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Mendocino County Board of Supervisors
501 Low Gap Rd.
Ukiah, CA 95482

January 29, 2022

Re: CDFW Alleged Objection to Use of Contiguous Expansion Affidavits

Dear Supervisors,

Through several public meetings, it has come to my attention that there is now some kind of problem with the development and use of the Sensitive Species and Habitat Review (SSHR) process outlined in the MND. This is once again causing delays in processing applications and threatening to further delay certain applications by re-instituting the SSHR referral for every applicant regardless of their eligibility for an exception to that additional time consuming process by virtue of their submission and acceptance of the Contiguous Expansion Affidavit and supporting proof.

A short, abbreviated history may be helpful to better frame the current issue.¹ Specifically, after years of failing to engage in conducting the reviews referred to in Mitigation BIO-1 in the initial MND published on 11/17/16², later amended and published on 3/17/17³, it was eventually realized

¹ Any omission of any history is not intended as a ploy, but rather made in the interest of brevity. Having tortuously had to live through the original year or more of MND development and revisions, and each of subsequent adopted modification, I dare say you would not want a full and complete history of each painful step.

² The 11/17/16 published draft (version 2) of the MND which was eventually filed with the State Clearinghouse as SCH Number 2016112028 provided in Mitigation BIO-1: **BIO-1:** Mendocino County shall amend the MCCR to require a sign off from CDFW for each proposed cultivation site to evaluate if there is a possibility for presence of sensitive species. Prior to submittal of the MCCR cultivation permit, cultivators will need to coordinate with CDFW who may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. If it is determined that a sensitive species could occur, the required cultivation and operations plan shall be revised to incorporate measures to protect sensitive species to the satisfaction of CDFW. A cultivator that cannot demonstrate to the satisfaction of CDFW that there will be a less than significant impact to sensitive biological resources will not be issued a cultivation permit. The County may eliminate this requirement at such time CDFW authorizes the County to perform this function based on available mapping and training of Agricultural Commissioner's staff and the qualifications of third party inspectors to identify sensitive species habitat. CDFW will remain involved when a sensitive resource is identified.

³ The 3/17/17 published draft of the MND changed the Mitigation BIO-1, ostensibly to ease the administration of that mitigation, to: BIO-1: Mendocino County shall amend the MCCR to require qualified County staff and/or qualified third party inspectors to review Cultivation Permit applications and identify locations where habitat suitable for sensitive species may exist. Prior to the pre-permit site inspection applications will be checked against publicly available aerial imagery and databases such as the California Natural Diversity Database, California Native Plant Society Inventory of Rare and Endangered Plants, and United States Fish and Wildlife Service List of Threatened and Endangered Species to evaluate the potential for sensitive habitat on-site. During the pre-permit site inspection County staff and third party inspectors will determine if sensitive species are present. If it is determined that sensitive species are present or could be present CDFW will be consulted. CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not



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that not only was the MND Mitigation BIO-1 not being implemented correctly, but that 10A.17100(A)(2)⁴ which had been modified to ensure a more practical program with clear criteria was developed for the referrals that did need to occur, was not being conducted. CDFW did not have a formal process to handle the work and the County was eventually forced to contract with CDFW approved biologists to conduct the work. Eventually, a screening process for when referrals were needed was developed with CDFW and a form was created.⁵ The County eventually entered into contracts with biologists approved of by CDFW to conduct the referred reviews, though to begin with, only authorization for renewals of already issued annual cultivation permits were allowed to have that process conducted. Eventually, the County finally expanded the REQUIRED screening to all applications and instituted the referrals to CDFW as needed under the developed policy.

Outrageously, even after years of failure to implement or even develop a policy and apply it pursuant to Mitigation BIO-1, eventually the County realized that the MND adopted by the county and published to the public **did not require referral to CDFW approved biologists in all instances**. Specifically, the MND adopted, and even later as properly noticed and amended, did not require referral for an SSHR where there was only contiguous expansion and no new areas of ground disturbance for the cultivation: "In Phase 1 this Mitigation Measure is limited to areas of new disturbance, non-contiguous expansion of existing sites and relocated sites."⁶ In fact, NONE of Mitigation measure BIO-1 is applicable to the sites that had only contiguous expansion.

In response to this discovery, the county realized that it could assist with heretofore delinquent methods of dealing with this portion of the MND by eliminating the SSHR screening process required in the MND's Mitigation BIO-1 for all the applications that did not require application of that mitigation: those with non-contiguous expansion. The County then undertook a long and arduous process to develop a definition of non-contiguous that was satisfactory. The much more

be issued a cultivation permit. **In Phase 1 this Mitigation Measure is limited to areas of new disturbance, non-contiguous expansion of existing sites and relocated sites.** (bold added)

⁴ 10A.17.100(A)(2): Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. **The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy.** During Phase 3 all applications will be referred to CDFW [bold added].

⁵ Attached as Attachment 1 is the form used to determine if referral is needed--which for some unknown reason, was not released to the public until long after it was developed behind closed doors. As indicated in the next portion of history, it failed to consider exemptions built into the MND.

⁶ Page 52 of MND Revisions 3/17/17.



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expansive definition brought forward and suggested by at least one Supervisor, was rejected and a more-narrow definition was adopted. Specifically, the definition adopted stated: “Contiguous expansion” means the relocation of plant canopy, and/or the permitted expansion of plant canopy to an area that is within 200 feet of any original cultivation site located on the parcel. Terms used in this definition shall be the same as those already defined in Chapter 10A.17, including “cultivation site,” “expansion” and “plant canopy.” The rationale to keep it to the 200 feet definition was based on analogy to buffer distances that are required between resource properties and residential development.⁷ A form⁸ was developed for applicants to use to attest that they met the definition, but they also were required to submit proof (3-4, now maybe even close to 5, years after the fact--- a patently unfair evidentiary burden after so many years that the County did not inspect and see the proof for itself).

Now, after nearly 5 years since the passage of the ordinance and even longer since the MND, applicants are once again being told that the ever-changing processes and standards may not be applicable (again).

I have not been directly involved with the discussions between CDFW and the County, so I am only surmising that the problem stems from the fact that a Staff Memo⁹ from MaryLynn Hunt was presented at the 3/21/17 meeting for the modifications to the MND that suggested a slightly different BIO-1 Mitigation than the one that was enacted in the actual modification. However, it should be noted that even the suggested but not adopted change to BIO-1 indicated the development of objective criteria of when referral was required. Furthermore, the MND posted on the County’s website includes the language in BIO-1 as actually amended on 3/21/17, which includes the inapplicability of the referral to CDFW in instances of contiguous expansion. The corollary ordinance provision, 10A.17.100(A)(2), currently reads:

The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW;

The policy WAS developed. The exemption for CDFW referral in instances of contiguous expansion is consistent with the MND and is specifically in keeping with the fact that once a policy is in place, consultation with CDFW is not required. Again, the entirety of Mitigation BIO-1 as published specifically excludes contiguous expansion, and does not only exclude the referral section of the SSHR. Furthermore, any objection to the Contiguous Expansion definition, Affidavit, or

⁷ I strongly disagree with this analogy as applicable to all cultivation applications since not all of them are on resource lands, but that is in fact what was adopted as a definition. The issued definition and explanation are attached as Attachment 2.

⁸ Attached as Attachment 3.

⁹ Attached as Attachment 4.



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implementation under BIO-1, should have been objected to at the time it was adopted and not nearly a year later (and nearly 5 years after the ordinance passage).

Applicants have been in limbo for far too long. Any assessment of whether the impacts of CONTIGUOUS expansion are within the less than significant impact threshold of the MND will be flushed out for those applicants during the State mandated Appendix G CEQA process to get an annual state license. Our MND does not require the SSHR for contiguous expansion.

Respectfully submitted,

Hannah L. Nelson



COUNTY OF MENDOCINO
 DEPARTMENT OF PLANNING AND BUILDING SERVICES
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 Planning and Building Services
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**10A.17.100(A)(2) PILOT POLICY WITH CDFW
 EXHIBIT A
 SENSITIVE SPECIES PERFORMANCE STANDARDS REVIEW**

(Rev. 9/30/2020)

Applicant Name:	
Current Mendocino County Cannabis Application or Permit Number (AG XXXX-XXXX):	
APN:	
Site Address:	

SENSITIVE SPECIES PERFORMANCE STANDARDS

Instructions: *The Cannabis Program Planner assigned will review SSHQ materials, and the CNDDDB data base and any other resource information available to the Cannabis Program to determine if the information meets the performance standards outlined below.*

If all performance standards are met, *this completed review form is an approval determination that the cultivator has demonstrated that there will be a less than significant impact to sensitive species on the parcel of the proposed cultivation permit location. The assigned Cannabis Planner must complete all the appropriate reviews, check boxes, and clearance section with signature and review determination.*

If one or more do not meet the performance standards, or one or more performance standards are unknown, *the application must be referred to CDFW for final determination, per the 10A.17.100(A)(2) Pilot Policy for Sensitive Species Review in Cooperation with CDFW.*

For the purposes of this document, the “project” includes, but is not limited to, existing or proposed access roads, cultivation areas, and associated structures and activities related to cultivation.

Meets performance standard			
Yes	No	Unknown	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>1. No Notice of Violation from CDFW</p> <p><u>Meets performance standard:</u></p> <ul style="list-style-type: none"> No Notice of Violation has been issued by CDFW for the parcel, or CDFW has provided written verification stating that the violation has been resolved, or that the violation is in the process of being resolved satisfactorily and that approving the cultivation permit would not risk further impact to public trust resources. <p><u>Does not meet performance standard:</u></p> <ul style="list-style-type: none"> A Notice of Violation has been issued by CDFW and has not been resolved satisfactorily
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>2. No obvious violations of Fish and Game Code (FGC), or unpermitted activities that would require a permit from CDFW, are present on the project parcel, to the best of County staff's knowledge.</p> <p>Staff knowledgeable about the most common types of FGC violations on cannabis cultivation sites staff should make this assessment based on information in the cannabis application and reference to other site information (e.g. aerial imagery).</p> <p>The most violations most frequently observed relate to water diversion and/or stream alteration (e.g. road/stream crossings, ponds, etc.), and water pollution (trash, sediment, and/or other materials). Refer to reference material from CDFW.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>3. Project footprint has not expanded, and is not proposed for expansion. Grading, tree removal or vegetation removal is not proposed (nor has occurred) beyond what existed on January 1, 2016.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>4. For projects with a surface water source (stream, spring, pond, or offset/shallow/hydrologically connected well) for cultivation, domestic, or other consumptive use; stream crossings (culverts, bridges, fords, etc.); or other activities subject to Fish and Game Code Section 1602:</p> <ul style="list-style-type: none"> a) Applicant has obtained a final LSA Agreement, verification an LSA Agreement is not needed, or an "operation of law" letter, <u>OR</u> b) If applicant has not obtained one of the above documents: applicant has submitted an LSA Notification to CDFW. <p>Obtaining a final LSA Agreement or other written documentation from CDFW - within the one year cultivation permit term - shall be required (i.e. County cultivation permit shall not be renewed without a final LSA Agreement).</p>

Yes	No	Unknown	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>5. Project meets the following stream and wetland setbacks (for cultivation sites and associated infrastructure): a minimum of 150 feet from perennial streams/wetlands, and a minimum of 50 feet from intermittent streams, measured from the outer edge of the riparian vegetation or top of bank, whichever is greater. These areas should be identified and maintained as no-disturbance buffers.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>6. For projects with existing or proposed ponds</p> <p>Bullfrog monitoring and management plan has been submitted. Plan appears feasible and includes sufficient detail.</p> <p>For a project with an existing or proposed pond of any kind (on- or off-stream, including rainwater catchment), applicant shall implement a bullfrog monitoring and management plan. Projects proposing new ponds, or where a pond has been constructed within the past five years, should be referred to CDFW.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>7. Permanent infrastructure associated with cannabis cultivation is located outside of the 100-year floodplain.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>8. Project shall completely avoid impacts to oak woodlands (genus <i>Quercus</i>) and provide an adequate protection buffer between oak woodlands and project activities.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>9. Cultivation site is not located within 0.25 mile of a known Northern Spotted Owl activity center or forested habitat contiguous with a known activity center.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>10. For projects using artificial light</p> <p>Light containment plan has been submitted. Plan appears feasible and includes sufficient detail.</p> <p>To protect wildlife and comply with the County ordinance, all lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>11. For projects using generators and other machinery</p> <p>Noise containment plan has been submitted. Plan appears feasible and includes sufficient detail.</p> <p>Noise generated on any portion of the project site shall not exceed 50 decibels when measured from 100 feet. This includes but is not limited to projects using a generator for any purpose, motorized trimming machines, fans, ventilation systems, and other machinery. The applicant shall submit information on containment structures, and a plan demonstrating that the generator or other machinery would not deliver, or have the potential to deliver noise exceeding the above limits.</p>

Yes	No	Unknown	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>12. To protect fish and wildlife and comply with the State Water Resources Control Board Cannabis Policy:</p> <p>Cannabis cultivators shall only use geotextiles, fiber rolls, and other erosion control measures made of loose-weave mesh (e.g., jute, coconut (coir) fiber, or from other products without welded weaves). To minimize the risk of ensnaring and strangling wildlife, cannabis cultivators shall not use synthetic (e.g., plastic or nylon) monofilament netting materials for erosion control for any cannabis cultivation activities. This prohibition includes photo- or bio-degradable plastic netting.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>13. No evidence suggests that sensitive natural resources would be impacted by the proposed project (based on County staff scoping using CNDDDB and other recommended resources, biological assessment or survey reports, or observation of the site).</p>

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CANNABIS PROGRAM PLANNER REFERENCE RESOURCES USED

Reference Resources Used			
Yes	No	Unavailable	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Most recent aerial imagery available (Google Earth, Bing maps, NAIP imagery, etc.). Imagery source: _____ Date of Imagery: _____
			BIOS/California Natural Diversity Database Minimum recommended data sets:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ California Natural Diversity Database (CNDDDB) – 9 quad search
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ Unprocessed Data from CNDDDB Online Field Survey Form
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ Northern spotted owl observations
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ California Streams
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ USFWS National Wetlands Inventory
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ NFHL 1% Annual Chance Flood (100 Year Flood)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> ▪ Vegetation - Mendocino Cypress and Related Vegetation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	USFWS IPaC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	USGS soils maps
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CNPS Rare Plant Inventory

CANNABIS PROGRAM PLANNER DETERMINATION

Meets criteria to be referred to CDFW			
Yes	No	Unknown	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evidence suggests there is a potential for the project to impact rare, sensitive, threatened or endangered species, or streams, springs, seeps, wetlands, oak woodlands, native grasslands, or other sensitive resources or habitats. (See also “Expansion and Biological Surveys” section below.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A new pond is proposed, or was constructed on the parcel within the past (approximately) five years.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Applicant is unable (for any reason) to comply with performance standards detailed above.

Expansion and Biological Surveys

Projects that meet Expansion Definition and Require a Biological Survey

Request Biological Survey from applicant	Significant impacts likely: refer to CDFW	Significant impacts unlikely: consult with CDFW	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>If the project footprint has been or will be significantly expanded or modified, or significant vegetation removal or grading has occurred or is proposed beyond what was existing on January 1, 2016, and/or tree removal is proposed or occurred after May 4, 2017 (Meeting Standards Criteria #3):</p> <ul style="list-style-type: none"> • The County should require a biological survey, the type and scope of which would be based on the risk of potential impacts (proposed size increase, site characteristics, potential species or habitat to be affected, etc.) <ul style="list-style-type: none"> ○ If impacts are unknown or likely to be significant, the County should refer the project (with completed biological survey) to CDFW. If preferred, the County may contact CDFW for recommendations regarding the type/scope of biological survey to require. <p><i>If County staff believe impacts are likely to be minimal, County may refer the project to CDFW for a recommendation regarding whether a biological survey should be required.</i></p>

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CANNABIS PROGRAM PLANNER DETERMINATION CONTINUED

Meets all Performance Standards:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Cannabis Planner Recommendation of Proposed Project:	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> CDFW Referral <input type="checkbox"/> Biological Survey from Applicant due to Expansion Definition
Potential Impact Comments for CDFW Referral:	
CDFW Referral Required:	<input type="checkbox"/> Yes <input type="checkbox"/> No
CDFW Referral Sent Date:	Date: <input type="checkbox"/> N/A
Reviewing Planner's Name:	
Planner's Signature:	
Review Date:	

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Sensitive Species Habitat Review

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Background

Section 10A.17.100 requires that, before the issuance of a cannabis cultivation permit, a cultivation site be reviewed for sensitive species habitat. This requirement was added to Chapter 10A.17 pursuant to Mitigation Measure BIO-1 of the initial study and mitigated negative declaration prepared and adopted for the permit program. The discussion of Mitigation Measure BIO-1 in the initial study provides additional context for the mitigation measure, stating it is applicable in Phase One of the permit program to non-contiguous expansion and relocated sites.

Limiting the application of this mitigation measure to non-contiguous expansion of existing cultivation sites and relocated cultivation sites is appropriate given the CEQA concept of the baseline environmental setting. The environmental review of a proposed project must identify the physical environmental conditions as they existed before the project, in order to study what impacts the project will have on those conditions. For the County's cannabis cultivation permit program, this would necessarily include those cultivation sites existing prior to the program's adoption. Areas contiguous to existing cultivation sites are more likely already impacted by the existing use of the site. Non-contiguous expansion and relocated cultivation sites would more likely mean development of areas not previously affected by an existing cultivation site, and where additional review for sensitive species habitat is appropriate.

The initial study did not define either "contiguous" or "non-contiguous." The County is defining the term "contiguous expansion" at this time to provide additional clarity to the sensitive species habitat review policy provided for by section 10A.17.100.

Contiguous Expansion Definition and Rationale

"Contiguous expansion" means the relocation of plant canopy, and/or the permitted expansion of plant canopy to an area that is within 200 feet of any original cultivation site located on the parcel. Terms used in this definition shall be the same as those already defined in Chapter 10A.17, including "cultivation site," "expansion" and "plant canopy."

The distance of two hundred feet was selected because this distance is also used as the buffer area between new residential development and resource zoned parcels, including agricultural parcels. While buffer areas protect one use from another, it can conversely be stated that one or both of the uses affect the area within the buffer. In the context of expansion of a cultivation site, the County is presuming that activities relating to the existing cultivation site have had an impact within two hundred feet of the site. However, note that this definition does not exempt contiguous expansion areas from the other requirements of Chapter 10A.17.

Affidavit for Sensitive Species Habitat Screening

For the purposes of Section 10A.17.100 and the sensitive species habitat review, applicants who believe that they have or intend to undertake a contiguous expansion of their original cultivation site must submit an affidavit to the Cannabis Division, in the form provided by the Division. In the affidavit, which is signed under penalty of perjury, the applicant states that all expansion of the applicant's original cultivation site fits the definition of "contiguous expansion," and shall include a description of the expansion area and/or an aerial photograph showing the original and expanded areas.

Should the County later determine that the applicant provided false or misleading information in signing the affidavit, the applicant's permit application shall be denied or an issued permit shall be revoked.

[Affidavit Form](#)



COUNTY OF MENDOCINO
CANNABIS PROGRAM
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AFFIDAVIT
CONTIGUOUS EXPANSION OF PRE-EXISTING CULTIVATION SITE

By affixing my signature to this affidavit, I hereby declare that:

1. I have submitted an application to the Mendocino County Department of Planning & Building Services – Cannabis Program (“Cannabis Program”) for a permit to cultivate cannabis pursuant to Mendocino County Code Chapters 10A.17 and 20.242.
2. The cannabis cultivation site or sites shown on the site plan I have submitted to the Cannabis Program as part of my application is/are either confined to the area of my original existing cultivation site, or consist of a contiguous expansion of my original cultivation site.

“Contiguous expansion” is defined as the relocation of plant canopy, and/or the permitted expansion of plant canopy to an area that is within 200 feet of any original cultivation site located on the parcel. Terms used in this definition shall be the same as those already defined in Chapter 10A.17, including “cultivation site,” “expansion” and “plant canopy.”

3. Attached to this affidavit is a written description and/or maps/aerial photos which accurately show the relationship of the cannabis cultivation permit area being applied for and the original cultivation site from which it is being expanded. If the area being applied for is the same size or smaller than the original cultivation site, this is shown or described on the attachment.

I declare under penalty of perjury, under the laws of the State of California, that the information provided on this affidavit is true and correct and, if applicable, that I am authorized to sign on behalf of the entity listed below.

Affiant Signature: _____

Printed Name: _____

Official Representative of: _____

Date: _____

ATTACHMENT 4

DIANE CURRY
Interim Agricultural Commissioner

PHONE (707) 234-6830
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ARIF KEVER
Assistant Agricultural Commissioner
Assistant Sealer of Weights & Measures

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COUNTY OF MENDOCINO
DEPARTMENT OF AGRICULTURE
890 N Bush St.
Ukiah CA 95482

DATE: MARCH 21, 2017

TO: BOARD OF SUPERVISORS

FROM: DIANE CURRY, Interim Agricultural Commissioner
MARY LYNN HUNT, Chief Planner
MATTHEW KIEDROWSKI, Deputy County Counsel

SUBJECT: SUPPLEMENTAL STAFF MEMORANDUM

AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER 10A.17-MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242-MEDICAL CANNABIS CULTIVATION SITE OF THE MENDOCINO COUNTY INLAND ZONING ORDINANCE (OA-2016-0003), COLLECTIVELY CALLED MCCR, INCLUDING REVISIONS TO POLICIES AND PROCEDURES FOR AGRICULTURAL PRESERVE AND WILLIAMSON ACT CONTRACTS REGARDING CANNABIS CULTIVATION AND THE ADOPTION OF AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION RELATED THERETO

Since documents for this item were originally made available on March 10, 2017, County staff has worked further with the California Department of Fish and Wildlife (CDFW) regarding Mitigation Measure BIO-1, and has also reviewed and found several items in the proposed Initial Study/ Mitigated Negative Declaration (IS/MND) that need correction or clarification. This memorandum reviews these proposed changes.

Mitigation Measure BIO-1

The IS/MND and the Mitigation Monitoring and Reporting Program (MMRP) were presented as Attachments 4a) and 4b) respectively to the original staff memorandum made available to the public on March 10, 2017. Since publication of these items, there are suggested changes to Mitigation Measure BIO-1 which have been developed in consultation with CDFW.

The Mitigation Measure as presented in Attachments 4a) and 4b) reads:

BIO-1: Mendocino County shall amend the MCCR to require qualified County staff and/or qualified third party inspectors to review Cultivation Permit applications and identify locations where habitat suitable for sensitive species may exist. Prior to the pre-permit site inspection applications will be checked against publically available aerial imagery and databases such as the California Natural Diversity Database, California Native Plant Society Inventory of Rare and Endangered Plants, and United States Fish and Wildlife Service List of Threatened and Endangered Species to evaluate the potential for sensitive habitat on-site. During the pre-

permit site inspection County staff and third party inspectors will determine if sensitive species are present. If it is determined that sensitive species are present or could be present CDFW will be consulted. CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a cultivation permit. **In Phase 1 this Mitigation Measure is limited to areas of new disturbance, non-contiguous expansion of existing sites and relocated sites.**

The proposed revised Mitigation Measure developed in consultation with CDFW would read:

BIO-1 Mendocino County shall amend the MCCR to require qualified County staff and/or qualified third party inspectors to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with CDFW prior to the issuance of a Cultivation Permit to evaluate if there is a possibility for presence of sensitive species. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. **A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Cultivation Permit.** The County shall develop policies in consultation with CDFW to (1) determine required qualifications of third party inspectors and (2) define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. **Following the development of the policy referred to in clause (2) of the preceding sentence, consultation with CDFW shall not be required but be performed pursuant to the policy.** During Phase 3 all applications will be referred to CDFW.

This proposed change represents a collaborative effort between the County and CDFW to ensure that Mitigation Measure BIO-1 is effective. Pursuant to CEQA Guidelines Section 15074.1, mitigation measures may be replaced with equally or more effective measures. **Based on consultation with CDFW the revised Mitigation Measure is found to be more effective than that which was previously proposed.**

Finding: The proposed Mitigation Measure BIO-1 is equivalent at mitigating or avoiding potential significant effects and will not in and of itself cause any potentially significant effect on the environment.

IS/MND Errata

County staff has developed an errata sheet for the IS/MND. This errata sheet makes certain typographical changes to the IS/MND, changes for consistency with other documents made available on March 10, 2017, and includes the revised Mitigation Measure BIO-1.

Mitigation Monitoring and Reporting Program

County staff have developed a revised MMRP that reflects the proposed change to BIO-1. The revised MMRP also has updated code section references for all mitigation measures in the final column. The version of the MMRP made available on March 10, 2017, had several outdated code section references in the final column.

CEQA Resolution

County Counsel has prepared a revised proposed resolution to adopt the IS/MND. A redline of the resolution previously made available is attached to this supplemental memorandum; the clean version has been substituted as Attachment 4 to the agenda packet.

The revised resolution includes the IS/MND errata sheet as a new Exhibit C, and adopts the IS/MND inclusive of the changes made by Exhibit C. Exhibit B of the resolution, the MMRP, has been replaced with a revised version containing the updated Mitigation Measure BIO-1 and the updated code section references.

ATTACHMENTS:

- 1) Redline Draft of Revised Resolution Adopting a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation (Exhibits Omitted)

RESOLUTION NO. 17-

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO
ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE MEDICAL CANNABIS
CULTIVATION REGULATION**

WHEREAS, the County of Mendocino desires to regulate the cultivation of medical cannabis within the unincorporated areas of Mendocino County in a manner consistent with current State law, including the Medical Cannabis Regulation and Safety Act (“MCRSA”); and

WHEREAS, County staff has, under the direction of the Board of Supervisors of Mendocino County, prepared draft regulations in the form of two (2) proposed new chapters of the Mendocino County Code: Chapter 10A.17- Medical Cannabis Cultivation Ordinance and Chapter 20.242 - Medical Cannabis Cultivation Site Regulation of the Mendocino County Inland Zoning Ordinance, which chapters are together known as the Medical Cannabis Cultivation Regulation or “MCCR”; and

WHEREAS, an Initial Study was prepared for the MCCR and noticed and made available for agency and public review on November 9, 2016 (SCH# 2016112028), and subsequently recirculated on December 5, 2016, in accordance with the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*; “CEQA”) and the State and County CEQA Guidelines, which Initial Study recommended the adoption of a Mitigated Negative Declaration; and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public meeting on December 1, 2016, to solicit public comments on the proposed MCCR, and subsequently held a public hearing on December 15, 2016, which it continued to January 19, 2017, at which times the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Initial Study/Mitigated Negative Declaration and the MCCR. All interested persons were given an opportunity to hear and be heard regarding the Initial Study/Mitigated Negative Declaration and the MCCR; and

WHEREAS, on January 19, 2017, the Planning Commission adopted Resolution No. PC 2017-001, making its report and recommendation to the Board of Supervisors on the MCCR, Initial Study/Mitigated Negative Declaration, and revisions to the County’s Policies and Procedures for Agricultural Preserves and Williamson Act Contracts (“Policies and Procedures”); and

WHEREAS, on January 24, February 7 and February 14, 2017, the Board of Supervisors held additional public meetings regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures, at which times the Board of Supervisors heard additional public testimony and gave additional direction to County staff regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures; and

WHEREAS, pursuant to the direction of the Board of Supervisors, mitigation measures AES-1, AG-4, AIR-1, BIO-1 and BIO-3 were modified and mitigation measure AIR-2 was eliminated, as described in more detail in the [memorandum-memoranda](#) accompanying this

resolution as well as the errata attached to this resolution as Exhibit C, which errata also makes certain clarifying changes to the Initial Study/Mitigated Negative Declaration; and

WHEREAS, CEQA Guidelines section 15074.1 provides that prior to deleting and substituting for a mitigation measure, a lead agency shall hold a public hearing on the matter and adopt specified written findings; and

WHEREAS, on March 21, 2017, the Board of Supervisors held a duly noticed public hearing on the MCCR, the Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures at which time the Board of Supervisors heard and received all relevant testimony and evidence presented orally or in writing regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures; all interested persons were given an opportunity to hear and be heard; and

WHEREAS, as part of its report and recommendation to the Board of Supervisors on the MCCR and Initial Study, the Planning Commission recommended that the proposed draft revisions to the Policies and Procedures be brought before the Board of Supervisors; and

NOW, THEREFORE BE IT RESOLVED, based on the evidence in the record before it, that the Board of Supervisors makes the following determinations and findings:

1. The recitals set forth in the above resolution are true and correct and incorporated herein by this reference.

2. The Initial Study/Mitigated Negative Declaration for the MCCR was prepared pursuant to CEQA and the CEQA Guidelines.

3. Revised mitigation measures AES-1, AG-4, AIR-1, BIO-1 and BIO-3 are, for the reasons described in the memorandum-memoranda accompanying this resolution and in the record as a whole, equivalent at mitigating or avoiding potential significant effects and will not, in and of themselves, cause any potentially significant effect on the environment.

4. Because standards are already in place, including mitigation measure AIR-1, the elimination of mitigation measure AIR-2, for the reasons stated in the memorandum-memoranda accompanying this resolution and in the record as a whole, does not cause any potentially significant effect on the environment and the in-place standards mean that equivalency at mitigating or avoiding potential significant effects has been achieved.

5. The Board of Supervisors hereby certifies that the Initial Study/Mitigated Negative Declaration, in the form attached to this resolution as Exhibit A and as modified by the errata attached to this resolution as Exhibit C, has been completed, reviewed and considered, together with the comments received during the public review process, in compliance with CEQA and the State and County CEQA Guidelines, and finds that the Initial Study/Mitigated Negative Declaration reflects the independent judgment and analysis of the Board of Supervisors.

6. The Board of Supervisors hereby finds and determines, on the basis of the whole record before it, that there is no substantial evidence in the record that there is any significant environmental impact that might arguably be anticipated to occur as a result of the MCCR that cannot be adequately mitigated through the conditions of approval and that there is no substantial evidence that the MCCR will have a significant effect on the environment.

7. The Board of Supervisors hereby adopts the Initial Study/Mitigated Negative Declaration attached to this resolution as Exhibit A, as revised by the errata attached to this resolution as Exhibit C, and the Mitigation Monitoring and Reporting Program attached to this resolution as Exhibit B and incorporated herein by this reference. The Board of Supervisors hereby directs the Department of Planning and Building Services to file a notice of determination following the adoption of the MCCR in accordance with CEQA and the CEQA Guidelines.

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy