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**COUNTY OF MENDOCINO**  
DEPARTMENT OF AGRICULTURE  
890 N Bush St.  
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**DATE:** MARCH 21, 2017

**TO:** BOARD OF SUPERVISORS

**FROM:** DIANE CURRY, Interim Agricultural Commissioner  
MARY LYNN HUNT, Chief Planner  
MATTHEW KIEDROWSKI, Deputy County Counsel

**SUBJECT:** SECOND SUPPLEMENTAL STAFF MEMORANDUM

AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER 10A.17-MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242-MEDICAL CANNABIS CULTIVATION SITE OF THE MENDOCINO COUNTY INLAND ZONING ORDINANCE (OA-2016-0003), COLLECTIVELY CALLED MCCR, INCLUDING REVISIONS TO POLICIES AND PROCEDURES FOR AGRICULTURAL PRESERVE AND WILLIAMSON ACT CONTRACTS REGARDING CANNABIS CULTIVATION AND THE ADOPTION OF AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION RELATED THERETO

On Thursday, March 16, 2017, proposed revisions to Mitigation Measure BIO-1 were made available for review and discussed in a supplemental staff memorandum. However, changes to the proposed ordinance implementing Mitigation Measure BIO-1 were not published. In the process of reviewing the ordinance, County Staff also located two other changes that should be made. Attached to this second supplemental staff report are *excerpts* from a redline of Attachment 7 showing the proposed changes to the adopting ordinance.

Pages 21 and 22 show the replacement of paragraph (B) of section 10A.17.100 to reflect the revised Mitigation Measure BIO-1. In addition, Mitigation Measure BIO-1 requires the creation of a policy regarding qualifications of third party inspectors. Page 25 shows the revised language of section 10A.17.130 to reflect this requirement.

The first minor change is an updated paragraph reference on page 19 that is necessary since the paragraphs were re-lettered as of March 10, but this reference was not updated. The second is the addition of a double asterisk (\*\*) to the "RL" line of Table 1 on page 32. The double asterisk was referenced in the notes following the table, but not in the table itself.

Attachment 7 to the agenda packet, which is the clean version of the proposed ordinance, has been substituted with a clean version that includes the revised language implementing the proposed revised Mitigation Measure BIO-1.

**ATTACHMENTS:** Excerpts of Redline Draft of Revised Ordinance

cultivation of medical cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features; (5) all structures, which shall be clearly labeled; and (6) all septic systems, leach fields and water wells.

- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item ~~(G)~~.
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.

Public Resources Code section 4526, in order to create or expand a cultivation site, a copy of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (“CalFire”). Alternately, for existing operations occupying sites created through prior unauthorized conversion of timberland, the applicant must provide evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a “Cortese List” database search for sites known to be contaminated with hazardous materials. If the site is listed on the “Cortese List”, the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

### **Section 10A.17.100 – Permit Review and Issuance**

The Agricultural Commissioner’s Office shall issue a Permit pursuant to this Chapter only:

- (A) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
- (B) Following review by qualified County staff and/or qualified third party inspectors to review proposed permit locations and identify where habitat suitable for

~~sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife (“CDFW”) to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW. After review by qualified County Staff and/or review by qualified third party inspectors to identify if any sensitive species and/or habitat exists on the parcel. If sensitive species and/or habitat is identified, CDFW will be informed and offered an opportunity to review and comment. If sensitive species are present the cultivation site must be operated in a way that demonstrates impacts to sensitive species will be avoided. (This requirement is applicable to new site disturbance, non-contiguous expansion of existing sites and relocation in Phase 1, and all new sites in Phase 3.); and~~

- (C) After the Agricultural Commissioner’s Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
- (D) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.

As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis for medical use.

If, during the pre-permit site inspection, violations of any building or other health, safety or other state or county statute, ordinance, or regulation are discovered, the applicant shall be required to submit a written plan to remediate, abate, or cure the violations at the earliest feasible date, but in no event more than one (1) year after the date of issuance of the Permit; said plan shall be signed by the applicant, approved by the relevant enforcement agency or agencies, and compliance with said plan shall be a condition of the Permit.

Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner’s Office. The Permittee will have 72 hours to register with the County track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of being provided to the Permittee.

Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.

- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

### **Section 10A.17.120 - Certifications**

Permittees who demonstrate compliance with all of the requirements set forth in this Chapter and the additional guidelines to be established by the Agricultural Commissioner in a Mendocino Sustainably Farmed Operations Manual will be issued a "Certified Mendocino County Grown" certificate through the Agricultural Commissioner's Office. Cannabis labeled with this certification shall be produced following production standards used in the production of crops labeled as organic according to United States Department of Agriculture, National Organic Program. This certification shall be valid for one (1) year from the date of issuance and shall be renewed annually thereafter following annual inspection(s) of the registered cultivation site and continued compliance with all requirements. An annual fee shall be paid for participation in this certification program, pursuant to the provisions set forth in Section 10A.17.070(H)(1).

### **Section 10A.17.130 – Third Party Inspectors**

The Agricultural Commissioner's Office is authorized to allow third party inspectors to assist medical cannabis cultivators in complying with the provisions of this Chapter. The County shall develop policies in consultation with CDFW to determine required qualifications of third party inspectors. By performing field checks with the cultivators, identifying potential or real points of concern, and working with the cultivators to correct the issues(s) at hand, while communicating with the Agricultural Commissioner's office, adherence to the standards established by this Chapter will be greatly enhanced and the possibility of enforcement actions being initiated by the County will be reduced.

Any third party inspector must receive approval by the Agricultural Commissioner's Office in order to serve individual permittees and to be recognized as credible and ensuring compliance with the requirements of this Chapter. The Agricultural Commissioner shall have the authority to approve or deny any application to operate as a third-party inspector based on experience, qualifications, education, incomplete applications, insufficient detail/scope of proposed work, conflicts of interest, and ability to perform. To ensure that a third party inspector is qualified to assist cannabis cultivators with the implementation of this Chapter, individuals desiring to be third party inspectors must submit an application/ proposal to the Agricultural Commissioner's Office and successfully pass an oral appraisal interview. An annual application fee will be due at the time the application is submitted for initial review or prior to any annual renewal of the application, and paid pursuant to the provisions set forth in Section 10A.17.070(H)(1).

Third party proposals shall include, at a minimum, the following:

Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	RL**	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	FL**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	TPZ**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

\* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

\*\* Existing cultivation sites in the FL, TPZ and RL zoning districts are permitted subject to limitations of this section. Expansion of existing cultivation sites in the FL, TPZ and RL zoning districts is permitted, subject to the issuance of an Administrative Permit.

(C) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue subject to the requirements of Chapter 10A.17 and the following planning permit requirements for a Zoning Clearance, Administrative Permit or Minor Use Permit.

(1) Planning Permit Requirements:

- (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
- (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding 500 square feet requires an approved Administrative Permit.
- (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between 501 and 2,500 square feet requires an approved Minor Use Permit.
- (d) Mixed Light Cultivation (pursuant to a MCCO Type C-B Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.

(2) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.

(D) An existing cultivation site, which qualifies for a MCCO permit, may continue within the FL (Forest Land), the TPZ (Timber Production Zone), or the RL (Rangeland) zoning districts not to exceed 2,500 square feet of cultivation with a Zoning Clearance, Administrative Permit or Minor Use Permit as listed in Table 1.