



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

October 11, 2020

Re: Agenda Item 3a for 10/13/20 BoS Meeting

Discussion and Possible Direction to Staff Regarding the Mendocino Cannabis Cultivation Ordinance, Including Possible Changes to Phase Three
(Sponsor: Planning and Building Services)

Honorable Supervisors,

Thank you very much for allocating this special meeting to discuss possible changes to the Mendocino Cannabis Cultivation Ordinance. **We believe that decisions regarding Phase 3 cannot be made without also considering the dynamic constellation of cannabis-related policy issues that are currently in unresolved.**

Additionally, this memo will address the specific ***Request for Direction in the Staff Memo dated 10/13/2020*** provided by the Department of Planning and Building Services regarding Phase 3 - New Cultivation Sites. Therefore, we have organized our comments into two sections. Section 1 lays out our ***Recommendations on the Direction of the Cannabis Program*** and Section 2 is our ***Direct Response to the PBS Staff Memo and Request for Direction.***

Section 1 - Recommendations on the Direction of the Cannabis Program

As we enter these conversations it is imperative that we bear in mind the following:

- According to preliminary Tax Collector's projections, as reported by Supervisor McCowen at the last BoS meeting, **cannabis taxes are likely to bring in \$5.8 million dollars this year** and have consistently been the only revenue source that has outperformed expectations.
- Sheriff Kendall has reiterated that **not one of the violent crimes associated with cannabis was related to a regulated cannabis business** and that he believes that there **should be a path forward to bring more people into the regulated system**. He also believes the **current regulations, including at the local level, are far too onerous and complicated**. In fact, the Sheriff has stated that **if more people get into**

the regulated system, the ability for law enforcement to effectively pursue criminals will be bolstered. Specifically, he has stated that regulated cannabis operators are more willing to report crimes that can then be investigated and prosecuted. Additionally, he hopes that if the permitting process was simplified, there would soon be a clear distinction between those that are lawfully permitted and those that are not.¹

- Mendocino County Board of Supervisors has, from the beginning of cannabis permitting, articulated clear foundations upon which such policy has been rooted: support for legacy cultivation. **The Board's recently stated commitment to follow through on the support for successful Phase 1 applicants, despite the revealed challenges to effectively process those applications into annual permits, indicates that the County continues to believe that legacy cultivation is a priority.**

- Mendocino County continues to value environmental protections, and expects those who enter the regulated system to adhere to those values and regulations.

- All those who craft a path forward must acknowledge that the **complex regulatory structures enacted for cannabis have created unnecessary bottlenecks, a complete lack of parity with other industries, including other agriculture crops, and a disincentive for cannabis businesses to enter or stay in the regulated system.**

With those foundational issues in mind, it is imperative that the County refocus its discussions in a way that aligns with the County's long stated goals. Specifically:

- **It is time to treat cannabis cultivation like all other agriculture.**

- Hemp production recently allowed under a Pilot Program is not taxed.
- Hemp and all other row and field crops are qualifying income for Williamson Act contracts but cannabis is not.
- Cannabis has strict testing standards not applicable to other agriculture, including products consumed by humans.
- Cannabis cannot conduct fire safety efforts without fear of losing their local permits, while other agriculture business can.
- Cannabis is being targeted by and treated differently than other agriculture with respect to building permit policies by PBS (labeling building applications as cannabis, categorizing structures as greenhouses that require F1 occupancy instead of as Ag Exempt), local fire districts (distinguishing cannabis activities as more dangerous than other agriculture without any basis), and CalFire clearance (not allowing tree removal within 100' of any cannabis structure despite 100' clearance rule for fire safety).

- **We must effectively bring into regulation all legacy cultivation.**

- The current cohort of permit holders and applicants **MUST** be prioritized and all efforts to get them to the finish line before the deadline for State provisional licenses must take precedence.
- Additional legacy cultivation **MUST** be afforded an immediate opportunity to be in the regulatory system, especially now that the Equity Grant is available.

¹ Sheriff Kendall was consulted and approved of the use of this accurate statement of his position.

- Re-opening for legacy cultivation and tying proof of prior cultivation to the land and not to the person will NOT jeopardize the use of Appendix G.

- CalCannabis has specifically agreed that reopening permits for legacy cultivation under the existing ordinance would NOT jeopardize the use of Appendix G for site-specific reviews. CDFA also explicitly stated that as far as they were concerned, proof of prior cultivation was appropriate to run with the land and not be tied to a specific person and that changing the definition of “proof of prior cultivation” in that manner would be in line with CEQA and would not change the applicability of Appendix G.

- We MUST WAIT to discuss whether Phase 3 or any discretionary permit process should proceed; if it should include only legacy cultivation that did not make it through the original process; and if it should include new cultivation but prioritize legacy cultivation, until AFTER we have received word on the final scope of work required by CDFA regarding Appendix G and the preliminary success of the new SSHR review process under the CDFW approved Pilot Program.

- In order for the conversations surrounding Phase 3 to happen effectively, we first must reaffirm our goals and vision for the county.
- In order for discussions regarding Phase 3 to happen, we must receive the final information from CDFA regarding the real possibility that the scope of work required to satisfactorily complete Appendix G is far less than was anticipated. Specific indications from CDFA suggest that while our first two sample cases failed to pass the Appendix G threshold, our next two test cases went well beyond what might be required. We must have a final determination from CDFA regarding the actual parameters of what will be required in order to know the scope of the work, the hours it will take, and therefore the costs and whether we could likely conduct all of the work in the required time frame.
- In order to effectively discuss Phase 3, we must see how the Pilot Program with CDFW is going for review of SSHRs. We believe that the ordinance should also be amended, to allow for the review to be conducted by professional biologists not hired or contracted with the county as well, but at the very least, we need to see if the current cohort is going to make it through and how long the reviews will take before we start discussing Phase 3 or a land use based discretionary permit program so that we include those left behind if the SSHR review holds things up.

In essence, it is important to examine County priorities, reaffirm or specifically reject long standing positions, assess the reality of the current situation with concrete data that will soon be available *before* embarking on discussions, whether truncated, as Staff suggests, or comprehensive, regarding Phase 3, zoning, and the use of the discretionary review process.

We believe it is worth calendaring the Phase 3 discussions for a time after the appropriate data is obtained, but in a timeframe that allows the County to take advantage of California Business and Professions Code Section 26055(h), enacted under MAUCRSA, which allows a local jurisdiction to avoid additional environmental reviews ordinarily required under CEQA, if it passes a discretionary permit process

before July 1, 2021², especially if it turns out to be the only path forward for existing applicants. However, to discuss the issues before more data concerning the progress and scope of the work to be conducted for Phase 1 applicants is shortsighted and meaningless. *To conduct a piecemeal discussion as Staff recommends, would likely land us right back where we are now, with an ordinance that did not have the benefit of all of the relevant information.*

Section 2 - Direct Response to the PBS Staff Memo and Request for Direction

PBS Staff has requested/recommended that action on the following three critical topics be deferred to a later date:

1. Developing a Discretionary Permit Model for Phase One and Two applicants;
2. Inclusion of Rangeland in the Zoning Table for Phase Three;
3. Allowance for Expanded Cultivation in Phase Three.

MCA prefers to defer the entire discussion until more data is received, perhaps to November, but urges that ANY discussions involve all relevant topics.

Phase 3 has been discussed as a potential Plan B or alternate pathway for existing Phase 1 & 2 operators to achieve eligibility for CDFA Annual Licenses should the Cannabis Ad Hoc be unable to resolve the CEQA issues facing our County's 800+ Provisional Licensees.

We reiterate our support for Staff time to be allocated to Phase 3 ONLY if: 1) the primary focus is on creating a viable pathway to annual licensure for the existing cohort of legal operators, 2) the existing cohort receive priority processing if/when this permitting window opens, and 3) the development of Phase 3 does not further jeopardize the efforts to continue processing all Phase 1 & 2 permits under the existing ordinance, including those that apply during a reopening for legacy cultivation, and if the processing of those permits allow for applicants to be eligible for CDFA Annual Licenses before the expiration of all Provisional Licenses at the end of 2021.

We cannot support any decision to develop and launch Phase 3 that does not take into consideration the above listed priorities. The Staff recommendations ignore these considerations and effectively repeat the mistakes of the past: piecemeal enactments that do not further the value behind and a cohesive vision for a county cannabis program. We see this piecemeal approach to be negligent, at best, in regards to our existing legal operators and will

² CA B&P Code Section 26055(h): Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2021.

not support this program as proposed.

Below are our responses to the 6 items listed in the Staff Memo that PBS Staff is requesting direction from the board on:

[Note: Requests in the PBS Staff Memo are italicized.]

1. *Type of discretionary permit required (Use Permits or Administrative Permits) for each permit category and zoning district on the Draft Revised Table 2.*

MCA is in favor of the proposed zoning table and requests that resource land zones (previously included in Phase 1 & 2) including Rangeland (RL), Forestland (FL), and Timber Production Zones (TPZ) be added to the table.

We recommend that all new cultivation sites within resource lands require a Minor Use Permit (Minor UP) and that all existing sites (with expansion allowed up to 10,000 SF of canopy) require an Administrative Permit (AP).

MCA has attached a Zoning Chart of its recommendations.

2. *Confirmation of the Board's willingness to defer to a later date the potential inclusion of RL as part of Phase Three and expansion above 10,000 square-feet.*

MCA is not in favor of deferring the inclusion of additional zones for the reasons stated above.

We are also not in favor of deferring the inclusion of expansion above 10,000 SF. We stand by our previous position on levels of expansion and reference the following from our memo on 02/01/2020:

Recommendation for Outdoor Cultivation: allow expansion up to 1 acre with AP over 10,000 sq. ft. if allowed.

Recommendation for Mixed Light Cultivation: allow expansion, with no specific recommendation for limit across the board, but instead case by case review of the request in each application bearing in mind the resources and impact in that instance. Require AP for expansion over 10,000 sq. ft. up to 22,000 sq.ft. and UP for any expansion above 22,000 sq.ft. if allowed.

Recommendation for Indoor Cultivation: allow expansion, with no specific recommendation for limit across the board, but instead case by case review of the request in each application bearing in mind the resources and impact in that instance. Except for Industrial zoning, which currently allows up to 10,000 sq. ft. of Indoor cultivation, require AP for expansion over 5,000 sq. ft. and UP for any expansion above 5,000 sq.ft.

if allowed. For expansion for Indoor cultivation on Industrial property above 10,000 sq. ft. if allowed, require UP.

3. *Allowance for scaling up to a larger cultivation size permit type given the acreage averages of surrounding parcels, similar to that allowed for existing cultivation sites. See * 2 and * 3 on the Draft Revised Table 2.*

MCA is in favor of this recommendation and agrees with Staff that this practice has been beneficial with implementation of Phases 1 & 2 and parity between the existing system and Phase 3 for this issue would be appropriate and logical.

4. *Aligning permit categories with the California Department of Food & Agriculture (CDFA). This should be reviewed in conjunction with items 5 and 6 below.*

MCA is in favor of this recommendation and suggests that, in most cases, efforts to align with CDFA regulations, definitions, and nomenclature will be beneficial and create less confusion for applicants/permittees.

MCA has prepared a comparison chart of CDFA license types and Mendocino County Permit Types so that the Board may better understand the differences.

5. *If the Board of Supervisors directs Staff to allow Specialty Indoor permit type, which would allow 501-5,000 square feet of Cultivation area, then Staff recommends the Board of Supervisors also direct staff to make additional changes to either the Specialty Cottage Indoor permit type or the square footage allowance for a Specialty Indoor permit type.*

MCA is in favor of Option 1 as presented by PBS staff. This option is aligned exactly with CDFA permit types, whereas Option 2 creates discrepancy between the MCCO and CDFA permit types. We recommend avoiding this potential for confusion.

6. *If the Board of Supervisors directs Staff to allow the Specialty Outdoor permit type, which would allow 501-5,000 square-feet of Cultivation area, then Staff recommends the Board of Supervisors also direct staff to make additional changes to either the square footage allowance for a Specialty Cottage Outdoor permit type or the square footage allowance for a Specialty Outdoor permit type.*

MCA is not in favor of a 500 SF limit on the Specialty Cottage Outdoor license type. This does not align with the 2500 Sq. Ft. limit for the same license type with CDFA. As written, the Current Table 2 (Attachment A), Draft Table 2 (Attachment B) AND the CDFA license categories are all in alignment for the tiniest state license type and we strongly recommend keeping them aligned.

Thank you for your consideration.

Mendocino Cannabis Alliance

MCA PROPOSED NEW "PHASE 3" ZONING TABLE

MCCO Permit Type - Phase 3		Specialty Cottage Outdoor	Specialty Cottage Indoor		Specialty Cottage Mixed Light Tier 1 and 2	Specialty Outdoor	Specialty Indoor	Specialty Mixed-Light Tier 1 and 2	Small Outdoor	Small Indoor	Small Mixed-Light Tier 1 and 2	Nursery *5	Medium Outdoor		Medium Indoor (*6)	Medium Mixed Light Tier 1 and 2 (*6, *7)	
Min Parcel (ac) *1 *2 *3		2	2	2	2	5	5	5	10	10	10	10	10	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501-2,500	2,500	5,000	501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000	10,001 - 22,000	22,001 - 1 AC	22,000	10,001 - 22,000	22,001 - 1 AC
Zoning District	RR5 *1	AP	AP	-	AP	AP	AP	AP	AP	Major UP	Minor UP	AP	-	-	-	-	-
	RR10	AP	AP	-	AP	AP	AP	AP	AP	Major UP	Minor UP	AP	Minor UP	Minor UP	Major UP	Major UP	Major UP
	AG	AP	AP	-	AP	AP	AP	AP	AP	Minor UP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Minor UP
	UR	AP	AP	-	AP	AP	AP	AP	AP	Minor UP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Major UP
	RL	AP	AP	-	AP	AP	AP	AP	AP	Major UP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Major UP
	FL	AP	AP	-	AP	AP	AP	AP	AP	Major UP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Major UP
	TPZ	AP	AP	-	AP	AP	AP	AP	AP	Major UP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Major UP
	I1 *4	AP	AP	-	AP	AP	AP	AP	AP	AP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Minor UP
	I2 *4	AP	AP	-	AP	AP	AP	AP	AP	AP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Minor UP
PI *4	AP	AP	-	AP	AP	AP	AP	AP	AP	AP	AP	Minor UP	Minor UP	Major UP	Minor UP	Minor UP	

MCA PROPOSED "LEGACY" ZONING TABLE

MCCO Permit Type - Phase 3		Specialty Cottage Outdoor	Specialty Cottage Indoor		Specialty Cottage Mixed Light Tier 1 and 2	Specialty Outdoor	Specialty Indoor	Specialty Mixed-Light Tier 1 and 2	Small Outdoor	Small Indoor	Small Mixed-Light Tier 1 and 2	Nursery *5	Medium Outdoor		Medium Indoor (*6)	Medium Mixed Light Tier 1 and 2 (*6, *7)	
Min Parcel (ac) *1 *2 *3		2	2	2	2	5	5	5	10	10	10	10	10	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501-2,500	2,500	5,000	501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000	10,001 - 22,000	22,001 - 1 AC	22,000	10,001 - 22,000	22,001 - 1 AC
Zoning District	RR5 *1	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	-	-	-	-	-
	RR10	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Major UP	AP	Major UP
	AG	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Minor UP	AP	Minor UP
	UR	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Minor UP	AP	Minor UP
	RL	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Major UP	AP	Minor UP
	FL	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Major UP	AP	Minor UP
	TPZ	ZC+	AP	-	ZC+	ZC+	AP	ZC+	ZC+	AP	ZC+	ZC+	AP	Minor UP	Major UP	AP	Minor UP
	I1 *4	ZC+	ZC+	-	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	AP	Minor UP	Minor UP	AP	Minor UP
	I2 *4	ZC+	ZC+	-	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	AP	Minor UP	Minor UP	AP	Minor UP
PI *4	ZC+	ZC+	-	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	ZC+	AP	Minor UP	Minor UP	AP	Minor UP	

- = Not Allowed, AP = Administrative Permit, Minor UP = Minor Use Permit, ZC+ = Zoning Clearance plus Appendix G

*1 Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

*2 A parcel that is located in a zoning district that allows commercial cannabis cultivation and has a lot area between 3 and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types Specialty Outdoor, Specialty Mixed-Light Tier 1 and 2, and Nursery following the issuance of the required discretionary permit as specified in Table 2.

*3 A parcel that is located in a zoning district that allows commercial cannabis cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types Small Outdoor, Small Mixed-Light Tier 1 and 2, and Nursery following the issuance of the required discretionary permit as specified in Table 2.

*4 Parcels in Industrial zoning districts are not subject to the minimum parcel area.

*5 Permit requirement applies only to stand alone Nurseries, otherwise may be permitted as Accessory to Cultivation Permit being processed on the same parcel.

*6 All Indoor & Mixed Light Tier 1 and 2 permits above 10,000 SF are subject to site-specific cultivation area limits placed on the permit by the Planning Department during the discretionary review process.

*7 Any permits for more than 22,000 sq.ft. Mixed Light Tier 1 or 2 would require multiple State licenses. There is no prohibition on more than one State license on the same parcel under State rules.

CURRENT COUNTY PERMIT TYPE	==>	CDFA LICENSE TYPE	=	CANOPY AREA ALLOWANCE (SF)
Small Outdoor	==>	Specialty Cottage Outdoor	=	1 - 2,500
Small Indoor	==>	Specialty Cottage Indoor	=	1 - 500
Small Mixed Light	==>	Specialty Cottage Mixed Light Tier 1 and 2	=	1 - 2,500
Medium Outdoor	==>	Specialty Outdoor	=	2,501 - 5,000
Medium Indoor	==>	Specialty Indoor	=	501 - 5,000
Medium Mixed Light	==>	Specialty Mixed Light Tier 1 and 2	=	2,501 - 5,000
Large Outdoor	==>	Small Outdoor	=	5,001 - 10,000
Large Indoor	==>	Small Indoor	=	5,001 - 10,000
Large Mixed Light	==>	Small Mixed Light Tier 1 and 2	=	5,001 - 10,000
Nursery	==>	Nursery	=	0 - 22,000
N/A	==>	Medium Outdoor	=	10,001 - 1 Acre
N/A	==>	Medium Indoor	=	10,001 - 22,000
N/A	==>	Medium Mixed Light	=	10,001 - 22,000