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DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: NOVEMBER 16, 2018

TO: BOARD OF SUPERVISORS

FROM: MARY LYNN HUNT, CHIEF PLANNER
JESSE DAVIS, SENIOR PLANNER
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SUBJECT: OA_2018-0008/R_2018-0005: AMENDMENTS TO MENDOCINO COUNTY CODE CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 - CANNABIS CULTIVATION SITES; PROPOSED ADDITION OF CHAPTER 20.118 – “CA” CANNABIS ACCOMODATION COMBINING DISTRICT AND CHAPTER 20.119 – “CP” CANNABIS PROHIBITION COMBINING DISTRICT TO THE MENDOCINO COUNTY CODE, AND REZONING OF CERTAIN PROPERTIES TO APPLY THE CA AND CP DISTRICTS.

The Board of Supervisors directed that a Request for Proposals (RFP) be circulated to secure assistance with Cannabis Zoning Exemptions – an effort intended to identify and implement strategies to facilitate the permitting of commercial cannabis uses in Mendocino County. The RFP identified the following areas of interest/concern: Exemptions for properties that do not meet zoning requirements of Chapters 10A.17 and/or 20.242; Tools such as Use Permits, Overlay Zones or Combining Districts; Options for phasing out commercial cultivation in residential neighborhoods; and, Exception process for properties not within an Overlay Zone/Combining District.

SUMMARY: Amendments to County Code Chapters 10A.17 - Mendocino Cannabis Cultivation Ordinance and 20.242 - Cannabis Cultivation Sites would provide greater flexibility for setbacks and lot sizes in the review of cannabis cultivation permits. The new Chapter 20.118 - Cannabis Accommodation (CA) Combining District is intended to support continued operation of existing cultivation sites and the new Chapter 20.119 - Cannabis Prohibition (CP) Combining District is intended to prohibit new commercial cannabis uses and would sunset existing permitted commercial cannabis uses. Also proposed is the establishment of the first CA and CP Districts.

Establishment of the Mitchell Creek North and Mitchell Creek South CA Combining Districts were considered in the study. Staff recommended to the Planning Commission that these proposed districts be removed from the rezone proposal due to insufficient support from the property owners within the proposed areas. The Planning Commission, at its October 18, 2018, meeting, recommended that these areas not be rezoned to the CA District.

BACKGROUND: Mendocino County circulated a Request for Proposals for assistance with Cannabis Zoning Exemptions – an effort intended to identify and implement strategies to facilitate the permitting of commercial cannabis uses in Mendocino County. Michael Baker International (“Michael Baker”) was selected to assist the County and, following selection, contract execution and scope refinements, Michael Baker formally initiated work on December 5, 2017. Initial strategies and approaches were developed and three small working groups (Overlay Sub-Groups of the Cannabis Overlay Working Group) were established by the County to provide guidance on what was then referred to as Opt-In, Opt-Out, and

Exceptions code amendments. The general approach of Michael Baker's effort was presented to the Board of Supervisors on January 23, 2018, and Michael Baker proceeded with work with adjustments in approach as directed by the Board.

From January to June 2018, Michael Baker led more than 15 meetings with members of the Cannabis Overlay Working Group, including meetings with the three Overlay Sub-Groups that were tasked with helping to guide development of what is now referred to as the Cannabis Accommodation (CA) Combining District, the Cannabis Prohibition (CP) Combining District, and the Exceptions to the current regulations. These meetings led to the creation of three Framework documents that were presented to the Board of Supervisors in a public presentation on June 12, 2018. The Framework documents were revised based on Board recommendations and preparation of draft regulations commenced; these documents are provided as Attachment 3 of this report.

Through Board discussions on January 23, 2018, Michael Baker received direction to rely on the Overlay Sub-Groups to guide and develop policy options for this effort. As such, Overlay Sub-Group members were encouraged to meet with and represent the broader community in this process. Meetings with the Overlay Sub-Groups resulted in the Framework documents that were presented for Board review on June 12, 2018. At the June meeting, the Board directed Michael Baker to hold meetings for each community that was considered for either a CA or a CP Combining District.

PUBLIC PARTICIPATION: Community input was received through three primary venues: a series of community meetings held on July 26 and July 27; a dedicated email address of cannabisoverlay@mendocinocounty.org; and through online community surveys for locations proposed as CA or CP Combining Districts. Brief summaries of community input are provided below and a more detailed summary is provided as Attachment 6 of this report.

Community Meetings: Following Board review and incorporation of Board-directed revisions, the draft Framework documents were presented at community workshops on July 26 and 27, 2018, in Covelo, Laytonville, Mitchell Creek, and Ukiah. Noticing for these meetings, and possibly the time of meetings, did not allow many residents to attend. In all, approximately 150 residents were in attendance at these meetings and many comment cards from participants were collected.

Meetings conducted in Covelo and Laytonville were lightly attended, in part due to limited advance notice and in part due to scheduling during working/business hours. While lightly attended, comments at these meetings were overall supportive of the CA provisions proposed for these communities. While the approach was supported in Covelo, there was strong sentiment that the size of the proposed district was too small and that a much broader solution was needed.

A meeting held in Ukiah to discuss the Deerwood and Boonville Road/Woodyglen CP Districts generated strong support from community members for the district. Some concerns were expressed by advocates of cultivation that widespread prohibitions could impact cannabis growers and the County economy, but no opposition to the proposed districts was voiced.

The Mitchell Creek meeting was well attended with regard to number of participants, but homeowners felt they were underrepresented. The discussion included comments about the benefits of cultivation as well as concerns regarding the negative impacts of cultivation on Mitchell Creek neighborhoods.

In the community meetings, it became clear that a convenient and relatively anonymous canvassing of residents was required to gain a sense of community support for the Combining Districts that were proposed for this effort. The use of an online survey was identified as an alternative for the currently proposed Combining Districts as compared to the petition of landowners that will be required for future cannabis Combining Districts (see discussion below).

Community Emails – www.cannabisoverlay@mendocinocounty.org

As part of the community input process, a web address was established to receive comments from the public: cannabisoverlay@mendocinocounty.org. This address has received more than 150 messages, including a combination of comments and requests for assistance with the survey. Comments have been reviewed and consolidated into recurring messages. Requests for assistance or general questions received direct email responses.

At least 88 email comments were received regarding the Mitchell Creek CA District, and these comments were almost 90 percent in opposition. Specific concerns are described in Attachment 6, but generally the concerns, in order of frequency cited, were impacts to water supply, increased crime, traffic, lack of noticing, commercial use incompatibility, impact on property value, and general environmental concerns.

Input on the Deerwood and Boonville Road/Woodyglen CP Combining Districts were consistently in favor of the district. In total, 28 comments were received and all supported establishment of the districts.

Email comments on Covelo, Laytonville, and South Leggett CA Combining Districts were very light. Comments were generally either in favor or requested additional information. Concern over the relationship of sensitive use buffers and tribal lands were noted in these districts.

Community Surveys: Proposed regulations require a demonstration of 60 percent of affected property owners to qualify a district for consideration. Requiring a petition would not have been feasible for some of the currently proposed Combining Districts due to schedule constraints, size of proposed districts, and other concerns expressed by community members. As an alternative, community surveys over the internet were conducted to gauge landowner support for the currently proposed districts. The survey process was not without flaws, including the following issues:

- Assessor Parcel information is not always accurate due to property sales, changed mailing addresses, and similar issues.
- The postcards used for the survey were, in some cases, discarded by recipients as junk mail.
- Some individuals felt the questions were unclear or poorly worded.
- Not all residents have easy access to the internet.

While there were challenges with the online survey, there was strong correlation between input received through community meetings, email comments, and the surveys and it is recommended that the County rely upon the survey results to demonstrate landowner preference.

Michael Baker has conducted many planning-related surveys and the response levels to the Mendocino County surveys ranged from acceptable to very high, though none of the surveys resulted in a response from 60 percent of all owners. Requiring a positive survey response from 60 percent of all property owners within a proposed district is an unrealistic expectation. Therefore, the survey results are presented as percent of respondents versus percent of all property owners.

The outcomes of the surveys, regarding whether the 60 percent community support was met, are noted below. In brief, all proposed districts received 60 percent favorable responses, except for Mitchell Creek North and Mitchell Creek South (these districts received very low support and are not recommended for adoption). Additional information on the survey methodology and the detailed results are provided in Attachment 6.

- Covelo Core CA District: Approval rate: 81%
- Covelo Fairbanks Road CA District: Approval rate: 60%
- Mitchell Creek North CA District: Approval rate: 10%
- Mitchell Creek South CA District: Approval rate: 33%
- Laytonville CA District: Approval rate: 80%
- South Leggett CA District: Approval rate: 88%
- Deerwood CP District: Approval rate: 94%
- Boonville Road/Woodyglen CP District: Approval rate: 92%

PROPOSED MENDOCINO COUNTY CODE AMENDMENTS: All proposed changes to County Code Chapter 10A.17 and Chapter 20.242 have been incorporated in the Ordinances attached to this report. Attachment 2 presents the proposed County Code amendments in their final form (notations of revisions removed) and with exhibits for the six proposed CA and CP Combining Districts. Attachment 3 of this report presents the proposed County Code amendments in a Redline format that identifies proposed additions and deletions of language (exhibits have not been included in Attachment 3). Proposed amendments are summarized as follows:

Chapter 20.118 – “CA” Cannabis Accommodation Combining District

- Chapter 20.118 both provides direction for how future CA Combining Districts may be established and creates the County's first CA districts.
- The chapter establishes provisions related to the expected future CA districts, including:
 - CA Combining Districts will be primarily residential in use and zoning designation.
 - CA Combining District will include at least 10 parcels.
 - Parcels within an CA Combining District must be contiguous, with limited exceptions.
 - Applicants seeking to establish a CA Combining District must demonstrate support of affected landowners (petition or alternative means as approved by the County).
- Once established, a CA Combining District would modify regulations as follows:
 - Sunset Provision for Residential Districts would not apply to permitted cannabis cultivation uses.
 - Cannabis cultivation permit types (C) Small Outdoor, (C-A) Small Indoor, Artificial Light, and (C-B) Small, Mixed Light would not be subject to current 2-acre minimum lot size.
 - Property line setback noted in Sec. 10A.17.040 (A)(5) would be reduced to 20 feet.
 - Property line setback noted in Sec. 10A.17.040 (A)(5) may be reduced to less than 20 feet or waived subject to Administrative Permit approval.
 - Setback from an occupied residential structure on adjacent property noted in Sec. 10A.17.040 (A)(2) could be reduced to 20 feet subject to Administrative Permit approval.
- In order to provide assurances and support the investment required for permitting and initiating commercial cannabis cultivation, CA Combining Districts would be subject to the following restrictions on modification:
 - Not eligible for repeal by property owner request for 10 years after date of approval.
 - After 10 years, a request to repeal or amend a CA Combining District could be initiated by petition of 60% or more of all current property owners within that district.
 - Parcels adjacent to the CA Combining District could be added to a CA Combining District within the initial 10-year period.
 - If a CA Combining District is repealed, at any time, permitted cultivation authorized through the district could continue for three years. At three years following the date of repeal of the CA Combining District, rights for cultivation that does not meet the standards of the underlying zone would cease.
- Six communities or neighborhoods were studied as possible CA Combining Districts:
 - Covelo, Core
 - Covelo, Fairbanks Road
 - Laytonville
 - Mitchell Creek, North
 - Mitchell Creek, South
 - South Leggett

Based upon the results of community surveys, staff recommended against the establishment of the Mitchell Creek North and Mitchell Creek South Combining Districts. The Planning Commission also recommended against rezoning the Mitchell Creek areas into the CA District.

Chapter 20.119 – “CP” Cannabis Prohibition Combining District

- Chapter 20.120 both provides direction for how future CP Combining Districts may be established and creates the County's first CP districts.
- The chapter establishes provisions related to the expected future CP districts, including:

- CP Combining Districts will be primarily residential in use and zoning designation.
 - CP Combining District will include at least 10 parcels.
 - Parcels within an CP Combining District must be contiguous, with limited exceptions.
 - Applicants seeking to establish a CP Combining District must demonstrate support of affected landowners (petition or alternative means as approved by the County).
- Once the district is established, cannabis cultivation sites and cannabis facilities (with limited exceptions) would be prohibited within a CP Combining District.
 - Existing permitted cannabis cultivation sites or permitted cannabis facilities located within a newly adopted CP Combining District would be permitted to continue operations for three years from the date of establishment of that district. At three years following the date of establishment of the CP Combining District, rights to operate commercial cannabis cultivation sites and facilities would cease.
 - In order to provide assurances to existing and future residents choosing to reside in a CP Combining District, CP Combining Districts would be subject to the following restrictions on modification:
 - Not eligible for repeal by property owner request for 10 years after date of approval.
 - After 10 years, a request to repeal or amend a CP Combining District could be initiated by petition of 60% or more of all current property owners within that district.
 - Parcels adjacent to the CP Combining District could be added to a CP Combining District within the initial 10-year period.
 - Changes to the underlying zoning of a CP Combining District would have no effect on the prohibition of cannabis cultivation and/or facilities established through the CP Combining District.
 - There are currently two areas being considered for the creation of a CP Combining District:
 - Boonville Road/Woodyglen
 - Deerwood

As noted above, the period to cease existing, permitted cannabis operations following approval of a CP Combining District would be three years. In discussions with the Board of Supervisors on June 12, 2018, there was interest in reducing this period. Upon further discussion, staff maintains that the three-year period for cessation of uses is appropriate. This period is provided to cannabis operators that have been granted County permits and may, based upon granting of such permits, have made significant investments in property improvements. The three-year period is consistent with the timing established under Sunset provisions and it grants cannabis operators a reasonable period to seek an alternative site upon which to conduct legally permitted cannabis operations.

Amendments to Chapter 10A.17:

- Section 10A.17.040 would be modified to reference the setback reductions proposed in Chapter 20.242.040 and the development standards of the CA Combining District.
- Section 10A.17.080(B)(2)(b) would be modified to note that within a CA Combining District and parcels zoned Rural Residential (lot size (5) acres [R-RL-5]) that are between 3.5 and 4.99 acres that could be exempted from Sunset provisions subject to issuance of an Administrative Permit.
- Section 10A.17.081 allows issuance of Phase One Permits within a CA Combining District for a period of 180 days following the establishment the District.

Amendments to Chapter 20.242:

- Table 1, Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type, of Section 20.242.040, Existing Cannabis Cultivation Sites, would be modified as follows:

- New Note 2: A parcel between 3.5 and 4.99 acres, and that shares at least 50 percent of its boundaries with parcels 5 acres in size or larger, may be granted cannabis cultivation permit types 1, 1-A, and 1-B following the approval of an Administrative Permit.
- New Note 3: A parcel between 7.0 and 9.99 acres, and that shares at least 50 percent of its boundaries with parcels 10 acres in size or larger, may be granted cannabis cultivation permit types 2, 2-A, 2-B, and 4 following the approval of an Administrative Permit.
- New Section 20.242.040(C) would allow reduction of required setbacks for structures used for cultivation or for cultivation sites, subject to various limits that include:
 - Setback for cultivation not within a structure shall be not less than 20 feet from a parcel under separate ownership of an access easement.
 - Setback for cultivation within a structure shall be not less than otherwise required front, rear, and side yard setbacks.
 - No setback reduction may encroach within a corridor preservation setback as established under Sections 20.152.015 and 20.152.020.
- Section 20.242.060 revisions to format of notes within Table 2.
- Section 20.242.070(C) would be modified to provide procedures and findings for granting a setback reduction in conjunction with Phase 1 planning permits, subject to issuance of an Administrative Permit.

GENERAL PLAN CONSISTENCY ANALYSIS: The purpose and intent of the proposed amendments is to support cannabis cultivation that currently exists and, except for limited aspects of development standards, could be legally permitted under current regulations. The adoption of the County's cannabis regulations was analyzed by the Mitigated Negative Declaration, which found that the proposed regulations, as mitigated, did not conflict with and in fact addressed and complied with the policies of the General Plan and Ukiah Valley Area Plan identified as relevant. The proposed amendments would similarly bring existing commercial cultivation operations in the County into compliance with new regulations, allowing for slightly greater flexibility in setbacks and lot sizes. As such, the proposed amendments are consistent with the adopted General Plan. The CP Combining District is proposed to maintain the residential qualities of neighborhoods where residents feel commercial cannabis cultivation and facilities are incompatible with existing residential uses.

Based upon the above, staff has determined that the amendments would not result an increase in an environmental impact or substantial increase to currently allowed cannabis-related uses and that the cannabis-related uses addressed by the proposed amendments would be permitted under the current General Plan. Therefore, the proposed amendments are consistent with the 2009 Mendocino County General Plan and the Ukiah Valley Area Plan.

PLANNING COMMISSION HEARING: The Planning Commission held a duly noticed public hearing on October 18, 2018 to consider the proposed amendments to the County Code. During the public hearing members of the community provided testimony that is summarized as follows:

- The greatest number of comments was related to Mitchell Creek.
 - Numerous comments from residents opposed to Mitchell Creek CA Districts.
 - Several comments from existing growers seeking a solution to allow cultivation to continue near the coast – no locations under current regulations.
- Several speakers supported Boonville Road/Woodyglen and Deerwood CP Districts.
- Several speakers offered support for Covelo, South Leggett and Laytonville CA Districts.
- Numerous comments requesting an alternative solution to the CA District – use permit process was mentioned repeatedly.

Specific comments of the Commission in consideration of this item included:

- Community Survey information was a key consideration – acknowledged the survey participation was low, but felt the results did have merit.
- Establishment of CA and CP Districts are local land use decisions and the guidance of community members is an important consideration.
- Noted strong support in the Laytonville, Covelo and South Leggett CA Combining Districts. Directed staff to coordinate with schools in the vicinity of proposed CA districts.
- Commissioners noted long standing concern about cultivation on parcels less than five acres in size and general concern over businesses in residential districts, but acknowledged the value of a local community solution (CA Districts).
- Acknowledged that cultivators present at the meeting are acting responsibly in their practices and regulatory compliance, but there is concern over whether future cultivators will maintain same practices.

Following presentation by staff, comments from the public and deliberation by Commissioners, members of the Planning Commission present voted 6-0 in favor of adopting Resolution No. PC_2018-0036 in support of recommending that the Board of Supervisors adopt the proposed County Code amendments and rezone all proposed areas to a CA or CP District, except for the Mitchell Creek areas.

The resolution also incorporated several changes to the ordinances proposed by staff prior to the meeting and discussed at the meeting. Most notable of these changes are specific changes regarding deadlines for seeking new CA districts and filing applications in new CA districts. It is proposed that persons seeking new CA districts would need to file an application for a rezone by November 1, 2019; no cutoff date for seeking new CP districts is being proposed. It is also proposed that once a CA district is formed, applicants for cannabis permits would have 180 days from the effective date of the ordinance adopting the CA district to apply for a cannabis permit.

AMENDMENTS FOLLOWING PLANNING COMMISSION REVIEW: Subsequent to the Planning Commission's consideration of this item, various changes to the proposed County Code amendments have been incorporated. None of the revisions to the Code amendments result in substantive changes. Such revisions include:

- Adjustment in terminology (Cannabis Accommodation (CA) Combining District is now referred to as "CA" Cannabis Accommodation Combining District). This revision applies to both CA and CP Districts.
- Minor word edits that do not change the meaning or intent of language – consistent use of terms throughout the ordinance.
- Minor corrections related to section and chapter citations.
- Adjustments to language establishing the first proposed CA Districts and CP Districts.
- Creation of a new Section 10A.17.081 regarding cannabis application deadlines in CA Districts – this language was generally directed by paragraph 3.A of the Planning resolution.

ENVIRONMENTAL DETERMINATION. The Board of Supervisors of Mendocino County, on April 4, 2017, adopted Ordinance Number 4381, thereby adopting Chapters 10A.17 and 20.242 to the Mendocino County Code and the associated Mitigated Negative Declaration for the County of Mendocino Medical Cannabis Cultivation Regulations (SCH# 2016112028). In considering the appropriate level of review under the California Environmental Quality Act (CEQA) for the currently proposed County Code amendments, the County reviewed the provisions of CEQA and the CEQA Guidelines, including Section 15162 (Subsequent EIRs and Negative Declarations) and Section 15164 (Addendum to an EIR or Negative Declaration).

The adjustments to development standards provided through amendments to Section 10A.17 and Section 20.242 are relatively minor in scope and apply only to cannabis uses that can demonstrate they were in existence as of 2016, and therefore only apply to existing uses. Further, granting reduced development standards to individual properties requires issuance of an Administrative Permit, an action that would be subject to analysis and review under CEQA if it is determined there is the potential for impacts to the environment. Similarly, the CA Combining District will only allow the permitting of cultivation sites that can demonstrate prior existence and will not provide a basis for permitting new cultivation sites. Additionally, through the process of permitting, including site inspection and required compliance with County, regional, and state permitting standards, the potential for negative impacts resulting from unpermitted cultivation is reduced through the process of securing and maintaining a cannabis cultivation permit.

An Addendum to the existing Mitigated Negative Declaration (SCH# 2016112028) has been completed in compliance with CEQA and CEQA Guidelines. Adoption of the Addendum is supported by the incorporated analysis and findings establish the basis for determining that none of the conditions described in section 15162 of the CEQA Guidelines calling for the preparation of the of a subsequent negative declaration or environmental impact report have occurred.

RECOMMENDATION FOR THE BOARD OF SUPERVISORS.

Please see the agenda summary for a recommended motion.

ATTACHMENTS:

1. OA_2018-0008/R_2018-0005 Board of Supervisor Resolution, CEQA
Exhibit 1A – Addendum to previously adopted Mitigated Negative Declaration for the County of Mendocino Medical Cannabis Cultivation Regulations (SCH# 2016112028)
2. OA_2018-0008/R_2018-0005 Ordinance Final Version
Exhibit 2A – Covelo Core Map and APN's
Exhibit 2B – Covelo-Fairbanks Road Map and APN's
Exhibit 2C – Laytonville Map and APN's
Exhibit 2D – South Leggett Map and APN's
Exhibit 2E – Deerwood Map and APN's
Exhibit 2F – Boonville Road/Woodyglen Map and APN's
3. OA_2018-0008/R_2018-0005 Ordinance Redline Version
No Exhibits Attached
4. Planning Commission Resolution
5. Summary of Public Input