



HUMBOLDT COUNTY GROWERS ALLIANCE

January 19, 2022

Dear Humboldt County Supervisors, Staff, and Project Trellis Committeemembers,

On behalf of Humboldt County Growers Alliance, representing 275 cannabis licensees in Humboldt County, we are writing today to strongly recommend that you not move forward with a county-funded or county-administered contract for the marketing of the cannabis industry.

On January 17, HCGA's policy committee met to consider a position on collective marketing for Humboldt cannabis. By a 10-0 vote, policy committee voted to approve the following position:

1. Oppose a county-funded Humboldt cannabis marketing effort.
2. Return the \$1.4 million in Measure S money currently allocated to collective marketing back to farmers.
3. Direct HCGA staff to prioritize the facilitation of an industry-wide conversation on an industry-run collective Humboldt cannabis marketing effort.

Subsequently, HCGA's Board of Directors took a 4-0 vote to adopt the same position.

In the past, HCGA has supported county-based efforts to establish a collective marketing program for Humboldt cannabis because we believed that this program would serve as an effective mechanism for the democratic, participatory, and transparent collective control of marketing efforts by all licensees paying into the county's Measure S cannabis tax.

In recent months, however, we have become aware of legal rules and norms surrounding public contracting which are incompatible with democratic participation and governance by the farmers who are the sole funders, critical stakeholders, and intended beneficiaries of a collective marketing effort.

Instead, discussions on the future of county-funded marketing efforts have become mired in delays, secrecy, non-disclosure agreements, and threats of civil and criminal sanction against bidders and decision-makers alike, while cutting out the participation of the very farmers who the program is intended to benefit.

While these dynamics may appear normal to those who are intimately familiar with the rules governing California public contracting, they are contrary to the principles of open dialogue and self-determination which are necessary for an equitable, transparent, and representative collective marketing effort.

In particular, we would like to highlight the following developments:



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- First, county staff and county counsel have made clear that proposals for the collective marketing of Humboldt cannabis will not be disclosed for public review, suggesting that such disclosure “could materially and irretrievably corrupt the process.”

The Project Trellis collective marketing budget is 100% funded by the Measure S taxes paid exclusively by Humboldt cannabis farmers. Despite this, we understand through staff and county counsel that the community of taxpaying farmers will play no role in reviewing, evaluating, or comparing proposals for the marketing of the products they produce.

- Second, county counsel has made clear that the client for the marketing contract is the county itself - not the farmers, the industry, or the public.

On December 17, county counsel gave a presentation to the Project Trellis committee regarding public contracting and conflicts of interest. In this presentation, county counsel directed Trellis committee members tasked with reviewing marketing proposals that they have a “duty of loyalty to the county, that you will put the county’s interests above yours, or people who are considered family.” County counsel then suggested that disclosure of “confidential government information” could be grounds for civil or criminal liability for committee members, stating: “anything that you learn on this committee or in viewing the submissions that is not part of a public agenda is confidential... in addition to disqualification from the committee, there are civil and... there can be criminal sanctions... you must keep in mind your duties to the county.” Finally, county counsel suggested that committee members are prohibited from utilizing any personal knowledge that is not contained in the RFPs and scoring rubrics, stating: “you’re kind of like a jury in a criminal trial, you can’t consider things you know outside of what’s been presented.”

Based on subsequent research, we believe county counsel’s articulation of public contracting law is accurate. However, what these statements suggest is that adherence to public contracting laws would effectively require the county to deny farmers control over their own marketing, and instead place the county in the position of responsibility over the marketing of Humboldt cannabis.

Additionally, these constraints place Trellis committee members in a deeply difficult position where they will be asked to make recommendations on the future of the Humboldt cannabis industry while subject non-disclosure agreements, with no ability to seek public input on marketing proposals, and without the ability to “consider things [they] know outside of what’s been presented.”

- Third, on December 3, 2021, HCGA received notice from county counsel that HCGA’s proposal for cannabis marketing had been disqualified based on a ruling from the Fair Political Practices Commission (FPPC). Specifically, the FPPC found that HCGA’s



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authorship of the Humboldt Cannabis Marketing Assessment precludes HCGA from participating in the implementation of publicly-funded marketing efforts.

It should be noted that HCGA authored the Humboldt Cannabis Marketing Assessment at the request of county staff at a time when HCGA had openly stated its intent to submit a marketing proposal, and where HCGA had previously submitted a proposal under a prior RFP process. If HCGA had been aware that authoring the Marketing Assessment could result in HCGA's disqualification from the RFP, HCGA would not have accepted staff's offer.

Based on consultation with legal counsel subsequent to HCGA's disqualification, we have been advised that the FPPC's decision could prohibit HCGA not just from bidding for the marketing contract, but also from collaborating with another organization that does receive the contract. As a result, any public contract for the marketing of Humboldt cannabis would necessarily exclude the participation of the trade association representing the businesses whose product is being marketed - an arrangement with no precedent in any successful regional marketing initiative, and in direct contradiction to the reasons why county staff initially requested HCGA's involvement in the marketing assessment.

The ingredients of a successful collective marketing initiative have been well-established through decades of global precedent. As outlined in the [Humboldt Cannabis Marketing Assessment](#) presented to the Board of Supervisors on November 17, 2020, industries comprised of a wide diversity of small, independent, regionally-grounded businesses - such as those in Napa, Bordeaux, Kona, and Colombia - are inherently in tension with more traditional business approaches which seek to maximize market share through the consolidation, corporatization, and commodification of smaller operators.

In regions throughout the world, geographical indications (GIs) are the critical conceptual approach that enable collective marketing efforts by craft producers to not just be successful, but also equitable and democratically grounded, thereby maintaining control of the collective brand in the hands of the producers themselves rather than large, heavily-financed corporate actors.

The ability for regional craft producers to resist trends towards consolidation is based, first and foremost, in the establishment of strong institutional structures and mechanisms for equitable participation by the affected producers. These finds are emphasized in an [exhaustive 2009 International Trade Centre \(ITC\) report](#) on global geographic indications, in the Humboldt Cannabis Marketing Assessment, and throughout the voluminous literature on successful geographic indications policy on a global level.



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Conversely, marketing efforts that lack effective mechanisms for equitable and democratic participation are primed to become engines for the very corporate consolidation they are theoretically designed to resist. Absent governance by producers, collective marketing efforts are likely to be co-opted by the interests of external actors; absent mechanisms for establishing wide-scale buy-in, collective marketing efforts are likely to rely on the resources of large, private companies rather than the collective resources of the community as a whole. The example of tequila provides a cautionary tale, where the [exclusion of producers from their own regional marketing](#) has enabled the monopolization of the tequila trade by a small number of transnational liquor distributors.

We cannot make a specific judgment on what impact any given marketing proposal submitted under RFP #3 would have on the future of the Humboldt cannabis industry because these proposals are not available for public review. Absent the fundamental control of marketing efforts by the affected industry, however, we believe that such co-optation is extremely likely; and unfortunately, it has become clear that the fundamental legal structure of public contracting is at odds with the principle of industry self-determination.

HCGA has received direction from both our policy committee and Board of Directors to prioritize the facilitation of an industry-run and industry-funded conversation on the future of collective marketing in Humboldt. This model follows the successful precedent of the Napa Valley Vintners, whose collective marketing is funded and administered entirely through the industry itself, without funding or administration by Napa County.

We are confident that this model is best equipped to develop an equitable, representative, and effective collective marketing program that enables Humboldt producers to resist corporatization and effectively market Humboldt's world-renowned cannabis products to consumers in California, and eventually, throughout the world.

Enabling the cannabis industry to govern its own collective marketing would also free the Project Trellis committee and staff to focus their limited time and resources on the allocation of much-needed grant funds, such as equity funds, directly to those in need of assistance.

For these reasons, we urge that the Board of Supervisors act swiftly to return the funds earmarked for a county-administered marketing program back to taxpaying farmers, and allow farmers and the industry at large to chart a path forward for our own future.

Sincerely,

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