

**Susan Pearlman**

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**From:** Eric Olsen <rebootatthebeach@gmail.com>  
**Sent:** Monday, November 23, 2015 8:35 PM  
**to:** Susan Pearlman  
**Subject:** Fwd: License Caps, Compliance Together, C4 Agenda

----- Forwarded message -----

**From:** <sasha@sbrodskylaw.com>  
**Date:** Monday, November 23, 2015  
**Subject:** License Caps, Compliance Together, C4 Agenda  
**To:** Eric Olsen <rebootatthebeach@gmail.com>  
**Cc:** Pat Malo <peppermalo@gmail.com>

Hello Eric!

Thank you so much for the positive feedback!

Our doors remain open to C4 for critical feedback, too, so we welcome and value input from you of any nature.

Please forgive the late response. We hope this will make it into the record, and in time for you to absorb for tomorrow's C4 meeting.

As you point out, ours is a collaborative, community effort, and so consensus is central to our collective success.

As an academic (but important) aside, Breeder licenses are a subclass of, and different from, the broader class of which they are a part, which is **Cultivation** licenses, the primary focus.

**Cannabis Is Being Highly Regulated - It is Not A Free Market Scenario:  
Santa Cruz's Golden Opportunity if they Act Now, Rather than Wait Until The Opportunity Has Passed  
(It is Passing Already, This Instant)**

Regarding restrictions vs free market: a) as regards cannabis, the State is now being extremely restrictive, hardly subject to free market forces; and b) the local municipalities are permitted to be only more, not less, restrictive. The State wants local municipalities to craft structures that make sense *vis a vis* the land use, topography, community, environmental, business, and cultural needs of a given city, county, region, or zoning area--and those local ordinances can only set the bar higher, not lower.

We see this as a golden opportunity for Santa Cruz to define itself while **bringing the community together around high standards.**

The opportunity to establish the highest standards possible is now. We can use high standards as the mode of regulation and limitation, while in turn using those same standards to define ourselves and what we stand for as the Santa Cruz cannabis standard--the highest standard in the State.

Ours should be the best cannabis medicine in the State. Santa Cruz should be known for having the most pro-organic and pro-environmental standard in the State. It should be sensitive to and beneficial to communities. It should provide a safe and diverse access point for patients.

We should be known for being the most progressive, with farmer's markets, CSAs, artisanal grows, and small business friendly regulations that encourage people to operate like small wine farms, microbreweries, and small organic vegetable farms. Everyone needs to benefit, not just a few. Compliance together. Let's show the State how it should be done, as we have done historically.

**Functional Caps: Good; Numerical Caps: Bad, Arbitrary, Not Community Compliance!  
Compliance Together!**

So while the cap approach is a valid one, we believe that the answer lies in *functional caps via significant regulation of the local market (as pre-qualified and passed by third-party certifiers)*, vs. *numerical caps* on licenses that run an extraordinarily high risk of appearing to most as an arbitrary measure from which only the politically and economically privileged will ever benefit.

Functional caps serve many positive functions, including:

- a. an opportunity for the County to formulate, announce, and promulgate high standards derived from consensus and sound/transparent policy.
- b. an opportunity for the County to enforce these high standards via a 3rd party certification process where the functional cap of a high bar necessitates that, at least initially, a relatively modest number of applicants are certified as compliant;
- c. an opportunity for the County to sell those standards to the rest of the community and be given the chance to show the community that by promulgating and enforcing high standards, the purposes of environment, community, and patient access to high quality medicine are accomplished, along with serving the further goal of becoming the gold standard in cannabis cultivation, manufacturing, distributing, etc.
- c. an opportunity for the County to begin to understand, survey, protect, gain the trust of, demonstrate trust to, and guide on a course to compliance the non-compliant applicants, so that no one is left out! Compliance together.

It is worth noting that these registered applicants need amnesty. We do it for guns, why not cannabis? The applicants need some form of protection, and the idea that we cannot take on that burden is eclipsed by a far worse burden which are all the ills of the black market, and non-compliant behavior that begets more of the same, and perpetuates mistrust in all directions.

- d. an opportunity for the entire Santa Cruz community to define itself in terms of not only high standards, but also in terms of having a vibrant cannabis micro-economy focused on small businesses, not large Walmart-type ones, and to resemble the wine region appellation small player economies.
- e. an opportunity for cultivators, manufacturers, distributors, dispensaries and other entities to educate themselves about compliance, and to be given a viable compliance path rather than the cold limit of numerical caps, which alone fail to educate and hardly operate as a carrot, but more as a stick, which historically has failed.

Restrictive zoning should not be expressed in terms of "don't grow here," but rather "if you are going to grow here, you need to do it THIS way."

All of the above will serve as a significant regulatory limit, that is hardly arbitrary, and protects and empowers the non-compliant applicants enough so that they can eventually become compliant.

By contrast, and given the lack of trust that we agree exists in all directions, there are many reasons why numerical caps do not work:

1. Numerical caps violate the idea of "compliance together."
2. Numerical caps will dissuade people from applying, and keep them in the black market, perpetuating all of the same problems from which we all currently continue to suffer.
3. Numerical caps are arbitrary, and will be viewed by the public as inherently unfair, arbitrary, and for the privileged few.
4. Numerical caps will put everyone else in an "unknown" no-person's land status, and will further erode potential registrant/applicant/participants' already extreme suspicion of this process.
5. There is no parallel to caps in the State law. Generally, limits are on types, not numbers, of licenses, except in certain circumstances. We should mirror the general structure of the State law whenever possible, except when to protect communities, the environment, and patient access, and also where it is more progressive, principled, innovative and self-defining to do so (within limits of State law).

Size of licenses should be capped based on various factors:

- a. topography;
- b. environmental concerns;
- c. residential concerns;
- d. type, nature, characteristic of a given activity (cultivation, manufacture), such as organic, or best practices, or minimum practices, artisanal vs. larger-scale.
- e. Any other factor(s) we should consider.

Caps on numbers do not make practical sense, and have many unintended consequences. It is far more productive, principled, and practical to impose functional caps via high standards embodied in regulation.

As regards breeder licenses, there currently are no state breeder license categories, the closest thing is nurseries, but more accurately we are discussing licenses for cultivation, distribution, dispensaries, manufacturer/transporters, testing, nurseries, and perhaps create our own mini licensing system for say, farmer market/CSA distribution hubs/small distributors, which will vary in character as per zoning, environmental, and community concerns.

Items on the Agenda that are of concern:

- a. **Nothing on the agenda re: Sheriff.** Without this, there is no trust, there is no compliance, and the process is likely doomed because no one will participate with the Sheriff able to operate at large. He is jeopardizing this process if he is not helping it. As part of that reigning in are they going to obtain Hart's agreement, and give him direction on, a new process, whereby the County actively builds a compliance path that includes at minimum the following:

**i. Registered Grows**

Whereby among other things registered grows become part of a **Cultivation Registry** that **Sheriff must check each and every time before following a surveillance lead or taking any pre-surveillance or surveillance action**, with the Cultivation Registry, and if the person or property is registered, the **Sheriff shall immediately forward to the County a notice and inquiry about the site or person**, and County shall then have **civil jurisdiction, unless** County determines that the matter shall be criminally pursued or otherwise, with the **exception** of emergencies that shall be justified each time by sworn affidavit and other good faith requirements.

**ii. Predominantly Civil, Not Criminal, Path**

The County and Sherrif Shall comport all practices consistent with and adopt as official policy the Blue Ribbon Commission idea that:

The requirement of business and individual licensing also provides an additional tool for civil enforcement: the potential to levy fees and fines, pursue unfair business or competition laws, collect taxes and the potential to revoke licenses for entities and individuals who do not play by the rules. It provides a tool beyond criminal sanctions, which should be reserved to the extent possible for serious, repeated or large-scale offenses in this new industry.

Blue Ribbon Commission Pathways Report at 31.

<https://www.safeandsmartpolicy.org/wp-content/uploads/2015/07/BRCPathwaysReport.pdf>

**iii. Search, Notice, and Mandatory Stand Down**

Upon Sheriff's discovery, upon a **diligent search**, of a registered grow, **Sheriff shall officially communicate with the County each time, and await instruction from County on whether or not to pursue the claim, or whether the matter should be treated as a civil/code enforcement issue or a criminal one**. Absent a criminal emergency, which shall be justified each time by an affidavit, Sheriff shall agree to a **Mandatory Stand Down** as to all registered grows that do not present an immediate criminal emergency. The likelihood of immediate harvest or evanescent evidence of cultivation shall not alone constitute an immediate criminal emergency.

**iv. Amnesty.**

**Sheriff will not prosecute, nor will any action of any kind be taken against any party given amnesty**, and the criteria for amnesty, as well as the terms of its possible revocation under certain circumstances, shall be developed by C4, County, or other body.

- b. **Assumption of No Grows in Bonny Doon or No Outside Grows in Zach Friend's district is unwarranted, unfair, and hasn't been voted on. It at least should be voted on.**
- c. **Micro Grow for Land Owners Only seems unfair.** This is an automatic economic exclusion, and a non-starter for renters. Requiring land owner permission is reasonable.

- d. **100 Square foot limit is unfair, arbitrary, and fraught with issues.** We need to discuss a floor for commercial grows that distinguishes from personal and is at least **above the 500 allotted for personal by the State.**
- e. Is C4 starting with the assumption that there will be **Zero Commercial activity on All Residential, or is a vote being taken on this issue?**
- f. **What are the limits on personal for Residential?**
- g. **25 Licenses?** This is a non-starter. Please see above commentary on license caps.
- h. **What about non-cultivation, i.e., distributors, manufacturers, testing, etc.** Are we only dealing with cultivation now? I so, this strikes us as a huge error.

**Appellation Starts (and may end with) Outdoor! Keep Outdoor Alive! And some closing thoughts:**

Ultimately, we should be encouraging people to get together on their own and develop their own appellation standards. If no one can even obtain a license, they are not likely to even embark on this very important journey.

The true appellation derives from the soil, i.e., outdoor grows, connected to the *terroire*, the soil, land, microclimate, environs, history, unique topography and culture.

To foster an indoor industry at the expense of outdoor in any significant way also imposes a far greater carbon footprint, and ignores the appellation and high quality standard opportunities--missing entirely the whole point of quality over quantity, and the unique Santa Cruz brand opportunities that abound in this particular region, whether Bordeaux or anywhere in Santa Cruz County where wine is produced.

The value of this approach, and the importance of outdoor soil and sun, must not be ignored or lost on anyone.

Again, to exclude Bonny Doon as a matter of course does not seem fair. To regulate heavily in that area in particular area does seem fair. But the idea that one neighborhood would be given an automatic (i.e., right off the bat) option to have no commercial cultivation of any kind seems like something that the C4 should at least discuss fully and vote on, as it cannot be otherwise supported by any principle other than the obvious cynical conclusions that the rest of the community will make.

**Compliance together.**

Credibility with County is established by many means, not least among them insisting on high standards.

Thank you for listening. We appreciate the role that you are playing and thank you for your very important service. We consider ourselves in service of this process as well and are grateful for this opportunity.