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TO: Honorable Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

DATE: July 18, 2017

**SUBJECT: Medical Cannabis Cultivation Program
Topics for Discussion/Direction at July 18, 2017, Meeting**

The Board of Supervisors adopted Ordinance No. 4381, which added Chapters 10A.17 and 20.242 to the Mendocino County Code, on April 4, 2017, and the ordinance was effective on May 4, 2017.

At its meeting on July 11, 2017, the Board of Supervisors directed that staff return at the meeting of July 18, 2017, for a more focused discussion of several issues related to the implementation of the County's Medical Cannabis Cultivation Program. These issues are briefly outlined below and will be discussed in greater detail at the July 18, 2017, Board meeting.

1. Permit Approval and Denial Processes

Approval of a permit pursuant to Chapter 10A.17 is intended to be a ministerial review. If the permit does not meet all requirements, the permit is to be denied. The Department of Agriculture has been working with applicants as part of this process to assist in determining whether all code requirements can be met.

Criteria for denial of a permit application are clearly identified in Section 10A.17.040 (General Limitations on Cultivation of Medical Cannabis). In

addition, applications must meet all of the requirements of Sections 10A.17.090 and 10A.17.100.

To issue a denial of an application, there must be no avenue for correction or recourse by the applicant to meet the requirement. For example, incorrectly applied for cultivation sites may be able to be moved or altered to meet all requirements, such as setbacks from neighbors or schools.

For an application to be approved, the following departments or divisions must provide the following:

Agriculture: All application components are submitted and deemed to meet ordinance requirements. This includes referrals to resource agencies such as Air Quality or the Department of Fish and Wildlife.

Planning: Zoning Clearance has been provided based on permit type, acreage and zoning. If an administrative permit or use permit is required, that permit must be finalized prior to approval.

Building: All structures on the site are properly permitted for the use types described, or a building permit has been issued for such structures but not yet finalized.

Env. Health: If applicable, all aspects of a site's septic, leach field and well have been appropriately addressed and permitted.

Trans.: If applicable, referral to CalTrans or Department of Transportation regarding encroachment permit status.

2. Prioritizing Review of Applications with Code Enforcement Complaints

The Code Enforcement Division readily addresses complaints received related to Cannabis, including those that are in the permit application process. The Code Enforcement Division forwards complaint information about applicants to the Department of Agriculture and flags the complaint within the TrackIt system indicating that there is a complaint related to that property. Code Enforcement also works closely with the Department of Agriculture and the Planning and Building Divisions, when they review these applications, to assist in determining what action may need to be taken before a permit could be issued.

3. Clarification of Building Code Issues
 - a. Requirements Related to Structures
 - b. Hoop House/Green House Issues
 - c. Status of Buildings Relative to Employees and/or Customers
 - d. ADA Requirements

The Building Division will present a review of these issues at the July 18 meeting.

4. Potential Extension of December 31, 2017, Application Deadline

The Board of Supervisors mentioned at its July 11 meeting that, for various reasons, it may be appropriate to extend the application deadline beyond December 31, 2017.

5. Potential Overlay/Exception so Areas Could Opt Out of Cannabis Cultivation

The Board of Supervisors has previously provided to staff direction to create an overlay/exceptions process that would apply to certain areas of the County or specific parcels that do not meet zoning requirements under the existing cannabis cultivation ordinances. On July 11, the Board mentioned that as a corollary to that existing process, it might be desirable to establish areas of the County where cannabis could not be cultivated.

6. Potential Ordinance Updates/Clarification

- a. Prohibition on Tree Removal

Section 10A.17.040 contains a prohibition on tree removal that applies to all cultivation sites, whether a permit is required or the cultivation meets one of the exemptions. However, this provision only became operative as of May 4, the effective date of the ordinance. Concerns have been raised by resource agencies and complaining parties regarding tree removal that may have occurred prior to May 4. In reviewing the

ordinance, Section 10A.17.090 still contains paragraph (T) which speaks to the possibility of a less-than-3-acre conversion permit, or, for existing cultivation sites, providing evidence of mitigation of prior tree removal as required by resource agencies.

Given that tree removal may have occurred prior to the May 4 effective date of Chapter 10A.17, Staff would like Board direction regarding how to address such tree removal. Paragraph (T) may be used or revised to provide for greater input from resource agencies.

b. Change of Type of Cultivation

Chapter 10A.17 does not require that the applied for cultivation site be the same type of cultivation that was shown as part of the applicant's proof of prior cultivation. Staff would like to clarify whether the Board intended the type of cultivation site being applied for must be the same as the applicant's prior/existing cultivation site.

c. Requirements for Multiple Permits on a Parcel

Section 10A.17.070(D) provides that a person may apply for and obtain a maximum of 2 permits, which shall generally be granted at a maximum density of one permit per applicant per legal parcel. An exception provides that a person may obtain two permits of different types on a single parcel if the total square footage of the two permits does not exceed the maximum square footage permitted on the parcel for the zoning district.

Staff proposes to amend this paragraph to clarify the language to more explicitly limit the density of a permits on a parcel to one permit per parcel, with two permits allowed where the maximum square footage is that of the larger permit being applied for. For example, a person could apply for a large outdoor cultivation permit and a cottage indoor cultivation permit, with the two permits sharing the total 10,000 square feet allowed.

d. Exemption Stacking

Section 10A.17.030 provides that qualified patients, persons with an identification card or primary caregivers are exempt from permit requirements, subject to certain requirements including maximum amounts of square footage that may be cultivated.

Staff would like clarification from the Board regarding whether the exemptions of Section 10A.17.030 also apply to each parcel, creating a maximum of 100 square feet (200 square feet for primary caregivers) per legal parcel.

e. Third Party Inspectors

Chapter 10A.17 currently contains a process for third party inspectors, hired by cultivators, to perform inspections of cultivation sites and report to the Department of Agriculture regarding the conditions of the site. Such a system was in place for the County's previous Chapter 9.31 permit programs, and a third party system is also used by the Water Board.

Given the inspectors hired by the Department of Agriculture and the active involvement of the Code Enforcement Division, staff requests direction from the Board as to the role of third party inspectors. Consultants or agents may be very helpful to cultivators in preparing applications or in reviewing the cultivation site during cultivation. However, concerns have been raised as to whether it is appropriate to rely on inspections performed by consultants paid for by the cultivator, and whether additional inspections are needed when the Department of Agriculture will be inspecting the cultivation sites at least twice a year (once before permit issuance and at least once during cultivation), has the ability to inspect more often, and when the Code Enforcement Division may also respond when a complaint is filed. Alternatively, the ordinance could be amended to provide alternate roles for inspectors, including acting specifically as County contractors.

f. Clarify Compliance with Section 10A.17.040 for Proof of Prior Cultivation

Section 10A.17.080(B)(1) requires that prior cultivation sites shall have been in compliance with the provisions of Section 10A.17.040. That section contains requirements for all cultivation in the County, including setbacks and other specific requirements, such as odors, lighting and noise.

In confirming proof of prior cultivation, it is difficult to ascertain compliance with most of the issues listed in Section 10A.17.040, and some requirements were not known prior to the adoption of the chapter. Staff seeks direction from the Board on whether the reference should be

narrowed to paragraph (A) of Section 10A.17.040, which would limit the review to compliance with setbacks, all of which were known and applicable prior to the adoption of Chapter 10A.17, or if the Board has separate clarifying direction.

g. Enforcement Issues, Pre- and Post- Permit Issuance

At a later date, staff intends to present changes to several sections of Chapter 10A.17 to provide additional detail regarding enforcement concerns and processes.