to new applicants and do nothing to protect small farmers and secure a pathway to Annual Licenses for those already granted County Permits and state Provisional Licenses.

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**From:** Supervisor Haschak and Supervisor Williams

**Meeting Date:** September 22, 2020

**Department Contact:** Supervisor John Haschak      **Phone:** 4441

**Department Contact:** Supervisor Ted Williams      **Phone:** 4441

**Item Type:** Regular Agenda

**Time Allocated for Item:** 45 min

**Agenda Title:**

Discussion and Possible Action Including Direction to Staff on Cannabis Cultivation Permitting Priorities Including, but Not Limited to: County Counsel Analysis of State CEQA request, Digital Portal, Cost Recovery for Work Outside of Application Scope, Interagency Biologist Agreement, Publication of Cannabis Cultivation Guide, Plan for Staffing Increase or Consultant Request for Proposal (RFP), Equity Grant Program Update, Notices to Correct Applications, Request Provisional License Extension from California Department of Food and Agriculture, and Schedule Special Board of Supervisors Meeting for Cannabis Cultivation Phase 3 Zoning Table and Permitting Model  
(Sponsor: Cannabis Ad Hoc Committee (Supervisors Haschak and Williams))

**Recommended Action/Motion:**

Direct County Counsel to opine on whether County has already met the requirements of CEQA in regards to Cannabis Cultivation permitting And whether State's demand for "Appendix G" is a legally supported county obligation and report back within 30 days; **Former County Counsel, Ms. Elliott, was also asked to assure the Board that the County's Mitigated Negative Declaration was appropriate and adequate, which she did. While County Counsel is again reviewing the legality of the MND and "Appendix G" please also direct CC staff to consider the following two state code sections.**

14 CCR § 15300.1

§ 15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for resources that such an activity is discretionary. Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

14 CCR § 15301

§ 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of

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projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use.

I again recommend that the Ad Hoc lobby CDFA to allow all Provisional License holders with County Permits, who do not wish to expand cultivation beyond their current permit size, be accepted as CEQA compliant as per the MND and given a County "Legacy/Craft/Heritage Cultivation permit. ANY local existing permit expansion or new applicant must be considered an "expansion of use" and thereby not subject to MND coverage. It will be appropriate to apply an "Appendix G" or applicant site-specific review to ALL new applications, the structure and timing of which to be determined.

2) Direct the Executive Office and Planning and Building Services to engage with Information Technology consultant to develop a fully digital submission portal capable of instantaneously generating accurate status reports for staff, applicants and the public;

I'm shocked to learn of the complete disorganization of files in the Planning and Building Services (PBS) department. How long have we been told by PBS staff that they have "streamlined" the application process, inferring improvement, when actually nothing has improved.

I support directing staff time to resume work with the County's IT consultant to construct a digital application and record keeping system and portal for cultivation and related cannabis businesses. PBS must prioritize organization and attention to the longest standing permittees first.

3) Direct Planning and Building Services to implement cost recovery for staff time allocated to cannabis cultivation development discussions beyond existing application scope;

Until the Board's main priority of finding a pathway for current Provisional Licensees to obtain Annual Licenses is fulfilled, staff should not be encouraged to use their time to justify cost recovery for extraneous, "outside the application process" activities. We need to solve the primary problems before creating more work for staff.

4) Direct Planning and Building Services to engage in an interagency agreement with California Department of Fish and Wildlife for a biologist to assist with Sensitive Species and Habitat Review;

I support a staff Biologist embedding in the PBS to perform and/or review SSHR analysis if the Board retains the current cultivation ordinance where CDFW participation is required for SSHR. If, however, the Board approves a use permit system, the current ordinance requirement no longer exists, and a Biologist will not be necessary as a site-specific CEQA review process will be required of all new applicants applying for a use permit.

5) Direct Planning and Building to publish and maintain a Cannabis Cultivation Guide, including flow chart, on website;

This recommendation is premature and a waste of staff time until the Cannabis cultivation permitting process is resolved. Currently, no new applications are being accepted and the website need only state same with assurance of updated information based on future Board action and regulation corrections.

6) Direct Planning and Building Services to develop a staffing plan to complete processing of Cannabis Cultivation applications within six months or an RFP for outside contractor if county lacks feasibility to perform;

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I support directing staff to complete processing of currently accepted application as per Phase 1 and Phase 2 of the current ordinance which is the only “good faith” position PBS can take. It is also imperative that PBS inform current permittees if their permits were issued in error as acknowledged by Brent Schultz. These permittees have no idea their approved status may be in jeopardy or revoked because of a County action not made public. They will need County assistance and potentially time to rectify any regulatory deficiencies.

7) Direct Cannabis Program Manager to prepare Equity Grant Program plan presentation;

Yes, I support a specific directive for County staff to complete the complete the Equity Grant process in advance of statutory deadline. It is essential that County staff work closely with MCA and other County stakeholders who were instrumental in crafting the grant application and achieving this award.

8) Direct Planning and Building to generate Notices of Correction and establish processing priorities;

To whom are “Notices of Correction” going? If the Ad Hoc means those permittees granted permits with deficiencies not yet communicated by PBS...I strongly support immediate action. It is essential, however, that the Board establish “processing priorities”. The first permittees to process are those who have been permitted and licensed by the state for the longest period of time as their businesses are most effected if they have relied on approvals and are not out of compliance. These earliest and most presumably compliant fee and tax paying businesses deserve first attention and assistance.

After the group established above as the highest priority, the second processing must be to purge non-responsive applicants who are delinquent in providing long overdue information to the County or whose applications are obviously not acceptable as presented. Clear the backlog and require applicants to respond within 30 days if they intend to complete applications. If no responsive action is received, PBS must order a cease and desist letter and send Code Enforcement in one week after the deadline. This holding pattern has gone on long enough with little definitive action coming from PBS.

9) Direct Executive Office to add Provisional License extension to legislative platform and Direct ad-hoc to engage with RCRC, Assembly member Wood and Senator McGuire for support;

I support adding the recommended action to the current legislative platform and request the topic be discussed under agenda item 5g) so there is action directed today!!

and 10) Direct staff to schedule Special Board of Supervisors Meeting for Cannabis Cultivation Phase 3 Zoning Table and Permitting Model.

The Board has amended the current cultivation ordinance to change or reopen application deadlines for Phase 1, Phase 2 and Phase 3. YOU CAN DO IT AGAIN WITH LITTLE CONSEQUENCE! It is absurd to think the beleaguered PBS staff can assist the Ad Hoc with securing a pathway for current permittees/licensees to secure Annual Licenses...the Board’s states highest priority... AND process the current application backlog estimated at more staff hours than can meet the existing state deadline.

PBS has stated “no confidence” in their ability to process applications in house and will likely be asked by the Board to return with a plan of required staff and/or a consultant RFP in the

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immediate future. Brent Schultz has stated that cannabis regulations are “unique and complex” and he wants his staff to return to a use permit program, more familiar to his planners. They have admitted defeat and rationalize a use permit will be the panacea for the County’s cannabis permitting process.

Supervisor McCowen is pushing for staff to develop a use permit system BEFORE the Board has resolved the legal CEQA and CDFW challenges for the several hundred permittees in the current system. Sup. McCowen is abandoning the small farmers he has, for years, vowed to protect. His insistence to push for opening Phase 3 and permit size expansion and controversial zoning changes that go with it has been pushed by large, wealthy and a few lobbying companies who want relief from small farmer considerations and environmental protections contained in the current ordinance. Of course, companies like Flow Kana, with investors contributing \$125M and Henry’s Original, both with distribution licenses and manufacturing and/or processing licenses that pay minimal taxes to the County, want to “grow their own” and fully integrate their businesses to control costs and maximize profits. If they succeed in lobbying for expansion without protection for small farmers who cannot or do not want to expand, and without a Craft/Legacy/Heritage Permit for the few small, organic, high quality products farms and medicines produced by Mendocino’s historical cannabis culture, our reputation will be lost, and large AG has won.

This is not the time for staff to invest limited resources in developing Phase 3 not only for reasons stated above, but also Phase 3 is part of the current ordinance. It is irresponsible for the Board to advance and explore Phase 3 until the fate of the current ordinance is determined.

Staff refused to pursue amendments to the existing ordinance ... because they thought a use permit system was expected. This interpretation of staff’s required performance has been the result of Sup. McCowen PUSHING an undefined use permit system persistently and often over the objections of the CEO, PBS staff and recalcitrant agreement of fellow Supervisors. Sup. McCowen has been singularly most involved in the development of cannabis policy in the County and we are in a friggin’ mess!

**TABLE PHASE 3 DISCUSSIONS UNTIL THE CURRENT CDFA AND CDFW OBSTACLES TO ANNUAL LICENSES ARE RESOLVED AND ORIGINAL LICENSEES AND NEW APPLICANTS CAN BE DEFINED APPROPRIATELY.**

**Previous Board/Board Committee Actions:**

On August 4, 2020, the Board of Supervisors voted to form an Ad Hoc, consisting of Supervisors Haschak and Williams, to work with staff and outside agencies on a pathway for cannabis cultivators to get their annual licenses.

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**Summary of Request:**

Appendix G: For the scope of California Environmental Quality Act compliance in regard to permitting of cannabis cultivation, the County is the “lead agency”. As the lead agency, the county has met its CEQA obligation through a Mitigated Negative Declaration, which did not receive timely challenge. Staff preparation for a State request demand known as “Appendix G” will incur a substantial cost, potentially greater than one million dollars while simultaneously adding additional considerations to approvals. As a policy, the Appendix G concept has not been approved by the Board of Supervisors. County Counsel should analyze whether the request is supported legally before we commit substantial public funds. Further, additional review beyond legal requirements could reduce overall quantity of cannabis permits, crippling the program beyond break even through reduced fees and taxes.

Digital Portal: Cannabis Cultivation applications are stored in disorganized files. Today, it is not possible to determine the state of an application without extensive review, estimated to require at least five hours of staff time from an experienced planner. This is the result of changing forms, changing process, migration from Agriculture department to Planning department, a mix of paper and digital submission and lack of digital schema to maintain order. The cost of continuing to work in disorganization is far greater than the cost of becoming organized. ClientFirst, the County’s IT Master Plan consultants, had started an effort to integrate Cannabis Cultivation applications into existing portal. This work could be resumed and expedited. Applicants should interact with a structured portal instead of submitting email attachments and dropping off hand drawn diagrams at the front desk. This will reduce costs for the county and applicants. Effort should include admin staffing and support. Transitioned legacy data should be editable text in proper fields, not scanned images of legacy paperwork. If transition is too time or cost prohibitive, staff can alternatively ask applicants to resubmit using the new portal.

Cost Recovery: Cannabis Cultivation application fees were derived from an estimate of 6 hour overall processing time. Actual staff time could be an order of magnitude greater. While maintaining commitment to applicants no matter how erroneous the fee basis now appears, staff time outside of the application processing should not be subsidized. Planning and Building Services should propose an appropriate hourly fee, holding a fee hearing if necessary, to recover costs involved in cannabis cultivation site development discussions. A handful of applicants with unusually difficult or complex situations have occupied staff time, hindering the processing pipeline for other applicants. Questions should be accepted through the portal and email, so that staff can reuse answers and develop a Frequently Asked Questions to save time and ensure consistency.

Interagency Biologist: Ad-hoc engagement with the California Department of Fish and Wildlife has highlighted the possibility of utilizing an interagency agreement to secure an onsite biologist from CDFW to expedite processing of Sensitive Species and Habitat Review as required by our county ordinance. Our County Ordinance requires SSHR review where appropriate, but fees are not collected to pay CDFW for such review. Without a biologist, we risk stalling the pipeline of SSHR processing. A greater cost will be lost tax revenue from failing to permit the current applicants before the Jan 1, 2022 state annual license requirement. Engaging in this interagency agreement to have an experienced biologist dedicated to the Mendocino County program will expedite the flow of applications through the SSHR process.

Cannabis Cultivation Guide: Constantly changing procedures have created confusion for Cannabis Cultivation applicants, permit holders and the public. A single “Cannabis Cultivation Guide” as a living document on the county website has potential to reduce staff time involved in answering repeat questions while ensuring consistent answers. When staff is unable to point at an answer in the guide, the document should be updated with review by counsel and Planning Director prior to answering.

Staffing: In order to process approximately 882 Cannabis Cultivation applications, substantially more staffing is required. Results of a pilot program consisting of 20 applications and determination about

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“Appendix G” legal obligation will impact time estimates, but today we know tens of thousands of experienced planner hours will be necessary to meet our commitment to existing applicants. Planning must develop a staffing plan. In the case local talent cannot be secured to immediately ramp up, staff should author a Request for Proposal, soliciting outside planning consultants for completion of our legacy cultivation applications.

Equity Grant Program: The State funded Cannabis Equity Grant Program has time constraints. Execution must begin soon. Next step should be a presentation by staff.

Notice to Correct: Once records have made orderly, Cannabis Cultivation applicants should be notified of completion requirements and offered reasonable time to correct missing documentation. Applications deemed incomplete should be de-prioritized relative to complete applications.

Provisional Extensions: Approximately 75% permits statewide are provisional (not yet to regular “annual” licenses). The environment and people are best protected by continued regulation, which will be lost if licensing sunsets before the transition is complete.

Phase 3 Zoning: If Cannabis Cultivation Phase 3 is to open in April, staff needs direction on zoning table and permitting model. This topic is inherently controversial and will invite extensive public comment. A special meeting should be held to reach approval on permitting model (ministerial, administrative, use) and zoning table.

**Alternative Action/Motion:**

No action.

Thank you for the opportunity to express not only my frustration with, but also experience in this process.

Respectively submitted,

Corinne Powell