



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
▶ 860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482

120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

Ignacio Gonzalez, Interim Director  
Ukiah Telephone 707-234-6650  
UKIAH FAX 707-463-5709  
Ft. Bragg Phone 707-964-5379  
Ft. Bragg Fax 707-961-2427  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

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## MEMORANDUM

**DATE:** MARCH 15, 2018  
**TO:** PLANNING COMMISSION  
**02851**  
**FROM:** MARY LYNN HUNT, CHIEF PLANNER  
**SUBJECT:** OA\_2018-0004 ADDITIONAL ITEMS FOR DISCUSSION

Since the writing of the staff report for the above noted ordinance amendment, staff continues to review the item for clarification, consistency and Board Direction. Staff asks that the Planning Commission review the below items and provide direction to be included in the Planning Commission's resolution providing its review and recommendation to the Board of Supervisors for this agenda item.

### Allowance for a One-Year Period of Non-Cultivation

Section 10A.17.080(B)(2)(d) currently reads as follows:

If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.

This language is within subdivision (B) regarding requirements specific to Phase One permits and is further within paragraph (2), which is specific to cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation. For instance, this language would apply to cultivation sites in a commercial zone or a single family residential zone (the latter of which is also subject to the sunset provision).

On September 12, 2017, staff proposed that section 10A.17.080(B)(2)(d) be revised as follows:

If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

In reviewing Chapter 20.242, a corresponding change would also need to be made to section 20.242.040(C)(2). Staff also sought additional direction from the Board as to what types of properties the new language should apply.

On September 12, 2017 the Board of Supervisors gave direction to staff that the allowance for a one-year period of non-cultivation only apply to those individuals cultivating in the Rangeland, Forestland and Timberland Production zones.

Based on the Board recommendation, staff recommends leaving the language of section 10A.17.080(B)(2)(d) as it currently reads, and creating a new paragraph 10A.17.080(B)(5), to read as follows:

If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, for Permits granted in the Rangeland (RL), Forestland (FL) or Timberland Protection (TPZ) zoning districts, not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

Corresponding language would also be placed in a new paragraph in section 20.242.040.

#### Administrative Permit Process for Setbacks from Sensitive Receptors

On August 29, 2017, the Board amended section 10A.17.040 regarding how a setback from certain sensitive receptors was measured so that the setback is 1000 feet from a cannabis cultivation site to the nearest point of any fenced, maintained, or improved area where the users of the facility are typically present during normal hours of operation.

In addition, on August 22, the Board provided general direction that section 10A.17.040 should be further amended to allow applicants to seek a reduction in the setback upon the issuance of an administrative permit pursuant to Chapter 20.242. This change requires minor changes to section 10A.17.040(B), but would also require revisions to section 20.242.070. Staff recommends revising section 20.242.070 to create special findings that would be made for the reduction of a setback from a sensitive receptor.

Staff recommends the following change to the last sentence of section 10A.17.040(B) as follows:

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242.

Staff recommends adding the following as a new paragraph (C)(7) to section 20.242.070:

An Administrative Permit may be applied for and granted for an exception to the 1,000 foot setback requirement of a cannabis cultivation site as outlined in section 10A.17.040(B). Administrative permits may be approved, conditionally approved or denied for the reduction of the setback provided for in section 10A.17.040(A)(1) based on the findings of 20.242.070(C)(1), (C)(2) and (C)(3) and on the following special findings:

- (i) That there be special circumstances applicable to the property involved, including size, shape, topography, location or surrounding;
- (ii) That the granting of such reduction will not be materially

detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and

- (iii) That the granting of such reduction will not adversely affect the General Plan.

#### Material Flow vs. Natural Flow

Further direction was given to staff to delete the word “material” from section 10A.17.080(B)(3)(c)(ii) and replace it with the word “natural.” This subsection is in regards to the restoration of an origin site that is being relocated; the existing requirement is that the applicant must “remove illegal dams, ponds or other in-stream water storage to restore material stream flows, unless such features will continue in use.”

Replacing the word “material” with “natural” would match the phrasing of the mitigation measure of the Mitigated Negative Declaration relevant to the relocation of a cultivation site.