



**Mendocino County Planning Commission
501 Low Gap Road
Ukiah, CA 95482**

July 17, 2019

Re: Agenda Item OA_2019-0001 (Coastal Ordinances)

Honorable Commissioners and Staff,

The Mendocino Cannabis Alliance appreciates the work that has gone into these issues. We are particularly pleased to finally have an opportunity after nearly 3 years, to comment on cannabis-related ordinances for the Coastal Zone.

General Comments Regarding Issues Raised In The Staff Memo

MCA appreciates Staff efforts to specify the reasons for recommending that the Coastal Zone ordinances differ from the Inland ordinances. We ask that the Commission review the need to differ with two specific considerations in mind. First, Coastal Zone cannabis businesses should be afforded the same opportunity to “come into compliance” that their inland counterparts have had. While Staff is recommending that “Compliance Plans” are not necessary if every permit is subject to discretionary review, MCA is concerned that without them, cultivators on the coast would not be afforded the same opportunity that their inland counterparts have been given to continue to operate while the review process is underway. Second, to the extent that these proposed ordinances advance changes that have been recommended to be made to the Inland ordinances, we appreciate the differing treatment between Inland and Coastal Zone ordinances and fully support bringing forth the language as will be updated in the Inland Codes. However, to the extent that there are other differences, we respectfully request that this Commission carefully examine whether the different treatment of Coastal Zone cannabis ordinances are narrowly tailored to reflect only the differences REQUIRED by the Coastal Zone rules. In short, MCA requests that the Commission analyze whether the differential treatment is truly necessary under the Coastal Zone rules.

Items Detailed In Staff Report

MCA supports many of the items enunciated in the Staff Report but have these specific comments:

Page 3, Items 3 & 4: As stated above, MCA has some concern about the impact to existing legacy cultivators who have been waiting for years to participate in the regulated industry. They would not be afforded an opportunity to continue to cultivate while the lengthy discretionary review process is conducted, while new operators would immediately be afforded the same permitting opportunities.

Page 3. Item 9: MCA strongly supports this recommendation.

Page 3, Item 10: MCA recommends that the Commission consider a less narrow approach than prohibition of cultivation on all Industrially zoned properties. Microbusinesses may be appropriately placed on Industrial property and there should be no prohibition on cultivation, if conducted in a structure, with proper air filtration. Likewise, potential industrial cannabis parks, opportunity or enterprise zones may seek to encourage co-location of all sectors of the industry on appropriate properties. Failure to include cultivation could minimize the efficiency of that kind of sector integration.

Page 4, Item 12: MCA generally supports the transition to use acreage as a distinguishing factor, but we have recommendations concerning acreage size for different types of permits that we have addressed below.

Page 4, Item 13: MCA strongly recommends that the ordinance language mirror the Inland Code in requiring a dwelling unit and remove the term “legal.” Currently, in order to encourage entry into the regulated system, the County has taken the position that filing of proper building permit applications for structures used in the cannabis business is a requirement which must be fulfilled within one year after issuance of an annual permit through a Compliance Plan. Building permits for structures not used in the cannabis operation, while still subject to general County permit requirements, are not evaluated and the cannabis cultivation permit is not conditioned on them. This is true even for properties that require a dwelling unit as a prerequisite to eligibility for a cultivation permit. MCA requests that the same approach be taken in the Coastal Zone.

Page 4, Items 14 & 15: MCA strongly recommends that the County mirror the State mandated setbacks to sensitive receptors and the State Water Board and other State agency processes for proving compliance with Mendocino County Coastal Groundwater Development Guidelines, so as to not unnecessarily add differing reporting and permitting requirements. State Water Board requirements are quite extensive. MCA would also encourage the use of the DEH waiver process if compliance with stringent State requirements are proven.

Page 5, Item 2c: MCA appreciates the detailed information and analysis Staff provided on this issue. Especially significant is the number of parcels (638) between 2 and 3.5 acres that would be excluded from eligibility, even with the process for a reduction of the minimum, if the 5 acre minimum is adopted. That number is just too great to exclude. Given the need for discretionary review of each application, there will be ample opportunity to protect neighbors, resources and provide reasonable conditions to lower acreage parcels. MCA respectfully requests the Commission recommend against the 5 acre minimum parcel size and recommend a 2 acre minimum. In addition to the discretionary review process as a protection, the permit size can be appropriately matched to a minimum parcel size so that, just like the inland, a parcel less than 5 acres may not cultivate more than 2500 square feet, a parcel of 5 acres up to 10 acres can cultivate up to 5000 square feet, and a parcel of 10 acres or greater can cultivate up to 10,000 square feet. There are also the added protections in the “Lot Coverage” restrictions.

Page 6, Items 4 & 6: MCA strongly recommends that local permit holders that may have 2 separate parcels that are not contiguous, be allowed to process the cannabis they grow under their

own cultivation permits. While the State currently would require a separate Processing license for processing of any material not grown on one premise, Mendocino County has intentionally taken the lead in creating a common sense approach that may help save small farmers money and unnecessary duplication.

Specifically, the County has adopted a “Mix and Match” approach to our local cultivation ordinance where different styles of cultivation may be conducted under one permit so long as the maximum square footage allowable on the parcel is not exceeded. The County did this even though the State currently requires separate licenses for each cultivation style because they knew that economy of scale issues for small farmers are being advocated for at the State level and our County wanted to show the State how seemingly small changes for farmers could make a big difference. In addition to the economy of scale for a small farmer that has 2 non-contiguous parcels, there are the environmental impact considerations. Requiring separate infrastructure on each of the 2 non-contiguous parcels to process the material from the very same owner, would cause a much greater level of development and impact. Track and Trace is implemented at the State level, so the material is tracked in accordance with each license regardless of where it is processed. Even the definitions section defines cultivation site in a manner that contemplates processing without cultivation.

Page 6, Item 5: MCA generally supports the creation of shared facilities and encourages their development. However, MCA cautions that the devil is in the details and requests that the County simply require strict adherence to State requirements for shared facilities. Those requirements are robust and detailed. If a separate layer of conditions (not mirroring State requirements) are imposed, the feasibility of participation would be diminished. Again, the State requirements are extremely detailed and account for public safety.

Page 9, Item 2(c)(ii): While MCA appreciates ordinance changes that cannot be immediately implemented may need to progress on a different track, MCA requests that identification and pursuit of issues that require changes to the Land Use portion of the Local Coastal Program to move forward. The fact that additional work may need to be done might impact the timing of when such changes can be addressed, but the additional steps should not serve as an impediment to commonsense and needed updates. Access to processing facilities is a critical component to the success of local small farmers. Rather than shipping their material elsewhere, the County must increase capacity to process material locally and look at these issues with the long-term economic impact in mind. Please recommend directing Staff to identify and begin to pursue all issues that might require changes to the Land Use portion of the Local Coastal Program.

Page 9, Item 2(d): Consider expansion to include retail co-equal use rather than primary use as the basis for a Microbusiness license. Please consider that some commercially zoned properties are located in areas that resemble industrial areas or have industrial type building spaces that are less appropriate for the retail component of a business. To not allow retail businesses to create value-added opportunities, especially if the retailer has no need to expand the footprint of the retail portion of the business to satisfy an arbitrary requirement, would be unfortunate. At the very least, there should be a discretionary review process allowing retailers who have facilities

where the best added use of the space might be non-retail activity and where that could tip the scale in the primary use equation.

Page 9, Item (e): MCA strongly supports the recommendation to remove the 5 users limit and requests that the County simply mirror the State rules for shared use of facilities.

Proposed Cultivation Ordinance

Section 20.537.015- Definitions:

Legal Parcel: The exception provided for Industrially zoned property should be expanded to include Commercially zoned property. The initial intent was to prevent subdivision of large parcels of RR, UR, RL, FL, & TPZ zoned properties for the purposes of creating multiple cultivation permits.

Section 20.537.020 (B): Please consider creating some mechanism for Coastal cultivators to be able to operate on a conditional/provisional basis while the extensive CDP or CDU and discretionary review process is underway.

Section 20.537.020 C/Table 1: MCA requests that there be no acreage minimum for Indoor cultivation. MCA further requests that either a Tiered Nursery permit system be adopted or a greatly reduced minimum acreage be adopted for smaller Nursery permits. Some Nursery permits are obtained to propagate seeds, perform and perfect tissue culture, and genetics preservation or innovation only, which is an activity that does not require much space. Additionally, some Nurseries, that do propagate immature plants, choose to operate on a much smaller scale than that allowed for under the Nursery permit.

Section 20.537.025 (A): MCA requests that the County align with State setbacks to sensitive receptors and that a process for reduction in other setbacks (Items (A) 2-4) be provided for. Especially since Inland cultivators in Phase 1 were subject to one-half of the distances required now for Coastal cultivators. MCA requests that 5(b) be amended to allow multiple contiguous legal parcels to have one parcel with the cultivation and the other with the dwelling unit, if required by that zoning. If need be, a requirement can be added that the dwelling be occupied by the same person or entity as the cultivation applicant. Requiring that the cultivation be located on the same parcel as the dwelling unit would simply encourage additional unnecessary development and not provide farming families to have some kind of separation between their home and their business.

Section 20.537.025 (D): Please amend to reflect the phased-in nature of the requirement to not rely solely on generators.

Section 20.537.025 (H): Please consider amending to include any cultivation style conducted in a secure structure (not just Indoor), since both Mixed Light and Outdoor (if not lights and no use of light deprivation) can be conducted inside secure structures and therefore should also be eligible for the exception based on the need for a secure structure and not on the growing style.

This is especially true for coastal cultivators who often utilize structures to cultivate regardless of style. At the same time, we need to ensure that our definition of “Outdoor” cultivation matches the State definition (use of structure is ok so long as no lights and no light deprivation techniques).

Section 20.537.025 (G): Please consider not requiring filtered ventilation systems for Nurseries that do not conduct activities involving mature plants (no smell), or restrict the requirement to only those areas that contain flowering plants.

Section 20.537.035 (A): Please consider requiring applicants to prove compliance with State Water Board as evidence for fulfilling all water related determinations.

Section 20.537.035 (C)(3): Please add to the end of the sentence, “or separate application for reduction is made, if applicable.”

Section 20.537.035 (D): MCA questions why disclosure of dates of cannabis cultivation operations would be relevant if there is no priority standing or proof of prior cultivation applicable. If such considerations are necessary, then allowing cultivators time to come into compliance while their applications are pending would seem warranted.

Coastal Facilities Ordinance

Section 20.538.020 (A): We urge the Commission to consider the need to expand the opportunities for Processing Facilities in every manner possible. Allowing processing as a use type, whether conditionally permitted or as an accessory use, in as many zones as possible is critical. Likewise, expanding opportunities for retail outlets to re-package material (which is a type of processing) from local farmers aside from what might be grown on premises, is an important value-added service and revenue opportunity.

Finally, as stated above, Mendocino County should again lead the way, as it did with “Mix & Match” permits, and allow processing by the same permit owner of two non-contiguous parcels to occur on one of those permitted sites despite the fact that the State would currently require a separate license. MCA intends to convince the State of the need to make these kinds of changes for the benefit of the small farmer and having the County provide the statutory basis for such request will be an important component to that advocacy.

Section 20.538.020 (B): Level 1 (non-volatile) manufacturing should be conditionally allowed in Commercial zoning and should not be limited to Home Occupation or Cottage Industry if a CDU is required. Further, under the home manufacturing provision of subsection (3)(a)(ii), only material grown on-site may be used. Local manufacturers should be able to purchase material from local cultivators. Track and Trace provides accountability and conditions of the CDP or CDU would address concerns such as the number of vehicle trips anticipated during the procurement process. Home Occupation is already limited to size of operation, why not encourage use of material from other local farmers?

Section 20.538.020 (D)(3): Please insert “or at licensed events offsite” after “exclusively by delivery” and before “and the premises...”

Section 20.538.020 (D)(4)(d): Please mirror State requirements on this issue.

Section 20.538.020 (E): Please consider expansion to include Commercial use type for Distribution (subsection 1), and do not restrict self distribution to material that was grown on the same premises (subsection 3) but instead consider a requirement that self-distribution require distribution of material cultivated under Mendocino County permits owned by the same applicant. This would allow cultivators with two separate locations to still be able to self-distribute. The State does not have a self-distribution distinction except for Distributor Transport Only and that license does not allow for anything but transportation.

Section 20.538.020 (F): Please consider expanding other activities under a Micro-business to be a co-equal use and not require retail activities to be a primary use (subsection 4). Please also do not limit Home Occupation or Cottage Industry to be limited to self-distribution of the microbusiness’ own products or limit the retail component to non-storefront (subsection 8).

Section 20.538.025 (D): Please amend the cargo container limitation. Cargo Containers for commercial or agricultural use are allowable structures under Ag-Exempt and traditional building permit requirements and use of them, as well as use of (building) permitted manufacturing pods have been an affordable way for businesses to develop the necessary infrastructure that still meets PBS permitting requirements.

Section 20.538.025 (G)& (H): Please consider simply requiring the applicant to adhere to the already detailed and stringent State requirements for the activities for which they are applying.

Section 20.538.030 Table 1: Please add in Type 13 (Distributor Transport Only) category and change the Micro-business need for a CDU on Commercially zoned properties when the underlying activities in the same zoning only require a ZC or CDP individually.

Section 20.538.030(D): Micro-businesses (even as Home Occupation or Cottage Industry) should not be limited to self-distribution in an appropriate facility.

Section 20.538.050: We strongly support the streamlined approach to event licensing.

MCA appreciates the opportunity to comment on these important issues on behalf of local cannabis businesses.

Respectfully,

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Mendocino Cannabis Alliance