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Mendocino County Board of Supervisors  
501 Low Gap Road, Ukiah, CA 95437

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Re: 4/19/21 Agenda Item 3b: Cultivation Ordinance (CCAO)

Honorable Supervisors,

I support passage of a new, land use-based discretionary ordinance. However, I believe that the race to take advantage of the State statutory CEQA exemption, along with the challenges of continuing to implement 10A.17, and the conflation of those matters with the very real need to prevent egregious environmental violations and protect public safety, creates a pressure cooker which is susceptible to unwise and fear-based decisions. When we add to that the passionate debates about whether a new ordinance should or should not be applicable to new cultivation or any expanded cultivation, and the complex details those choices entail, we have a perfect storm. **As a result, it is my very strong recommendation that a few explicit steps be taken to ensure that the public policy considerations you are weighing out and ultimately deciding upon, have the best chance of serving the purposes you identify.**

**First, for each and every restriction or allowance, please clearly articulate the specific underlying goal in the ordinance language itself and do not merely rely on the robust discussion that I'm sure you will be engaged in.**

**Second, please include specific language in the ordinance, perhaps in the preamble, that states it will be modified from time to time, if either an issue was left out to begin with (often we don't know what issues will arise until actual implementation), or if an unintended consequence is revealed along the way that is misaligned with the specially stated goal behind the restriction or allowance.**

While we all hope to spend less of our time discussing the minutia related to cannabis permitting, inevitably, implementation will reveal either that a term is not worded in a manner that best effectuates the intended purpose, or an unknown issue will pop up that needs to be addressed. Over the years, with 9.31, 10A.17, and now I fear, with the CCAO, it is often difficult for Staff and even the Ad Hoc to ascertain whether an issue warrants ordinance changes and the time it takes to bring it back before the board creates inertia problems. **If we can ensure specific goal is clearly articulated underlying each allowance and restriction and it is actually matched to the language as the new ordinance matures, while we also clearly state the intent, we may have less impact on staff time in ascertaining whether an ordinance change is necessary and may be able to have Staff deal with some issues through policy and procedure adjustments if there is misalignment.**

Here are two examples: To begin with, 10A.17 was worded in a way that prevented a person with a two legal parcel homestead from using both legal parcels for one single permit even if there was zero expansion from the gardens that existed going back to 25 plants per parcel. This had the inadvertent effect of encouraging garden relocation (new disturbed land) and the proliferation of more permits rather than fewer since the single homestead person was forced to pay two separate permit fees, and submit two separate applications for what was always their one homestead. It took me more than a year, despite full agreement about the unintended impact, to have the item brought forward for a language change, and then another long period before staff could implement the change. The problem was, staff could not simply determine that the language was accidentally preventing them from correcting what everyone knew was not in line with the Board's intended goal. However, because there was no explicit stated goal for the restrictive wording, the only way to effectuate what the Board wanted in the first place, was to go through an ordinance change and since there was no expressed desire to do so, entropy took over. Currently, under the new proposed ordinance, a consideration of banning water deliveries as a water source is being contemplated. Without advocating for one thing or another with respect to the ultimate outcome, it is not hard to imagine all the ways in which there could be unintended consequences. However, if the Board instead adopts language which expresses the underlying goal they are trying to achieve, and first tries to match language to that specific goal and then provides an avenue for realignment with the goal if it turns out that the language is imperfect, it may have a more positive benefit. So, if the goal is to not have unlicensed water sources, state that. If the goal is to not allow water trucks to use illegal water, deal with that not in the cultivation ordinance, but in the general code. If a likely unintended consequence is that a water district, with lawful water sources, could lose 1/3 of its business, be sure to consider that. If it becomes



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impossible to make this rule for cannabis alone, then consider using a different code section to address the issue for the county across every industry or use. Again, I am not advocating one way or the other, just pointing out why matching the language to the underlying goal is so imperative and why stating the specific intent and leaving a way to later align with that intent is necessary.

I am a lawyer, so I am not suggesting some mushy language that is not clear. Rather, I am suggesting a three-step process: **(1) identify the underlying goal and attempt to match the language to that goal; (2) specify the intent behind the language; and (3) articulate a method for realignment in case the language used winds up being problematic for one reason or the other.**

**Finally, while all of the important issues pertaining to the specifics of any new ordinance are debated, it is imperative to not lose sight of the urgent need to properly deal with the current cohort of permit applicants.** This means different things under the current system than it may under a new system, but the point is we cannot forget to continue to address moving them forward one way or another. In the current system that means continuing to march forward under it (10A.17) to see how many applicants can be processed through that system **before the end of Provisional licensing.** That requires the processes that I understand the Cannabis program is currently in the process of implementing to correct the county's failure to keep accurate files and some of the miscommunication that came from prior iterations of the program (don't contact us, we'll contact you), and refinement of long-ago promised consistent and necessary requirements before cutting people from the program. However, in addition to those current efforts by the Cannabis Program (portal for resubmission, education and notices, rethinking site plan requirements), it may be worth insisting that certain items that were directed by the Board to be changed but have not come to fruition (duplicative local LiveScan be removed, generator language change) finally come back in the form of 10A.17 amendments soon. Those matters were voted by the Board to be implemented as a part of an effort to make the processing of the applications by staff more efficient without losing the intended protections. **The fact that a new ordinance is being enacted does not change the need to continue on with all of these efficiencies so that we have the best chance of getting the most people (of the original cohort) through that existing system before the end of state Provisionals.** It has been two years since I submitted a memo with line-by-line ordinance changes to effectuate a smoother administration of the 10A.17 permits. A few of those issues have had ordinance changes effectuated. Some were approved by the Board to enact ordinance changes nearly a year and a half ago but have not occurred. Others, were agreed to in theory by the Ad Hoc and Staff at the time, but were never brought forward to the Board as issues because of the feeling that there was no bandwidth and no effort should be expended on fixing the "old" system. **While there is certainly more than ever to accomplish, it is imperative that we continue to make 10A.17 efficient so that staff may process those people, who have been waiting for 4 years, and move on to handle additional work under a new land use –based system.** Additionally, we need a specific directive to change the last Board direction to ONLY do the SSHR screening for annual renewals, rather than the many hundreds that were waiting in line under the CDFW contract.

I have been and continue to be a source of specific assistance to the Board, the Ad Hoc, and Staff. I genuinely appreciate all of the effort each Board and Staff member are putting in. **I simply hope that the passions regarding certain issues do not drown out the need to accomplish things that will have a significant impact on practical implementation in both the old and the new ordinance.**

Thank you for your consideration.

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