



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

April 11, 2021

Re: **Item 5f on 04/12/2021**: Discussion and Possible Direction Regarding Phase 1 Cannabis Permit Applications Including: (1) Encouraging Denial of Non-Compliant Phase 1 Cannabis Cultivation Applications; (2) Approving Increased Scope of Work for Existing Outside Counsel Abbott & Kindermann to Assist with Phase 1 Cannabis Cultivation Denials; (3) Obtaining Satellite Imagery Subscription for Cannabis Program and Code Enforcement with Budgetary Request Returning on Consent; (4) Requiring Phase 1 Cannabis Permit and Embossed Receipt Holders to Demonstrate State Provisional License or Attest to Non-Cultivation Within 45 days (Sponsor: Supervisor Williams)

Honorable Supervisors,

MCA understands the need for a process to clarify “who is in and who is out of the legal cannabis cultivation system” but we reject the notion that most of Phase 1 program participants are “bad actors” who deserve to be denied.

The Board of Supervisors has acknowledged repeatedly that the County has also been responsible for the poor status of application files. There are countless documented examples where the Cannabis Program has moved the goalposts on applicants, made substantial errors in processing or filing documents, provided applicants with incorrect information, sent notices to incorrect email or mailing addresses, or failed to update contact information despite the applicant providing the updates.

In the interest of moving past how we got here, and to effectuate fairness and a reasonable way to sort out who is “serious” about meeting the program requirements, we ask that an opportunity to correct issues and become compliant be given to all Program Participants before any systematic denial of existing applications.

Two primary procedures should be employed:

- A 60 day window for complete and up to date file resubmission after the portal has opened.
- A process for review, similar to the pre-appeal minimum tax review process, should be instituted for consideration of extenuating circumstances that the review panel can consider before final denial or a reconsideration determination is made.

Providing these reasonable processes before wholesale denials are issued in no way compromises existing avenues for enforcement actions, including against egregious environmental violators, who would then be ineligible for a permit, and it would not prevent subsequent denials for failure to meet program requirements. Rather, it accounts for the history of confusion and provides no excuse to the County, or to any applicant, about prior errors.

MCA respectfully requests that the following parameters be placed on any denial process:

1. No denials should occur on the basis of non-communication or incomplete applications until 60 days after the long-awaited portal is launched and final guidelines are provided to Program Participants.
2. No denials should occur for Program Participants without an active license or recently expired State Licenses without a process for review if they are being considered for denial.

3. No denials should occur without the County first publishing clear and official guidance and sending notice to all Program Participants that they must perform certain tasks within a certain timeframe or risk being denied. Special attention should be made to tell applicants that even if they recently submitted materials in response to a 30-day letter, they should still resubmit through the portal. Every Program Participant should be informed of the need to update the materials, and that the requirements for those materials have changed since they first applied.
4. Clear and reasonable standards, tied specifically and only to demonstrating compliance with the requirements of 10A.17, should be used and communicated for considering the denial of any application. Arbitrary standards that do not achieve that end should be eliminated.
5. No denials should occur for unpermitted buildings if the Program Participant does not have an annual permit and is eligible for a Compliance Plan. For those who have already been issued a Compliance Plan or who have annual cultivation permits, a denial for a renewal or a revocation should not occur if they are actively pursuing building permits but waiting in processing queues of either CalFire or Planning/Building Services.
6. Program Participants without a state provisional license should be given 45 days to apply for a state license or attest to non-cultivation. The state license should not have to be issued within the 45 day period, only applied for.¹
7. It is unjustifiable to conduct satellite-based permit denial solely by the Cannabis Program, on Program Participants, without the same measures for denial or approval of other business licenses or to enforce all code violations on all properties throughout the county. All enforcement efforts of any kind in our county should be uniform and not be targeted to any one group whether utilized as a sorting tool for denial of any right or privilege the county bestows or for enforcement of any existing county code.

Without the above fair and reasonable parameters, we believe strongly that any encouragement of application denial is effectively an unconscionable effort to winnow down the current Program Participants to reduce the backlog of the application processing of those Participants in advance of the opening of the new land use based cultivation ordinance.

We ask that you please remember that many Program Participants are families and long-standing members of the Mendocino County community. They stuck their necks out, in many cases gambling everything on the belief that the County was offering a program that would work. The goal posts have repeatedly moved. The program's management and processes have repeatedly changed. It's not an exaggeration to say that this experience has been traumatic for many involved. There may be some bad apples in the bunch, but most are good actors and we do not trust the current structures to make that determination without the above proposed parameters to ensure that good actors don't get unfairly denied.

We strongly urge each of you, Honorable Supervisors, not to generalize Program Participants as bad actors, and to give everyone a chance to comply with a reasonable and clearly defined process. These people have given the County many chances to get this right, and despite how poorly that has gone, they have continued marching through the endless mistakes and changes. We ask that the heated rhetoric concerning various issues does not color the right of the current Program Participants to have a fair and clean reset and that the issues are not conflated in a manner that prejudices all of the current participants.

Respectfully,

Mendocino Cannabis Alliance

¹ There are several legitimate reasons why a Program Participant may not have already applied for a state license, such as: a) they have not yet begun cultivating b) they stopped cultivating and filed a Notice of Application Stay (NAS) c) the embossed receipt is for a nursery permit, accessory to a cultivation permit, which they have not yet begun to use, etc.