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Mendocino County Planning Commission  
501 Low Gap Road  
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RE: CASE#: OA\_2018-004

Honorable Commission Members:

I greatly appreciate the careful attention this Commission has paid to these issues. In general, I am in support of the amendment requests and in fact, most of them are based on issues I raised with the Board of Supervisors. However, I request that you consider a number of specific comments and proposed changes to the Staff recommendations concerning these issues. I have referenced the sections of the proposed amended text and page numbers of the redlined version Staff submitted for this Agenda Item. Some of the proposed changes are technical in nature, but some will have a significant impact on how the amendments are implemented and I appreciate your careful deliberation concerning them. Again, I support the amendments and appreciate Staff's hard work in bringing them forward.

Page 2, Sec. 10A.17.020- Definitions:

"A-license" and "A-licensee": Please insert "or subsequent legislation" after the term "MAUCRSA." Currently, there are numerous pieces of legislation working their way through the State legislature. It seems prudent to include future legislation so we do not have to amend the ordinance(s) again as we did with medical and adult use.

Page 3, Sec. 10A.17.020- Definitions:

"Cultivation site": please insert "or more" after "on one" and before "legal parcel" in the first line of the definition and add "(s)" after "parcel" in the second sentence on the second to last line. A proposed amendment suggested in a later section would allow a person to apply for a single permit to be used on more than one legal parcel owned by the same owner (in the instance, for example, that an applicant does not want to "max out" by getting two permits for the maximum cultivation amounts for each legal parcel they own, but happen to have their garden sites on two contiguous legal parcels that together constitute up to the legal limit for one permit).

"Disturbance": Please explicitly except from this definition removal of brush for fire safety and removal of brush (we already have a ban on removal of commercial trees and oak species) where there is no erosion impact and/or sufficient erosion control measures (we already have a requirement to comply with all State Resource Control Board rules relating to erosion prevention). If one has an existing clearing that needs some brush removal to ensure a fire safety perimeter around a structure used for cultivation (such as a hoop house), one should not be subject to an administrative permit for expansion if one were merely removing brush near to the hoop house to keep it fire safe where a clearing already exists.

"Expansion": Please insert "or before" after "as of" and before "the Baseline Date." There were folks who cultivated more (canopy) prior to the Baseline Date and then reduced and may now want to expand to the legal limit. For example, under prior permitting programs in 2010-2011, one



might have cultivated 10,000 square feet of canopy and then when that program was shut down, reduced to 2500 square feet and want to expand again to 10,000 sq. ft. where otherwise allowed. They should not be penalized (by now having to get an Administrative Permit for “expansion” just because they followed the current County laws and reduced to 25 plants when the prior permitting program went away. If one can demonstrate that the area cultivated previously had the same total square footage of canopy at any time up to the Baseline Date, one should not be required to get an Administrative Permit.

An additional note and question regarding “expansion”: How do indoor growers or growers who grew in hoop houses or green houses prove the same canopy square footage? Perhaps the same size clearing should be considered in those instances?

Page 5, Sec. 10A.17.020- Definitions:

“Plant canopy” or “square footage”: Please insert “and does not include immature plants” after the last sentence in the definition, before the period. Elsewhere in the proposed amendments, the recommendation is to mirror the State rule that immature plants do not count toward square footage. If that recommendation is adopted, please alter this definition.

Page 8, Sec. 10A.17.040 (B):

Please consider altering the description of how the distances are measured. The Board of Supervisors had indicated that some unintended consequences have arisen by the use of these particular methods of measuring. It has been suggested that hills and other features of terrain (such as ravines, gullies, difficult to penetrate trees and brush, etc.) be considered when calculating distance from sensitive receptors and setback requirements.

Page 10, Sec. 10A.17.050:

The State did enact a statute that specified that the Bureau of Cannabis Control would publish the date from which the collective defense would no longer be effective after one year from the published date. That date is January 9, 2018. The defense under Section 11362.775 is repealed one year from 1/9/18.

Page 11, Sec. 10A.17.060:

Please insert “or maintain those purchased” after “propagate their own” and before “immature plants”. The reality is many farmers now purchase immature plants and maintain them until they are ready to be planted in a manner that will bring them to maturity.

Please also include in the requirement of no new disturbance (at the end of the first paragraph on p.11) , an exception for brush removal for fire safety and removal of brush in an existing clearing if there is no impact on erosion and/or erosion control methods are sufficient to prevent erosion entirely. Again, strict rules from the State Water Resource Control Board already impose stringent erosion control requirements.

**Please do not impose a separate M or A permit requirement.** One important reason why some of the proposed amendments are coming before you is to address issues that are otherwise making things more expensive and difficult for small farmers. If they cannot survive, the entire



program will fall apart and the local economy with it. Staff has, perhaps inadvertently, included language that appears to add a second permit requirement for each applicant. Up until now, even when discussing Adult Use and Medical Use permits, the County has not imposed separate M or A permits. While it is true that at the State level (at least for now... there is some discussion of removing A and M distinctions for farmers), farmers must apply for two separate licenses if they want to do business in the Adult Use market and the medical Use market. However, in an effort to keep costs down for small farmers, we implore the Commission and the Board of Supervisors to continue the practice of one single permit. Otherwise, the recommendation to amend the ordinance to allow consolidation of different cultivation styles under one permit would lose its effect financially. In addition to the separate application fees and actual annual permit fess, there are minimum taxes imposed on each permit.

**Please consider taking this opportunity to restate our local Permit Types to match the State license types.** Many local permit applicants had their Temporary State Cultivation License Application rejected because of the confusion they had between Mendocino County's permit categories and the State's. So, for example, our local "Large" permit types are for 10,000 square feet but at the State level that is considered "Small." It would be less confusing if we mirrored the State license types with respect to size. Additionally, if the "mix and match" of cultivation styles is consolidated into one permit as proposed, each permit could have multiple cultivation styles listed on the same permit. Updating our system of identifying permit types makes sense at this juncture.

**Please correct the "one legal parcel" language in the description of permit types.** As explained before, if the ordinance is amended to allow an owner of two legal parcels next to one another to cultivate on both parcels under one permit up to the legal limit for one permit for the total size of the larger of the two parcels or the combined size of the two parcels not to exceed the maximum allowed on any parcel), then the "one legal parcel limitation in the description of permit types is in conflict with the amendment.

Page 14, Sec. 10A.17.070 (H) Fees:

Please change the location of the phrase "and prior to any annual renewal" from the sentence relating to application fees and place it in the sentence relating to annual fees. Unless one is applying for an additional permit, their annual permit needs renewing, not their application.

Page 14, Sec. 10A.17.070 (K):

Please remove the date the trust must have existed by. This issue was already fully discussed and the Board of Supervisors agreed that the date the trust was created was irrelevant since the permit is also tied to the person with proof of prior cultivation.

Page 15, Sec. 10A.17.080 (A) (1):

Please add "until May 4, 2020" at the end of the last sentence in this subsection. The Board of Supervisors indicated that since the sunset period ends three years from the ordinance's enactment, the right to extinguish and transfer should also be three years. While this section largely deals with when those areas subject to the sunset provision must apply for a permit in those areas, the issue of when they can extinguish and transfer is a separate issue (last sentence of this section) and should mirror the time that the cultivation may occur before sun setting.



Page 15, Sec. 10A.17.080 (B) (1):

Please consider allowing persons who have proof of cultivation prior to 1/1/16 on a different property from the property they are now applying to cultivate on to use their prior cultivation on the other property to establish their prior cultivation even if it was not on the current property **so long as the current property also has proof of prior cultivation**. This would allow people who were responsible and moved off of property that may have been unsuitable to continue on a more suitable property. It would also allow renters or former partners who parted ways to continue their livelihood even if they moved. **By requiring that the property also have proof of prior cultivation, we would ensure that no new inventory was added above the baseline**. If we don't allow this, then heritage farmers who rented for years and now own property or found a more suitable place to rent would be forced out of the industry. Likewise, owners who moved would be forced out even if they were long time cultivators in Mendocino County.

Page 16, Sec. 10A.17.080 (B) (2) (c):

Please consider moving this subsection out of the section pertaining to the sunset provisions and instead place it under other general requirements. If for any reason it is important to keep this provision here, then how is it different from the provision in (B) (2) (b) (i)?

Page 18, Sec. 10A.17.080 (B) (5):

Please specify that the requirements of "this Chapter" that persons who might apply later for a larger or different permit subsequently will be subject to Phase One requirements (not Phase Three) if they are applying for a larger or different permit on the same property as their initial permit.

**Please also consider adding a provision that enunciates the provision previously approved by the Board of Supervisors that permit holders or applicants who established prior cultivation in Phase One may file a notice of intent to take a break for 1-3 years without it jeopardizing their ability to resume cultivation on that property after the hiatus.**

Page 20, Sec. 10A.17.090 (I):

Please consider updating the reference to the pilot program instituted by the NCRWQCB under its 2015 order which has been replaced by the Statewide Regulations.

Page 20, Sec. 10A.17.090 (J):

Please add, "if needed" to the end of the last sentence in this subsection. An applicant cannot provide the LSAA if it is not needed. In fact, the State cultivation licensing requires submission of that document or the determination that one is not needed prior to licensing, so this requirement is no longer needed at the local level. Instead **a simple mandate that the permit holder obtain a state cultivation license is sufficient (and already included in the ordinance). The same is true for many of the required elements on 10.A.17.090.**

Page 21, Sec. 10A.17.090 (Q):

Please update the agency name to California Department of Tax and Fee Administration which is now the agency that handles sellers permits in place of the BOE.



Page 22, Sec. 10A.17.090 (X):

Please consider replacing the Cortese List with the EnviroStar Hazardous Materials database search that is required by the State when obtaining a cultivation license. It seems silly to not use the same database for the state and local requirement.

Page 23, Sec. 10A.17.100 (2):

Please require Staff to publically post the policy referred to that was to be developed in consultation with CDFW.

Page 25, Sec. 10A.17.110 (E):

Please consider amending the second paragraph in this subsection to remove the requirement that a sound analysis be performed as a condition of the permit. Instead, require such analysis if a complaint regarding noise has been filed against the permit. There are NO accredited acoustical engineers in Mendocino County.

Page 25, Sec. 10A.17.110 (F):

Please update the reference to the NCRWQCB Order from 2015 to the current statewide regulation.

Page 26, Sec. 10A.17.110 (P):

Please include exceptions to the requirement of no additional disturbance for brush removal for fire safety and brush removal that does not impact erosion and/or erosion control methods are employed so as to prevent any erosion.

Page 27, Sec. 10A.17.140 (E):

Please do NOT remove the return receipt requested requirement. Due process is important. It is important that ACTUAL notice occur before terminations occur. The ordinance has very short time frames for a permit holder to respond. Further curtailment of the notice requirement would not afford proper de process. Also, please require the notice be sent to the last address provided by the permit holder.

Page 28, Sec. 10A.17.150 (A):

Please do NOT remove the return receipt requirement. Also, please require that the notice be sent to the last address provided by the permit holder instead of the address "associated with" the permit. It is imperative that with the very short response times and the expedited code enforcement processes when it comes to cannabis, that the few due process protections that were included in the ordinance not be truncated.

Page 30, Sec. 10A.17.150 (D):

Please change the language to the last address provided by the permit holder instead of the last address "associated with" the permit.

Page 33, Sec. 20.242.040 \*\* Expansion:

Please see my comment on pages 1-2 of this Memo regarding Expansion and the need to include the possibility that the cultivation may have contracted before the current expansion. Also, is



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January 1, 2016 the appropriate date given that the "Baseline Date" for the CEQA document is proposed to change?

Page 34, Sec. 20.242.040 (D):

Please include reference to only needing Administrative Permits for expansion in FL or TPZ zoning. While the Table 1 was updated, the language in this section was not.

Page 34, 20.242.040:

Please consider adding a specific provision that codifies the Board of Supervisors direction that permit holders or applicants may file a document to take a break for 1-3 years without losing their right to resume later.

Page 36, 20.242.070 (C):

Please add a subsection (7) indicating that an Administrative Permit may be applied for and granted to reduce a setback requirement.

Page 37, 20.242.070 (D) (5):

I think that the reference to the Administrative Permit in the second line is an error since this provision relates to Minor Use Permits.

Thank-you for your careful consideration of these issues.

Respectfully,

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