

Martha Spencer
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Hydesville CA 95547
(707) 768-3056

BOARD
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January 15, 2016

Board of Supervisors
Humboldt County Courthouse
825 5th St.
Eureka CA, 95501

RE: Humboldt County Phase IV MMLIJO (Cannabis Regulations)

Dear Members of the Board,

I commend and thank you and County staff on the incredible work done so far on this phase of the draft Marijuana Ordinance. It is a difficult regulatory issue to undertake as this illegal land use has for many years been conducted in the shadows, without any legal sideboards to guide or regulate it. I realize that I am very "late to the table" on this issue, but would like to offer comments on the draft ordinance and review process for future consideration. My comments are limited to three areas: removal of lands with approved commercial grows from Timber Production Zones (TPZ); notification to landowners in the zoning districts that qualify as relocation areas for retired grow sites, in particular, the areas that could receive commercial grow operations with only a ministerial review and no neighborhood notice; and development of a "Q" zone option for neighborhoods that would like to opt out as a potential receiving area under the "RRR" program.

Issue 1: Removal of lands with approved commercial grows from Timber Production Zones (TPZ)

As you may recall during the hearings of the proposed changes to the TPZ Ordinance, there was much discussion regarding whether residences should be considered a compatible use on TPZ lands. I believe the focus of compatibility was the wrong argument in that case. The question of whether the use detracts from the growing and harvesting of timber (which is the litmus test for the California Timberland Productivity Act of 1982) can often be difficult to prove. The better question becomes, "What is the primary use of the property?" As with large lot subdivisions on TPZ lands, marijuana cultivation becomes the primary economic driver, and the growing and harvesting of timber through active management is no longer the primary use of the property. The taxpayers of the state of California believed so strongly in the continued productivity of our timber resources, they passed a law deferring tax collection on timberlands to protect this industry, recognizing the long time span between commercial realizations of their product. When the primary economic driver of the land is no longer timber production, of which we as taxpayers are supporting, I believe we should even the playing field and have commercial marijuana growers pay their fair share of taxes and get out of TPZ. If, as was suggested during the 2007 TPZ Ordinance revision, commercial marijuana growers want to stay in TPZ, a timber management plan, prepared by a qualified professional, demonstrating the continued care and management of timber resources should be filed with the County.

Issue 2: Notification to landowners in the zoning districts that qualify as relocation areas for retired grow sites and new commercial grows

According to the presentation to the Board by Van Busic with the UC Cooperative Extension Service titled Cannabis Production and Land Use in Humboldt County, there were approximately 1725 individual parcels with cultivation sites. Of these 1725 parcels, only 124 parcels, or 7% would qualify under the Ordinance permitting requirements in regards to soil class, zoning and slope for continued production. He concluded that there would be a high potential for re-locating existing cultivation sites to other qualifying areas in the County.

As staff indicated in the January 11th Board Report, the “primary operative principal” for the Ordinance was “to reduce impacts of the existing baseline of unregulated marijuana cultivation by requiring compliance with performance standards designed for that purpose”, which includes the Retirement, Remediation, and Relocation (RRR) Policy Option. If I understand the proposed RRR program correctly, there are also added incentives and “multipliers” to help move commercial growers to more suitable areas in the County, that potentially have less environmental impacts than their current location. This should be commended.

However, on the flip side, these receiving areas could experience adverse impacts in the rush of relocation and the ministerial permitting of new grow operations, without any prior notification to landowners of the proposed changes within their zoning district, as amended through the Marijuana Ordinance. This Board has prided itself on the extensive notification protocols of the General Plan Update program, in particular the mapping changes, in order to ensure an informed citizenry. I do not believe that the general public, those individuals not involved in the Marijuana industry or the environmental community hoping to see improved growing conditions, understand or are aware of these potential changes to their neighborhoods. I strongly recommend that a notice be sent to property owners within the zoning districts affected most by these changes, in particular the districts where new grows can be permitted or relocated with only a ministerial permit and no neighborhood notice. This notice should be sent prior to the implementation of the Ordinance.

Issue 3: Development of a “Q” zone option for neighborhoods that would like to opt out as a potential receiving area under the “RRR” policy program

Full disclosure here – I live in an area that would qualify as receiving area under the RRR policy program – however, certain conditions may “disqualify” it as a suitable area for the commercial growing of marijuana, but at a countywide review level, staff would not know this.

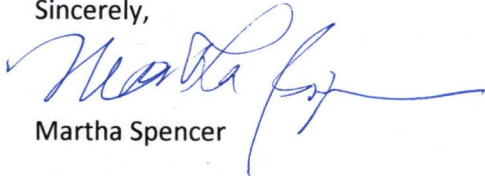
My husband and I own 10 acres on the old Victoria Ranch outside of Hydesville. There are approximately 16 parcels ranging in sizes from 5 acres to 35 acres in the subdivision. We are currently zoned Agriculture General (AG), with most parcels containing prime ag soils as indicated on the County’s GIS site, and slopes less than 9%. The primary agricultural uses are cows and horses. We grow a lot of grass (not the kind you smoke) for livestock. On the surface it sounds like a perfect receiving area for commercial marijuana cultivation until you dig a little further and find that we have limited water in the summer. Although this subdivision is within the Community Services District boundary, we are not served by the district and most everyone has individual wells or shared water sources. Since moving here in 2002, we have experienced our water system fail and know of at least 4 other landowners in the neighborhood whose systems failed. Other than watering livestock, there is no other agricultural use demanding water resources in our neighborhood. Many residents actually store water for their

vegetable gardens and I can't think of any neighbor that waters their yard in the summer. With all these precautions, we still run out of water in years of low precipitation.

Because this area qualifies for new grows and relocation of existing grows under the ministerial review permit process, there would be no notification for any new grows. County staff would not know of these area specific site conditions as they prepare a county wide ordinance. It would be a shame to have an intensive agriculture operation (such as a commercial marijuana grow that replaces their soil annually) move into an area and jeopardize the water resources of others. That is why I believe it is appropriate to allow neighborhoods to opt out as receiving areas either through a "Q" Zone or a similar zoning mechanism.

Thank you again for your efforts on this Ordinance. Your hard work (and that of staff!) is greatly appreciated as we navigate a possible future with legalization. Please feel free to contact me at 768-3506 if you have any questions or wish to discuss this further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martha Spencer", with a long horizontal flourish extending to the right.

Martha Spencer

Hartwell, Ana

From: Wall, Robert
Sent: Friday, January 15, 2016 4:26 PM
To: Hartwell, Ana
Subject: FW: Draft MM Ordinance
Attachments: Draft Ordinance Text 1-13-16 (00376080xC24FB).doc

Ana, This is addressed to staff, but please add this to public comment.

Thanks

Rob

From: Brad Johnson [mailto:bjohnson@hthjlaw.com]
Sent: Wednesday, January 13, 2016 1:16 PM
To: Wall, Robert; swarner@co.humboldt.ca.us; Lazar, Steve
Cc: Mark Harrison
Subject: Draft MM Ordinance

Rob, Steve and Steve,

We thought some additional clarifications would be helpful as a follow up to the Board's discussion late yesterday afternoon regarding the potential for multiple permits on a single parcel.

First, it is important to note that MMRSA establishes grow size limits *per license*, on a single "premises", not parcel. It is the per-license limit that is important under MMRSA, not the total grow size in any particular location. Although we do not have a full legislative history yet, the reasons for this are apparent: (1) the size of a grow on any single parcel bears no relationship to the state's licensing scheme; indeed relatively few licensees will actually own or lease an entire parcel, and therefore the law must track grow size per license instead; (2) with respect to indoor operations in particular, by using the word "premises" rather than "parcel", MMRSA provides local governments with the discretion to allow multiple operations within close proximity (think of a commercial zoning district, with multiple commercial business operating in a single business park, or within a single building even), and the same is true for outdoor operations; (3) for outdoor operations in particular, a "per-parcel" limitation could prevent local governments from achieving the central legislative objective of moving grow operations out of inappropriate areas and onto appropriate agricultural land.

We recognize that the County may want to limit the density of licensed grow operations on agricultural property (i.e., the County does not want multiple maximum-size operations on a single small agricultural parcel). The use of a "per-parcel" approach to do this, however, as in the current draft ordinance, is not effective because of the massive variability in parcel size across the County (a parcel could be less than one acre, or several thousand acres). A "parcel" is simply not an appropriate metric to control grow operation density. As with the state's objectives in MMRSA, the number of grow operations on a single parcel is ultimately irrelevant to the County's objectives – what is more important to the County is the overall density of grow operations, and, as noted, the ability to move grows out of inappropriate areas and onto appropriate agricultural property. It is clear that the County must allow multiple grow operations on large agricultural properties to achieve these objectives.

A few simple changes to the draft ordinance can achieve this, as shown in the attachment. This draft language allows only those agricultural properties greater than 100 acres to host more than one maximum-size (with CUP) grow operation; parcels smaller than 100 acres are bound by the absolute limits already set out in the draft ordinance, regardless of how those smaller properties may be divided by lease interest.

I understand that staff is working on this issue presently. Please call or email me with any questions on the above or our suggested language.

Regards,

Brad

BRADLEY B. JOHNSON, ESQ.
HARRISON TEMBLADOR HUNGERFORD & JOHNSON
MINING LAND USE NATURAL RESOURCES

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January 13, 2016

Revised Ordinance Language:

55.4.7 Definitions

“Premises” means a each legal parcel that is compliant with the Subdivision Map Act, if applicable, and that is 100 acres or smaller in area, or for legal parcels that are in compliance with the Subdivision Map Act, if applicable, and which are greater than 100 acres in area, each 100-acre portion of such a legal parcel, or each 100-acre portion of a leasehold interest in agricultural land for agricultural purposes of outdoor or mixed-light cultivation or processing of medical cannabis, or space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture, or distribution of medical cannabis.

55.4.9 Permit Types

The type of Zoning Clearance Certificate, Special Permit, or Use Permit that shall be required in order to engage in the commercial cultivation of cannabis for medical use shall be determined by the size and zoning classification of the parcel or premises on which the activity is to be conducted and the type of state license required for that operation pursuant to the MMRSA, in accordance with the following chart:

Table of Humboldt County Commercial Cannabis Cultivation Permit Types – Coastal Zone

In the Coastal Zone, with a Zoning Clearance Certificate or permit type specified below, Outdoor and Mixed-Light cultivation is permitted on all 'Agricultural Land' or in zones in which 'General Agriculture' is a principal permitted use (RA, AG, or AE)			
	Parcel Size	Permit Tier	Cultivated Area Size Limit
OUTDOOR	less than 1 acre	I - Zoning Clearance Certificate	100 sq ft
	1 - 5 acres		200 sq ft
	0 - 5 acres	III - Use Permit	>200 - 43,560 sq ft
	> 5 acres to 10 acres	I - Zoning Clearance Certificate	up to 3,000 sq ft
		III - Use Permit	>3,000 - 43,560 sq ft
		I - Zoning Clearance Certificate	up to 5,000 sq ft

	> 10 acres to 30 99 acres	II - Special Permit	5,000 - 10,000 sq ft	
		III - Use Permit	>10,000 - 43,560 sq ft	
	> 30 100 acres¹ to 320 acres	I - Zoning Clearance Certificate	up to 1 20,000 sq ft	
		II - Special Permit	10,000 - 20,000 sq ft	
		III - Use Permit	>20,000 - 43,560 sq ft	
	> 320 acres	I - Zoning Clearance Certificate	up to 20,000 sq ft	
		III - Use Permit	>20,000 - 43,560 sq ft	
	MIXED - LIGHT	less than 1 acre	I - Zoning Clearance Certificate	100 sq ft
		1 - 5 acres		200 sq ft
0 - 5 acres		III - Use Permit	>200 - 22,000 sq ft	
> 5 acres to 10 acres		I - Zoning Clearance Certificate	up to 3,000 sq ft	
		III - Use Permit	>3,000 - 22,000 sq ft	
> 10 acres to 30 99 acres		I - Zoning Clearance Certificate	up to 5,000 sq ft	
		II - Special Permit	5,000 - 10,000 sq ft	
		III - Use Permit	>10,000 - 22,000 sq ft	
> 30 100 acres¹ to 320 acres		I - Zoning Clearance Certificate	up to 1 22,000 sq ft	
		II - Special Permit	10,000 - 22,000 sq ft	
> 320 acres	I - Zoning Clearance Certificate	up to 22,000 sq ft		
Indoor Cultivation permitted in AG and AE Zones with on-grid power and non-diversionary source of water with Zoning Clearance Certificate or permit type specified below.				
INDOOR - AE	less than 1 acre	I - Zoning Clearance Certificate	100 sq ft	
	1 - 5 acres		200 sq ft	
	0 - 5 acres	III - Use Permit	>200 - 22,000 sq ft	
	> 5 acres to 10 acres	I - Zoning Clearance Certificate	up to 3,000 sq ft	
		III - Use Permit	>3,000 - 22,000 sq ft	
		I - Zoning Clearance Certificate	up to 5,000 sq ft	

	> 10 acres to 30 99 acres	II - Special Permit	5,000 - 10,000 sq ft
		III - Use Permit	>10,000 - 22,000 sq ft
	> 30 100 acres ¹ to 320 acres	I - Zoning Clearance Certificate	up to 1022,000 sq ft
		II - Special Permit	10,000 - 22,000 sq ft
	> 320 acres	I - Zoning Clearance Certificate	up to 22,000 sq ft
	Indoor Cultivation Permitted in CG, MB, ML and MG Zones with on-grid power and non-diversionary source of water with zoning clearance or permit type specified below.		
INDOOR	Must be within footprint of structure allowed within applicable zone	I - Zoning Clearance Certificate	up to 22,000 sq ft

Applications for any clearance or permit listed in the above chart shall be processed in accordance with the procedures set forth in Title III, Chapter 2, beginning with Section 312-1 of the Humboldt County Code.

Notes:

1. On parcels over 100 acres, one cultivation area within the applicable cultivation area size limit (up to 43,560 square feet outdoor or up to 22,000 square feet mixed light or indoor) may be allowed for every 100 acres (gross). A separate Zoning Clearance, Special Permit, or Use Permit shall be required for each cultivation area, subject to the individual permit limit specified in Section 55.4.8.12 of this Ordinance. For parcels smaller than 100 acres, the cultivation area size limits specified above apply to the entire parcel.

(1/5/16 Staff Report, pp. 28-29 (Coastal Zone), 44-45 (Inland).)

* * *

Hartwell, Ana

From: Hayes, Kathy
Sent: Tuesday, January 19, 2016 10:02 AM
To: Bass, Virginia; Bohn, Rex; Fennell, Estelle; Lovelace, Mark; Sundberg, Ryan
Cc: Hartwell, Ana; Damico, Tracy; Lazar, Steve; Wall, Robert
Subject: FW: TPZ and the new industry

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Board Members: just received this email from Michael Richardson re MMJ Ordinance

Kathy Hayes
Administrative Support Manager/Clerk of the Board County of Humboldt
707-476-2396
khayes@co.humboldt.ca.us

-----Original Message-----

From: Richardson, Michael
Sent: Tuesday, January 19, 2016 9:41 AM
To: Hayes, Kathy
Subject: FW: TPZ and the new industry

Below please find comments from Sonny Anderson on the marijuana ordinance for the Board's consideration.

From: DOBSON IMAGES [dobsonimages@asis.com]
Sent: Tuesday, January 19, 2016 7:22 AM
To: Richardson, Michael
Cc: Bohn, Rex
Subject: RE: TPZ and the new industry

Dear Rex and Michael,

I do have a couple of questions on the new industry as it relates to the county TPZ lands and other lands. I had hope to have the minutes of the last meeting of the board in my hands to see what transpired at the last meeting. I have only read an article about the last board meeting in the Lost Coast Outpost.

So just a few points,

1. I am one that would prefer that all grows remain small especially in the remote areas. I do feel that there should not be an across the board ban on grows that take place on tpz lands as long especially if they are small enough to not have any water quality board restrictions.

2. 10,000 square foot, one acre grows and anything larger concerns me, if we are to continue to restrict the number of residences on a parcel why on those parcels would we permit a 10,000 square foot grow seems the traffic and impact year round would be as much as if one two additional residences were allowed on a parcel.

3 Why would the county restrict an owner of TPZ land from growing any weed as long as it stayed within the 2,000 feet that is allowed under state laws.

As long as state environmental laws and water quality laws are adhered to grows of less than 2,000 feet should be allowed on TPZ or any other parcels in the county. Micheal may have not been around but decades ago to qualify for a 3 acre timber plan you had to agree to convert that usage to something other than timber production regardless of the classification of the parcel.

It should also be understood that many parcels that are completely in TPZ may have some grasslands within that parcel. When I had a parcel put in TPZ decades ago I wanted to leave a few acres of grasslands to remain AG and Kevin Caldwell at the time said to put the whole parcel in as the grasslands could be justified to be needed to protect the timberland from fire.

I am against the larger grows they create more of a traffic issue, more use of water and chance of more impact on the land. We we also see a boom on structures needed to house farm workers that are needed for the larger grows?

I now the county is under deadline to get something to the state which I feel is important, but lets hope the county can get an extension or at the very least write up something that will give them a bit of wiggle room to change some of the requirements as needed in the future.

7:20 would is blowing around 40 which in past years was consider a minor blow on Prosper.

Stay warm and dry

Sonny

This message was sent using IMP, the Internet Messaging Program.