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MEMORANDUM

DATE: APRIL 10, 2018

TO: BOARD OF SUPERVISORS

FROM: MARY LYNN HUNT, CHIEF PLANNER
MATTHEW KIERDROWSKI, DEPUTY COUNTY COUNSEL

SUBJECT: OA_2018-0004- AMENDMENT TO MENDOCINO COUNTY CODE
CHAPTER 10 A.17 MEDICAL CANNABIS CULTIVATION AND
CHAPTER 20.242- MEDICAL CANNABIS CULTIVATION SITE OF THE
INLAND MENDOCINO COUNTY CODE.

INTRODUCTION

On March 15, 2018, the Planning Commission heard and made recommendations to the Board of Supervisors regarding Mendocino County Code Chapters 10.17.A and 20.242. This report details the amendments to these chapters.

The most extensive change involves adapting the code sections to allow for both adult-use and medical cannabis, as opposed to exclusively medical. This would be accomplished by removing most instances of the phrase "medical" throughout, and referring to just "cannabis" to imply both types of use. Several minor changes are proposed in order to better align the existing terms and definitions with those of the State. The proposed changes are also intended to ensure consistency throughout the code sections themselves. These proposed changes are detailed in the following section, and can be viewed as red-line edits in the attached documents.

The title of these collective ordinances would be changed from Medical Cannabis Cultivation Regulations to Mendocino Cannabis Cultivation Regulations (MCCR).

One of the results of the proposed changes is that Chapter 10A.17 will become the chapter with all cultivation regulations, whether for medical or adult use. Cultivation regulations for personal cultivation of adult use cannabis had previously been adopted and placed in Chapter 9.30. These regulations have been incorporated into Chapter 10A.17, and were part of the changes reviewed by the Planning Commission. It is now proposed as part of the action of the Board of Supervisors that Chapter 9.30 be repealed.

BACKGROUND

On April 4, 2017, the Board adopted Ordinance No. 4381, adding Chapter 10A.17 Medical Cannabis Cultivation and Chapter 20.242 Medical Cannabis Cultivation Site (Ordinance No. 4381) to the County Code regarding the cultivation of medical cannabis in Mendocino County and creating a permit program for cultivation in the inland area of Mendocino County. A Mitigated Negative Declaration (MND) was adopted for Ordinance No. 4381 (SCH No. 2016112028). The ordinance took effect on May 4, 2017.

On August 22, 2017, the Board amended numerous sections of Chapter 10.17.A Medical Cannabis Cultivation (Ordinance No. 4392). On March 13, 2018, the Board of Supervisors adopted changes to

Chapter 20.242 related to expansion in the Rangeland zoning district (Ordinance No. 4405). On March 27, 2018, the Board of Supervisors adopted changes to Chapter 20.

PLANNING COMMISSION RESOLUTION/ DISCUSSION

The Planning Commission's resolution making its report and recommendation on the proposed ordinance changes is attached to this agenda packet. Also attached is the staff memorandum and a supplemental staff memorandum that were presented to the Planning Commission.

For a review of the issues presented to the Planning Commission as part of the proposed ordinance amendments, please see the attachments to the agenda packet. This memorandum will review issues presented to the Planning Commission but not discussed in detail, as well as recommendations of the Planning Commission that differed from the staff recommendations.

Registration Requirement

In preparing the proposed amendments to Chapters 10A.17 and 20.242, staff generally made changes as directed by the Board of Supervisors. During such preparation, staff of the Department of Agriculture recommended certain changes to various code sections, one of which was regarding the registration requirement for qualified patients or primary caregivers in section 10A.17.030. This section is already proposed to be modified to incorporate from Chapter 9.30 the limitations regarding cultivation of cannabis for adult use, and Chapter 9.30 is proposed to be repealed as part of this ordinance.

An additional change recommended by the Department of Agriculture is the deletion of the requirement that qualified patients or primary caregivers register with the Department. This registration requirement has lost some relevancy following the legalization of adult use cannabis and cultivation. Enforcement of the personal cultivation provisions for either medical or adult use may be done without the registration requirement. But staff requests direction from the Board of Supervisors before making this change.

Code Enforcement Section Changes

Certain changes had been recommended by the code enforcement division to delete any requirement of the County to request a return receipt when mailing. Upon hearing public comment on these changes, the Planning Commission recommended against these changes, and the version of the ordinance prepared for the Board does not include the proposed changes.

Staff will return with any additional recommended changes in the future, after reviewing the language associated with the service procedures in greater detail and with consideration given to the Planning Commission's current recommendations and to public comment.

State Water Resource Control Board/ Regional Water Quality Control Board Orders

In order to regulate environmental effects from the unregulated commercial medical cannabis industry, the North Coast Regional Water Quality Control Board (NCRWQCB) adopted the *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects In the North Coast Region (Order)* in August 2015.

This has since been replaced by the State Water Resource Control Board with the Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation (2017) which is implemented through the Statewide General Order. Cultivators may continue to operate under the applicable Regional Water Board order until July 1, 2019, at which time coverage under the statewide Cannabis General Order shall be required.

The performance standard found in Mendocino County Code Section 10A.17.110(F) requires that permittees maintain enrollment with the North Coast Regional Water Quality Control board order or any substantially equivalent rule may be subsequently adopted by the County or other responsible agency.

The Statewide General Order provides substantially the same requirements and protections of the regional order. Therefore no clarifying language is required.

Disturbance Definition

The Planning Commission asked that the proposed definition of disturbance be reconsidered to ensure that there was an allowance for defensible space for fire protection.

The proposed definition came from the State Water Resources Control Board Cannabis Cultivation Policy (2017):

Land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located.

To address the Planning Commission recommendations the following additional clarification would be added:

Areas where plant material has been removed for the purpose of wildfire suppression and where the plant material will recover with seasonal precipitation, are not considered disturbed.

The above is also from the State Water Resources Control Board Cannabis Cultivation Policy and is included with the section that describes how to calculate disturbed area. The ordinance proposed for the Board's consideration has included this additional clarification, as it is in conformance with the approach of the State Water Resources Control Board and allows the flexibility to address fire suppression. It also better reflects Mendocino County Code Section 10.A17.110(H) which requires cultivators to maintain defensible space.

Type of permit required in TPZ and FL zones – Section 20.242.040 and Table 1

At the time the Initial Study for the Mendocino County Cultivation Ordinance was prepared it was assumed that existing cultivation sites, operating at the current size in the TPZ and FL zones could be permitted with a Zoning Clearance up to the maximum allowable size in the zone. If an expansion occurred from the original size (up to the maximum allowed in the zone) an Administrative Permit (AP) would be required.

However during the final public hearing adopting the ordinance an errata sheet for the Initial Study/Mitigated Negative Declaration (IS/MND) was prepared and it specified that any allowable cultivation site 2,500 square feet or larger in the TPZ and FL Districts would require an AP. Subsequently staff understood Board direction to be more similar to the original language and require an AP only for expansion of cultivation operations. From a CEQA perspective, the analysis was conducted assuming that an AP would be required for expansion and not for existing cultivation sites that would be considered part of the baseline conditions. Any permitting scheme that is more stringent would not conflict with the CEQA analysis. The form of the code changes presented to the Planning Commission showed changes intended to simplify Table 1 and only require an administrative permit where expansion was proposed beyond what was previously cultivated. This issue was briefly discussed at the Board of Supervisors meeting on March 13, 2018, and at the Planning Commission's meeting on March 15. Staff informed the Planning Commission of the concerns regarding the language, but the Planning Commission did not make any particular recommendation.

In preparing the agenda packet for the Board of Supervisors, staff is proposing changes to Section 20.242.040 and Table 1 that more closely adhere to the language presented in the errata sheet to the IS/MND. Changes to Table 1 that would have changed the zoning permit requirement for TPZ and FL

zones, for permit types 1, 2 and 4, from an AP to a zoning clearance are no longer being proposed. The double asterisk for TPZ and FL zones is also being deleted in its entirety. This comports with the language presented in the errata sheet to the IS/MND, which states that any cultivation site 2,500 square feet or larger in the TPZ and FL districts will require an AP.

As now proposed, Table 1 now contains all relevant requirements for the TPZ and FL districts: outdoor or mixed-light cultivation up to 2,500 square feet is allowed with a zoning clearance review, while all larger cultivation permits will require an administrative permit (indoor cultivation of up to 2,500 square feet requires either an AP or a minor use permit, depending on size). Modifications have also been made to the CEQA addendum prepared for the ordinance consistent with this change.

Proof of Prior Cultivation Requirements

Public comment to the Planning Commission raised certain questions regarding the issue of proof of prior cultivation for cultivators who previously cultivated at a different location, whether as a tenant or a property owner. The Planning Commission had no specific recommendation for ordinance changes, but requested the Board of Supervisors consider the issue. Staff seeks direction from the Board of Supervisors regarding any changes to this portion of Chapter 10A.17.

Phase One and Extinguishment of a Cultivation Site

Staff presented the Planning Commission with a supplemental memorandum for the March 15, 2018, meeting that included additional changes to Chapter 10A.17, which the Commission endorsed. One of these changes was creating a new paragraph in section 10A.17.080(B) addressing the ability of a permit holder in certain zoning districts to not cultivate one year out of every five years.

The new paragraph (B)(6) is intended to carry out Board direction from September 2017. In adding paragraph (B)(6), paragraph (B)(2)(d) of section 10A.17.080 has been superseded and is proposed to be deleted. The extinguishment of a cultivation site if a cultivation permit is not obtained or revoked in the future would occur for any location in Phase One, not just for the zoning districts covered by paragraph (B)(2)(d). This change is implied by the direction of the Board from last September, as the allowance for cultivators in RL, FL and TPZ zoning districts to take a year off from cultivating without extinguishing their right to cultivate was not specifically needed under the existing ordinance.

However, staff requests Board direction as to (1) whether the placement of the provisions of paragraph (B)(6) is correct, and (2) whether the board intended for the extinguishment provision to apply to destination cultivation sites pursuant to the relocation provisions of paragraph (B)(3).

Baseline Date

Amendments to Chapter 10A.17 reviewed by the Planning Commission included a new definition of Baseline Date, which is defined as the baseline date of the initial study prepared for the initial adoption of the cannabis cultivation ordinances. This date is August 26, 2016, but the draft prepared for the Planning Commission stated the year as 2017. This has been corrected in the version attached to this agenda packet.

Changes Based on Written Public Comment

Ms. Hannah Nelson submitted a letter to the Planning Commission requesting many additional changes to Chapters 10A.17 and 20.242. In reviewing the letter, staff believes that many changes will require additional specific direction from the Board of Supervisors. However, certain suggested changes are cleanup changes consistent with changes already proposed by staff and have been incorporated into the form of the ordinance prepared for the Board of Supervisors. These include minor modifications to definitions that reference "MAUCRSA," changes related to a cultivation site being allowed on one or more legal parcels under certain circumstances, specifying a date for the end of the application period for Phase One relocation applications, and an erroneous reference to Administrative Permit instead of Use Permit in section 20.242.070.

ENVIRONMENTAL RECOMMENDATION

In order to comply with the California Environmental Quality Act (CEQA), the County of Mendocino adopted a Mitigated Negative Declaration (State Clearinghouse Number 2016112028), pursuant to the provisions of CEQA. An addendum to the existing Mitigated Negative Declaration has been prepared to satisfy the requirements of CEQA. The addendum is attached to this staff report and makes findings on the level of significance these changes entail, with regards to environmental review.

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

That the Board of Supervisors adopt an ordinance repealing Mendocino County Code Chapter 9.30 Adult Use Marijuana Cultivation Regulation and amending Mendocino County Code Chapter 10A.17 Medical Cannabis Cultivation and Chapter 20.242 Medical Cannabis Cultivation Site of the Inland Mendocino County Zoning Code, and authorize Chair to sign same.

ATTACHMENTS

1. OA_2018-0004 Planning Commission Resolution
2. OA_2018-0004 Planning Commission Staff Report
3. OA_2018-0004 Planning Commission Supplemental to Staff Report
4. OA_2018-0004 CEQA Addendum
5. Adopted Mitigated Negative Declaration/Initial Study (OA_2016-0003)
6. Previous CEQA Addendum (OA_2018-0001)
7. OA_2018-0004 Ordinance Redline Version
8. OA_2018-0004 Ordinance Final Version