



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

January 3, 2021

Re: **Item 6B on 1/5/2021** - Direction to Staff to Develop a Framework for Approving Third Party Planning Consultants to Avail Phase 1 Cannabis Cultivation Applicants with the Option to Directly Hire for Summarization of County Performed Review as Necessary to Meet Site-Specific Environmental Review Under the California Environmental Quality Act (CEQA) for Purposes of Seeking a State Annual License (*Sponsor: Cannabis Ad Hoc Committee of Supervisors Williams and Haschak*)

Honorable Supervisors,

MCA is encouraged by, and supportive of, the concept of this proposal to approve the use of third party planning consultants by Phase 1 Cannabis Cultivation Applicants to produce the required summarization of Site-Specific Environmental Review under CEQA. We continue to advocate that the County must pursue a multi-pronged approach that considers the unique circumstances of each applicant and the specifics of each project to help Phase 1 operators identify what pathway to annual licensure is most efficient for that project. Please refer to our [Questions and Considerations for the 12/16/2020 Town Hall](#) document for extensive comments on possible approaches to resolving these issues.

As you consider proposals and direct staff, please bear in mind that a practical and functioning permitting process together with a full opportunity for those who wish to participate in the regulated industry, are both critical to the overall environmental health and public safety of our community. Sheriff Kendall has provided the following statement which underscores this concept and supports MCA's request to involve stakeholders in each step of any program development to ensure its viability from an on-the-ground perspective:

"It is imperative that the County pursue every avenue to establish a clear, consistent, and manageable process to permit commercial cannabis cultivators who are willing to follow the rules established by the County and State. It is my belief that the people in the current application process are NOT the people who are committing violent crimes and egregious environmental violations. The Sheriff's office will continue to prioritize those that are committing egregious environmental and violent crimes. Ultimately, there needs to be a pathway to get everyone into the permitting process, including those that have no pathway forward at this time. The environmental and other regulatory conditions placed on permitted and licensed cultivators result in a far better method of protecting our environment and communities than a failed process. My support remains intact for those who have already stepped forward and are trying to adhere to the rules, as well as to those who need a sensible process to enter into. I support

efforts that would result in getting all those who might be eligible into a local regulated system in a manner that allows them to be in line with state requirements.

Please also consider the following recommendations regarding this proposal to allow outsourcing of CEQA document preparation:

For reference, the Recommended Action for Item 6B on 1/5/2021:

- “1) Direct staff to implement and execute a framework for approving cannabis cultivation planning consultants based on merit, ability to adhere to county standards, agreement of appropriate indemnity and assurance that in the course of summarization, California Environmental Quality Act will be followed and only existing county records memorialized by a writing will be translated;
- 2) Direct staff to maintain publication of the list of approved cannabis cultivation planning consultants on the web site;
- 3) Direct staff to develop a third party consultant engagement package for Phase 1 applicants, including agreement to release records to a consultant contracted by applicant, and a statement clarifying risks inherent in attempting to reuse County’s phase 1 site specific review documentation for the purpose of state license.
- 4) Direct staff to continue expeditious processing of Air Quality Management District permits and Sensitive Species and Habitat Review in collaboration with California Department of Fish & Wildlife.”

1. Recommendations, questions and background information regarding the specific language of the Recommended Action:
 - a. Given the direction to ‘implement and execute a framework’, we recommend that at the very least, the Cannabis Ad Hoc, Staff and relevant stakeholders review and provide input to any framework or plan that is proposed. We are concerned that without adequate ground-level input from staff and stakeholders, any proposal could result in a realization down the road that it is not functional or practical to implement.
 - b. We support the development of a merit and ability based approval process to assess the qualifications and skills of potential planning consultants, and we recommend directing staff to draft the appropriate criteria and work with the Ad Hoc and stakeholders before it is implemented.
 - c. We urge confirmation that CDFA understands the details of and agrees to any developed program and has agreed that this process would constitute the necessary steps to demonstrate that the CEQA process is underway for purposes of retaining Provisional licenses. It is our understanding that in order for the documents to be acceptable by CDFA for an annual state license, the county would be required to review and certify them before submission to CDFA. If this is correct, we urge the county to make provisions for the allocation of staff time and fees to be charged to the applicant for any such work so that we do not wind up back at a point where such allocations are a surprise and not accounted for.

- d. We strongly recommend that the framework include preparation of project descriptions and any combination of CEQA documents pursuant to various pathways a project might be eligible for (Appendix G, Notice of Exemption, or underlying preparatory work for a discretionary review under Phase 3, if applicable). It is imperative that every pathway is available and that the work conducted is not limited to one scenario (e.g. only Appendix G).
- e. Given the County's previous record of not adequately maintaining complete files, we recommend that all the records utilized for the underlying CEQA compliance tasks not be limited to 'only existing county records memorialized by a writing will be translated' as part of the process of preparing the CEQA documents. We believe that all information and documentation required by the 10A.17 ordinance is legally admissible to support compliance with CEQA and there should not be a prohibition on the utilization of additional review by the third party planning consultant, as long as the materials being reviewed are required by the ordinance. We recommend revising the direction to staff to reflect this possibility, and if necessary, amending the 10A.17 ordinance to incorporate all additional information and documentation that may be useful in satisfying site-specific environmental review in order to assess the actual significance of all environmental impacts.
- f. Time is of the essence. We recommend that the list of approved cannabis cultivation planning consultants be produced as quickly as possible and updated on an on-going basis.. We are also concerned that there are a limited number of consultancies with qualified planning staff to perform the necessary review. We recommend including all qualified environmental consulting firms state-wide on the list. There is very likely to be a shortage of available environmental consultants locally if this proposed approach goes into effect, and many of the most qualified environmental consulting firms refuse to work on cannabis-related projects.
- g. We recommend that the 'statement clarifying risks inherent in attempting to reuse the County's Phase 1 site-specific review documentation' be provided for review and comment prior to adoption and execution and that these clarified and fully defined risks must be made explicitly clear to all Phase 1 stakeholders. We also recommend that careful consideration be given to the difference in the inherent risks and process limitations for the pool of permit holders vs. the pool of applicants with authorization to operate. The ramifications of using the county's Phase 1 documentation are different for permittees than they are for applicants. The issue of inadequate prior review, that might impede the process for permittees, is not the same for applicants who are currently being asked to provide

updated application information and for whom the county is conducting additional review. And it should be possible to update the documentation in a permittees file during their renewal process, in which case those materials should be available for site-specific review by the 3rd party consultant.

- h. We strongly support the direction to continue expeditious processing of the AQMD Checklists, the Sensitive Species Habitat Reviews, and all other processing that gets each file closer to a local annual permit and CEQA compliance. We request regular updates (every 30 days or less) from staff on the progress made.
- 2. Additional considerations regarding the continued development of all potential pathways to State Annual Licensure, and assessment of existing operators for purposes of assisting operators with identifying the best pathway for their project(s):
 - a. Given the limitations on additional review that, as stated above, may likely impede the process for those with issued county annual permits, we recommend exploring and confirming that additional review based on adherence to 10A.17 can take place for permit holders during the renewal process.
 - a. We recommend that the County state clearly for the public record that they will not use the '30-day Corrections Required' process to winnow the number of permittees and applicants in process in order to reduce the County's obligation to review all applications. It is imperative to remember that the county has repeatedly failed to keep track of its own files, sent letters to the wrong addresses, and there is no accountable way to determine if a Phase 1 operator has already fulfilled the application requirements. It is equally crucial to remember that Phase 1 operators have been paying yearly cultivation taxes despite not having been issued an annual permit and while also facing the existential question of whether they will be able to maintain a state license given the CEQA debacle.
 - b. MCA recommends continued exploration in line with the recent (12/8/2020) motion to "direct staff to Review Additional Options for the Program Including Potential Consideration of Cannabis Cultivation as an Agricultural Activity." While it is uncertain if this re-designation will impact CDFA's position regarding the level of review necessary to comply with CEQA in order for an Annual State license to issue, we strongly support creating parity between cannabis farmers and other farmers where possible.

- c. In addition to providing an update on the potential classification of cannabis cultivation as an agricultural activity as a potential pathway to Annual Licensure for Phase 1 operators, can the Cannabis Ad Hoc Committee provide an update on the progress of the following additional potential pathways:
 - i. Using statutory exemptions judiciously to issue Notices of Exemption for eligible components of projects;
 - ii. The development of a Discretionary Use Permit Program (Phase 3 Ordinance) and the priority processing of Phase 1 projects unable to meet the standard of less than significant environmental impact including:
 - 1. The development of an Expedited Administrative Permit and the use of a Zoning Administrator, rather than the Planning Commission, to process applications more expeditiously as part of Phase 3;
 - 2. The use of existing Phase 1 files/documents to further expedite the processing of applications in Phase 3.
 - 3. Note: During the 12/16/2020 Town Hall event, Planning Director Brent Shultz and Supervisor Ted Williams discussed the priority processing of Phase 1 applicants and agreed it was a good idea. Mr. Shultz said he would look into the possibility and we request that he be asked to report back on his findings.
 - iii. The practicality and anticipated result of Phase 1 operators opting to forego CEQA compliance through 10A.17 and instead, submitting full CEQA documents to CDFA directly as per section 8102(r)(2) of the California Code of Regulations is not a viable approach:
 - 1. As stated in the Summary of Request, this approach is likely to take months, if not years, and cost tens of thousands of dollars. While this is legally allowed, it is not likely to resolve the issues of slow processing of CEQA locally, and is probably not a better solution for most operators than achieving CEQA compliance through the yet to be established Phase 3 Discretionary Use Permit Program.

2. Would operators be able to submit their CEQA documentation as part of their existing provisional license, and continue to be considered by CDFA to have CEQA 'in process' and be able to operate under a State Provisional License as is statutorily-required?

Thank you for the opportunity to provide our comments, questions, and recommendations. We appreciate your careful consideration of the points we have raised, and as always are available to discuss further and assist in any way possible.

Sincerely,

Mendocino Cannabis Alliance