



February 8, 2023

Re: Requesting Urgent Intervention to Prevent Mendocino Licensing Collapse

Dear Governor Newsom and DCC Director Elliott,

On behalf of Mendocino Cannabis Alliance (MCA), the trade association representing cannabis operators in Mendocino County, we are writing today to provide an urgent update regarding the failure of the Mendocino Cannabis Department (MCD) and Mendocino local government to establish a process capable of moving good-faith cannabis operators towards state annual licensure.

Since the passage of Proposition 64 in 2016, a confluence of factors - including California's dual local and state system for cannabis permitting, an expensive and complex licensing process, and an anomalous CEQA workflow for cannabis projects¹ - have resulted in cyclical legislative interventions to reform the cannabis licensing process in the face of impending statutory deadlines for annual licensure.

Most recently, in the 2021 legislative session, California faced the prospect of losing over 70% of state cannabis licenses which were unlikely to transition to state annual licensure by the then-existing January 1, 2022 deadline. In response, California passed AB 141 and SB 160, which attempted to facilitate transitions to annual licensure through extended timelines for compliance.

In parallel to the passage of AB 141 and SB 160, the state also established the Local Jurisdiction Assistance Grant Program (LJAGP), a statewide grant program which allocated a total of \$100 million to local governments for permit processing, CEQA review, and licensee compliance. Of this \$100 million, over \$17 million in LJAGP funds were allocated to Mendocino County.

Over a year and half later, we believe it is critical to assess whether these efforts have achieved their intended purpose: to ensure that good-faith operators who entered the cannabis licensing process established by Proposition 64 are able to enter the regulated market and operate as legal, legitimate businesses.

While extended timelines have provided a brief reprieve from annual licensing deadlines, we believe that AB 141 and SB 160's approach has not addressed the crux of the problem in Mendocino County: that state rules require local governments to conduct intensive project-by-project, site-specific review, and that local government in Mendocino is not effectively moving forward on these reviews.

¹ "Suggestions for legislative solutions to existing challenges in achieving efficient CEQA compliance for cannabis licensing," Jim Moose, 3/21/21. https://drive.google.com/file/d/1YhWQqPswzryo5FT_xh-3nVeb9AkeHlWS/view

Despite notable efforts by some local officials to improve the situation² - including Supervisor John Haschak in the county's third district, and more recently by Supervisor Glenn McGourty in the first district - the county as a whole has not taken steps forward to address these problems, and as a result, the Mendocino cannabis program currently sits on the brink of irreversible failure absent an urgent course correction.

This letter seeks to clearly enumerate the causes for this failure. In brief, we find the following:

- Nearly six years into its local permitting process, the county has struggled to establish a functional permit application system, and still has not moved forward in any meaningful fashion to process local cannabis permits, renewals, or Appendix G checklists.
- On January 23, 2023, MCD provided a timeline which would enable just 256 of 841 total operators to meet state statutory deadlines which initiate on July 1, 2023.
- MCD's prioritization of these 256 applications - and lack of any plan to process the remaining 585 applications - is consistent with "deprioritization" letters sent to many applicants in November and December of 2022 based on allegations of either 1) failure to hold a compliant state license, or 2) failure to remit local cannabis taxes.
- MCA has found that a large number of these "deprioritization" letters have been sent based on demonstrably false grounds to operators who do, in fact, hold compliant state licenses and are current on tax payments. As of the date of this letter, MCD continues to deprioritize applicants on false grounds despite repeated public and private efforts to provide accurate information.
- Errant "deprioritization" notices are the latest in a string of MCD efforts to disqualify operators from consideration *en masse* based on grounds that are questionable or demonstrably false.
- Even among the 256 applicants who MCD theoretically intends to process in time to meet state deadlines, MCD projections assume staffing resources which do not align with MCD's current or expected resources. According to statements by MCD, it appears that expected staffing resources through July 2024 are approximately half of what the Department claims would be necessary to process 256 applications in time to meet state statutory deadlines.
- Over \$17 million in Local Jurisdiction Assistance Grant Program (LJAGP) funds allocated by the state to Mendocino in the 2021 state budget have not meaningfully altered the situation. As of the date of this memo, MCD has been unable to provide any public information regarding how much LJAGP money has been spent, or where; MCD's work plan for 2022 as outlined in its LJAGP application has not been implemented; and an application process for over \$10 million in LJAGP funds set aside for direct grants to cultivators has yet to open.
- Attempts to improve this situation - whether through reforms to the permitting process at the county level, or through the allocation of state funds through the LJAGP - have not yielded clear outcomes, and appear to have stalled even as Mendocino operators face impending state deadlines for CEQA compliance and annual licensure.

Below, we discuss and document these issues in more detail.

² See section 7 below, which discusses the recommendations of the Mendocino Cannabis Ad Hoc Committee in greater detail.

The State of Cannabis Permitting in Mendocino

On February 28, 2022, publicly available DCC state licensing data indicated that Mendocino County cultivators had obtained a total of six annual licenses at the state level. Nearly a year later, as of January 30, 2023, this total has remained the same: six annual cultivation licenses among 623 total state cultivation licenses in the county, for a total annual licensure share of less than 1%.

At the same time, the number of overall state cultivation licenses in Mendocino has dropped by 25% since February 2021 according to DCC data. Between October and December of 2022 alone, county licensing data suggested that 52 licensees had dropped out of the county's permitting program.³

With impending state deadlines on the horizon, and little progress made towards annual licensure for most applicants, Mendocino's cannabis program has reached a breaking point. In a document provided to the Board of Supervisors on December 13, 2022, MCD provided a written report stating that *"the cannabis department estimates there will be approximately 200-300 farms that make it to annual licensing at the state level."*⁴

If this estimate were accurate, it would suggest that approximately 75% of cultivators who entered the permitting process in good faith beginning in 2017 will be unable to obtain a state license. While we believe this estimate is unacceptable, we also unfortunately believe that it is optimistic in light of the program's current trajectory.

Documenting a Pattern of Failure

If failure to obtain a provisional license were primarily due to failures on the part of the applicant, we would expect similar annual licensure challenges in counties which are demographically similar to Mendocino. In reality, however, Mendocino's inability to transition cultivators to annual licensure is unique. For comparison, as of January 30, 2023, 882 of Humboldt County's 1,414 cultivation licenses (62%) were state annuals; in Nevada County, 58% of cultivation licenses (102 of 175) were annuals; and even in Trinity County, where a lawsuit has substantially affected the county's local permitting process, 23% of cultivation licenses (80 out 352) were annuals as of January 30.

County	Total State Cultivation Licenses	Annual State Cultivation Licenses	Annual License %
Humboldt	1,414	882	62%
Mendocino	623	6	<1%
Trinity	352	80	23%
Nevada	175	102	58%

³ MCA review of licensing data as outlined in December 12, 2022 MCA memo.

<https://mendocino.legistar.com/View.ashx?M=F&ID=11511390&GUID=2DF23551-8CC2-4D56-919D-54F48FCB718E>

⁴ MCD memo provided for December 13, 2022 Mendocino Board of Supervisors meeting.

<https://mendocino.legistar.com/View.ashx?M=F&ID=11511390&GUID=2DF23551-8CC2-4D56-919D-54F48FCB718E>. At the meeting itself, MCD

Director Nevedal suggested that this information was not intended to be published. Mendocino County BoS Meeting 12-13-2022

<https://www.youtube.com/live/bEdsKwAhxcl?feature=share&t=20454>

This document details how, since the opening of permit applications in Mendocino on May 4, 2017, Mendocino County has repeatedly failed to establish basic systems necessary to move applications successfully through the county's local permitting process; has failed to establish a viable work plan; has consistently failed to provide guidance to applicants regarding compliance requirements while threatening to remove applicants from the program based on non-compliance; has delayed and failed to maintain continuous contracting with CDFW for environmental reviews necessary to effectuate CEQA compliance; and has failed to effectively distribute equity and LJAGP grant funds to assist cultivators in meeting compliance costs.

Rather than working to establish a viable permitting process, we have seen MCD and the Board of Supervisors repeatedly focus time and energy on topics that raise additional barriers to compliance, including threatening operators with denial on "vegetation modification" grounds without due process; raising inscrutable legal objections to their own cannabis equity program; continuously moving the goalposts on required submission materials; and most recently, "deprioritizing" hundreds of applications for review based on demonstrably false grounds, putting these applicants at imminent risk of losing their local and state permits.

Following MCD's statement on December 13 that the Department estimates only 200-300 applicants will obtain an annual license, as well as recent "deprioritization" efforts by MCD which are covered in more detail below, it has become clear to us that outside intervention and accountability will be necessary if Mendocino's small and legacy cultivators are to have a chance to operate within the legal cannabis market.

1. Mendocino's Failure to Establish a Functional Permit Application System

Nearly six years into Mendocino's local permitting program, the county has yet to establish a functional system to receive, track, and organize cannabis applications, so that these applications can be substantively reviewed and referred back to the applicant for correction of any deficiencies.

Since the opening of permit applications in the county on May 4, 2017, cannabis permitting in Mendocino has transitioned through three different county departments and six different managers or department heads. Throughout this period, the county has failed to retain adequate internal organization for submitted cannabis applications, and has frequently asked applicants to resubmit materials which had already been submitted, often using different forms and procedures.

In March 2021, following the establishment of the Mendocino Cannabis Department and the promotion of MCD program manager Kristin Nevedal to Director, MCD responded to continued internal disorganization by requiring most operators to resubmit their county cannabis permit in full, using new forms and standards, in an electronic format called the "Portal."

The opening of the Portal has not effectively streamlined the permitting process for applicants or led to substantial progress in permit reviews, and instead has created its own set of new technical and administrative challenges. In February 2021, MCA recommended that MCD utilize Accela as the system for receiving and tracking Portal resubmissions, since this was the software already used by CDFA to process permit applications at the state level.⁵ Instead, the county opted for an in-house solution, resulting in a six month delay in the opening of the Portal and ongoing technical and operational challenges.

⁵ February 7, 2021 MCA memo to Mendocino Board of Supervisors, <https://mendocino.legistar.com/View.ashx?M=F&ID=9168465&GUID=ED7CB10C-FBE9-49C1-8F2C-5F79FED7ABBC>

Since its original opening, the Portal has been “opened” and “closed” to submissions or resubmissions several times, often with insufficient guidelines and inadequate time windows for compliance. Most recently, in September 2022, 160 applicants who had previously been told that they would not be required to resubmit through the Portal were told this was no longer the case, and that they would be required to submit a fully complete new application utilizing new forms by January 2, 2023.

The net result is that, nearly two years after the hiring of the current Cannabis Department Director, and nearly a year and half since the opening of the first application resubmission Portal, little progress has occurred in permit reviews: whether for cannabis permits themselves, or for “Appendix G” checklists which are the critical documents necessary for cultivators to demonstrate CEQA compliance.⁶

An MCD report to Mendocino’s General Government Committee (GGC) on January 23, 2023 suggested that out of 46 Appendix G documents which have been deemed “complete” by the county, only 4 are under review in the county.⁷ Additionally, many renewals of local annual permits, which are a prerequisite to review of Appendix G, have been delayed for more than a year; and many Appendix G documents have not been submitted because MCD has told applicants not to submit these documents until an annual permit is issued.

An underlying pattern in this process, which continues as of the date of this letter, is the failure for MCD to even *initiate* substantive review for most cannabis applications and Appendix G documents. One critical reason is that MCD has insisted on delineating application “completeness” reviews from “substantive” reviews, delaying and complicating the process of designating an application “complete,” and then refusing to initiate substantive reviews (even of “complete” applications) until a critical mass of *other* applications are also deemed complete.

Nearly six years into the permitting process, the result is a backlog of applications which the county has yet to even deem “complete,” and a separate set of “completed” applications for which the county has not initiated substantive review.

At a meeting of the GGC on January 23, 2023, a permitting consultant with a background in the Building Department summarized these internal dynamics within the Department:⁸

“[I was in] the Building Department for fifteen years... and the worst thing you can do is handle a document, handle a document, handle a document. Intake the document, send the planning [aspects] to the plan checker. It may be lacking where the water heater is, but the plan checker will do comprehensive review of that set of plans and write a plan check correction letter, which may include some minutiae stuff they missed.. but it saves time.

To do a completeness review – “oh, he’s got this, he’s got this, he’s got this, oh I see I’m gonna have to write a correction on that letter once he gets it back and he puts this minor stuff on” – that’s a complete and total waste of time, it’s inefficient, it’s the wrong way to review an application...

If you keep having this ever-changing walkway people have to go down, and they have no surety of review, they can’t plan their next grow season if they don’t know where they’re at in the application process and the grant process. Overly subjective review, invent-a-rule changes, and handling documents multiple times is not a good way to run a department. None of the other departments run like that, except for this one.”

⁶ “Mendocino County Cannabis Cultivation Permit CEQA Guidelines Section 15168 Review (Appendix G Checklist)”

<https://www.mendocinocounty.org/government/cannabis-cultivation/ceqa-information-cannabis>

⁷01-23-2023 BOS Cannabis Department Update

<https://mendocino.legistar.com/View.ashx?M=F&ID=11588257&GUID=95545978-134B-4897-9E15-ABB876505E97>

⁸Mendocino County GGC Meeting 01-23-2023 <https://www.youtube.com/live/qO2wbVHbdUc?feature=share&t=9765>

2. Lack of Work Plan or Timeline to Effectuate Transitions to Annual Licensure

With state deadlines for CEQA compliance approaching, and despite having received LJAGP funds from the state a year ago, MCD has not yet established a clear work plan, timeline, or process to correct the deficiencies identified above and keep applicants on track to receive annual licenses from the state.

At the county's January 23 GGC meeting, the committee discussed potential application guidelines for \$10.5 million in LJAGP funds which the county has earmarked to distribute directly to applicants for meeting costs for compliance.

In public comment, one permitting consultant emphasized how lack of direction from MCD has left applicants unclear on whether and how these funds - if and when they are ever distributed - can effectively be used to ensure that applicants are meeting state deadlines for CEQA compliance:⁹

"Is the grant timeline [for LJAGP direct grants] sufficient to line up with when somebody needs to transition from provisional to annual?... My concern is that we don't know enough from the Department – and I don't know if the Department yet knows their timeline – for when they're actually going to be doing the true CEQA review to determine that something is not just completed submitted materials, but actually certified. So completeness is Step A, and certification is Step B. When is A gonna happen, and when is B gonna happen? And how do those line up with the potential funding approval of the intent of this grant, which is to get people all the way through from provisionals to annuals?"

This is the technical world I live in on a daily basis. I draft CEQA documents, I've submitted about eight, I've received comments on none so far. As a consultant, I submitted my first ones in August of 2021. I haven't yet received back any comments. So I have no idea as a consultant whether or not what I'm preparing even meets the level of review that the county is going to be applying to them. We still don't have any review standards for CEQA materials. So we're now talking about rolling out a grant program with the entire intent being to assist people with CEQA transition, but from the reviewing agency, we don't yet have any technical information letting us know what's going to satisfy the review, we don't know what standard they're going to use.

So not only do we not have enough information to prepare the materials that this grant is intended to fund, we don't know if the county's timeline internally for their review of the materials and getting them to completeness (as step 1) and certification (as step 2) is actually going to move along. We need a projection of how this is all gonna come together. Including all of their staffing requirements and permit reviews that have already been discussed, and the question of timing...

I would like my point to not be lost in the conversation... how does funding this program line up with the county's review of CEQA materials? And can you chart out whether it will be successful or not? Or are we just hoping that it will be?"

A written update provided by MCD for the January 23 meeting (see footnote 7) does provide some outlines of a potential timeline for processing required CEQA documents between July 1, 2023 and July 1, 2024; however, this timeline covers only a small minority of operators, and is based on assumptions which appear inconsistent with other facts presented by MCD at the meeting.

In line with MCD's suggestion on December 13 that they expect only 200-300 operators to obtain annual licenses, the January 23 document charts a path forward for just 256 of the 841

⁹Mendocino County GGC Meeting 01-23-2023 <https://youtu.be/qO2wbVHbdUc?t=7380>

active operators in the county. The document suggests that MCD will establish a rolling prioritization of these 256 applicants to meet state CEQA benchmarks starting on July 1, 2023, implying that the remaining 585 active operators currently have no path forward to retain their state license.

Even for these 256 applicants, however, the path forward is unclear given that MCD's projected timelines assume staffing resources which do not appear to align with current or expected resources for the Department. The January 23 document states that MCD's ability to process 256 permits in time to meet state deadlines assumes "11 Full Time Planners plus 20 Contract Planners."

During the meeting, however, Director Nevedal makes statements which suggest these staffing goals are unlikely to be met, stating that 1) the department only has sufficient funds under the LJAGP to staff twenty contract planners for six months out of the required twelve month work period,¹⁰ and that 2) MCD has had difficulty locating qualified candidates to hire as in-house planners, including being unable to locate a qualified candidate for senior planner for over a year.¹¹ Currently, MCD has just five planners, and only three additional planning positions are currently being recruited.

Consequently, even the most optimistic timelines offered by the county do not appear to offer a viable path forward for the vast majority of good-faith operators.

3. Repeated MCD Attempts to Justify Mass Permit Denials

While the county and MCD have failed to establish a viable process for operators to move forward to obtain local permits, MCD's energy has increasingly been dedicated towards attempts to deny large numbers of permits on technical and unsubstantiated grounds.

We view these dynamics as closely related. Because MCD has not established a process that can provide a pathway to legality for most good-faith operators, the conversation in Mendocino County has increasingly moved towards which applications will be "prioritized," and which will be "deprioritized" or outright rejected.

In the past year, there have been at least three major attempts by MCD to eliminate large swaths of operators from licensure process: 1) threats to disqualify applicants based on "incomplete" applications submitted through the Portal, with no opportunity for applicants to correct deficiencies; 2) "vegetation modification" denial threats initiated early in 2022; and 3) "deprioritization" letters sent on false grounds in November and December of 2022.

In each of these three cases, concerted pushback from MCA and other advocates has been necessary to prevent the immediate elimination of large numbers of operators from the permitting process. While these efforts have been partially successful, none are fully resolved as of the date of this memo, and their combined pressure has led to an ongoing and accelerating attrition of operators from the program.

a. Fall 2021 - MCD denial threats for "incomplete" applications

In an article published on November 8, 2021, the Ukiah Daily Journal reported¹² that MCD had repeatedly threatened applicants with denial based on the submission of "incomplete"

¹⁰Mendocino General Government Committee, January 23, 2023 <https://youtu.be/qO2wbVHbdUc?t=3010>

¹¹Ibid. GGC Committee meeting <https://youtu.be/qO2wbVHbdUc?t=9617>

¹² "Mendocino Cannabis Alliance reports problems with county's pot portal," Ukiah Daily Journal, November 8, 2021.

<https://www.ukiahdailyjournal.com/2021/11/08/mendocino-cannabis-alliance-reports-problems-with-countys-pot-portal/>

applications through the Portal, without providing clear criteria for completeness or an opportunity for applicants to cure deficiencies.

According to the Journal:

“Very early in the process the Cannabis Program’s recently-appointed director, Kristen Nevedal, (formerly manager) stated that if staff did not have enough time to review the submissions or if an application was deemed incomplete at the close of the portal, operators would be in danger of being statutorily denied because they had not been deemed complete yet.”

In response to public outcry and substantial pushback from MCA and cultivation licensees,¹³ the Journal reported that Director Nevedal briefly reversed this decision at an October 26 Board of Supervisors meeting, suggesting that applicants would have the opportunity to cure deficiencies identified by county staff. Just a week later, however, the Journal reported that MCD once again began sending emails threatening denials:

“On the afternoon of Nov. 2, however, the day the portal was set to close, there was an email form (sic) the Cannabis Program stating that incomplete applications would still be denied with no indication of the criteria that would be used to determine what was incomplete.”

MCD’s inconsistency and lack of clarity have been the rule, not the exception. Over the past year, applicants have continued to receive confusing and contradictory information regarding the procedural completeness of their application; whether they will have an opportunity to correct deficiencies in their application; what deficiencies, if any, exist in a given application; how to correct deficiencies that are identified, on what timeline; and what appeals process may or may not be available for denials on procedural or substantive grounds.

While applicants fail to receive clear guidance on requirements for compliance, the underlying threat of license denial remains present at all times. In a memo that MCA published jointly with local attorney Hannah Nelson on January 12, 2022,¹⁴ we expressed how MCD’s combination of bureaucratic disorganization and punitive threats has resulted in an erosion of trust among good-faith applicants.

“Applicants have had to completely reorganize their lives based on a constant ‘hurry up and wait’ mode of conducting business in the County. They are expected to at all times be ready with unknown documents that fulfill unknown expectations and standards. They have zero information about when or how they will be judged. Honest and human mistakes by the staff of MCD are deemed to be correctable at some unknown time and only then by the efforts and detailed request of the applicant, but honest and human error by the applicant, or submission of an incorrect document or something that an outside agency has prepared that is in some way inconsistent with the applicant’s materials, are presumed to be out of compliance and either subject to denial or subject to unknown additional efforts by the applicant at some unknown time.”

b. February 2022 - MCD denial threats on “vegetation modification” grounds

In February 2022, MCD began sending letters to applicants threatening permit denial based on alleged violations of the cannabis ordinance’s tree removal prohibition (“vegetation

¹³ See public correspondence for October 26, 2021 Board of Supervisors meeting.

<https://mendocino.legistar.com/LegislationDetail.aspx?ID=4749156&GUID=D67D04F7-CDB1-4B10-8A57-0AC47907EE0F&Options=&Search=>

¹⁴ Potential Extinction of Tax-paying Legal Mendocino Cultivators Must Be Addressed By Mendocino County – Hannah Nelson & MCA Op Ed January 12, 2022

<https://mendocannabis.com/2022/01/12/potential-extinction-of-tax-paying-legal-mendocino-cultivators-must-be-addressed-by-mendocino-county-hannah-nelson-mca-op-ed-01-12-2022/>

modification”), a prohibition which is qualified in the ordinance by exemptions for disease and safety concerns.

While the prohibition on tree removal had been long-standing - the policy was included in the County’s original ordinance in 2017 - the county had not suggested any systematic problem with compliance until 2022, when MCD suddenly issued denial threats *en masse*, often based on work alleged to have taken place many years prior.

Applicants who were threatened with vegetation modification denials were given just fifteen days to respond, and were required to provide new and unreasonable standards of evidence to prove their innocence. Mendocino’s ordinance prohibits removing commercial tree species “for the purposes of developing a cannabis cultivation site,” but does not provide further specific definitions or standards to assess potential violations. Despite the lack of clarity, MCD began making presumptions based on how close trees were to cultivation, and whether the tree removal might conceivably benefit a cultivation site even if the tree removal was for other purposes.

Additionally, MCD disregarded applicants’ use of valid exemptions to the tree removal prohibition for “disease and safety concerns” and pruning for maintenance as allowed by the ordinance, and instead imposed *new* and unreasonable requirements for acceptable documentation - such as the completion of work by a licensed professional, and specific documentation for this work - and applied them retroactively.¹⁵ This level of proof is not specifically outlined in the ordinance or in any guidance materials, and had not been previously required in the five years the ordinance had been in effect.

In response, several attorneys representing both applicants and MCA threatened litigation against the county on due process grounds. In a letter¹⁶ written to MCD on March 15, 2022, the attorneys stated:

“In the five years that MCD has run the cultivation permit program, it has never before requested evidence of compliance with the tree removal prohibition provisions of Mendocino County Code Section 10A.17 et sq. (the “Ordinance”) at the standards that it is now demanding in the Vegetation Modification letters. Indeed, MCD is suddenly requiring that applicants affirmatively disprove violations of the Ordinance, despite the fact that MCD has not made any specific allegations of such violations. Furthermore, the type of evidence now being requested goes beyond what MCD is permitted to require under the Ordinance, and no reasonable person anticipated that they would ever have to produce it.”

The attorneys continued: *“If MCD follows through with its threats to deny applications based on alleged vegetation removal under the current circumstances... it would represent a clear violation of the applicants’ rights to due process of law.”*

Following these litigation threats, the county initially chose to re-refer the vegetation modification issue to outside counsel and the GGC. To this date, the timeline and evidentiary standards required for applicants to demonstrate their innocence have still not been finalized, and County Counsel has indicated that doing so will likely take several more meetings. The first meeting to advance these discussions is currently scheduled for February 7th, nearly two months after the last time the matter was discussed at the GGC.

¹⁵ “Mendocino Cannabis Operators Take on the Mendocino Cannabis Department – Litigation Looms,” Kym Kemp, March 16, 2022. <https://kymkemp.com/2022/03/16/mendocino-cannabis-operators-take-on-the-mendocino-cannabis-department-litigation-looms/>

¹⁶ “Legal Objection to Deprivation of Due Process re Vegetation Removal,” March 15, 2022. https://drive.google.com/file/d/1GYE3wTP1bf4nV0J57sOujjU12bxVyxG/view?usp=share_link

The result is continued confusion on whether and how applicants will be able to move forward towards annual licensure and further delays in application processing.¹⁷ While the process for assessing and resolving vegetation modification allegations remains outstanding, some applicants have been treated as “guilty until proven innocent” in the interim, and have had equity grant funding delayed indefinitely based on alleged violations.

c. November 2022-current date - MCD “deprioritization” letters based on grounds easily demonstrated to be false

On November 2, 2022, Mendocino County’s local public radio station KZYX reported that MCD had sent 590 of Mendocino’s 863 licensees letters “de-prioritizing” their application review, citing alleged deficiencies in either 1) state licensure status or 2) county cannabis tax payments.¹⁸

Operators who received deprioritization notices were told that their applications would no longer be processed by MCD until they were “re-prioritized” through an undefined process, putting these licensees at imminent risk for failing to meet July 1, 2023 state licensing benchmarks and therefore losing their state license.

Neither of MCD’s alleged reasons for deprioritization, however, were accurate for a substantial number of licensees who received these letters. An MCA survey indicated that over 90% of respondents who were cited as state license deficient in fact had active state licenses, and more than 50% of operators cited as tax delinquent had tax payment receipts from the years for which they were cited.

When asked to explain these inconsistencies, MCD Director Nevedal stated that potential errors regarding state licensure status were largely due to MCD’s inability to access statewide licensing data to confirm operators’ state license status. According to KZYX, Director Nevedal stated that *“we have no way, just like the public has no way, to type an address or an APN (Assessor Parcel Number) into the state license search, and find a license.”*

Contrary to Director Nevedal’s claims, MCA has found that these records are easily accessible for any member of the public. On October 26, MCA obtained the results of a Public Records Act request to the Department of Cannabis Control for statewide cannabis cultivation licensing data, including APN numbers for each licensee. The DCC responded to this PRA request within three hours with a spreadsheet including all data that would be necessary to confirm operators’ state licensing status. A subsequent PRA from MCA on October 27 confirmed that MCD had not, at any point prior to that date, requested a list of Mendocino licensees from the DCC.¹⁹

MCA brought this publicly-available state licensing data to MCD’s attention at MCD’s October 28, 2022 public meeting. Despite this, however, MCA is aware of cases where MCD has continued to send additional deprioritization letters to applicants over the past several months based on incorrect claims of lack of state licensure or tax delinquency. In one recent case, an applicant who had corrected an errant deprioritization notice in November 2022 was sent a second deprioritization notice in February 2023 that contained the same, false allegations of tax delinquency that had been cleared several months prior.²⁰

¹⁷ “BoS discusses ordinance to establish appeals process for cannabis permit denials,” KZYX, October 26, 2022.

<https://www.kzyx.org/2022-10-26/bos-discusses-ordinance-to-establish-appeals-process-for-cannabis-permit-denials>

¹⁸ “Application reviews stalled for majority of cannabis cultivators,” Mendocino County Public Broadcasting, November 2, 2022.

<https://www.kzyx.org/2022-11-02/application-reviews-stalled-for-majority-of-cannabis-cultivators>

¹⁹ PRA request documentation <https://drive.google.com/drive/folders/1u7PNJ0tBQxuMDZxiK3-pcK7iKDOhRFvH>

²⁰ <https://drive.google.com/file/d/1P61QIcvWP7HSbqqAgta9UmaJufVD83I-/view>

4. Failure to Establish a Clear Process for Required SSHR Reviews

For well over five years, Sensitive Species and Habitat Reviews (SSHRs) have been identified as a necessary component of CEQA compliance for many Mendocino cultivators. The requirement for SSHRs is written into Mendocino's mitigated negative declaration (MND), and was heavily discussed in the negotiations leading up to the adoption of the most recent cannabis MND in March 2017.²¹

Although the county has been aware of the SSHR requirement since at least 2017, it took over three years following the opening of the permitting process for the county to begin working with CDFW to set up mechanisms necessary for the required reviews. The issue was finally discussed by the Board of Supervisors in December 2020, when the Board voted to contract with CDFW for SSHR review on a limited²² number of permits.

More than a year following this decision, the Board finally began to initiate contracts with CDFW to conduct SSHRs for the bulk of applicants in the permitting process. The contracting process took so long, however, that CDFW was forced to stop conducting reviews for most of 2022 - a work stoppage which was not disclosed to applicants or announced to the Board by MCD.

A retroactive contract was finally executed and approved by the Board of Supervisors on October 18, 2022; however, it expired on November 2, 2022, and it is unclear whether work for upcoming SSHR referrals was included in that contract's approved budget, or was limited to reimbursement for the work performed up until the work stoppage.

On December 2, 2022, MCD Director Nevedal stated that MCD had no way of knowing how many SSHR reviews had been conducted to date, how many were included in the prior budget, and how many were left to be conducted;²³ suggesting that MCD has not tracked that information despite their intimate involvement in initiating the review process. This answer was consistent with an earlier PRA request submitted in November 2021, which requested information on the number of Appendix G applications which had been submitted, were under review, or had been approved: county counsel responded that *"the County does not yet have a mechanism for tracking this data and so has no records responsive to your request."*²⁴

As of the date of this memo, the goalposts for conducting required SSHR reviews continue to move. At the January 23 GGC meeting, Director Nevedal stated that MCD would not make a significant number of SSHR referrals to CDFW in the future, and that the SSHR process would instead be brought "in-house."²⁵

The details of this process, however, have not been released to the GGC, the Board, or the public. It is not clear whether screening criteria for SSHR referrals has changed, whether MCD has qualified and sufficient staff to conduct the work CDFW had been doing, or how taking the process "in-house" might impact timelines for effectuating CEQA compliance and annual licensure.

5. County Failure to Distribute State-Level Equity Funds

One potential bright spot for Mendocino cannabis applicants is the theoretical availability of state-funded grant opportunities for cannabis operators. Funds allocated to Mendocino County

²¹ "Exhibit M: Addendum to the Mitigated Negative Declaration for the County of Mendocino Medical Cannabis Cultivation Regulations." <https://www.mendocinocounty.org/home/showpublisheddocument/23908/636736655756970000>

²² The scope of this initial SSHR contract was limited to 200 local permits which had been already approved, but had not yet received SSHR review, and did not include provisions to contract for SSHR reviews for any other applicant.

²³ MCD public meeting December 2, 2022, question at 59:55, answer at 1:02:00. <https://www.youtube.com/watch?v=dNxUA99g3uE&t=3595s>

²⁴ <https://drive.google.com/drive/folders/1A7YdoVrPDbHVQpdrIwQ-RdNpdPbGWoF5>

²⁵ January 23 GGC meeting, <https://www.youtube.com/live/qO2wbVHbdUc?feature=share&t=3233>

under the state's cannabis equity program would, if distributed effectively, provide significant and needed resources for legacy operators seeking to transition into annual licensure.

To this point, however, Mendocino County has largely failed to facilitate the timely release of state equity funds to qualified equity operators. For more than a year, unrealistic income limitations included within program qualification criteria severely limited the utility of the program, and initially only five checks were distributed in April of 2022. After substantial advocacy from the public, the county eventually lifted these income restrictions, and more significant distribution of equity funds to program applicants did not begin until late August, 2022 - more than a year and a half after equity grant applications became available online.²⁶

More recently, Fifth District Supervisor Ted Williams, then-Chair of the Mendocino Board of Supervisors, raised additional, artificial barriers to the functioning of the equity program. On October 4, 2022, Supervisor Williams brought forward an agenda item seeking to severely limit Mendocino's equity program to "legitimate governmental expenses" due to concerns regarding the federal legality of commercial cannabis activities.²⁷

Supervisor Williams' concerns regarding the legality of equity grant funds were new: they had not been raised in prior iterations of Mendocino's equity program, in the state's decision to release the equity funds to local jurisdictions, nor (to our knowledge) by other jurisdictions that have distributed equity funds. Supervisors and staff have not raised parallel federal legality concerns regarding any other aspect of Mendocino's cannabis program, including the millions in cannabis taxes, fees, and grant funds that have been accepted by the County since 2017.

Over the past several months, the county has continued to dedicate scarce resources to questioning the legality of its own equity program, most recently approving the hiring of outside counsel to assess the legality of the program prior to initiating the fourth round of equity funding. A contract to hire this outside counsel will be considered at the Board of Supervisors meeting scheduled for February 7, 2023.

The county's legal objections to its equity program adds to a long-standing pattern of delays and self-imposed obstacles to the distribution of equity funds. One applicant has documented a chain of over 125 emails between themselves and the county regarding their equity eligibility and funding.²⁸ Recently, the county has also begun to direct applicants to re-apply for equity status, utilizing a different online system, up to nine months after their initial applications were submitted.²⁹

6. Outcomes of the Local Jurisdiction Assistance Grant Program

The nearly \$17.5 million allocated to Mendocino County under the Local Jurisdiction Assistance Grant Program (LJAGP) is the primary mechanism that the state has established to assist local governments in permit processing. To this point, however, there is little clarity about how these funds have been spent, or how they will be spent in the future.

²⁶ "Building the Airplane While It's Flying" —Mendocino Grand Jury Assesses the Cannabis Equity Grant Program," MendoFever, July 25, 2022. <https://mendofever.com/2022/07/25/building-the-airplane-while-its-flying-mendocino-grand-jury-assesses-the-cannabis-equity-grant-program/>

²⁷ "We are going to go down unless we have this funding": Mendocino Cannabis Alliance growers, supporters turn out for BOS discussion," Mendocino Voice, October 4, 2022. <https://mendovoice.com/2022/10/we-are-going-to-go-down-unless-we-have-this-funding-mendocino-cannabis-alliance-growers-supporters-turn-out-for-bos-discussion/>

²⁸ <https://drive.google.com/file/d/1rNLD4wrxvCkuWt61PEl5t89ccgddRHr/view>

²⁹ Collection of Equity mandatory re-application after extensive processing delays from Attorney Hannah Nelson. https://docs.google.com/document/d/1QblGtwc4iOYNzZgSgJY5v7RCkv7FHffV/edit?usp=share_link&oid=114851947870673380801&rtpof=true&sd=true

In the county's application for LJAGP funding,³⁰ MCD indicated that approximately \$10.5 million in funds would be distributed as direct grants to licensees for costs of compliance, while an additional \$7 million would be allocated to the county and MCD for staffing, professional services, and other administrative costs.

An application process for the \$10.5 million direct grant funds to operators has not yet opened as of the date of this letter; and while some of the \$7 million in administrative funds appear to have been spent, Director Nevedal stated on January 23 that she could not specify how much had been spent or where, and that this information would not be clarified until the mid-year budget presentation.³¹

Theoretically, the county's LJAGP application document should serve as a roadmap for how the county intends to successfully conduct CEQA reviews and transition operators to annual licensure. The application materials for the grant prompt the local jurisdiction to explain "how CEQA compliance will be achieved," "how obstacles will be removed from the permitting process, including opportunities to reduce time to permit issuance," and "how these goals will align with the statutory deadlines mandated for maintenance of a provisional license."

In reviewing the county's LJAGP application submission from November 2021, however, it is increasingly unclear to us how the county plans to utilize LJAGP funds to effectuate this transition.

For the 2022 calendar year, the LJAGP application lays out a work plan that centers on bringing on additional contract planners to perform substantive environmental and compliance reviews, as well as preparing Appendix G Checklists in-house.³²

"Goal: Phase One & Phase Two Application Review (January 1, 2022 – December 31, 2022): Upon completion of the Portal Reapplication Program, all Phase One and Phase Two applications will have undergone initial review and will be assigned to either a staff or contract planner for environmental and compliance review, and permit issuance or denial. The MCP intends to have the assigned staff or contract planner draft the Appendix G Checklist during the environmental and compliance review. The Program believes that taking over the drafting of the Appendix G Checklist will expedite applicant's ability to qualify for a State issued annual license."

As discussed in Sections 1 and 2 of this memo, through the end of 2022, the county did not bring on the intended or necessary number of staff or contractors, and has not conducted substantive review of permit applications or Appendix G materials. As of the date of this memo, MCD has not yet established a contract for outside planners, and has not located qualified candidates for many in-house planning positions.

MCD has also not moved forward to bring Appendix G checklist preparation in-house, a priority which is repeatedly stated and emphasized throughout the county's LJAGP application. In their narrative justification, MCD states that the staff time to prepare Appendix G in-house would be less than the staff time needed to correct a checklist prepared by an applicant or agent:

"Currently it is the responsibility of the permit holder to develop the Appendix G Checklist document and then submit it to the County for review and Certification. This process has proven quit (sic) challenging for Program staff as Appendix G Checklists are often submitted that do not reflect the scope of the permit issued by the County, or are treated as a development permit and include project development not included in the permit issued by the

³⁰ Executed Mendocino County LJAGP Application to the State November 2021

<https://mendocino.legistar.com/View.ashx?M=F&ID=10434741&GUID=100FEA62-D494-429A-9955-F99A40633893>

³¹ Mendocino General Government Committee, January 23, 2023 <https://youtu.be/qO2wbVHbdUc?t=3122>

³² Executed Mendocino County LJAGP Application to the State November 2021

<https://mendocino.legistar.com/View.ashx?M=F&ID=10434741&GUID=100FEA62-D494-429A-9955-F99A40633893>

County. The amount of time Program staff spends correcting and sending suggestions to applicants and agents requesting changes is significant and in many cases exceeds the amount of time it would take staff to simply have drafted the Checklist to begin with."

MCD expresses specific concerns that cultivators - if left to their own devices - would delay preparation of Appendix G checklists until Q3 and Q4 of 2022/2023, resulting in a need for the county to move more swiftly through an in-house process:

"The Program is additionally concerned that, based on track record over time, permit holders will wait until Q3 and Q4 of the 2022/2023 Fiscal Year to submit a completed Appendix G Checklist which would create a new backlog of materials, which may hinder the Program's ability to conduct the reviews in a timely manner and jeopardize permit holders ability to qualify for provisional license renewals after June 30, 2023."

At the January 23, 2023 GGC meeting, however, Director Nevedal stated that she was unsure whether the county would be able to take on the preparation of Appendix G checklists, citing lack of resources:³³

"Supervisor Haschak: At this point, is the idea for everyone to do their Appendix G forms themselves, or have consultants do them? Or there was talk about the Department doing some of that work?"

"Director Nevedal: I think at this point we haven't determined exactly whether we'll be able to take on developing those materials. We're still working through our contract, so the contract for planning services has been agreed upon and is just making its way through Cobblestone, it'll be updated today I anticipate. The funding available for contract services is not as robust as we would need to have both contract services and the Department manage application review and CEQA document development, so at this time I'm not convinced we have the capacity, even with contract planning services, to take on developing these documents."

The continued uncertainty on who is slated to prepare Appendix G checklists is particularly concerning given the county's emphasis on this process, and its timeliness, in the county's LJAGP application.

Beyond the proposal to hire contract planners and bring Appendix G preparation in-house, there is little information in the county's grant application on how LJAGP funds will be used for the substantive business of processing permit applications.³⁴ If the county does not intend to prepare Appendix G checklists, and has not yet hired a contract planning firm or staffed up significantly in-house, it is unclear how LJAGP resources are intended to meaningfully increase MCD's administrative capacity to perform reviews required for annual state licensure based on the work plan submitted to the state.

Outside of the \$7 million in LJAGP funds allocated for administrative costs, the \$10.5 million in funds slated for direct grants to operators does have the potential to meaningfully move operators towards compliance - but only if it is accompanied by a viable local permitting process. While it is too early to assess the success or failure of LJAGP direct grants which have yet to be dispersed, MCA has raised concerns regarding the narrow scope of proposed LJAGP eligibility, and the lack of policies and procedures associated with the proposed program.³⁵ Currently, the application submission process for direct grants is slated to open on February 17, with grant award announcements anticipated to be made by April.

³³ Mendocino General Government Committee, January 23, 2023 <https://www.youtube.com/live/qO2wbVHbdUc?feature=share&t=1674>

³⁴ Other aspects of the county's LJAGP application are largely focused on ancillary and administrative tasks such as improving IT systems, expanding enforcement efforts, and establishing data collection.

³⁵ https://drive.google.com/file/d/1SO6NaldL4ZNgk1oNGgav7s4XP6dr_WWW/view?usp=share_link

Despite the lack of transparency or clarity on the historic use of LJAGP funds, the county is now exploring the potential to utilize these funds to backfill other budget deficits which have been identified. At the January 24 Mendocino Board of Supervisors meeting, county staff revealed that the county's executive office fiscal team had recently discovered a \$1 million shortfall in MCD's budget.³⁶ While county staff did not clearly explain the reasons for this shortfall at the meeting, staff suggested that they are currently in discussions with MCD to determine whether LJAGP funds might cover the deficit.

7. Attempts to Reform Mendocino's Cannabis Permitting Program Have Failed

For many years, MCA and other local advocates have sought to work within the parameters of public process to effect reforms to the county's permitting program. With the failures of the program compounding, and with state CEQA compliance deadlines approaching, these efforts have grown increasingly urgent over time.

Following the recent rejection of a slate of recommendations from Mendocino's cannabis ad hoc committee, however, these efforts have once again stalled. For five months in 2022, an ad hoc committee comprised of Supervisors John Haschak and Glenn McGourty facilitated in-depth meetings with a range of local stakeholders, including MCD, county counsel, county staff, and state agencies, to consider improvements to the county's processes for cannabis permitting and grant allocations.

On October 14, 2022, the ad hoc committee brought a list of twelve recommendations to the full Board for consideration.³⁷ The ad hoc's recommendations included proposed solutions addressing many of the issues identified in this memo, including efforts to improve and expedite permit reviews by MCD, improve interdepartmental coordination, enable effective distribution of equity and LJAGP grant funds, expedite SSHR reviews, and establish a fair process to resolve alleged vegetation modification violations.

MCA strongly supported these recommendations, and in the middle of harvest, over forty cultivators attended the October 14 meeting to urge the Board of Supervisors to adopt them.³⁸

In response, the Board accepted just two of the ad hoc's recommendations, either providing no direction on the other recommendations, or pushing them to future discussion in the General Government Committee (GGC). Since that time, there have been only three meetings of the GGC, and no additional recommendations proposed by the ad hoc have been adopted. With state licensing deadlines approaching, and time to establish a viable permitting program rapidly running out, it remains unclear whether and how the ad hoc's recommendations will ever be seriously considered or adopted.

Conclusion: Urgent Intervention Is Necessary to Realize Proposition 64's Promise of a Just Transition for Legacy Operators in Mendocino County

Given the compounding failures identified in this letter, MCA currently sees no indication that MCD will successfully review local permits and conduct site-specific review for Mendocino operators in time to meet state deadlines for annual licensure.

³⁶ Mendocino BoS Meeting 01-24-2023 <https://www.youtube.com/live/s23Zh-BWpww?feature=share&t=7558>

³⁷ Cannabis Ad Hoc Recommendations, October 4, 2022. <https://mendocino.legistar1.com/daystar.legistar6.sdk.ws/View.ashx?M=F&GovernmentGUID=MEND&LogicalFileName=fd118f64-76e2-44fc-9063-0fb6fc053b4c.docx&From=Granicus>

³⁸ "'We are going to go down unless we have this funding': Mendocino Cannabis Alliance growers, supporters turn out for BOS discussion," Mendocino Voice, October 4, 2022. <https://mendovoice.com/2022/10/we-are-going-to-go-down-unless-we-have-this-funding-mendocino-cannabis-alliance-growers-supporters-tur-n-out-for-bos-discussion/>

Since 2021, MCD and Mendocino County have not effectively implemented those policies and structures most directly necessary for licensees to move forward in the local permitting process, including 1) establishing a stable and viable system for submitting applications, 2) promulgating clear guidelines for application completeness and correction of deficiencies, 3) allocating resources, such as contracting for SSHRs, which are necessary for licensees to demonstrate CEQA compliance, 4) effectively distributing state equity grant funds necessary for applicants to resource CEQA compliance or 5) establishing a clear plan to conduct all facets of MCD's required work in time to meet state statutory deadlines.

Instead, since the passage of SB 160, MCD and Mendocino County have devoted resources to 1) requiring continuous resubmission of already-completed applications, 2) threatening denials based on "incomplete applications" 3) threatening applicants with denial on "vegetation modification" grounds without due process, 4) deprioritizing 590 applications based on frequently false (and easily verifiable) claims of state license noncompliance or outstanding tax liability, and 5) raising spurious legal objections to their own cannabis equity program.

Considered collectively, we believe the pattern of obstruction and incompetence documented in this letter raises the possibility that many Mendocino County local government do not seek to permit cannabis cultivation in good faith, and instead seek to effectively "run out the clock" on CEQA compliance in light of impending state deadlines.

As the State considers further policy changes to licensing rules in 2023, we believe it is critical that policymakers understand the fundamental nature of the problems plaguing the current system. Legislative action to further push out deadlines, while potentially necessary from a practical perspective, will fail to solve the underlying structural problems with local government approvals. We believe the role of local government in processing applications must be addressed at the state level in order to provide good-faith operators with a path forward.

Thank you for your urgent consideration of the items presented here. We look forward to continuing a conversation with you on effectuating a viable transition for Mendocino's small and legacy cultivators into the licensed California cannabis market. We are available at your convenience to discuss further.

Sincerely,



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cc. Senate President pro Tempore Toni Atkins
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Senator Nancy Skinner, Budget Committee Chair
Assembly Speaker Anthony Rendon
Assemblymember Jim Wood
Assemblymember Phil Ting, Budget Committee Chair