



Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

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Via Email:

bos@co.mendocino.ca.us

Mendocino County Board of Supervisors
501 Low Gap Road, Room 1010
Ukiah, CA 95482

RE: Agenda Item 5B: Proposed Recommendations and Revisions from the Planning Commission and County Staff to the Draft Medical Cultivation Ordinance Chapter 10A.17, Zoning Ordinance Chapter 20.242, California Environmental Quality Act (CEQA) Initial Study and the Williamson Act

Dear Chair McCowen and Board Members,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1200 members.

Medical cannabis has been defined as an agricultural product. In Mendocino County it is currently being grown on agricultural properties including AG, FI, TPZ and RL. Due to this, MCFB has a strong interest regarding the impact of the proposed medical cannabis cultivations ordinances on the sustainable use of agriculture lands. Overregulation of the agricultural industry has made farming and ranching one of the most difficult industries to operate within successfully. MCFB would like to ensure that standards established for medical cannabis cultivation also take into consideration the potential implications for the entire agriculture industry as a whole.

For this reason, MCFB would like to provide comments below for the proposed recommendations and revisions from the Planning Commission and county staff to the Draft Medical Cultivation Ordinance Chapter 10A.17, Zoning Ordinance Chapter 20.242, California Environmental Quality Act (CEQA) Initial Study and the Williamson Act.

Proposed Recommendations for the Planning Commission

Recommendation 1C: BIO-1

Clarification is needed on the definition of sensitive species and the role of CDFW

MCFB is concerned that the general definition of "sensitive species" in BIO-1 will allow for expanded jurisdiction to CDFW in determining approval of potential medical cannabis cultivation permits. The

evaluation should be limited to the "species of special concern" as defined in CDFW jurisdiction. There is a process for determining listed or non-listed species and this should not be allowed to be an open ended process opened to interpretation of what is a "sensitive species". There should also be a resource for permit applicants to reference so that there is an understanding of what "sensitive species" may be present on their properties prior to considering cultivation sites. MCFB is also not familiar with where in the Medical Cannabis Regulation and Safety Act (MCRSA) it is required to incorporate additional reviews for "sensitive species".

MCFB is also concerned that excessively increasing the regulatory burden will discourage many cultivators from applying for permits. The negative environmental and social impacts of unregulated cannabis cultivation will best be addressed by bringing a majority of cultivators into a regulated system. If county staff that are in charge of performing site inspections are biologists, then with their education, experience and training, these staff should be capable of utilizing existing data bases available from CDFW to make determinations and recommendations related to potential species of special concern when evaluating existing or potential medical cannabis cultivation sites. With this in mind, MCFB believes that the county would be the preferred entity to work with permit applicants to make the first assessment related to sensitive species and county staff can require a secondary consultation with CDFW if necessary. Automatic referrals to CDFW for all medical cannabis cultivation permits should not be necessary.

MCFB understands that the Planning Commission looked to reduce the potential lag time and permit delay related to outside agencies when they included recommendation 4G to require agencies to respond within 30 days. However, this will most likely be difficult to enforce and significant delays in permitting will most likely continue if agency comments are received after 30 days and are required to be addressed.

Recommendation 2: Procedures For Agricultural Preserves and Williamson Act Contracts

MCFB agrees that permitted medical cannabis cultivation may be a "compatible use" on Williamson Act properties, but would not support medical cannabis being a "qualifying" use.

MCFB recommends that:

- The Board of Supervisors agree with the finding from the Planning Commission that medical cannabis will be allowed to be produced on Williamson Act contracted properties, but will NOT be considered as a qualifying use.
- That there needs to be clear evidence that properties considered for cannabis production that are under current Williamson Act contract are in compliance with the requirement that at least 50% of the property is being used for qualifying commercial agricultural.
- Any new Williamson Act contracts for properties involved with medical cannabis cultivation will also need to be vetted to ensure that compliance standards are met and that the intent of the Williamson Act, to support production agriculture, is protected.
- If medical cannabis is not considered to be a qualifying use for Williamson Act contract compliance, then any medical cannabis accessory structures (greenhouses, processing, etc) would also not be allowed on Williamson Act properties as current requirements for accessory structures are to be incidental, related and subordinate to a qualifying agricultural use. This seems to be covered on page 16, 9.4 B(E) of the draft amended Ag Preserve and Williamson Act contract ordinance.

Recommendation 3: Permit Limit Per Parcel

Clarification is needed on the intent of the definition of legal parcel as related to permits for property owners and property leases.

The current definition in 10A.17 of “Legal parcel” or “Parcel” is: a lot of real property which, upon application, is eligible for a certificate of compliance or which was created pursuant to the Subdivision Map Act”.

The current draft medical cannabis cultivation ordinance allows for one cultivation permit per legal parcel. The current definition of legal parcel includes property that is eligible for a certificate of compliance. If certificates of compliance are recognized as legal parcels, this could encourage property owners with current unrecognized certificates of compliance to pursue applications with the county in order to obtain additional certificates of compliance. This may have not been the intent of the Board of Supervisors when discussing the definition of legal parcel, so MCFB wanted to bring this back to the attention of the Board for consideration.

The draft medical cannabis cultivation ordinance allows no more than two permits to be granted to any one individual or entity. At the January 19, 2017 Planning Commission meeting, the concept that an owner of multiple parcels could lease out a number of parcels to medical cannabis cultivation permit holders for cultivation sites was discussed. MCFB is concerned that properties throughout the county are being purchased based on speculation for future permits for cannabis cultivation, manufacturing, etc. MCFB suggests that new permits in Phase 3 should limit direct permit holders and lessors who lease land to permit holders. A permit holder should only be able to hold two permits and a property owner should only be able to lease two parcels for permitted cultivation.

Recommendation 4: Various

4A and 4D

Do not predicate current ordinance requirements on future ordinances

MCFB does not support the use of the current ordinance development for medical cannabis to influence the need to develop future regulations such as an oak woodland protection ordinance or an expanded grading ordinance. Decisions should not be made in 2017 predicated on the development of additional future ordinances which may or may not come to fruition.

Mendocino County has a countywide grading ordinance

Mendocino County has adopted both Appendix J of the California building code as well as Mendocino County Code Chapter 18.70 to regulate grading activities in the county. Mendocino County Code Chapter 16.30 related to Stormwater Runoff Pollution Prevention Procedure also has a number of protection mechanisms related to pollutants that could impact water quality as well as requirements for soil disturbance and grading.

In addition, the requirement that cannabis cultivation permit applicants prove enrollment with the North Coast Regional Water Quality Control Board's cannabis cultivation water quality regulatory program provides additional compliance requirements related to the control of potential waste discharges, including sediment.

MCFB supports Recommendation 4E to require compliance with Chapter 18.70 and encourages the Board of Supervisors to require compliance with other relevant county code sections such as Chapter 16.30. Enforcement of current county codes should take preference over developing expanded ordinances.

4C

How will residential permits be re-located and where will they go?

MCFB understands that there are significant concerns related to cannabis cultivation in residential zoning designations. The Planning Commission recommendation to allow a continuation of cultivation in the RR-2 zoning district, with a two year sunset clause after which the cultivator must relocate to a new cultivation site. If permit holders are not able to relocate, this condition may have the unintended consequences of perpetuating the black market and limiting the effectiveness of the ordinance. Due to limited zoning designations to relocate to, this condition will also put additional pressure on agricultural zoned land and remaining residential districts which will already be subjected to strong pressure when Phase 3 permits become available.

MCFB recommends that the Board of Supervisors consider a three year sunset clause and to also work with residential neighborhoods that are in support of developing community based plans for the consideration of cannabis cultivation.

4F

How is harm defined in relation to oak trees?

MCFB is concerned that in an attempt to regulate impacts from current and future cannabis cultivation, that the county will also potentially impact other land uses and property owners. As we commonly see in Mendocino County, oak trees require maintenance when they endanger life or property. Pruning, thinning, or other management practices related to oak trees should not be considered harmful. Due to sudden oak death and other diseases, oak trees also need to be removed on occasion. In addition, there are existing forestry guidelines and regulations related to oak management that need to be considered. MCFB encourages the Board of Supervisors to make further consideration of these points prior to consideration of recommendation 4F.

4H

Enforcement is critical

MCFB agrees that enforcement of the county cannabis ordinances is essential. The county needs to identify and provide adequate sources of funding for enforcement 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 work to encourage enforcement of illegal cultivation sites, including trespass grows on private and public lands, with local and state resources. Until enforcement pressure matches regulatory compliance pressure, the impacts to the environment, resource lands and communities will not be significantly reduced.

4I

The potential impacts to AG zoned properties have not been addressed

MCFB sees the value in not allowing new cultivation permits in Rangeland, TPZ and Forestland during Phase 3, as new permits within these zoning designations could impact timber and livestock production as well as encourage property subdivisions. However, MCFB is equally concerned that removing these zoning designations will put increased pressure on AG zoned properties when new cannabis cultivation permits become available. Impacts to AG zoned properties should be reviewed once Phase 3 is

implemented and amendments should be made to the ordinance if AG zoned properties are found to be significantly impacted.

There needs to be additional considerations in the CEQA initial study to how impacts to AG lands will be mitigated. MCFB recommends that additional options be considered for mitigating potential impacts to agricultural conversion than just removing the option of allowing for any new medical cannabis cultivation permits on rangeland.

How does mitigation measure AG-2 address the potential pressure for subdivision of larger AG parcels in order to allow for the ability to have increased cannabis cultivation permits in Phase 3?

How does mitigation measure AG-2 address potential short term or long term conversion of existing agricultural commodities and loss of production on AG zoned properties?

To reduce impacts to AG properties, MCFB encourages the placement of medical cannabis cultivation, processing and manufacturing facilities on Industrial or Commercial zoned properties. This could alleviate impacts to AG zoned property, improve security and help avoid negative interactions between neighboring property owners or the general public.

General Comments

Provisional Permit

If provisional permits are considered to allow for permit applicants to start the compliance process prior to the 2017 cultivation season, applicants for a provisional license should be required to submit a completed application, fee payments and some type of statement that the applicant will follow all relevant regulations while in the provisional phase. If a provisional permit holder is found to knowingly violate relevant codes or laws, the applicant should not be able to apply for a permanent permit.

Proof of Compliance

It is recommended that applicants be required to prove enrollment with the North Coast Regional Water Quality Control Board's cannabis cultivation water quality regulatory program and submitted applications for all other required permits, but not be required to receive the final permit as a condition of receiving a local cannabis cultivation permit. Cannabis cultivation permit holders should have to demonstrate annual progress toward completion of all other applicable permits. Failure to receive final permits or violations brought forward from other permitting agencies need to be considered, prior to the cannabis cultivation permit being reissued.

Data Collection

MCFB feels that a number of land use decisions are being made without significant knowledge of current impacts. To make more educated decisions, it is necessary to collect accurate data which, in addition to effective enforcement, will also assist in evaluating the need for changes to the regulatory program in the future. The county should 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 existing regulations.

MCFB encourages the Mendocino County Board of Supervisors to consider the comments and recommendations above. As always, if there are any questions on the comments and recommendations above, please do not hesitate to contact the MCFB office.

Sincerely,

A handwritten signature in cursive script that reads "Frost Pauli".

Frost Pauli
President

CC:

Steve Dunicliff, Director of Planning and Building Services

Mendocino County CEO, Carmel Angelo

Mendocino County Interim Agricultural Commissioner, Diane Curry

Mendocino County Council, Katharine Elliott