



September 6th, 2023

**Re: 9/7/23 DCC CAC Agenda Item #6 - Report from the September 5, 2023, Cultivation Subcommittee meeting**

Dear Cannabis Advisory Committee Members and DCC staff,

Origins Council represents 800 small and independent cannabis businesses in partnership with our regional partner organizations: Trinity County Agriculture Alliance; Humboldt County Growers Alliance; Mendocino Cannabis Alliance; Nevada County Cannabis Alliance; and the Big Sur Farmers Association.

We are writing to offer comments related to the motions passed at the 5th 2023 CAC Cultivation Sub Committee meeting regarding DCC appellations policy.

For the past 8 years, our organizations have invested deeply in coalition advocacy on cannabis appellations. Our efforts have included both legislative and regulatory work, including participation in the CDFA Cannabis Appellations Working Group of 2019. Our advocacy on appellations policy has been informed by legal experts in the fields of intellectual property and geographical indications law and policy, as well as scientific advisors in the fields of botany, natural sciences and social anthropology. This policy area is as complex and technical as it is exciting and hopeful, and is a top priority for us.

It is important to provide some additional context around the regulatory history of the California Department of Food and Agriculture Cannabis Appellations Program. In our comments below we reference the final proposed CDFA regulations for CAP (2021), which included provisions around many of the regulatory issues addressed by the CAC Cultivation Sub Committee on September 5th, 2023. The consolidation of cannabis licensing authorities and the formation of the Department of Cannabis Control in 2021 prompted the removal of labeling and enforcement related provisions from the final proposed CDFA CAP regulations, just prior to final adoption,

due to questions around whether those provisions are under the purview of DCC or CDFA. These issues are being taken up by the CAC at this time, as it has been determined that these CAP related issues fall under the purview of the DCC.

There were 5 motions for recommendations to the DCC adopted by the CAC Cultivation Sub Committee during the September 5th 2023 meeting. Given that the recording of that meeting is not yet posted to the DCC website, we are including language below for the motions based off of our notes from the meeting. We offer specific comments related to each CAC Cultivation Sub Committee recommendation below, for your collective consideration.

### **Motion 1: Appellation Seal or Mark**

*CAC Cultivation Sub Committee recommends that the DCC adopt a tamper-proof, unique in appearance State cannabis appellations seal, ideally embedded with a QR Code.*

**COMMENTS:** We support the recommendation for the State to adopt an official State cannabis appellation seal or mark, and regulations that mandate use of the seal or mark on qualifying non-manufactured cannabis product labels. However, at this time we do not support use of an official State cannabis appellation seal or mark on manufactured cannabis products, even if those products were “made with” appellation designated cannabis.

**RATIONALE:** The adoption of an official State seal or mark for cannabis appellations will help consumers recognize appellation designated cannabis in the regulated supply chain. It would assist appellation producers, trade associations, supply chain partners, jurisdictional and State agencies with education and marketing efforts around cannabis appellations. Lastly, an official State seal or mark would help guard against counterfeit appellation products within the illicit market as well as mis-use of appellations on unqualified regulated products.

We oppose the DCC pursuing regulations at this time that either mandate or allow for the use of an official State seal or mark for cannabis appellations on manufactured products. Cannabis appellations are structured in California law to be applicable to cannabis, not manufactured cannabis products. Furthermore, only outdoor cultivators may develop standards and petition for an appellation, and they must substantiate within the petition that the cannabis they produce has regionally distinct qualities or characteristics contributed to the natural features of the region. Farmers are investing significant time and money into scientific research and community organizing efforts to develop their petitions to these high standards.

Use of an appellation on manufactured products introduces significant risks of diluting the integrity and value of the Cannabis Appellations Program, as well as carrying risks associated

with consumer confusion around “appellation ingredients” vs. appellation products. The complexity and risks associated with these considerations arose in the 2019 CDFA Appellations Working Group. It was the consensus of the group that the issue of appellation use on manufactured products would require significant future policy research and stakeholder engagement, beyond the scope of under consideration of the working group at the time.

We urge the DCC and CDFA to pursue further policy research into the use of an appellation on manufactured products, and in parallel to collaborate on facilitating in-depth stakeholder input through a working group on this issue, prior to any associated regulatory promulgation by either agency.

### **Motion 2: Appellation Labeling**

*CAC Cultivation Sub Committee recommends that the DCC adopt regulations requiring that appellation names appear on the primary label panel (front of the product) of non-manufactured product, with the appellation name followed by the term "appellation". For manufactured products, require the appellation name on the primary label panel with the term "made with" to precede the appellation name, and the term "appellation" to follow the appellation name.*

**COMMENT:** We support the recommendation for the DCC to adopt regulations requiring that appellation names appear on the primary label panel (front of the product) of non-manufactured product, with the appellation name followed by the term "appellation". However, at this time we do not support use of an appellation on the label manufactured cannabis products, even if those products were “made with” appellation designated cannabis.

**RATIONALE:** See our above comments above under Motion 1 regarding our opposition to the DCC advancing regulations at this time for the use of an appellation on manufactured products.

### **Motion 3: Transition Timelines for Conflicting Geographic Brands**

*CAC Cultivation Sub Committee recommends that the DCC adopt a 1 year transition timeline.*

**COMMENT:** We support this recommendation, and further recommend the regulation for “Effective Dates” 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 Cannabis Appellations Program was published. We recommend that the one year sunset of the geographic trademark would begin when an appellation with the same or similar geographic name is established.

**RATIONALE:** Regulations that definitively address conflicts between geographic trademarks and appellations are urgently needed to protect the integrity of the Cannabis Appellations Program, and to support the efforts of farmers currently working to organize, research and develop appellation petitions. Ultimately, this issue strikes at the heart of appellations as truth in labeling laws.

The 2021 CDFA draft regulations proposed a sunset provision that would allow any owner of a trademark for a geographic brand name 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.

CDFA first proposed this regulation for the Cannabis Appellations Program on February 21, 2020. To ensure that there's not a rush to register geographic trademarks that conflict with potential appellations, this one-year transition should only apply to geographic brands that were in use before February 21, 2020.

#### **Motion 4: Penalties for Mis-use of an Appellation**

*CAC Cultivation Sub Committee recommends that the DCC develop different penalties for misuse of an appellation name and seal, and for counterfeit use, no less than \$500.*

**COMMENT:** Based on the CAC Cultivation Sub Committee discussion on September 5th, 2023, we support the intention of this recommendation, but believe that the recommendation as stated falls significantly short of the actual need.

We request that the CAC recommend that the DCC categorize all violations of advertising, marketing, labeling and packaging requirements for appellation of origin as serious, while also providing for a one time, first-offense moderate violation in order to appropriately support sufficient licensee education regarding these requirements.

**RATIONALE:** CDFA's proposal that the misuse of appellation of origin designations in advertising, marketing, labeling and packaging be a serious violation was also removed from CDFA's final proposed regulations due to the aforementioned regulatory authority issues that arose during agency consolidation and the formation of the Department of Cannabis Control. It has now been over 2 years since these proposed regulations were removed from CDFA's package.

As currently written, DCC regulations would classify these appellation violations as minor violations, carrying a \$100 - \$500 fine. If not redressed, operators will simply pay a minor fine \$100 - \$500 for violations related to appellations advertising, marketing, labeling and packaging. This will incentivise abusive non-compliant use, as well as full blown counterfeit use of appellation designations by licensed operators, particularly on the part of 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 appellation product markets, globally. Producer associations expend enormous annual budgets in pursuing the legal protection of their authenticated appellation of origin products.

This is also a very time-sensitive matter, as operators and entrepreneurs learn about CAP and size up the proposed enforcement teeth of the program, or lack thereof, and move forward with investing in plans to leverage appellations in their business activity. If not redressed, current regulations dangerously undermine the integrity of the Cannabis Appellations Program.

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.

#### **Motion 5: Record Keeping**

*CAC Cultivation Sub Committee recommends that the DCC adopt regulations that require each appellation producer to maintain a copy of the petition as approved plus the public notice of approval on site at all times, and make that paperwork readily available to the DCC for the purposes of inspection.*

**COMMENT:** We support this CAC recommendation.

**RATIONALE:** California cannabis appellations are required in statute to include stipulated standards, practices and cultivar requirements. Section 9107, subsection (e) of the CDFA CAP regulations require that:

*Each standard, practice, and cultivar requirement shall include description of a mandatory mechanism by which compliance with the requirement shall be documented and supported by record retention pursuant to cannabis licensing record retention regulations. Appellation compliance documentation shall be thorough and appropriate to the requirement to allow determination of compliance based solely upon review of the records.*

It is imperative that each producer that is authorized to use an appellation by CDFA maintain these records, and have them readily available on the production premises, in addition to the final approved appellation petition which details precisely what compliance documentation is required for each specific appellation in use by the producer.

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We want to thank the DCC, the Cannabis Advisory Committee and the CAC Cultivation Sub Committee for bringing appellations forward for consideration. We look forward to additional opportunities for in-depth stakeholder engagement with both the DCC and CDFA in support of the near-term launch and implementation of California's Cannabis Appellations Program.