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Department of Cannabis Control
Legal Affairs Division
2920 Kilgore Road
Rancho Cordova, CA 95670

Re: March 4th, 2022 Notice of Proposed Rulemaking for the DCC: Designation of Origin Regulations

Dear Director Elliott and DCC staff,

Given the unique considerations and importance of California cannabis' geographical indications system, as well as the substantive historic work that has gone into developing the regulations for the CDFA Cannabis Appellations Program (CAP) over the past couple of years, Origins Council has decided to submit these comments as a stand alone document and supplemental addendum to our larger body of comments regarding this DCC rulemaking.

We find it important to state at the outset of these comments that we are extremely concerned about the DCC decision to strike some of the CDFA CAP regulations. We are equally concerned where you changed the substance of other CDFA proposed provisions. All of the CDFA provisions are critical to the integrity and function of the program and were developed over multiple years with substantial stakeholder input. Our position is that the CDFA provisions were better for reasons we have detailed in our comments.

This document traces the history of the Cannabis Appellations Program, including the extensive stakeholder engagement, and provides recommendations to bring DCC regulation back in line with historical discussions.

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About Origins Council

Origins Council (OC) was founded in 2019 as a social welfare nonprofit education, research and advocacy organization, building upon the foundational work of our predecessor organizations, the California Grower Association and the Mendocino Appellations Project.

Origins Council is dedicated to sustainable rural economic development within historic cannabis producing regions, and establishing nationally and internationally recognized, legally defensible, standards-based, geographic indication systems for cannabis.

Our organization's vision is for legacy cannabis producing regions around the world to drive global sustainable development and regenerative agriculture through the regulated production and research of high quality craft cannabis and herbal medicine products.

Critical to this mission and vision are public policies and programs that protect and promote these regions' legacy cannabis farmers and medicine makers including their genetic, cultural, natural and economic resources.

Foundational to the mission and work of Origins Council is our partnership with regional trade associations representing the legacy producing regions of California, collectively forming the OC Regional Council: the Trinity County Agriculture Alliance, the Humboldt County Growers Alliance, the Mendocino Cannabis Alliance, the Sonoma County Growers Alliance, the Nevada County Cannabis Alliance and the Big Sur Farmers Association. Collectively, we represent over 900 licensed small and independent cannabis businesses, predominantly small homestead farmers cultivating ½ acre or less of cannabis.



The California Cannabis Appellations Movement

Our organizations were born out of the decades-long California cannabis movement to repeal prohibition, support medical patient access and recognize cannabis farming as agriculture. Core to this vision is the realization of legal, standards based cannabis appellations. Collectively, over the past 5 years, our organizations have made substantial contributions to the legislative and regulatory development of California's Cannabis Appellations Program and California's city, county & city and county designations of origin.

The legacy farming community is facing an unprecedented crisis of monumental proportions due to a confluence of factors: financial and regulatory barriers to entering into licensure; state-wide overproduction and the depression of wholesale cannabis pricing below profitability margins; significant overtaxation; lack of direct marketing and sales opportunities for producers; protracted licensing insecurity due to the extensive timelines and continually shifting state and local environmental compliance requirements; and the resulting widespread erosion of public trust in the state and local regulatory frameworks.

We find hope in the Cannabis Appellations Program and what it represents to our legacy farming community. It holds the promise of honoring our heritage, our elders, our practices and our legacy of genetic resources, developed over generations. It also has the capacity to help actualize a viable craft cannabis market and sustainable economic development for our heritage farming regions, while protecting our precious natural resources. We care very deeply about our regions and this program. Even in the face of tremendous adversity, we remain as committed and determined as ever to realize a vibrant California craft cannabis market replete with successful cannabis appellations. It is an honor to be a part of creating this program. Thank you for the opportunity to comment on these draft regulations for the Cannabis Appellations Program and the city, county & city and county of origin designations. We look forward to working with the DCC and CDFA to help inform, launch and implement this historic and pioneering geographical indications system for California cannabis.

The Structure of this Document & the Focus of Our Comments

We have provided a chronological overview of the CDFA CAP rulemaking process over the past 2 years, linking all rulemaking documents as well as our organization's comments. These documents are provided for ease of cross-reference, and to highlight the multi-year evolution of the CDFA CAP regulations based on an extensive public policy development process informed by significant stakeholder engagement and input.

Our comments on the DCC proposed regulations that relate to CAP are provided largely in the context of the specific regulatory provisions that were struck from the CDFA CAP regulations in June 2021, pursuant to anticipated agency consolidation.

Overall, our comments focus on issues that are key to the integrity of the Cannabis Appellations Program and of particular importance to the legacy cannabis-producing regions of California and to consumers of those products.

Of equal importance to us is the integrity and regulatory implementation of California's city, county, and city and county of origin designations. Along with appellations, all of these designations of origin collectively make up a comprehensive geographical indications system that will carry California cannabis forward in the eventual global marketplace.

Penetrating consumer awareness about products of place in this nascent legalizing market is a heavy lift. Appellation regions will be largely unknown to consumers, and will greatly benefit from conjunctive labeling of appellations along with county of origin designations, providing context for consumers, identifying the specified appellations as being located within recognized California cannabis producing counties such as Trinity, Humboldt, Mendocino, Sonoma, Nevada and Monterey. Our fellow cannabis producers in urban regions, such as Oakland, San Francisco and Los Angeles also have the opportunity to advance their regional branding and marketing through city of origin designated products. In the landscape of interstate, Federal and international markets - all of these designation of origin products will be tied together through the California designation of origin. Collectively these producers and products will serve as emissaries representing California cannabis agriculture in the global marketplace. Therefore, it is critical that the regulations and implementation of all of these California cannabis designations of origin be considered and treated as an integrated system.

Comments regarding this rulemaking are included in the final section entitled: "Comments on the Currently Proposed DCC Designation of Origin Regulations" Recommendations and requests for clarification are labeled and italicized in bold for emphasis and ease of reference.

CDFA Rulemaking History for the Cannabis Appellations Program

We incorporate by reference in this rulemaking the entire record of the previous CDFA rulemaking for the Cannabis Appellation Program, including but not limited to the documents described and referenced below.

On February 20, 2020, CDFA released the originally proposed regulations. The release marked the official start of the public comment period provided under California law. All interested parties were encouraged to submit comments about the proposed regulations by May 6, 2020. CDFA also received public comments during a virtual hearing on May 6, 2020.

1. Initial Notice Documents (45-Day Comment Period)

- [Notice of Proposed Rulemaking](#)
- [Text of the Proposed Regulations](#)
- [Initial Statement of Reasons \(ISOR\)](#)
- [Economic and Fiscal Impact Analysis Report](#)

Origins Council Comments:

- [May 5th, 2020 Origins Council CAP Comments](#)

CDFA announced modifications to the proposed appellations regulations and the first additional public comment period was October 2 to 19, 2020. The proposed regulations were subsequently modified, prompting several additional comment periods during 2021; March 5 to April 12, June 3 to June 18, and September 27 to October 12.

2. First Additional Comment Period Documents (15-Day Comment Period)

- [Notice of Modifications to the Text of the Proposed Regulations](#)
- [Addendum to the Initial Statement of Reasons \(ISOR\)](#)
- [Modified Text of the Proposed Regulations](#)

Origins Council Comments:

- [Oct.19th, 2020 OC Partners CAP Comments](#)
- [Oct.19th, 2020 CAP SB-67 Coalition Letter](#)

3. Second Additional Comment Period Documents (15-Day Comment Period)

- [Extension Notice of Modifications to the Text of the Proposed Regulations](#)
- [Notice of Modifications to the Text of the Proposed Regulations](#)
- [Second Addendum to the Initial Statement of Reasons \(ISOR\)](#)

- [Modified Text of the Proposed Regulations](#)

Origins Council Comments:

- [April 12th, 2021 OC Partners CAP Comments](#)
- [April 12th, 2021 CAP Coalition Advocacy Letter](#)

4. Third Additional Comment Period Documents (15-Day Comment Period)

- [Notice of Modifications to the Text of the Proposed Regulations](#)
- [Addendum to the Initial Statement of Reasons \(ISOR\)](#)
- [Modified Text of the Proposed Regulations](#)

Origins Council Comments:

- [June 18th, 2021 OC Partners CAP Comments](#)
- [June 18th, 2021 OC Partners CAP Comments Addendum](#)

5. Fourth Additional Comment Period Documents (15-Day Comment Period)

- [Notice of Modifications to the Text of the Proposed Regulations](#)
- [Addendum to the Initial Statement of Reasons \(ISOR\)](#)
- [Modified Text of the Proposed Regulations](#)

Origins Council Comments:

- [October 12th, 2021 OC Partners CAP Comments](#)
- [October 12th, 2021 OC Partners CAP Comments Addendum](#)

Agency Consolidation

In July 2021, the three state cannabis programs were merged to form the Department of Cannabis Control (DCC). The DCC now licenses and regulates all commercial cannabis activity in California.

Upon the dissolution of CDFA's CalCannabis Licensing Division, the CDFA Cannabis Appellations Program was moved under the purview of CDFA's Office of Environmental Farming and Innovation.

CDFA Proposed Regulations Struck in June 2021 Rulemaking

In anticipation of agency consolidation, and the resulting statutory shift of cultivation licensing and regulatory authority to DCC, CDFA struck a number of key provisions within the proposed regulatory package for the Cannabis Appellations Program.

From the June 3rd, 2021 Addendum to the Initial Statement of Reasons (ISOR):

“The Department anticipates amendments to Business and Professions Code division 10, which if passed, would transfer authority to create and modify cannabis cultivation licensing regulations from the California Department of Food and Agriculture (CDFA) to the Department of Cannabis Control. The authority to establish a process by which licensed cultivators may establish appellations of origin remains with CDFA. In response to these proposed statutory changes, the Department is amending the regulations to extract all proposed modifications in Chapter 1, resulting in no changes being made to the current regulation language in Chapter 1 and to remove section 9204 from Chapter 2 as this section is cultivation licensing regulation.”

The following proposed regulations were struck from CDFA's proposed regulatory package:

- § 8000. Definition of Appellation of Origin
- § 8212. Advertising and Marketing of Cannabis and Nonmanufactured Cannabis Products.
- § 8212.1 Notice of Use for Appellation of Origin
- § 8400. Record Retention.
- § 8601. Administrative Actions - Operations. (Enforcement)
- § 8602. Administrative Actions - Recordkeeping. (Enforcement)
- § 9204. Effective Dates.

As part of this rulemaking, DCC should explain why these proposed CDFA regulations were omitted and why certain other regulatory provisions were changed from what CDFA had proposed.

Interagency Coordination on the DCC CAP Rulemaking

The provisions that were struck from the CDFA proposed regulations as a result of agency consolidation are key to the integrity, successful development and implementation of cannabis appellations.

For example, § 9204. Effective Dates, addressed issues that are of paramount importance for petitioning groups to have regulatory clarity around *prior* to beginning the research and development of an appellation petition. This provision proposed regulations to mitigate prospective legal conflicts around naming an appellation. Identifying a proposed name for an appellation is a fundamental and very strategic consideration that can take considerable time and negotiation, in addition to legal and scientific research on the part of petitioning groups and the reviewing agency in order to achieve conclusive decisions.

The striking of this provision, and the decision on the part of DCC to not re-introduce it in this rulemaking (which we go into much more lengthy discussion around below) highlights perfectly the significant negative impacts regulatory uncertainty has on CAP and on petitioning groups currently investing time and resources into researching and developing their petitions. This formative time for CAP is critical, and calls for close interagency coordination.

In response to these concerns, Origins Council submitted comments to CDFA on [June 18th, 2021](#) and again on [October 12th, 2021](#) requesting that, moving forward, the California Department of Food and Agriculture and the Department of Cannabis Control coordinate closely around the development and launch of CAP.

Our comments emphasized the importance of inter-agency coordination around the DCC promulgation of CAP regulations in order to support the DCC in understanding the full history, context, stakeholder input and impacts considered within the CDFA rulemaking in relation to these specific provisions, and also their impacts in relation to the overall timing of the launch of the program.

Status of the California Cannabis Appellations Program

Pursuant to meeting with CDFA in late 2021, we learned that CDFA has the legal authority to choose and notice an appropriate date for initiating the launch of the program and acceptance of petitions, affording CDFA and DCC the flexibility to complete the formative work to finalize policy and programmatic components prior to launch.

Additionally, we really appreciated that a communicated priority of CDFA is to conduct stakeholder outreach and education prior to launching the program, to support the public and petitioning groups in being well informed and prepared to pursue petition development and submission.

From the CDFA website:

“The Cannabis Appellations Program is not accepting applications at this time. OAL approved CDFA’s proposed regulations detailing the process by which outdoor cultivators may establish appellations of origin for cannabis. Prior to accepting petitions to establish an appellation, the Department is developing the administrative structure for the program and establishing a review panel to support the fair and thorough evaluation of petitions. In early 2022, the Department will hold a virtual stakeholder meeting to discuss program progress. CDFA intends to announce the opening of appellation of origin petition acceptance in the middle of 2022. Petitions received prior to an announcement from the Department will not be accepted. Please sign up for the program listserv (top right-hand side of this page) as we will send regular updates and will also be updating this website to keep interested stakeholders informed.”

As stated above, we have significant concerns regarding the CDFA Cannabis Appellations Program launching and accepting petitions prior to the final DCC adoption of CAP regulations, and will continue to advocate for the completion of DCC CAP rulemaking prior to the launch of CAP and the acceptance of appellation petitions.

OC Comments on the Proposed DCC Regulations Relating to Designations of Origin

This section offers our comments on the current DCC rulemaking for designation of origin regulations. We address DCC regulations that were either added or revised, and CDFA proposals for CAP that were not adopted or otherwise addressed in this DCC rulemaking.

1. Appellations vs. Trademarks

COMMENT: The DCC proposed regulation ignores entirely the issue of conflicts between geographic trademarks and appellations. It cannot be emphasized enough how important regulations addressing this issue are to the integrity and function of the Cannabis Appellations Program, particularly at the outset of launching the program.

It is confounding to us why the DCC would choose to ignore this critical and time-sensitive issue in this rulemaking. The CDFA recognized the importance of this issue from the very outset of their rulemaking, and invested considerable time and resources into further modifying the proposed regulations surrounding this issue during the 2 years of CDFA CAP rulemaking, based on significant stakeholder engagement and input on this issue. This issue has been a top concern of the Origins Council throughout the CDFA rulemaking, and our organization as well as other stakeholder groups, such as a coalition of 24 California Wine Associations and intellectual property attorneys from the International Cannabis Bar Association have invested considerable time and resources into researching and engaging on this issue.

Furthermore, Origins Council has learned in our recent on-the-ground work supporting farming groups currently working on appellation petitions that this issue is of paramount importance to have regulatory clarity around *prior* to beginning the research and development of an appellation petition. Identifying a proposed name for an appellation is one of the first steps to researching and drafting a petition. It is a component that must be carefully considered in tandem with defining the boundaries and causal link(s) for the appellation. As such it is a fundamental and very strategic consideration that can demand considerable time and resources from farmers to be invested into legal and scientific research, in addition to stakeholder outreach and negotiations. Based on our first hand experience, the lack of regulation around this has already negatively impacted the legacy farming community, which is already at a breaking point. These negative impacts will continue until such time as this issue is definitively addressed in DCC regulation. The longer it takes to resolve this hole, the more this issue threatens to undermine the successful launch of the Cannabis Appellations Program as it creates exponential risks to farmers' substantial investment into petition development.

GEOGRAPHIC TRADEMARKS

COMMENT: The CDFA proposed regulations adopted a sunset provision that would allow any owner of a geographic trademark registered with the California Secretary of State or U.S. Patent and Trademark Office and in use in California prior to CDFA's publication of a Notice of Proposed Action for an appellation of the same or similar name to continue to use the trademark for one year after CDFA's notice of final decision establishing the appellation, so long as the trademark is accompanied by a truthful county of origin or appellation of origin.

California Business and Professions Code Sec. 26063, as amended by Senate Bill 185 (effective January 1, 2020), provides in pertinent part

... (b)(2) Cannabis shall not be advertised, marketed, labeled, or sold using an appellation of origin established pursuant to paragraph (1) including any similar name that is likely to mislead consumers as to the kind of cannabis [defined as "the applicable type or designation regarding a particular cannabis variant, origin, or product type, including, but not limited to, strain name, trademark, or production area designation"], unless the cannabis meets the appellation of origin requirements for, and was produced in, the geographical area.

(3) An appellation of origin established pursuant to this subdivision, including any similar name that is likely to mislead consumers as to the kind of cannabis contained in a product, shall not be used in the advertising, labeling, marketing, or packaging of a cannabis product unless 100 percent the cannabis contained in the product meets the appellation of origin requirements and was produced in the geographical area.

In addition, Business and Professions Code Sec. 26121(a), added by Senate Bill 94, effective June 27, 2017, states:

A cannabis product is misbranded if ... (2) its labeling is false or misleading in any particular.

By allowing trademarks that conflict with an appellation of origin, we are concerned that the DCC proposed regulations conflict with these statutory requirements. If left unaddressed, it will lead to a rush to use and register geographic trademarks before CDFA proceeds with the review and determination on a given appellation petition. Those trademark registrations would then authorize the misdescriptive and misleading use of those geographic trademarks after the appellation is established. The resulting confusion between appellations and trademarks, occurring at the earliest and most sensitive time in the appellation program, would threaten to prevent the program from getting off the ground and potentially undermine the integrity of appellations permanently.

CDFA may have based its proposed resolution of conflicts between geographic trademarks and appellations of origin on TTB's resolution of the Calistoga AVA conflict. In that case, there were several Calistoga-named wineries whose wines wouldn't qualify for the proposed Calistoga AVA. They wanted to be forever grandfathered, with no sunset date. Instead, TTB established the Calistoga AVA and granted those wineries a three-year transition period to use their existing

wine labels with Calistoga in the brand name on wines that do not qualify for the Calistoga AVA. The agency explained in its Final Rule, 74 Fed. Reg. 64602 (2010):

We are providing this 3-year transition period to allow the use-up of existing label stocks, to provide time for the design of new labels, to submit labels and receive label approvals from TTB, and to allow each affected brand label holder the opportunity to consider other changes required of its business model in light of this rulemaking, including whether to begin sourcing 85% or more of its grapes from the new Calistoga viticultural area in order to continue to use its brand name or to transition to a new brand name.

RECOMMENDATION: *We recommend that DCC include a section for “Effective Dates” that allow for a one year sunset period only for geographic brands that were in use before February 21, 2020, when the first Notice of Proposed Rulemaking for the CAP was published. The one year sunset of the geographic trademark would begin when an appellation with the same or similar geographic name is established. We recommend the following language, which mirrors the final proposed CDFA regulation addressing this issue:*

Effective Dates.

(a) An appellation of origin shall be considered established and protected against misuse on the date identified in the CDFA notice of final decision to establish the appellation of origin.

(b) The use of trademarks containing an appellation of origin – including any similar name which is likely to mislead consumers as to the kind of cannabis – in advertising, labeling, marketing, or packaging shall not be subject to administrative actions for violation specific to appellation of origin during a period of one year following the date identified in the notice of final decision to establish the appellation of origin, provided that:

(1) The trademark was filed with the California Secretary of State or the United States Patent and Trademark Office prior to February 21, 2020;

(2) The trademark was used in the California cannabis marketplace prior to February 21, 2020;

(3) Documentation of compliance with the requirements in subdivisions (b)(1) and (b)(2) is retained by the trademark owner and is provided to the department upon request; and

(4) The use of the trademark is accompanied by a valid and truthful county of origin, city of origin, city and county of origin, or appellation of origin applicable to the cannabis and clearly indicated as the geographical origin.

NOTIFICATION

COMMENT: CDFA's final adopted regulations for CAP provide that the agency shall provide public notice of proposed action (petition or amendment review and determination). Additionally, the regulations stipulate that CDFA provide a notice of final decision on a petition (i.e., established, amended, denied). This notice shall be posted on the CDFA website and also go out via email to: the petitioner; designated responsible parties of licenses issued by the department and located within the areas directly impacted by the decision; and stakeholders enrolled on the department's Cannabis Appellations Program Mailing List.

RECOMMENDATION: *Given the widespread use of geographic trademarks for cannabis brands, particularly using the names of regions renowned for cannabis production, we propose that the CDFA and the DCC coordinate to notify all cannabis licensees in California of perfected petitions, notices of proposed action, and final decisions on cannabis appellation petitions, both those to establish an appellation and to amend an appellation. This is particularly important if the amendment involves a change of name of the appellation.*

It is worth mentioning that the timeline to develop a petition and receive the final agency determination for an appellation is likely to span one to two years. This process timeline should be considered when determining what constitutes fair notice to geographic trademark owners. In addition, all licensees already are on notice that if they use a brand name that includes a geographic term that later becomes an appellation, the cannabis sold under that brand name ultimately will have to qualify for the appellation or be sold under a new, non-misleading brand name.

We would like to emphasize that the establishment and use of appellations of origin for cannabis constitutes the "fair use" of geographic names that are in the public domain and that no one can own and use those names exclusively. These designations also protect collective intellectual property and regional identity whereas trademarks that incorporate place names are the intellectual property of individual businesses leveraging a regional identity. If the producers of a region are invested enough in their collective identity, values, and standards to devote the effort and spend the money necessary to build producer consensus and prepare and file an appellation petition, that appellation, when established, will become the intellectual property that rightfully belongs to that collective. Of course, the trademark owner is allowed to continue to use the geographic trademark on products that conform to the appellation requirements.

2. Compliance, Enforcement and Penalties for Designations of Origin

Record Retention

COMMENT: The proposed DCC regulations abandon entirely the CDFA proposed provisions regarding record retention as a mechanism - in fact the only proposed regulatory mechanism - to verify compliance with appellation of origin production requirements, also a necessary component of implementing city, county or city and county of origin designations.

CDFA's final adopted CAP regulations retained record retention requirements specific to verifying standard, practice and cultivar requirements of the appellation, as specified in the final approved petition. However, verification for the more fundamental, universal production requirements for appellations and all designations of origin: 1. that the crop be cultivated within the boundaries of the designated geographic area from the time of plant immaturity forward, and; 2. that all remaining cultivation activities occurred within the geographic boundaries, inclusive of planting, growing, harvesting, drying, curing, grading, and trimming of cannabis.

This evidence is documented in the California Cannabis Track and Trace System (CCTT). However, as stipulated in Business and Professions Code Section 26067, CCTT data is statutorily exempt from the Public Records Act, making this data inaccessible to the public, licensees or jurisdictional governments. Statute authorizes access to CCTT data solely to the DCC, CDTFE and upon request, law enforcement agencies.

This limited access to CCTT data would be sufficient if these designations of origin were set up like a statewide certification program being administered by the DCC, akin to the OCal Program, which is a statewide certification program being administered by the CDFA.

Such certification programs have robust verification and enforcement mechanisms that are deployed, such as official seals, state-approved certifying agents, mandatory regular production facility inspections, product quality evaluations and reporting requirements. The state has not yet invested this level of resources into the Cannabis Appellations Program or city, county & city and county of origin designations. Thus, we are left with state adopted regulations, record keeping and violation penalties as the sole tools with which to protect the integrity of the program and the significant investment into these differentiated marketing programs on the part of the state, industry associations, licensees and in some cases jurisdictional governments.

The compliance framework envisioned by CDFA for CAP was, and for the time being continues to be, record retention. There is no other regulatory mechanism in place in the adopted CDFA regulations or being proposed in the DCC regulations to verify compliance with designation of origin production standards. Given that CAP has not been developed as a statewide certification system, and given that appellations are *statutorily required* to include standards, practice and cultivar requirements, which are uniquely negotiated, defined and adopted by each individual appellation - there is a tremendous pressure upon appellation producers to self-regulate the production requirements of their own appellation. Violations of appellation standards can have devastating impacts upon the reputation and success of an appellation. The backbone of standards-based certification programs and legal designations of origin is the strength of the compliance mechanism deployed to ensure the established standards are being met. This is key to building consumer trust and loyalty - a critical endeavor for the recently legalized cannabis industry and nascent consumer market. In France the test of an appellation product is that it meets the test of "local, loyal and constant."

From the article ["Codifying Consensus and Constructing Boundaries: Setting the Limits of Appellation d'origine control' ee' Protection in Bordeaux, France"](#) by Erica A. Farmer:

“At a basic level, AOC status is based on linking together a location, a history of practice, and a reputation around wine. This is legally represented through the usages locaux, loyaux, et constants (local, loyal, and constants) test, which highlights that linkage between product and place, and it is by proving each of these individual elements that the right to an AOC is established (Farmer 2011). Each of the individual factors that comprise the test combine to represent the value protected by legal status. Producers applying to belong to or create an AOC must thus be able to align wines which are reputationally recognizable in geographically specific places with values and community perceptions of long standing within their local and neighboring communities. Doing so means that community perceptions shape AOCs in a fundamental way, by recognizing and defining what they are, while also policing their boundaries through social mechanisms and local politics.”

There are tremendous incentives for appellation of origin, city, county or city and county of origin producers to skirt these statewide production requirements. Farmers working to comply with the requirement that designated crops be grown within the designated area from immaturity forward face the following challenges: barriers to entering genetic stock sourced from the non-commercial adult use market; barriers to the compliant sharing of seed and genetic stock between licensed farmers; the rapid and continuing decline in genetic biodiversity in the regulated supply chain; lack of local or nearby licensed nurseries; the increasing prevalence of unhealthy nursery stock. All of these circumstances contribute to challenges in sourcing viable stock, which can put pressures on farmers who may need to source vegetative plants larger than 18”, or even to source flowering plants that may not be found within the designated region. Farmers working to comply with the remainder of cultivation activity requirements face: building code and/or land use regulation barriers to processing on-farm; lack of licensed processing facilities within the designated region; financial, building code or local land use regulation barriers to hosting on-farm labor. Many farmers transport their fresh or dried harvested cannabis to licensed facilities in other jurisdictions for after-harvest processing services.

The lack of explicit DCC provisions for recordkeeping requirements to verify compliance with statewide appellation production standards renders appellation producers entirely unarmed to defend their appellation’s internal integrity and compliance with state law. Thorough, appellation-specific recordkeeping requirements are essential to the function of the program.

Additionally, multiple jurisdictional governments have been investing into research and stakeholder scoping regarding publicly-funded local marketing programs to support the integration of local cannabis producers and designation of origin products, to strengthen regional branding and marketing efforts and destination tourism economies. In parallel, Origins Council’s Regional Partner associations are pursuing industry funded initiatives framed around bringing their product to market and strengthening their regional agricultural identity and reputation.

The bottom line is that producers, associations and jurisdictional governments that recognize the value of designations of origin as integral to their investments into regional marketing and

branding efforts will need to be afforded the necessary tools and information to lead verification and enforcement efforts related to production standards.

RECOMMENDATION: We recommend that the DCC add provisions specifying record retention requirements and violation stipulations for appellation of origin, city, county & city and county of origin, based off of the CDFA proposed language, below:

For each county of origin, city of origin, and city and county of origin used in the advertising, labeling, marketing, or packaging of cannabis,; documentation demonstrating that the cannabis was produced in the named county, city, or city and county.

Failure to maintain on the licensed premises records demonstrating that the cannabis was produced in the named county, city, or city and county if a county of origin, city of origin, or city and county of origin is used in advertising, labeling, marketing, or packaging is a Minor Fine, with a fine range of \$100 - \$1,000 per violation.

For each appellation of origin used in the advertising, labeling, marketing, or packaging of cannabis,; documentation demonstrating that the cannabis was produced in the geographical area of the appellation of origin and according to all standard, practice, and cultivar requirements of the appellation of origin.

Failure to maintain on the licensed premises records demonstrating that the cannabis was produced within the boundary of and in compliance with all standard, practice, and cultivar requirements of the named appellation of origin if used in advertising, labeling, marketing, or packaging is a Minor Fine, with a fine range of \$100 - \$1,000 per violation.

COMMENTS: CDFA's proposal that the misuse of an appellation of origin designations in advertising, marketing, labeling and packaging be a serious violation have been omitted from the DCC draft regulations.

As written, the DCC draft regulations would classify these appellation violations, as well as comparable violations of city, county or city and county of origin designation requirements as minor violations, carrying a \$100 - \$500 fine.

If not redressed, this proposal will enable operators to simply pay a minor fine \$100 - \$500 for violations related to advertising, marketing, labeling and packaging, incentivising abusive non-compliant use, as well as full blown counterfeit use of appellation designations by licensed operators, particularly well resourced operators who can afford to simply integrate minor fines into their budgets as a part of the cost of doing business. This is a very common business practice in high value designation of origin product markets, globally. Producer associations expend enormous annual budgets in pursuing the legal protection of their authenticated designation of origin products.

As proposed, the regulations dangerously undermine the integrity of the Cannabis Appellations Program as well as city, county & city and county designated products and programs. Designations of origin are a tenant of consumer protection laws ensuring truth in labeling, marketing and advertising.

During the CDFA rulemaking, this issue ranked as one of the most common, repeating concerns articulated in public comment from the California Wine Industry as well as the California cannabis industry. This reflects a shared concern and commitment from both industries that the California Cannabis Appellations Program as well as city, county & city and county of origin designations achieve and preserve integrity through meaningful abuse deterrents and enforcement remedies. This is especially critical to the integrity and rigor of a standards based program such as CAP and to ensuring that CAP enhances and protects the legacy of American Viticultural Areas.

Stakeholder comment and CDFA Responses from CDFA's Final Statement of Reasons regarding violation severity categorization:

"Article 7. Enforcement Section 8601. Administrative Actions - Operations.

Comment: Raise the severity level of the violations added to the enforcement violation tables in sections 8601 and 8602 specific to the misuse of origin designations from "Minor" to "Moderate" or "Serious." [0032, 0034, 0046, 0048, 0056]

Response: The Department partially accepts this comment. During the second 15-day comment period, the Department amended the entries in Table A of section 8601 to specify that violations for advertising, marketing, labeling, or packaging specific to use of cannabis production origin designation are "Serious" violations.

The Department determined raising the levels of the violations in Table B of section 8602 to be unnecessary because there is not an identified potential for significant monetary gain for violating recordkeeping requirements, as there is with advertising, marketing, labeling, or packaging violations. Leaving recordkeeping violations as minor provides the appropriate level of deterrent for this type of violation."

Comment: "In addition to imposing fines, CDFA has other enforcement authorities it can exercise to more effectively deter violations of §8212. For example, CDFA has authority to revoke or suspend a license, issue a probationary license and order "an administrative hold of cannabis or non manufactured cannabis products" in response to a violation.

Unfortunately, CDFA's proposed appellation regulations have defined the misuse of an appellation as a "Minor" violation, which will undoubtedly limit the use of these tools. In the absence of significant fines, and Page 54 of 55 CDFA Cannabis Appellations Program FINAL STATEMENT OF REASONS without the real threat of administrative action against a cannabis

licensee's business and product, there is very little deterrent for a cannabis licensee to misuse an appellation." [0034]

Response: The Department accepts this comment. During the second 15-day comment period, the Department amended the entries in Table A of section 8601 to specify that violations for advertising, marketing, labeling, or packaging specific to use of cannabis production origin designation are "Serious" violations.

RECOMMENDATION: We urge the DCC to change the categorization of violation severity from minor to serious for violations of advertising, marketing, labeling and packaging requirements for all cannabis designations of origin, including appellation of origin, city, county & city and county of origin, while also providing for a one time, first-offense moderate violation in order to appropriately support sufficient licensee education regarding these requirements. We recommend the following language as proposed by CDFA:

Failure to comply with county of origin, city of origin, city and county of origin, or appellation of origin advertising or marketing requirements is a Serious Fine, with a fine range of \$1,001 - \$5,000 per violation, and with first-time violations being a Moderate Fine, with a fine range of \$501 -\$1000 for this first-time violation.

Failure to comply with county of origin, city of origin, city and county of origin, or appellation of origin labeling or packaging requirements is a Serious Fine, with a fine range of \$1,001 - \$5,000 per violation, and with first-time violations being a Moderate Fine, with a fine range of \$501 -\$1000 for this first-time violation.

3. Advertising, Marketing, Packaging and Labeling of Designation of Origin Products

§15000.8. Appellations of Origin

(a) Licensees shall not label, advertise, or market cannabis or cannabis products with any statement, design, device, or representation that tends to create the impression that the cannabis contained therein was produced within a particular appellation of origin unless the cannabis contained therein meets the requirements and the appellation of origin designation process established by the Department of Food and Agriculture.

(b) Compliance with the requirements does not evidence compliance with the standard, practice, and cultivar requirements for an appellation of origin established by the Department of Food and Agriculture.

(c) For purposes, cannabis is considered to have been produced within the specified geographical boundary of an appellation of origin if the cannabis was cultivated within

that boundary starting from the time the plants were no taller or wider than 18 inches.

COMMENTS: Subsection §15000.8.(c) addresses the matter of sourcing seeds and plants, and the requirements for designation of origin cultivation to begin at seed, seedling, immature plant or mature plant was explored at length during the 2019 CDFA Appellations Working Group, in which our predecessor organization, The Mendocino Appellations Project, as well as many of Origins Council's current Regional Partner organizations participated. The consensus was that, given cannabis is an annual and the nascent stage of the industry and the scarcity of licensed nurseries in remote rural cultivation regions, some flexibility should be afforded to growers interested in participating in the Cannabis Appellations Program and/or leveraging city, county or city and county of origin labeling and marketing.

We appreciate this clarification regarding production requirements for appellation of origin designated product, however it is incomplete. We disagree with the limitation of the clarification that: " For purposes, cannabis is considered to have been produced within the specified geographical boundary of an appellation of origin if the cannabis was cultivated within that boundary starting from the time the plants were no taller or wider than 18 inches."

Throughout California statute and regulation, "produced" is a term applicable to cannabis and the use of the term in statute and regulation includes all of the following commercial cannabis activities: cultivation, processing and manufacturing.

Business and Professions Code Section 26063 (a) (1) reads: "*No later than January 1, 2018, the department shall establish standards by which a licensed cultivator may designate a county, city, or city and county of origin for cannabis. To be eligible for the designation, 100 percent of the cannabis shall be produced within the designated county, city, or city and county, as defined by finite political boundaries.*"

Even more specifically, Business and Professions Code Subsection 26001 (k) defines cultivation as "*any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.*" Historic CDFA and existing DCC regulation, in addition to proposed DCC regulation §15000 (q) also define "*Cultivation*" to mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

From a craft cannabis perspective, the harvesting, drying, curing, grading, trimming and storing of cannabis impacts the quality of the cannabis significantly.

From an economic impact perspective, incentivising local licensed production: planting, growing, harvesting, drying, curing, grading, trimming within the boundaries of an appellation of origin maximizes both the potential regional benefit and ensures the quality of such products.

RECOMMENDATION: *For these reasons, we recommend Subsection §15000.8 (c) be revised to read:*

For purposes of this subsection, ~~a~~ cannabis ~~plant~~ is considered to have been produced within the specified geographical boundary of an appellation of origin if all of the following occur:

(1) ~~it~~ the cannabis was cultivated within that geographic boundary starting from the time the plants were no taller or wider than 18 inches.

(2) all remaining cultivation activities occurred within that geographic boundary, inclusive of planting, growing, harvesting, drying, curing, grading and trimming of cannabis.

§17408. Labeling Restrictions.

(a) Cannabis goods labeling shall not contain any of the following:

(1) The name of a California city, county, or city and county, including any similar name that is likely to mislead consumers as to the origin of the cannabis contained therein, unless one hundred percent of the cannabis contained therein was produced in that city, county, or city and county. For purposes of this subsection, a cannabis plant is considered to have been produced within a city, county, or city and county if it was cultivated within that boundary starting from the time the plants were no taller or wider than 18 inches.

COMMENT: We appreciate this clarification regarding production requirements for city, county or city and county of origin designated product, however it is incomplete in the same way that §15000.8. is incomplete. Please see our related comments above.

RECOMMENDATION: *We recommend Subsection §17408 (a)(1) be revised to read:*

The name of a California city, county, or city and county, including any similar name that is likely to mislead consumers as to the origin of the cannabis contained therein, unless one hundred percent of the cannabis contained therein was produced in that city, county, or city and county. For purposes of this subsection, ~~a~~ cannabis or a cannabis product ~~plant~~ is considered to have been produced within a city, county, or city and county if all of the following occur:

(A) ~~it~~ the cannabis was cultivated within that geographic boundary starting from the time the plants were no taller or wider than 18 inches.

(B) all remaining cultivation activities occurred within that geographic boundary, inclusive of planting, growing, harvesting, drying, curing, grading and trimming of cannabis.

COMMENT: Origins Council has been tracking the active misuse of the term “appellation” and “proposed appellation” within the marketing, advertising and labeling of regulated cannabis products.

Business and Professions Code Section 26063 clearly stipulates that cannabis and cannabis products must not be advertised, marketed, labeled or sold as appellation products unless those products are in fact authentic appellation of origin products produced within a legally established appellation. This use of the term “appellation” even if qualified as a “proposed appellation” is misuse, which we are concerned is in violation of statute.

Some of this misuse is innocent and due to a lack of understanding on the part of licensees about appellations, but nonetheless harmful to CAP. The use of the term “proposed appellation” in the advertising, marketing, labeling of regulated cannabis by licensees other than petitioning groups undermines both consumers and licensees' understanding and appreciation of the value of appellations as defined and established by farmers in a given proposed appellation.

This misuse, at this very sensitive and critical time leading into the launch of the program, lends to consumer confusion as well as working against efforts on the part of CDFA and organizations such as Origins Council to educate licensed cultivators about appellations.

RECOMMENDATION: We recommend the DCC draft provisions in this rulemaking that clarify that use of the term “appellation” and “proposed appellation” within the marketing, advertising and labeling of regulated cannabis products is a serious violation of regulation. We recommend the following language:

Cannabis and cannabis products shall not be advertised, marketed, labeled, packaged or sold as “appellation” products or “proposed appellation” products, or any similar term that is likely to mislead consumers as to the kind or origin of the cannabis, unless 100% of the cannabis contained in the cannabis or cannabis product meets the requirements of the program established pursuant to Business and Professions Code section 26063.

§17408. Labeling Restrictions.

(a) Cannabis goods labeling shall not contain any of the following:

...

(6) Any statement or indication of an appellation of origin if the cannabis contained in the cannabis or cannabis product does not meet the requirements of the program established pursuant to Business and Professions Code section 26063.

COMMENT: This provision is confusing in that it does not clarify that 100% of the cannabis in the product must be appellation of origin designated cannabis.

RECOMMENDATION: We recommend modifying §17408 (a)(6) to read:

Any statement or indication of an appellation of origin if **any of the cannabis contained in the cannabis or cannabis product does not meet the requirements of the program established pursuant to Business and Professions Code section 26063.**

4. Use of Designations of Origin

§15000.9. Notice of Use of an Appellation of Origin

(a) A licensee that intends to use an appellation of origin in the labeling, advertising, or marketing of cannabis or cannabis products shall submit a Notice of Use to the Department within 30 days of use of the appellation. This requirement does not apply to licensed retailers conducting sales of cannabis goods labeled with an appellation of origin.

(b) The Notice of Use of an Appellation of Origin shall include:

(1) The licensee's legal business name and license number(s) using the appellation of Origin;

(2) A contact name and email address or phone number;

(3) The appellation of origin to be used; and

(4) The date the licensee began using the appellation of origin.

(c) A licensee that has cultivated cannabis in accordance with an appellation of origin approved by the Department of Food and Agriculture and has filed a Notice of Use of an Appellation of Origin pursuant to this section may indicate on the sales invoice that the cannabis may be labeled, advertised, or marketed with the appellation of origin.

COMMENT: DCC §15000.9. is incomplete, missing key proposals regarding notice of use regulation that were thoughtfully developed during the two years of the CDFA CAP rulemaking. The below proposed notice of use regulations were extracted from the CDFA proposed regulations in June 2021 due to agency consolidation, as per the CDFA ISOR for that rulemaking, but are excluded from these proposed regulations:

(c) A Notice of Use shall be effective for three years.

(e) If the department does not receive Notice of Use of a specific appellation of origin during a period of five years, the department may in its sole discretion issue notice of final decision that the appellation of origin is canceled.

(f) A Notice of Use may include more than one appellation of origin only if all license numbers listed in the Notice of Use begin use of all of the listed appellations of origin on the specified date.

Currently, there are 261 established American Viticultural Areas (AVAs) in the United States. California has the most AVAs, with 143. While some have been extraordinarily successful and are recognized globally, a great many have “died on the vine”, meaning they have fallen into non-use.

This circumstance weakens the marketing strength of active designations of origin and complicates compliance and enforcement efforts for the industry and regulating agencies. Given the nascent stage of the cannabis industry and the significant challenges facing the industry, the likelihood that established cannabis appellations will “die on the vine” by falling into dis-use is very high.

Additionally, cannabis appellations differ from AVAs in that they include specified standards, practices and cultivar requirements. Given the minimal enforcement mechanisms being proposed by the DCC to ensure compliance and enforcement against mis-use or counterfeit use of appellations, it will fall largely on appellation producers to monitor and act against misuse or counterfeit use of an established appellation. In the case of an appellation that has been abandoned due to its producing farms going out of business, leaving an abandoned appellation active that has no licensed appellation producers to monitor and guard against mis-use of the appellation is inviting abuse, and dangerous to the integrity of the program as a whole.

By requiring a 3 year term and renewal requirement for a Notice of Use, with a 2 year grace period for appellation producers who have fallen out of appellation production for a period of time, coupled with the ability for the agency to cancel an abandoned appellation - as was proposed by CDFA - provides a simple and effective system that would prevent abuse of abandoned appellations and ensure that all active California cannabis appellations are appropriately supported by the program.

This proposal would require interagency cooperation and rulemaking, given that Notice of Use regulations are under the purview of DCC and the authority to establish or cancel an appellation are under the purview of CDFA.

RECOMMENDATION: We recommend the following two provisions be added to Section §15000.9 and that the DCC convene meetings as soon as possible with the CDFA to coordinate on the rulemaking and launch of CAP:

[\(5\) A Notice of Use shall be effective for three years.](#)

(6) If the department does not receive Notice of Use of a specific appellation of origin during a period of five years, the department shall issue a recommendation to CDFA to cancel the appellation of origin.

RECOMMENDATION: *We recommend allowing for the filing of one Notice of Use covering multiple appellations. We believe that It will not be rare for a licensee to use more than one appellation when there are nested appellations.*

RECOMMENDATION: *For consistency within the regulations we recommend modifying §15000.9 (a) to read:*

(a) A licensee that intends to use an appellation of origin in the labeling, advertising, or marketing of cannabis or cannabis products shall submit a Notice of Use to the Department within 30 days of use of the appellation. This requirement does not apply to licensed retailers, or licensed microbusiness authorized to engage in retail sales of cannabis goods labeled with an appellation of origin.

RECOMMENDATION: *We believe it is necessary to add a provision to §15000.9 to clarify that a licensee may only submit a notice of use for an established appellation of origin. Many licensees, especially non-cultivators may be largely unfamiliar with the process to establish an appellation of origin. We recommending the following language:*

(d) A licensee may only submit a notice of use for an established appellation of origin approved by the Department of Food and Agriculture through the program established pursuant to section 26063 of the Act.

COMMENT: Business and Professions Code Section 26063 (a)(1) exclusively authorizes a licensed cultivator to designate a county, city, or city and county of origin for cannabis:

“(No later than January 1, 2018, the department shall establish standards by which a licensed cultivator may designate a county, city, or city and county of origin for cannabis. To be eligible for the designation, 100 percent of the cannabis shall be produced within the designated county, city, or city and county, as defined by finite political boundaries.”

RECOMMENDATION: *We recommend the DCC create a new code section that stipulates the process for licensed cultivators to designate city, county or city and county of origin cannabis and cannabis products, in conformance with Business and Professions code section 26063 (a)(1), that mirrors the proposed process for appellation of origin. Recommend the following proposed language:*

Use of a City, County or City and County of Origin

A licensee that has cultivated cannabis in accordance with the requirements for city, county or city and county of origin designations pursuant to this section may indicate on the sales invoice that the cannabis may be labeled, advertised, or marketed with the city, county or city and county of origin.

5. Definition of Appellation of Origin

§15000 Definitions

(d) “Appellation of Origin” means a designation to indicate that the cannabis meets the requirements approved by the Department of Food and Agriculture through the program established pursuant to section 26063 of the Act.

COMMENT: Proposed DCC regulation §15000 (d) is adequate. No revisions are requested.

6. Closing Comments

We hope that our comments have clearly articulated our significant concerns about the numerous outstanding issues related to the Cannabis Appellations Program that we are requesting be addressed through this rulemaking in tandem with our urging of close interagency coordination between the DCC and the CDFA.

We also hope that we have illustrated the importance of aligning regulations and implementation approaches for city, county & city and county of origin with those for appellation of origin. Our advocacy on this issue has always approached these designations as a system in which all of these designations are intended to work in tandem, meeting the needs and opportunities that come from urban (city of origin) and rural (county and appellation of origin) producers, as well as exclusive (appellation of origin) and inclusive (city, county & city and county of origin) applicability.

Unifying all of the state’s producers is a shared identity represented by the California designation of origin that every single product being produced and sold intrastate or exported out of state proudly wears, carrying with it these regional agricultural identities and reputations as these designations of origin move forward in the market. The state’s designation of origin system for cannabis has the potential to uplift and amplify the best of California cannabis, and to position our state’s producers for the best possible differentiated market advantages as interstate, federal and international markets open.

We want to acknowledge that this is the beginning of this rulemaking process, as well as the beginning of a broader overall process of agency and stakeholder engagement and relationship building, focused around the shared goal of reforming the state’s regulatory framework to

enhance the viability of the industry and the functionality of the cannabis licensing and regulatory system. We recognize the importance of industry and agency partnership to achieve these goals, and we are committed to building that partnership between the DCC and the 900 members we represent. Please consider our passion, experience and technical expertise regarding appellations as a resource to the DCC as we move forward to launch this historic program together. Thank you for this opportunity to comment.

Sincerely,



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Executive Director
Origins Council



Natalynne DeLapp
Executive Director
Humboldt County Growers Alliance



Oliver Bates
President
Big Sur Farmers Association



Diana Gamzon
Executive Director
Nevada County Cannabis Alliance



Michael Katz
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Adrien Keys
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Joanna Cedar
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Sonoma County Growers Alliance