

February 6, 2017

Mendocino County Board of Supervisors

RE: Cannabis Cultivation and Zoning Code Ordinances

Dear Board Members,

The signers of this letter have reviewed the draft cultivation and zoning code ordinances, the Initial Study, the Mitigation Monitoring Program, the Planning Commission Resolution, and other relevant documents. Each of our organizations has approached this discussion from our own perspective and with our own concerns. We are also aware that no individual or group is likely to see all of their concerns addressed in the way they might prefer. Despite our differing perspectives, we are in general agreement on a number of key points. We speak with complete unanimity in support of some positions. In other cases, we recognize the likely direction of the ordinances and advocate for modifications that help address our concerns.

We recognize too that we are at the beginning of a major transition period. Our understanding of the impacts and how they can best be mitigated will continue to evolve. In that respect, it will be important for the County to accurately compile comprehensive data about the permitting program, beginning with review of compliance and enforcement data generated in 2016.

Among the many points to be considered, we have discussed the following issues in detail and offer our recommendations for your consideration.

1) We recommend Mitigation Measure BIO-1 (Section 1.C.) not apply to Phase 1, which consists of existing growers, but be revised to require referral only for new cultivation sites and relocated cultivation sites. BIO-1 should also not be necessary if the relocation site has an existing garden site that does not require new grading or land clearing. We share a general concern that increasing the regulatory burden will discourage many cultivators from applying for permits. We believe the negative environmental and community impacts of unregulated cannabis cultivation will best be addressed by bringing a majority of cultivators into a regulated system.

We share the concern about potential impacts to sensitive species and habitat but believe Phase 1 impacts are less than significant because the impacts of site development have already occurred. Existing impacts of Phase 1 sites, including modest expansion, will be addressed through the permit compliance process. Existing cultivators will be required to enroll with the State Water Board and/or adhere to applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects"; will be advised by approved third-party inspectors; and will be inspected by County Agricultural Commissioner staff members, who are four year college graduates and trained biologists.

We believe County staff, by reason of their education, training, and experience, and by utilization of relevant database listings, including the CDF&W California Natural Diversity Database, California Native Plant Society rare plant lists, and the United States Fish and Wildlife Service List of Threatened and Endangered Species, are qualified to determine if Special Status Species and their critical habitat may be impacted by Phase 1 cultivators, and make appropriate recommendations, including requiring consultation with CDF&W if applicable.

2) We recommend that the County not approve any Phase 1 cannabis cultivation permit that would result in removal of any true oak tree species prior to adoption of an oak woodland protection ordinance. We recommend that this condition would prohibit any Phase I cultivator from removing any true oak tree species on cultivation sites where cannabis plants are grown. We believe the Planning Commission recommendation, and the expanded mitigation suggested here, provide further assurance that automatic referral of Phase 1 cultivators to CDF&W is not necessary to assure protection of sensitive species or habitat.

3) Consistent with the Mitigation Measure suggested in point 2), we do not support tree removal or the conversion of timberland to allow cannabis cultivation. For that reason we recommend modification of Mitigation Measure AG-4 to specify that no permits shall be issued if the cultivation would require a Less-Than-Three-Acre Conversion Exemption or Timberland Conversion Permit. We support retaining the requirement that unauthorized conversion of timberlands prior to enactment of this ordinance be required to provide evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including Cal Fire, the North Coast Regional Water Quality Control Board and CDF&W. Any unauthorized conversion of timberlands occurring subsequent to enactment of this ordinance shall result in a denial for any permit application.

4) We recommend the following for Phase 3 only new cultivation sites: The draft cultivation ordinance allows no more than two permits to any one individual or entity. At the January 19 Planning Commission meeting, staff introduced the concept that an owner of multiple parcels could lease out any number of parcels to be used for cultivation sites. We are concerned that this condition is already fueling land speculation and, if allowed to stand, will result in a concentration of permits under the control of a single individual or entity. We strongly support a condition for Phase 3 new cultivation sites only, that would limit any individual or entity to having a financial stake in no more than two cultivation sites, irrespective of whether they are the permit holder or a lessor who leases land to permit holders. For purposes of this ordinance, collectives and cooperatives of cultivators holding pre-existing permits shall count as a single lessee.

5) We are concerned about the Planning Commission recommendation (Section 4.C.) to allow a continuation of cultivation in the RR-2 zoning district but with a two year sunset clause after which the cultivator must relocate to a new cultivation site. This condition may have the unintended consequence of discouraging legally compliant cultivators from applying for permits which will perpetuate the black market and limit the

effectiveness of the ordinance. Further, many of these cultivators will not be able to relocate or will not be able to do so within two years. Finally, this condition will put additional pressure on Agricultural zoned land which will already be subjected to strong pressure when Phase 3 permits become available in 2020.

We understand the concern about allowing commercial marijuana cultivation in residential neighborhoods but we also believe many neighborhood grow sites are not in compliance. Effective enforcement of existing rules would address most of the perceived problems.

However, if the Board supports Planning Commission recommendation 4.C., we support the following recommendations applicable to RR-2 and smaller: A) extend the sunset period to 3 years to allow a reasonable time for relocation: B) create the opportunity to apply for an Administrative Permit that would recognize existing cultivators as legally non-conforming if they can: comply with Phase 3 setbacks, or have no immediate residential neighbors; or can otherwise demonstrate that they are not causing neighborhood impacts; C) actively pursue the creation of overlay zones or community based plans to identify communities or neighborhoods where cultivation is not considered a problem: D) provide effective enforcement to identify and abate illegal neighborhood growers on a complaint driven or public visibility basis. E) seek to identify appropriate relocation sites and/or business models, such as cooperatives, that may facilitate the ability of growers to relocate, including financial participation of relocation site owners consistent with the philosophy expressed in our paragraph 4), above.

6) We endorse prohibition of new cultivation permits in Rangeland, TPZ and Forestland. We believe these mitigations will limit speculation, fragmentation, removal from production, and potential adverse environmental impacts to these lands. We share a concern that this prohibition could exert pressure on the Agricultural zoning district. However, we believe these mitigations support the Initial Study and are essential in making the ordinance legally defensible.

7) The Planning Commission recommended consideration of future amendments (Section 4.1.) to allow cultivation in Rangeland, TPZ, and Forestland zoning districts. We understand the Board may consider future amendments on this or any other issue if it chooses to do so, but signaling an intention to do so now will only fuel speculation in these zones. We do not support the Planning Commission recommendation for the reasons stated in number 6).

8) Given the timing of ordinance adoption; uncertainty around the number of applicants; and the time required to process and review applications, we support the necessity for some type of provisional permit approval. In addition to a completed application, payment of required fees, and an agreement to obey all laws, applicants for a provisional license shall also be required to submit a detailed plot plan, photographs of the cultivation site (including any expansion area).

9) For the same reasons that we support provisional permits, we also recommend that applicants be required to enroll with the State Water Board and apply for other required permits, but not be required to receive those permits as a condition of receiving a local permit.

10) Effective enforcement of this ordinance is essential. We recommend that the primary agent for enforcement of this ordinance shall be the Agricultural Commissioner. We recommend that the County identify and provide adequate sources of funding to the Agricultural Commissioner to assure that all required conditions are met and that those who fail to comply will be required to cease cultivation. The County must also identify a lead agency for enforcement of illegal neighborhood grow sites on a complaint driven or public visibility basis. Finally, the Sheriff's Office must be adequately funded to eradicate trespass grows on public and private lands. Effective enforcement may result in reduced impacts that will assist in the evaluation of what is needed in terms of additional oak woodland protection and grading.

11) We reiterate the necessity of collecting accurate data which, in addition to effective enforcement, will also assist in evaluating the need for changes to the regulatory program. We recommend that the County compile data, including but not limited to: the number of applications received and permits issued for each permit type, the number of permits per zoning district, the parcel size; the geographical distribution, and the number of applicants that fail to comply with conditions. This information is especially critical to inform the initial period of regulatory structure and enforcement protocol. We recommend an annual report on these features by the end of each calendar year, to enable timely modification and issuance of permits for each succeeding year.

12) Proof of prior cultivation shall be held in confidence by the County and shall not be used for any other purpose or in any other proceeding.

Approved on February 6, 2017 and authorized for submission to the Mendocino County Board of Supervisors by the following individuals and organizations:

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