December 13, 2022

Dear Cannabis Advisory Committee Members and DCC staff,

On behalf of Origins Council (OC), representing nearly 900 small and independent cannabis businesses in partnership with regional trade associations in Trinity, Mendocino, Sonoma, Humboldt, Nevada County, and Big Sur, we are writing today to offer recommendations on regulatory changes that would reduce regulatory barriers for small and independent cannabis cultivators in California.

On February 18, 2022, we published a regulatory platform containing nearly fifty recommendations for regulatory changes that would benefit small and independent cannabis operators in California's rural legacy producing regions. We also submitted extensive public comment on proposed DCC consolidation regulations on April 19 and July 22.

OC's regulatory recommendations are based on hundreds of hours of iterative deliberation among hundreds of small cannabis cultivators across California over more than five years, including deliberations by one of Origins Council's predecessor organizations, the California Growers Association, as far back as late 2017.

While some of OC's priority regulatory recommendations were implemented in new DCC regulations adopted November 7, several others have not yet been implemented. As the CAC and DCC consider further changes to cultivation regulations, we recommend that the CAC and

DCC place the highest priority on the following eight urgent recommendations that reflect the most pressing issues facing our membership.

1. **Allow Small Producers Access to Direct-to-Consumer Sales**

Over two decades, California medical cannabis patients, legacy cannabis farmers, medicine-makers and home growers of medical cannabis developed a robust direct-to-consumer network under state medical cannabis access laws. This network was stewarded by compassion clubs, medical patient collectives and cannabis farmer market events which afforded producer direct-to-consumer relationships and transactions.

Under the legal commercial cannabis framework, craft legacy producers have largely lost access to these opportunities to connect directly with consumers. Vertical integration is financially out of reach for nearly all independent small urban and rural producers, and land use regulation restricts the opportunity to sell directly from the farm. As a result, legacy producers have been denied access to their well-established and loyal medical cannabis consumer base, as well as the burgeoning recreational consumer base.

In other craft agricultural industries, such as America's world-renowned artisanal wine industry, the ability to ship products directly to consumers has been the cornerstone of ensuring that small producers have the ability to access markets and differentiate craft, high-quality products.. Multiple policy approaches, including AB 2691 (introduced by Asm. Wood in the California legislature in 2022) and the SHIP Act (introduced by Rep. Jared Huffman in the U.S. House of Representatives) would enable small producers to access direct to consumer sales in a parallel fashion to craft producers in other industries.

OC Recommendation: Endorse state and federal action to grant small producers access to direct-to-consumer sales, including through cannabis events, on-farm sales, and direct shipping.

2. **Establish a Process for Cultivation License Fallowing**

Over the past year and a half, plummeting wholesale prices for cannabis have led to crisis conditions for small cannabis cultivators. At the same time, drought and fire emergencies have created situations where farmers are either incentivized or required to cut back on their cultivation.

In other sectors of agriculture, farmers commonly adjust their production in response to market and environmental conditions, cutting back during periods of oversupply ("fallowing") and expanding in periods of undersupply. Under current state regulatory procedures, however, fallowing is currently not possible for cannabis farmers outside of case-by-case disaster relief provisions. Current procedures require cannabis farmers to either renew their state license each year and pay an annual licensing fee, or to forfeit their license and reapply from square one at a future date.

OC Recommendation: Establish a formal mechanism for cultivators to fallow their crops year-to-year by choosing to mark one or more licenses as "fallowed," and ineligible to cultivate mature cannabis plants for that season. This mechanism should include the ability for farmers to 1) retain immature plants and genetic resources on-site, 2) conduct ancillary activities, such as processing, 3) transact cannabis which has already been harvested, 4) fallow a license for the time period associated with a growing season, rather than for a one-year period associated with license renewal dates, and 5) pay a significantly reduced annual licensing fee.

3. Streamline Transfers from Mixed-Light 1 to Outdoor License Types for Eligible Cultivators

In amended DCC regulations enacted on November 7, the DCC redefined "outdoor" cultivation to include the use of light deprivation. This change, which OC strongly supports, would theoretically enable many farmers who currently utilize light deprivation under a "mixed-light 1" license type to instead cultivate under the less expensive "outdoor" license type.

In practical implementation, however, we understand the DCC is currently requiring licensees who seek to transition their licenses from "mixed-light 1" to "outdoor" to submit a fully new license application. This requirement involves substantial time, energy, and financial resources from cultivators, and is discouraging many cultivators from applying for the license type that they legally qualify for.

OC Recommendation: Establish a streamlined process to enable conversion from a mixed-light 1 license to an outdoor license under new regulatory definitions.

4. Allow for Batch Tagging Mature Plant Cannabis Plants in METRC

The current requirement to physically tag each individual plant in METRC requires tremendous effort on the part of the cultivator, with no clear corresponding regulatory benefit. For a half-acre farm, we estimate it typically requires a crew of five people 3-4 days to tag all plants within a licensed cultivation area. Tagging each plant also generates large amounts of plastic waste. We estimate that a 10,000 square foot ML1 license utilizing light deprivation will generate about 30 pounds of plastic tag waste per year. Projected over the state's 5,884 cultivation licenses, we estimate statewide plastic waste at 71 tons per year.

On November 7, the DCC enacted new regulations that allow wet harvest weight for cannabis to be tracked collectively by batch, rather than individually by plant, further calling into question why it is necessary for cultivators to tag each plant independently.

Further, on November 28, Oregon's regulatory agency proposed rulemaking that would allow mature plants to be tagged in batches of 100, reflecting the recommendation of Oregon's cannabis Rules Advisory Committee. We believe Oregon's proposal is common sense policy and urge California to follow their leadership.

OC Recommendation: Track mature plants by batches of 100, as is currently allowed for immature plants, rather than tagging each individual plant.

5. **Amend Generator Restrictions to Accommodate Transition Timelines and Ancillary Uses**

As currently written, §16306 of DCC regulations would prohibit the use of a diesel generator under 50hp for more than 80 hours per year for non-emergency purposes starting in 2023. We remain confused by the purpose of this regulation, which in our understanding is not applicable to any other form of agriculture, and which would render only large generators (but not small generators) permittable.

We are concerned that these proposed restrictions may be driven by a false impression that generator usage on cultivation sites primarily falls into the categories of either 1) large, energy-intensive generators used to power supplemental light for cultivation or 2) backup generators utilized for emergency purposes only.

While we understand concerns regarding large-scale and intensive generator usage, the vast majority of generator usage by small rural farmers is for non-emergency but limited ancillary and seasonal purposes, such as drying, irrigation, supplementing solar power, or powering solar batteries. The emergency exemption currently included in §16306 provides no path forward for these limited activities.

While we understand the trajectory of state policy broadly is to regulate and restrict generator use over time, applying a 2023 timeline specifically to cannabis operators is out of step with our understanding of generator restrictions in other contexts, as well as the practical realities of transition for operators who are struggling with extremely challenging market conditions and awaiting the availability of grant funding for renewable energy projects.

OC Recommendation: Extend the timeline for restrictions on generators under 50 hp to at least 2025 to provide time for transition to solar energy or PG&E.

6. **Enable Cultivator Genetic Transfers and No-Source Entry**

DCC regulation §16300 currently prohibits cultivators from transferring seeds and immature plants unless they also hold a Type 4 Nursery license. Many cultivators hold specialty genetics that they would like to share with other farmers. Others find themselves with extra immature plants that they were unable to get in the ground during planting season, while others hold multiple cultivation licenses and seek flexibility to transfer plants between licensees.

On a cultural level, sharing plants and seeds is deeply rooted in legacy cannabis cultivating communities. Practically speaking, the ability for seeds and clones to be openly shared among farmers is critical to maintaining and expanding genetic diversity within the cannabis supply chain, with impacts for consumers in general and medicinal patients in particular.

Regulatory restrictions on the ability to share genetics incentivize a commoditized market with limited differentiation, will undermine the rollout of the cannabis appellations program, and will prevent farmers from preserving genetics through crop failure, fire damage, or change in license or ownership type.

While recent federal rulings regarding the definition of “hemp” provide more freedom in the distribution and sale of cannabis seeds *outside* of the cannabis supply chain, DCC has yet to establish parallel structures that enable the flow of cannabis genetics *within* the cannabis supply chain.

OC Recommendations: Last year, we shared the following recommendations with the DCC, which seek to provide licensees with flexibility to source and maintain their legacy genetics, while establishing clear lines between commercial nursery activities and activities intended to maintain and expand genetic diversity.

- *Transfer of Plants, Clones, and Tissue Culture Between Existing Licensees* **-** we recommend authorizing the non-sale transfer between cultivators and/or nurseries of up to 150 specimens of any combination of plants, clones and/or tissue culture samples to be received by any given business entity per year. These transfers would be logged in CCTT.

- *One-Time No Source Entry for New Cultivation and/or Nursery Licensees* - for new cultivation and nursery license holders, we recommend authorizing a one-time ability to enter up to 150 personal use cannabis plants, clones and/or distinct tissue culture samples into the CCTT system.

- *No-Source Entry of Personal Use Plants, Clones and/or Tissue Culture Specimens For Existing Licensees* - for cultivation and nursery licenses, we recommend authorizing the non-sale transfer of up to 6 personal use plants, clones and/or distinct tissue culture samples per day into CCTT, with an annual limit of 150 of any combination of specimens per business entity.

- *No-Source Entry of Seeds by New and Existing Licensees* - For cultivation and nursery license holders, we recommend exempting seeds from the no-source entry restrictions and allowing for an unlimited amount to be entered daily into CCTT. California laws do not place any limitation on the personal possession of seeds, making a commercial limitation on seeds unnecessary. Additionally, the United Nations 1961 Single Convention on Narcotic Drugs denotes that seeds are non-regulated entities.

7. **Increase Access to Microbusiness Licensure through Regulation Appropriate for Small-Scale and Rural Operations**

As California discussed the potential for adult-use cannabis legalization in 2015 and 2016, the microbusiness license was established within Proposition 64 in an attempt to establish exclusive access to on-farm vertical interaction specifically for small, rural producers.

Since Proposition 64's implementation, however, the microbusiness license has failed to achieve its intended purposes. Overwhelmingly, microbusiness licenses have been utilized to facilitate vertical integration by medium and large-scale businesses in urban areas, while only a handful of microbusiness licenses have been granted to small farmers based in rural areas.

Some barriers to rural microbusiness licensure stem from regulatory approaches at the state level, while others exist as a consequence of local land use regulation. While both barriers will need to be addressed for small and rural producers to effectively access this license, the DCC can begin to clear the way by addressing several specific technical regulations at the state level.

7a. Align Microbusiness Security Requirements with Existing Security Requirements for Cultivation

Recognizing the unique situation facing small rural farmers, DCC regulations currently exempt cultivation premises from certain security requirements applicable to other licensed operations, including requirements for video surveillance, alarm systems, and locks. However, state regulations have never exempted non-cultivation areas of a microbusiness premises from these security requirements, effectively locking small farmers out of access to microbusiness licensure.

In its recent regulatory promulgation, the DCC's ISOR stated that rural cultivation operators are exempt from state security requirements due to unique practical considerations on rural farms. The ISOR stated: *"The Department has determined that requiring the same level of video surveillance for cultivation locations that may be very large, outdoors, and located in rural areas where it may be difficult to access internet or electricity, would be unreasonably onerous and in some cases not possible."*

The logic in the DCC's ISOR extends equally to non-cultivation areas of a microbusiness premises located in an outdoor, rural area. Because it is "unreasonably onerous and in some cases not possible" to install compliant video surveillance and alarm systems in these areas, microbusiness licensure will not be attainable if licensees are required to install these systems as a condition of licensure.

OC Recommendation: Exempt all areas of a microbusiness premises from video surveillance, lock, and alarm requirements in §15044, §15046, and §15047, if the premises is located on the same site as an outdoor or mixed-light 1 cultivation license.

7b. Remove the requirement for a wall between retail and non-retail areas of a microbusiness premises.

§15500(j) of DCC regulation currently requires a wall to separate retail and non-retail areas of a microbusiness premises. While we can understand this requirement in the context of a storefront retail premise which is open to the public, we do not see the applicability to a non-storefront retail premises. For a microbusiness located on a homestead farm in particular, this section may require the construction of an unnecessary wall, and in some cases may render microbusiness licensure impractical.

OC Recommendation: Don't require a wall to separate non-storefront retail areas from the non-retail areas of a microbusiness.

> 7c. Remove the liability insurance requirement for a distributor self-transport licensee, and tier these insurance requirements by size for all distribution licensees.

§15308 currently requires all distributor licensees, regardless of type or size, to carry at least $2,000,000 in general liability insurance. Given that compliance with distribution requirements is also necessary for most microbusiness applicants, this requirement is specifically challenging for small prospective microbusiness operators.

OC Recommendation: We recommend that these insurance requirements are waived for self-distribution licensees, who are generally carrying nominal amounts of product, and who are definitionally limited only to carrying their own products. Insurance requirements for these licensees are not necessary and constitute a significant barrier to licensure. We also recommend that insurance requirements are tiered based on the size, and amount of product carried, by a distributor.

8. **Allow product returns without retesting.**

§15052(a)(2) in newly-adopted DCC regulations requires products which have been returned to be re-tested before they can be re-transferred to a retailer.

Because small cultivators typically cannot afford for product to be re-tested after initial (expensive) testing, this requirement amounts to an effective prohibition on product returns in many cases, leaving cultivators without options to recover products on retail shelves.

From a public health perspective, we do not understand the purpose of requiring re-testing for products which are already in their final packaged form, with their tamper-evident seal intact.

OC Recommendation: Allow products to be returned without triggering mandatory re-testing, assuming that their COA has not expired.