



## **Comment on Proposed DCC Equity Fee Waiver Regulations**

May 2, 2022

Dear DCC Staff,

On behalf of Origins Council, representing nearly 900 licensed small and independent cannabis businesses in six counties throughout California, we appreciate the opportunity to comment on proposed changes to state equity fee waiver regulations.

Over the past five months, equity fee waivers have been a lifeline for small, equity farmers and businesses struggling to remain above water in the midst of a severe drought and collapse in wholesale prices for cannabis.

The availability of fee waivers for equity cultivators is especially urgent in the context of the current market collapse and severe drought, and the lack of resources available to cannabis farmers compared with farmers in any other sector of agriculture. Under current DCC regulations, cannabis farmers do not have the ability to temporarily “fallow” and reduce production in response to drought or market conditions. Farmers must pay their full annual licensing fee each year, or permanently forfeit their DCC license and reapply from square one at a future date.

Additionally, cannabis farmers do not have access to federal disaster relief funds available to farmers facing drought in other contexts. For example, on April 22, the U.S. Small Business Administration declared a drought emergency in Mendocino County, making up to \$500,000 in loans available to agricultural producers.<sup>1</sup> Cannabis producers do not qualify for these and other funds which are available to other farmers.

In this context, equity fee waivers are a critical bridge that can provide equity farmers with resources to remain within the licensed market during a period of acute crisis, when few other resources are available. It is critical to note that the small legacy cultivators are challenged not only by the legacy of cannabis prohibition prior to 2016, but also by a currently existing framework that does not provide access to resources that would be available to small farmers in any other context. Absent the relief afforded by equity fee waivers, many small, legacy cultivators who have been disproportionately impacted by the War on Drugs will fall out of the licensed market, and face substantial challenges in attempting to re-enter it at a later date.

### **Narrowing of Residency Criteria**

For these reasons, we are in strong opposition to a narrowing of equity criteria as part of the emergency regulatory process.

Proposed regulations would narrow residency criteria to qualify for equity fee waivers, requiring either 1) residence in a high poverty census tract, or 2) an immediate family member with a conviction for cannabis in order to qualify.

While we appreciate the opportunity for input prior to the formal release of emergency regulations, we do not believe there has been adequate time or opportunity for stakeholder input to justify such a specific and significant narrowing of equity criteria. If enacted as proposed, these provisions would exclude hundreds of equity farmers from critical resources at the height of a market and environmental crisis. Many equity farmers have made plans for the current growing season under the assumption that equity fee waivers would be available under existing criteria, and would be excluded under new criteria implemented on an emergency basis.

Defining impact by cannabis prohibition is complex and multifaceted, particularly given the breadth and diversity of the War on Drugs' impact in different regions and communities, and should be driven by a significant stakeholder process through a regular rulemaking period. Until such a regular rulemaking is completed, we do not believe criteria should be further narrowed.

### **Alternatives to Proposed Narrowing of Criteria**

If residency criteria are narrowed, we ask that the DCC consider the following additional amendments.

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<https://mendofever.com/2022/05/02/u-s-small-business-administration-declares-mendocino-county-a-disaster-area-du-e-to-drought-conditions/?fbclid=IwAR1gPKNVMpHY5RatHWLvWEGupkocrdiw3pmEKKjSGdL3vqeVQK5PYTy1g>

First, regardless of residency, qualification under local equity program criteria should be adequate to establish qualification under state equity fee guidelines. This would partially defer equity qualification to local governments which are in the best position to enact local guidelines, while also enabling the DCC to set statewide criteria for jurisdictions that do not yet have a local equity program.

Second, if impact to immediate family members is considered as part of qualifying equity criteria, this impact should include raids, detentions, and arrests in addition to convictions, and should also extend to the qualifying licensee themselves in addition to family members.

In rural communities, patterns of cannabis enforcement did not result in convictions in many cases. The character of the War on Drugs in rural communities has been documented in many places, including a series of Cannabis Equity Assessments<sup>2</sup> conducted by the California Center for Rural Policy (CCRP). In the Humboldt Cannabis Equity Assessment, CCRP documents a range of CAMP and COMMET law enforcement practices that were premised on inflicting terror and disrupting community networks, but fell short of conviction in many cases.

*“Communities were disrupted from regular paramilitary raids that disproportionately targeted Humboldt and Mendocino counties. Rural policing methods sometimes deviated from standards of professional police conduct toward citizens with constitutional protections...”*

*Fifty sworn declarations from County residents alleged*

*... warrantless searches and seizures, arbitrary detentions and destruction of property, and sustained low-altitude helicopter activity resulting in repeated invasions of privacy, emotional distress, property damage, disrupted schooling and work, and general danger to the public. Plaintiffs contend, in short, that CAMP is “out of control” and has turned its areas of operations into ‘war zones.’*

*In finding for the plaintiffs, the court found that official CAMP policy provided by the attorney general’s office and supported by Ruzzamenti’s testimony explicitly “endorses warrantless entries, searches, and seizures on private property,” lending “considerable credence to the allegations of warrantless searches and seizures and the oppressive character of the resulting encounters with innocent residents.”<sup>3</sup>*

In 1990, the federal government deployed over 200 U.S. Army soldiers and National Guard to Humboldt County in Operation Green Sweep, the first use of active-duty military personnel for a domestic drug enforcement operation. Specifically, the federal government deployed the Army’s Seventh Infantry Division, which had just returned from an invasion of Panama in the previous year. Although Green Sweep had tremendous impacts on the Humboldt cannabis producers and the community as a whole, the operation did not result in any arrests:

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<sup>2</sup> <https://ccrp.humboldt.edu/research/cannabis-social-equity>

<sup>3</sup> <https://humboldt.gov/DocumentCenter/View/78948/Humboldt-County-Cannabis-Equity-Assessment>

*“In the first use of active-duty troops to fight marijuana growing in the United States, a contingent of about 200 Army soldiers, National Guardsmen and Federal agents have spent the past two weeks raiding clandestine marijuana gardens in the rugged terrain of the King Range National Conservation Area.*

*The residents of southern Humboldt Country have responded with protests, complaining that the military convoys through their towns, the Blackhawk helicopters over their homes and the camouflaged and armed guardsmen prowling the woods have made the war on drugs too much like real war.*

*In the operation, which ended today, the guardsmen and agents from the Bureau of Land Management and the Drug Enforcement Administration destroyed 1,200 plants producing potent sinsemilla marijuana and seized five tons of equipment used to maintain the remote ‘guerrilla gardens.’ No arrests of suspected marijuana growers were reported.”<sup>4</sup>*

Other CAMP and COMMET practices including the use of helicopters, holding individuals at gunpoint, and raids and property destruction may have fallen short of conviction or arrest, but nevertheless functioned as part of an intentional strategy to disrupt community networks and inflict terror on cannabis producing communities.

Furthermore, until recent years, many of the cases brought in cultivation cases resulted in pre-conviction diversion into a drug program or other diversion program to avoid conviction records if the participant complied with all terms of the diversion order. In those days, cases were held in abeyance rather than dismissed after-the-fact.e

### **Fee Deferrals**

We appreciate the DCC’s openness in sharing potential concepts for fee deferrals prior to implementation. In general approach, we recommend that the DCC prioritize waivers over deferrals at this time.

Waivers are critical given the current financial challenges facing equity operators, and in some cases deferrals risk expanding debt over time, rather than providing needed relief. To the extent deferrals are provided, there should be an opportunity for deferrals to later transition into waivers

We look forward to providing additional feedback on prospective deferrals at a later date with more opportunity for discussion and deliberation as organizations.

### **Fee Waivers for Multiple Licenses**

In addition to the above topics, we would like to reiterate our previous request from December to allow small farmers to obtain fee waivers for multiple small-scale cultivation licenses.

Current cultivation regulations require cannabis farmers to hold multiple licenses if they wish to cultivate using different methods. For example, many farmers hold a 5,000 square foot “outdoor” license to cultivate cannabis outdoors without the use of a structure, and also a 5,000 square foot “mixed-light 1” license to cultivate using light deprivation in a hoophouse.

These farmers hold multiple licenses not to increase the total size of their operations, but rather to provide more variability in cultivation methods. We believe these farmers with multiple smaller licenses should have the same opportunity to apply for fee waivers as farmers who hold a single larger license.

We recommend that equity cultivators have the ability to apply for fee waivers for multiple cultivation licenses, so long as the cumulative size of the licenses qualifying for waivers is less than 10,000 square feet.

Thank you for your consideration,



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