



**PLANNING COMMISSION
STAFF REPORT- ORDINANCE AMENDMENT**

**JULY 18, 2019
OA_2019-0002**

SUMMARY

APPLICANT: COUNTY OF MENDOCINO
501 LOW GAP ROAD
UKIAH, CA 95482

REQUEST: Review and consider a recommendation to the Board of Supervisors on proposed amendments Mendocino County Code Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance, and Chapter 20.242 – Cannabis Cultivation Sites. Multiple changes are proposed, including regarding transferability of permits, reducing the minimum parcel size for nurseries from 10 to 5 acres, extending the phaseout of generators, providing for a limited extension of the Phase One Sunset Provision for Residential Districts, modifying the types of permits that may be applied for during Phase Two, and postponing the start of Phase Three until July 1, 2020.

LOCATION: Within the unincorporated areas of Mendocino County, not including the designated Coastal Zone areas of the County.

ENVIRONMENTAL DETERMINATION: Addendum to adopted Mitigated Negative Declaration.

FROM: JULIA ACKER KROG, CHIEF PLANNER
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL
ELIZABETH BURKS, LACO ASSOCIATES

INTRODUCTION

The Mendocino County Board of Supervisors (Board) established ad hoc committees in both 2018 and 2019 to review the County's cannabis cultivation ordinances and provide recommendations to the Board.

The 2018 ad hoc committee made its recommendations to the Board in November 2018, and at that time the Board directed staff to make a number of changes to Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance and Chapter 20.242 – Cannabis Cultivation Sites. Many recommended changes to Chapter 10A.17 were acted upon by the Board in December 2018, but several changes required amendments to Chapter 20.242 of the County Zoning Code, which requires review by the Planning Commission, and needed additional review under the California Environmental Quality Act (CEQA).

The 2019 ad hoc committee made its recommendations to the Board in May 2019, and the Board directed staff to make additional changes to Chapters 10A.17 and 20.242. Some of the directed changes are being made at this time, while others will take additional time for staff to review and prepare for adoption, such as creating a use permit based process for Phase Three.

PROPOSED CHANGES

1. Section 10A.17.040: Elimination of Paragraph (A)(4) Regarding Visibility of Cannabis Plants from a Public Right of Way or Publicly Traveled Private Road

The Board directed that this requirement be deleted, in part because the breadth of the statement made application unwieldy. One particular concern raised by the Board was how to apply this requirement when many roads in the County, private and public, are on ridgetops and allow for views of large portions of the County.

2. Section 10A.17.060 and Section 20.242.040: Reduction of Minimum Parcel Size for Type 4 Nursery Permits from Ten Acres to Five Acres

A Type 4 (Nursery) permit allows for the cultivation of cannabis that may take the form of either vegetative and non-flowering starts, or seeds, which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. A Type 4 permit is restricted to a parcel with a minimum of ten (10) acres, however, legal parcels in industrial zoning districts were not subject to this restriction.

In 2018, as part of OA_2018-0006 (the Overlay and Exceptions process), staff received direction to reduce the lot area standards associated with cannabis cultivation to engender greater land-use flexibility. As part of that ordinance amendment, it was determined that a parcel with a lot area between 3.5 and 4.99 acres, and which shared at least 50 percent of its boundaries with parcels five acres in size or larger, could obtain a permit as allowed for a five-acre parcel with similar zoning, subject to approval of an Administrative Permit. Additionally, that ordinance amendment determined that a parcel with a lot area between 7.0 and 9.99 acres, and which shared at least 50 percent of its boundaries with parcels 10 acres in size or larger, could obtain a permit as allowed for a 10-acre parcel with similar zoning, subject to approval of an Administrative Permit. Therefore, Staff allowed for a Type 4 permit to be located on a parcel as small as 7.5 acres, subject to the approval of an Administrative Permit.

In 2018, at the direction of the Board of Supervisors, it was requested that staff investigate the establishment of a 'Tiered Nursery' structure to allow for further nursery flexibility on smaller parcels. On May 14, 2019, rather than a 'Tiered' approach, Staff recommended to the Board a general reduction of the minimum acreage for Type 4 permits to 5 acres. The Board of Supervisors agreed with the Staff recommendation, and amendments are proposed to Section 10A.17.060 and Table 1 in Section 20.242.040.

In addition to the Board direction regarding acreage limits, Staff is proposing further changes to the asterisks following Table 1. Staff recommends allowing for a Type 4 permit on parcels as small as 3.5 acres, subject to the approval of an Administrative Permit. Staff believes this is consistent with the allowances made by the Overlay and Exceptions process.

3. Section 10A.17.070(F): Extension of Generator Phaseout

This provision of the ordinance currently requires that indoor or mixed-light cultivation sites need to have installed an alternative power source to the generator that will meet at least one-half of the sites' power requirements within 12 months of the initial application date, and the alternative power source needs to meet the needs of the site (and any required dwelling unit) by the end of the second permitted year. These provisions have proven burdensome for cultivators to meet, and the Board directed staff to research whether amendments could be reasonably made.

Staff is proposing an extension and modification of the two time periods. First, the existing 12 month period in which a cultivator must install alternative power sources meeting one-half of the sites' power needs is proposed to be extended to a total of four (4) years from the date of application. Second, the requirement to fully meet the power needs of the site by the end of the second permitted year is being modified to simply be within an additional two (2) year period, starting at the first renewal of the permit after the expiration of the 4 year period.

The proposed extension from 12 months to 4 years provides additional time for cultivators who applied even in 2017 to meet the fifty-percent alternative power source requirement. Note that even with this extension, 2017 applicants are already halfway through this extended time period. The modification of the time period to fully meet the power needs of the site with alternative power is generally consistent with the existing ordinance.

During this extended time period with generators, the generator and the cultivation site will remain subject to all of the existing requirements of the ordinance regarding noise, fuel storage and other issues. Additional cultivators may come into the program with a longer phaseout period, which would bring more cultivation sites into the regulated market as opposed to remaining in the black market.

4. Section 10A.17.070(K) and Section 20.242.040(E): Transferability of Permits

The ordinance currently provides that cultivation permits under Chapter 10A.17 and any required permit under Chapter 20.242 are non-transferable except to spouses/domestic partners, children, parents, or certain trusts for estate planning purposes, so long as the trust existed prior to January 1, 2016.

Cultivators have requested a broader ability to transfer permits. Phase One permits are only available to persons with proof of prior cultivation, and Phase Three permits are not currently allowed in all of the zoning districts where Phase One permits are allowed. Current cultivators have raised concerns about investing in property where a successor would not be able to apply for a new permit and not be able to take over the current permit.

Allowing for limited transferability of permits while not allowing for new cultivation permits may result in the phaseout of certain cultivation sites over time. However, given that permits may presently be transferred within a family from one generation to the next, there is no certainty to any reduction in the number of cultivation sites, and the IS/MND did not presume any environmental benefit on the basis of non-transferability.

Staff was given direction to create a process that would allow for the transferability of permits. Staff looked to the assignment of permit process found in the Coastal Zoning Code for coastal development permits and has incorporated that language into both Chapter 10A.17 and Chapter 20.242. This process requires the submission of certain documents to the County at the time of the transfer. Pursuant to Board direction, cultivation sites subject to the Sunset Provision of section 10A.17.080(B)(2) are not assignable.

Board direction was not clear as to whether this assignment prohibition extended to Cannabis Accommodation Combining District or non-conforming RR parcels that have received an administrative permit. Since both of these groups are technically made up of parcels that are otherwise subject to the Sunset Provision, they have been specifically excluded from eligibility for transfer in the draft ordinances prepared for the Planning Commission. However, Staff is requesting discussion and recommendation from the Commission on this topic.

5. Section 10A.17.080(A)(2) and Section 20.242.050: Amendments to Types of Permits Which May Be Applied For During Phase Two

The cultivation ordinances currently allow only for Type 1A and 2A cultivation permits during Phase Two. Phase Two, which began on January 1, 2018, is specifically for cultivation on industrially-zoned property and proof of prior cultivation is not required. Phase Two is currently limited to Types 1A and 2A Permits, which are indoor cultivation only.

The Board directed that mixed-light cultivation permits (C-B, 1B and 2B) also be allowed to apply during Phase Two, but only in greenhouses with odor filtration. Hoop houses and outdoor cultivation types remain excluded, which will minimize odor from any mixed-light cultivation site.

6. Section 10A.17.080(A)(3): Delay in Start of Phase Three to July 1, 2020

Phase Three is currently slated to open to applications on January 1, 2020. However, in 2018 the Board provided direction that Phase Three be revised in its entirety to require some level of discretionary permit and individualized review under the California Environmental Quality Act for each application. The process of rewriting Chapters 10A.17 and 20.242 to accommodate this change is anticipated to take some time and several meetings of the Board of Supervisors and Planning Commission. Staff requested that the start date for Phase Three be pushed back to accommodate the ordinance revision process. The Board gave such direction, with the caveat that the start date could be pushed earlier, depending on when the ordinance revisions were complete. The change to Section to 10A.17.080(A)(3) effectuates this direction.

7. Section 10A.17.080(B)(2)(b)(ii): Limited Extension of Sunset Period for Areas Near Coastal Zone

Chapter 10A.17 currently contains what is known as the “Sunset Provision for Residential Districts” in Section 10A.17.080(B)(2)(b). Cultivation sites on parcels located in specified residential districts (or districts where a dwelling unit is a principally permitted use and the parcel is less than 2 acres in size), may obtain a cultivation permit only for 3 years after the effective date of the ordinance adopting Chapter 10A.17, or May 4, 2020. This provision was added by the Board of Supervisors in response to public comment requesting that cultivation sites be removed from residential neighborhoods.

On May 14, 2019, the Board of Supervisors provided direction to staff to allow for a limited extension of the Sunset Provision, from May 4, 2020, to June 30, 2022, which would apply only to indoor cultivation sites which are permitted or in the permitting process, and within proximity to the Coastal Zone.

The Board directed Staff to recommend a definition of what area would qualify as “within proximity to the Coastal Zone.” This area was generally understood to be areas of the County subject to the Inland Zoning Code but located in the western portion of the County that typically identifies with being adjacent to the coast.

The Board focused the extension of the Sunset Provision on this area for two primary reasons, both of which relate to the limited opportunities for cultivators in this area to relocate from their existing sites. First, the lack of adoption of a cultivation ordinance in the Coastal Zone has meant that no parcels within the Coastal Zone have been available to be considered for relocation. Second, the zoning of parcels in the Inland Zone near the coast does not generally include the types of zones to which a cultivator can relocate. Property zoning is generally either of the type subject to the Sunset Provision, or Forestland or Timber Production, neither of which are permitted to host a relocation cultivation site.

In drafting the proposed ordinance, staff recommends that sites within two (2) miles of the Coastal Zone boundary be considered “within proximity” to the Coastal Zone. This distance is based upon review of mapping, which indicates that the bulk of permitted sites that are proximate to the Coastal Zone boundary are located within the two (2) mile distance that is suggested by staff.

Staff is also proposing a deadline of May 14, 2019, as the date by which a cultivator must have obtained the permits required for their cultivation site, or have applied for the permits required for their cultivation site. May 14 was the date direction by the Board was given for this change; creating this deadline rewards the cultivators who applied in a timely manner and limits the possibility for a last minute rush for permit applications. As indoor cultivation sites in these zoning districts require both a permit under Chapter 10A.17 and an administrative permit under Chapter 20.242, the proposed language requires both permits to have been obtained or applied for.

ENVIRONMENTAL DETERMINATION

In order to comply with the California Environmental Quality Act (CEQA) for the initial adoption of the County’s cannabis cultivation permit program (the adoption of Chapters 10A.17 and 20.242), the County adopted a Mitigated Negative Declaration (State Clearinghouse Number 2016112028). An addendum to the Mitigated Negative Declaration has been prepared to satisfy the requirements of CEQA for the adoption of the proposed ordinance amendments. Exhibit B of the proposed Planning Commission resolution attached to this staff report contains the addendum, which reviews the proposed changes and makes findings on the level of significance these changes entail for purposes of CEQA.

GENERAL PLAN CONSISTENCY ANALYSIS

Staff finds that the proposed amendments are consistent with the 2009 Mendocino County General Plan. The amendments would not constitute an increase in environmental impact, or change to existing land use provisions. The allowed uses would still only be permitted in areas already otherwise allowed for by the General Plan.

RECOMMENDED MOTION FOR THE PLANNING COMMISSION

Adopt the resolution recommending that the Board of Supervisors approve Ordinance Amendment No. OA_2019-0002 which will modify Chapter 10A.17 - Mendocino Cannabis Cultivation Ordinance and Chapter 20.242 – Cannabis Cultivation Sites of the Mendocino County Code and finding that the Addendum to the Adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed ordinance changes and that no subsequent environmental review is needed.

DATE

JULIA ACKER KROG
CHIEF PLANNER

ATTACHMENTS

1. Proposed Resolution
 - a. Proposed Ordinance – Redline
 - b. Draft CEQA Addendum