

ADMINISTRATIVE DRAFT CEQA PROJECT DESCRIPTION
MENDOCINO COUNTY CANNABIS CULTIVATION ORDINANCE
October 12, 2016

II. PROJECT DESCRIPTION

Introduction

The Mendocino County Board of Supervisors intends to adopt a comprehensive ordinance regulating the cultivation of medical cannabis. This ordinance is the local complement to a variety of actions currently being taken by the State of California to provide a legal framework for the medical cannabis industry (see Regulatory Setting Section, below). The ordinance will consist of Chapter 10A.17 of the Mendocino County Code and Chapter 20.242 of the Mendocino County Zoning Ordinance (Inland).

In brief, the Mendocino County Medical Cannabis Ordinance includes provisions to establish a comprehensive local ordinance generally including (but not limited to) the following:

1. The phased review and permitting of medical cannabis operations:
 - a. Phase 1 consists of the review and permitting of eligible operations in existence as of January 1, 2016 and extends from adoption of the ordinance to January 1, 2018,
 - b. Phase 2 extends from January 1, 2018 to January 1, 2020 and consists of the review and permitting of new medical cannabis operations, restricted to Type 1A and Type 2A permit types, which are applications for indoor cultivation using only artificial light, with a maximum growing area of 5,000 square feet (Type 1A) or 10,000 square feet (Type 2A), that will only be allowed in Industrial zoning districts, and
 - c. Phase 3 begins on January 1, 2020 and consists of the review of all types of cultivation applications which will only be allowed in Agricultural zoning districts and, with a completed watershed assessment, in Rural Residential, Upland Residential and Rangeland zoning districts;
2. Appropriate locations for the cultivation of medical marijuana at a variety of intensities and in a variety of growing conditions;
3. Appropriate County entitlements and permitting for the cultivation of medical cannabis in a variety of intensities and methodologies;
4. Track and Trace controls throughout the cultivation, processing, manufacturing and distribution of medical cannabis and related products (such as edibles);
5. The application and review process for cultivation and other related permits;
6. Performance standards regarding the cultivation of medical cannabis including licensing requirements, requirements to comply with state regulations, water quality requirements, support limitations on pesticide use, handling and storage of hazardous materials, and inspection mechanisms;
7. Establishment of a "third party" inspection process to monitor ongoing compliance;
8. Establishment of an enforcement mechanism; and
9. Certification of medical cannabis products as "Mendocino County Grown."

Project Objectives

- Establish local regulations for the cultivation of cannabis intended exclusively for medical use within the unincorporated areas of Mendocino County consistent with existing State Law;

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- Establish a program in coordination with the State of California's future implementation of the Medical Cannabis Regulation and Safety Act (MCRSA) which was adopted in 2015 and took effect on January 1, 2016, but which will not be fully implemented until 2018;
- Promote the health, safety, and general welfare of the residents and businesses within the unincorporated area of Mendocino County by balancing the needs of medical patients and their caregivers, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that may be associated with cannabis cultivation;
- Offer persons wishing to cultivate cannabis the option to do so within the parameters set forth in the MCRSA, including but not limited to the provisions of Business and Professions Code Section 19315, 19316, 19320, 199322, 19332 and 19360, and Health and Safety code Section 11362.777;
- Provide a local permitting structure for medical cannabis cultivators; and
- Provide a mechanism for current medical cannabis cultivators to identify permits required and site improvements necessary to bring their operations into compliance with applicable state and local regulations as a condition of the issuance of permits.

Project Setting and Location

The proposed Mendocino County Medical Cannabis Cultivation Ordinance applies throughout unincorporated areas of Mendocino County, exclusive of areas within the Coastal Zone. It establishes ten (10) permit types for the cultivation of medical cannabis. Zoning Ordinance Section 20.242.050 establishes the appropriate locations for each permit type. The following zones have been identified as appropriate locations for one or more of the ten permit types:

- RR2 (Rural Residential – 2 acre minimum)¹;
- RR5 (Rural Residential – 5 acre minimum)¹;
- RR10 (Rural Residential – 10 acre minimum)¹;
- AG (Agriculture);
- UR (Upland Residential);
- RL (Rangeland);
- FL (Forest Land);
- TPZ (Timber Protection Zone);
- I1 (Limited Industrial);
- I2 (General Industrial); and
- P-I (Pinoleville Industrial).

Note that no new cultivation operations (established after January 1, 2016) are permitted in the FL and TPZ zones.

The total area within Mendocino County made available for Medical Cannabis Cultivation is approximately 1,788,000 acres, including FL and TPZ zones and 889,000 excluding FL and TPZ Zones as follows:

¹ The specified acre minimums in the Rural Residential Zoning District are directly from the existing Mendocino Zoning Ordinance (Inland) and establish minimum subdivision lot size and maximum residential density in each of the zoning districts. They do not establish a minimum lot size or acreage restriction for cannabis cultivation sites.

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Table 1. Area of Zoning Classifications Potentially Available for Cultivation Permits in Each Project Phase

	PHASE 1	PHASE 2	PHASE 3
	Existing Cultivation Only	New Indoor Cultivation Only	New Cultivation: All Types
ZONING	AVAILABLE ACRES*		
AG	56,738	-	56,738
FL	62,415	-	-
I1	584	584	584
I2	1,342	1,342	1,342
PI	69	69	69
RL	714,842	-	714,842
RR-2	1,931	-	1,931
RR-5	8,460	-	8,460
RR-10	10,050	-	10,050
TPZ	836,850	-	-
UR	94,771	-	94,771
TOTAL:**	1,788,051	1,995	888,787

*Acreage numbers are based on GIS polygon calculations and are estimates only.

**Minimum parcel sizes, maximum cultivation areas, mandatory setbacks and other restrictions significantly reduce the actual area potentially available for development.

While the above acreage may imply extensive opportunity for cultivation in the County under the proposed cultivation ordinance, the area that will be allowed to be placed under cannabis cultivation will be substantially limited as only one cultivation site will be allowed on each legal parcel and the size of each cultivation site will be limited by the type of cultivation permit to 2,500, 5,000, or 10,000 square feet, accordingly. Therefore, "Available Acres" includes the gross acreage of all parcels potentially eligible for permits while a maximum 10,000 square feet of cultivation (less than a ¼ acre) or 22,000 square feet in nursery (cannabis in vegetative state only) on any parcel (will be eligible for a permit).

Baseline Conditions

Pursuant to CEQA Guidelines Section 15125, the Project Description is required to identify the existing baseline set of physical characteristics. This is typically a single point in time snapshot of conditions which apply to the project location prior to implementation. For purposes of this Initial Study, the Baseline date will be established to be August 26, 2016, the date on which the County submitted requests for early consultation to Responsible and Trustee agencies and to other interested parties.

It is not feasible to establish specific existing conditions at every potentially-affected site for a project as geographically extensive and diverse as the proposed ordinance. Except as described below in, the *Prior Effects of Marijuana Cultivation* section, the analysis in the Initial Study will assume the regional location and setting in the unincorporated area affected have not changed substantially since the adoption of the Mendocino County General Plan and certification of the General Plan Update EIR (SCH 2008062074) in 2009 or, where applicable, the Ukiah Valley Area Plan EIR (SCH 2003072038) in 2011. The existing baseline condition includes, but is not limited to, the following excerpt from the General Plan Update EIR:

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Mendocino County General Plan EIR: Regional Location and Setting

Project Location

Mendocino County is located along the Pacific Coast in the northwestern portion of California. Mendocino County is bordered by Humboldt and Trinity counties to the north; Tehama, Glenn, and Lake Counties to the east; Sonoma County to the south; and the Pacific Ocean to the west.

Project Setting

Mendocino County is approximately 2,247,000 acres in size including the incorporated cities. The county consists of a series of northwest-southeast trending mountainous ridges and narrow valleys. Most of the valleys are alluvial; of these valleys, Round Valle is the largest.

The county lies in the Coast Ranges, which are characterized by a series of northwest-trending mountain ranges and intervening canyons and alleys. Mountain elevations in the county are typically within the range of 2,000 to 4,000 feet.

Climate throughout the county does not vary significantly. Mean annual temperatures range between approximately 53 degrees Fahrenheit and 58 degrees Fahrenheit, with average minimum temperatures ranging from approximately 39 degrees Fahrenheit to 42 degrees Fahrenheit and average maximum temperatures ranging from 72 degrees Fahrenheit to 74 degrees Fahrenheit (www.worldclimate.com 2008). However, there are instances where maximum temperatures reach above 100 degrees Fahrenheit in the inland valleys, and minimum temperatures reach below freezing, especially during nighttime hours. Rainfall mostly occurs during the months of October through April, with average rainfall between 33 inches and 45 inches.

There are numerous rivers and creeks that traverse the county. Seven major rivers (the Ten Mile, Noyo, Big, Albion, Navarro, Garcia, and Gualala rivers) start in the mountainous areas of the western edge of the county and flow west out to the Pacific Ocean. The Eel River watershed drains the northern portion of the county, while the Russian River basin drains the southern portion.

Predominant vegetation types include valley grassland and oak woodland in the lowlands and valley areas, and mixed chaparral, hardwood forest, and coniferous forest in the mountainous areas.

US Highway 101 (US 101) is the main north-south thoroughfare through Mendocino County. State Routes 20, 128, 162, 253, and 271 all connect to US 101.

The majority of land in the county is privately owned. The majority of privately owned lands are timber production zones. The other private land is either agricultural preserves or smaller privately owned residential, commercial, industrial, or agricultural use properties. The majority of the developed land is located in the unincorporated community areas (i.e., Anderson Valley, Hopland, Redwood Valley, Potter Valley, Laytonville, and the Round Valley/Covelo area).

Prior Effects of Cannabis Cultivation

The environmental setting includes a landscape that has been substantially altered by illegal/trespass cultivation as well as legal but unpermitted cannabis cultivation. Current cultivation sites vary widely in their

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circumstances, characteristics, maintenance and prior efforts to conform to regulatory and other standards.

No precise count has been made of existing cannabis cultivation sites and no formal characterization of existing sites has been made to distinguish between sites which will qualify for entitlement under the proposed Medical Cannabis Cultivation Ordinance and those which cannot receive permits (see Limitations on Project Description, below). The California Department of Fish and Wildlife (CDFW), the North Coast Regional Water Quality Control Board (NCRWQCB) and other state and local agencies have documented the effects of existing cannabis cultivation sites described in Table 2, below.

The adopted Initial Study for the Regional Water Quality Control Board Order R1-2015-0023, General Waiver of Waste Discharge Requirements and General Water Quality Certification for Dischargers of Waste from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region (Order), acknowledges some general reported differences between cultivation practices occurring on trespass grows on public lands versus practices occurring on private lands:

“For example, cultivation activities on public lands often occur in remote areas with difficult access and are visually indistinct features from a birds-eye view. These are often areas where people rarely go because entry is made difficult by physical barriers such as cliff faces or dense poison oak (Mallory 2011). For site access and supply in such remote areas, cultivators wear or cut trails into the landscape which leads to destruction of small vegetation and can introduce non-native species to new areas via seeds or spores on the cultivator’s clothing or equipment. Additionally, there are often significant differences regarding chemical use practices in cannabis cultivation on public lands, as cannabis monocultures on public lands are especially susceptible to mold, mites, and wildlife. Many reports cite widespread usage of chemicals for cannabis cultivation on public lands.”

The adopted Initial Study for the Order acknowledges “Though different in some ways, development and land use of land for cannabis cultivation on public and private lands share a number of similarities in environmental impacts as well.”

Even where residents are conscientious in their water use or cultivation practices, they may not have the expertise or awareness to identify and address site features or activities that impact or may impact the environment.

In the absence of site specific data on cultivation sites throughout the County, and while acknowledging the wide range of cultivation practices and their potential environmental impacts, for the purposes of this Initial Study, the lead agency assumes that existing operations, which may qualify for permits under the proposed Ordinances, are generally physically similar to but are likely not to be as intense, both in size of operations and severity of impacts, as illegal/trespass sites that will not qualify under the proposed cannabis cultivation and zoning regulation.

CEQA case law indicates that illegal and unpermitted uses currently in operation when the existing conditions baseline is set are included in the baseline (Kenneth F. Fat v. County of Sacramento (2002) 97 Cal.App.4th 1270). For the purposes of this Initial Study we rely on existing physical conditions to establish the baseline. An effort to describe the baseline without including the existing widespread cultivation of

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cannabis, whether potentially legal or clearly illegal, would ultimately be misleading, hypothetical and speculative and will not be used in this case.

Based on documented inspections of existing cultivation sites, the current environmental setting at cultivation sites for which a permit may be sought pursuant to the Medical Cannabis Ordinances may include any or all of the conditions listed in Table 2.

Table 2. Impacts to the Environmental Baseline from Existing Illegal/Trespass Grows and Unpermitted Grows

Impact Area	Existing Environmental Conditions
Aesthetics	<ul style="list-style-type: none"> • Unpermitted tree removals and other site improvements or development features with potential impact on scenic vistas/resources such as ridgeline views. • Aesthetic impacts on roadway segments designated as heritage corridors and eligible as scenic highways. • Light trespass and light pollution from security-related and cultivation-related lighting.
Agriculture and Forestry Resources	<ul style="list-style-type: none"> • Areas cleared of timber for the installation of roadways, water storage, and cultivation sites • Large scale conversion of forest lands to other uses. • Inefficient use of soils by siting cultivation operations based on factors such as privacy and remoteness in addition to considerations of soil characteristics for agriculture such as terrain, soil fertility, sun exposure, and water availability. • Cultivation sites out of compliance with acreage limitations under the Forest Practices Act and zoning regulations. • Increased risk of fire.
Air Quality	<ul style="list-style-type: none"> • Portable diesel and gasoline generators used on a stationary basis operating for extended periods of time with local air quality impacts and associated high emissions (PM10, PM2.5 and other criteria pollutants). • Contributions to PM10 from construction, grading, and travel on unpaved roads. • Objectionable and detectable odors from fuels, fertilizers, and cannabis plants. • Existing operations may be located near "sensitive receptors. • Burning of cannabis waste products.
Biological Resources	<ul style="list-style-type: none"> • Varying degrees of habitat modifications through tree removal and clearing of vegetation. • Inappropriate storage, use, and disposal of pesticides, fertilizers, and related materials with potential adverse effect on sensitive species. • Illegal or unpermitted water diversions sufficient to affect riparian habitat values and impact sensitive natural communities and species. • Cultivation impacts on oak woodland and rangelands, endangered and threatened species, riparian and critical habitat, wetlands, and native resident or migratory wildlife corridors. • Use of security fencing, wildlife traps and various poisons. • Non-compliance with setback requirements to sensitive areas. • Lack of protection of riparian buffers, wetlands, and Environmentally Sensitive Habitat Areas (ESHAs). • Adverse impact from artificial lighting. • Habitat fragmentation. • Removal of riparian buffers, wetlands and environmentally sensitive habitats areas.

Table 2. Impacts to the Environmental Baseline from Existing Illegal/Trespass Grows and Unpermitted Grows

Impact Area	Existing Environmental Conditions
Cultural Resources	<ul style="list-style-type: none"> • Endangerment of wildlife and listed rare species. • Trespass on and desecration of sacred lands. • Diversion of tribal water with associated impacts on fish.
Geology and Soils	<ul style="list-style-type: none"> • Illegal or non-permitted grading of roads, cultivation sites, ponds which may facilitate erosion and slope failure. • Development without consideration of subsurface conditions which may facilitate slope failure or the failure of the road surface or impoundment. • Over-grading as a result of non-consideration of site topography, soils, geology, and hydrology. • Lack of erosion control to protect water quality. • Lack of compliance with slope restrictions. • Impoundments/damming of streams. • Impediments to fish passage • Improperly graded roads/ delivery of sediment to streams.
Greenhouse Gas Emissions	<ul style="list-style-type: none"> • Greenhouse gas emissions associated with power generation to run lights and exhaust fans. • Greenhouse gas emissions associated with vehicles required to conduct cultivation operations in remote settings.
Hazards and Hazardous Materials	<ul style="list-style-type: none"> • Use of petroleum products, fertilizers, and various pesticides. • Use of volatile compounds (pressurized gases such as propane or solvents) for cannabis manufacturing processes with associated risk of explosion or chemical release. • Improper storage of hazardous materials and/or storage above minimal amounts with no hazard response plan. • Fire risk associated with the operation of gasoline powered equipment in close proximity to dry vegetation. • Close interface with wildland areas and non-compliance with Fire codes and State Responsibility Area regulations. No sprinkler systems or defensible space. • Improper use and storage of petroleum products, fertilizers, herbicides, pesticides, automotive and machine-related fluids (acids, solvents, degreasers, corrosives, antifreeze, and hydraulic fluid), and construction materials (asphalt and oils, cementitious materials). • Improperly sited or hazardous water tanks. • Improper disposal of petroleum products, fertilizers, herbicides, pesticides, automotive and machine-related fluids and construction materials
Hydrology and Water Quality	<ul style="list-style-type: none"> • Depletion of water resources and potential impacts to or loss of beneficial uses. • Cultivation without implementation of control measures required by state and local permit regulations related to water quality, grading, erosion control, stream protection, stormwater management and discharge. • Lack of legal water supply. • Permitted and unpermitted surface water withdrawals from streams and rivers Illegal water storage, impoundment, illegally constructed

Table 2. Impacts to the Environmental Baseline from Existing Illegal/Trespass Grows and Unpermitted Grows

Impact Area	Existing Environmental Conditions
	<p>dams/diversions.</p> <ul style="list-style-type: none"> • Improper storing of fertilizers and pesticides creating the risk of or actual contamination of surface or groundwater. • Illegally constructed or unpermitted wells with associated impacts on neighboring well, surface water supplies, in-stream flows, groundwater supply. • Alteration of natural drainage and runoff patterns. • Temperature impacts from improper hydromodification, potential for adverse geomorphological changes, and creation of habitat/migration barriers. • Alteration of drainage patterns and watercourse channels. • Blocking or impeding natural stream flows or floodwater flows. • Improper stream crossings that create a sediment source and create or exacerbate unstable features. • Illegal dumping. • Improperly sited outhouses and disposal of human waste. • Trucking of water to cultivation sites.
Land Use and Planning	<ul style="list-style-type: none"> • Lands improved and structures built without required permits or according to existing regulations. • Non-compliance with General Plan policies and zoning regulations (cultivation in areas where use/similar uses are not allowed).
Noise	<ul style="list-style-type: none"> • Noise from generators and trimming machines. • Noise from water pumps.
Population and Housing	<ul style="list-style-type: none"> • Cultivation in "habitable" portions of residences. • Increased population in rural areas.
Public Services	<ul style="list-style-type: none"> • Longer emergency response times in remote areas not generally serviced. • High number of enforcement actions requiring Sheriff involvement.
Transportation/Traffic	<ul style="list-style-type: none"> • Long travel times associated with sites in remote areas and associated emissions • Illegal or improperly graded access roads. • Lack of prior evaluation of driveway encroachments, new roads or road improvements, site distance, adequate access/turn-around space for emergency vehicles. • No traffic impact fees or agreements regarding maintenance of access roads.
Utilities and Service Systems	<ul style="list-style-type: none"> • Unaccounted for increase in energy consumption and disposal of waste (solid waste, dumping large amounts of soil, high levels of fertilizers and amendments added to soil and irrigation water). • Undocumented source of water demand potentially in conflict with other water rights and potentially subject to water availability restrictions. • Illicit connections and utility theft (jerry rigged wiring, bypass of electrical meter and circuit breaker, water theft).

Regulatory Setting

Cultivation and use of medical cannabis has been legal on a statewide basis since passage of the California Compassionate Use Act (Prop 215) on November 6, 1996 (California Health and Safety Code Section 11362.5). Additional guidance and regulatory control were established by SB 420 which took effect January 1, 2004 (California Health and Safety Code Section 11362.7 et seq.) and the issuance of Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, issued by the California Attorney General in 2008. The California Department of Fish and Wildlife, the Regional Water Quality Control Board, and others have documented thousands of new cultivation sites established since 1996. This use has been largely unregulated in the absence of a comprehensive state and local program. The California Department of Forestry and Fire Protection has documented unpermitted timberland tree clearances and harvests to establish cultivation sites.

Mendocino County has undertaken prior efforts to register and regulate medical cannabis growers within the framework of the State of California's changing approach to regulation. The County's cultivation ordinance was adopted in 2008 as Chapter 9.31 of the County Code, and allowed no more than twenty-five (25) marijuana plants on any one (1) parcel which was intended to result in a significant reduction in the complaints of odor and the risks of fire, crime and pollution.

In 2010, the County amended Chapter 9.31 to add an exemption to the 25 plant per parcel limitation. Cultivators could grow up to 99 plants, provided that those seeking the exemption apply for, obtain, and comply with the conditions of a permit issued by the Sheriff. The revised ordinance contained numerous conditions related to the 99-plant permit program, from application to inspection to enforcement and appeal. The revised ordinance also contained additional limitations on how and where cannabis may be cultivated.

In 2012, in response to a directive from the United States Department of Justice, the County amended Chapter 9.31 to eliminate the 99-plant permit program. The 25 plant per parcel limitation remained, but was changed from a legal parcel to an assessor's parcel.

The Mendocino County Board of Supervisors appointed an ad hoc committee in November, 2015, to review and make recommendations for revisions to Chapter 9.31 with the goal of aligning the County with MCRSA. In December, 2015, the ad hoc committee presented a timeline for adoption of a revised ordinance, projected to occur in the spring of 2016, but reported in April, 2016 that ordinance adoption would be delayed based on the need for environmental review.

On May 17, 2016, the Mendocino County Board of Supervisors adopted an urgency ordinance amending Chapter 9.31, which again created a permit program operated by the Sheriff's Office. Two tiers of cultivation were created: 26-50 plants and 51-99 plants per legal parcel. This program again required compliance with conditions designed to protect the public peace, health and safety, including numerous conditions intended to provide enhanced environmental protection. The urgency ordinance had a sixty (60) day registration window for cultivators to apply for a permit from the Sheriff's Office or voluntarily register with the Department of Agriculture if cultivating 1-25 plants.

On June 8, 2016, litigation was filed challenging the adoption of the urgency ordinance, alleging that it required review under CEQA and was not eligible for any CEQA exemptions. The plaintiffs and the County entered into a settlement agreement to resolve the lawsuit on June 21, 2016. The settlement agreement

allowed the County to accept applications for permits under the urgency ordinance until June 22, 2016 and required the County to enforce the urgency ordinance for applications received as of that date.

Since the original approval of the California Compassionate Use Act (Prop 215) in 1996, and because of ambiguity in state law and conflict with federal law, cultivators have sometimes been unable, and in many cases unwilling, to secure permits for such regulated activities as:

- Surface water withdrawal for irrigation of parcels both immediately adjacent and removed from the water source;
- Impoundment of surface water in tanks and ponds;
- Installation of in-stream dams and water diversion equipment;
- Grading of roads, ponds and cultivation sites;
- Removal of trees and vegetation and timber harvest for land clearance;
- Application of pesticides;
- Installation of culverts and road crossings;
- Establishment and maintenance of sanitary facilities; and
- Discharge (intentional and inadvertent) of sediment, pesticides, fuels, lubricants and other materials into surface waters, groundwater and associated wetlands and other protected habitats.

The ordinance seeks to establish local-level regulation, consistent with the state and regional regulation including: Cannabis Cultivation Waste Discharge Regulatory Program (hereinafter referred to as the "CCWDRP") administered by the North Coast Regional Water Quality Control Board, and state licensing requirements described in MCRSA. The legislation will create the Bureau of Medical Cannabis Regulation (hereinafter referred to as the "BMCR") and amendments to the provisions of Business and Professions Code Sections 19315, 19316, 19320, 19322, 19332, and 19360 and Health and Safety Code Section 11362.777.

Project Description

In summary, the proposed project consists of the adoption of two ordinances as follows:²

Medical Cannabis Cultivation Ordinance (County Code Chapter 10A.17)

- With limited exceptions for personal use and primary caregivers, all cultivation of cannabis for medical use will require a Mendocino County Cultivation Permit;
- Cultivation is required to be set back from schools, public parks, churches, youth oriented facilities, and residential treatment facilities;
- Restricts the impact of odor, light, noise, and impacts to the quantity and quality of surface water;
- Track and Trace requirements for permitted medical cannabis (from plant to consumer) and zip tie confirmation for plants grown under the personal use and primary caregiver exemptions;
- Restates the sunset provisions regarding Medical Marijuana Collectives organized pursuant to Proposition 215 and Senate Bill 420 as described in the Health and Safety Code;
- Establishes the following permit types:
 - Type C for outdoor cultivation using no artificial lighting with a maximum of 2,500 square feet of total plant canopy size on one legal parcel,

² The summaries provided reflect the ordinances in DRAFT form as of August 22, 2016. While no changes are anticipated with regard to the location or intensity of permitted cultivations, non-substantive administrative changes may yet occur.

- Type C-A for indoor cultivation using exclusively artificial lighting not to exceed 2,500 square feet of cultivation area within a structure on one legal parcel,
- Type C-B for cultivation using a combination of natural and supplemental artificial lighting (mixed-light) not to exceed 2,500 square feet of cultivation area within a structure on one legal parcel,
- Type 1 for outdoor cultivation using no artificial lighting of 2,501 to 5,000 square feet of total **plant** canopy size on one legal parcel,
- Type 1A for indoor cultivation using exclusively artificial lighting of 2,501 to 5,000 square feet of cultivation area within a structure on one legal parcel,
- Type 1B for cultivation using a combination of natural and supplemental artificial lighting (mixed-light) of 2,501 to 5,000 square feet of cultivation area on one legal parcel,
- Type 2 for outdoor cultivation using no artificial lighting of 5,001 to 10,000 square feet of total **plant** canopy size on one legal parcel,
- Type 2A for **indoor** cultivation using **exclusively** artificial lighting of 5,001 to 10,000 square feet cumulative cultivation area on one legal parcel,
- Type 2B for cultivation using a combination of natural and supplemental artificial lighting (mixed-light) of 5,001 to 10,000 square feet cultivation area on one legal parcel, and
- Type 4 for the cultivation of medical cannabis solely as a nursery product to be sold to a permittee, a qualified patient or a primary caregiver. The nursery product may take the form of either vegetative and non-flowering starts or may be in the form of seeds, if the applicant is applying as a seed producer under this type of permit. The cumulative cultivation area shall not exceed 22,000 square feet on one legal parcel.
- Establishes a methodology for the review of cultivation permit applications and specifies required application materials;
- Establishes performance standards including:
 - Requirement to follow the approved site plan,
 - When available, secure a current valid state license,
 - Conform to track and trace requirements,
 - Comply with all statutes, regulations and requirements of the California State Water resources Control Board, Division of Water rights, including the statement of diversion required by Water Code Section 5101,
 - Requirement that generators only be used as a secondary or backup source of power and requires leak and spill prevention measures,
 - Maintain Tier 1, 2 or 3 certification with the NCRWQCB Order No. 2015-0023, or equivalent, as required. Operations which are not required to secure certification from NCRWQCB are required by the proposed ordinance to comply with the standard conditions of approval for certification,
 - Comply with "defensible space" standards,
 - Comply with the terms of a Streambed Alteration Agreement, if applicable,
 - Facilitate mandatory inspections,
 - Support limitations on the type and application of pesticides,
 - Store and handle fuel in compliance with state and local laws and regulations;
 - Pay applicable fees, and
 - Comply with conditions required pursuant to zoning review;
- Establishes certification types and standards; and
- Establishes a program of third party inspections allowing the Mendocino County Agricultural Commissioner to approve non-governmental inspectors to perform field checks, identify potential or actual points of concern, and work with the cultivators to correct any identified problems.

- Establishes an enforcement program based on required consultation visits by third party inspectors, required compliance visits by county staff and implementation of enforcement actions, if needed.

Cannabis Cultivation Site Regulation (Zoning Code Section 20.242)

This section establishes appropriate zoning classifications for existing (“Phase 1”; Table 3) and new cannabis cultivation sites (“Phases 2 and 3”; Table 4) as well as the type of zoning clearance necessary for each type of cultivation permit required by the Mendocino County Cannabis Cultivation Ordinance . The key components of the cannabis cultivation site zoning code include the following:

Phase 1

- Establishes requirements for existing cultivation sites in the following zoning districts in operation prior to January 1, 2016: RR2, RR5, RR10, AG, UR, RL, AG, UR, RL, TPZ, FL, I1, I2, and PI.
- Establishes requirements for permits in the TPZ and FL Zoning Classifications to prohibit the permitting of new cultivation sites not in operation prior to January 1, 2016. All applications for permits for cultivation sites in the TPZ and FL Zones must be received by January 1, 2018.
- Allows for the continued use and an expansion up to a total of 10,000 square feet of permitted cultivation areas by existing cultivators within TPZ and FL subject to an approved Administrative Permit and, if applicable, an approved less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (CalFire), or alternatively, evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB, and the California Department of Fish and Wildlife;
- Allows existing cultivation sites to be closed and relocated to properties which can more fully meet minimum parcel sizes, slope limitations, and other restrictions; and
- Sets the process for planning review of applications, including circumstances permitting site specific conditions of approval, requirements for hearings.

Phase 2

- Starting January 1, 2018, new indoor, artificial light cultivation operations may be permitted only in Industrial zoning districts.

Phase 3

- Starting January 1, 2020, new cultivation sites may be permitted only in the AG zoning district or in the RR, UR, and RL zoning districts provided that the cultivation site is located in a watershed with a completed watershed assessment, which demonstrates that there is adequate water supply available to serve the new cultivation site and existing uses, including in-stream requirements. Zoning districts which require a watershed assessment are marked with an * in Table 4.

TABLE 3. Zoning Permit Requirement for **Existing** Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

Permit Type	C	C-A		C-B	1	1-A	1-B	2	2-A	2-B	4
	Sm Outdoor	Sm Indoor, Artificial Light	501 - 2,500	Sm, Mixed Light	Med Outdoor	Med Indoor, Artificial Light	Med Mixed Light	Lg Outdoor	Lg Indoor, Artificial Light	Lg Mixed Light	Nursery
Min Parcel Area (ac)	NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)	2,500	500	501 - 2,500	2,500	2,501-5,000	2,501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000
Zoning District	RR 2	ZC	AP	UP	ZC	ZC	--	--	--	--	--
	RR 5	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	RL	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	FL *	AP	AP	AP	AP	AP	--	AP	AP	--	AP
	TPZ*	AP	AP	AP	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	ZC

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

* No new cultivation sites are permitted the FL and TPZ zoning districts (Section 20.242.050.D) and existing cultivation sites are permitted in these zoning districts subject to limitations (Section 20.242.050.E).

TABLE 4. Zoning Permit Requirement for **New** Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

Permit Type	C	C-A		C-B	1	1-A	1-B	2	2-A	2-B	4	
	Sm Outdoor	Sm Indoor, Artificial Light	501 - 2,500	Sm, Mixed Light	Med Outdoor	Med Indoor, Artificial Light	Med Mixed Light	Lg Outdoor	Lg Indoor, Artificial Light	Lg Mixed Light	Nursery	
Min Parcel Area (ac)	2	2		2	5	5	5	10	10	10	10	
Cultivation Area Limit (sf)	2,500	500	501 - 2,500	2,500	2,501-5,000	2,501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000	
Zoning District	RR 2*	ZC	AP	UP	ZC	ZC	--	--	--	--	--	
	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	
	RR10*	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	
	UR *	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	
	RL *	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	
	I1	ZC	ZC	ZC	ZC	ZC	ZC	ZC	--	ZC	ZC	ZC
	I2	ZC	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,

* = Watershed Assessment Required

Anticipated Project Impacts

Phase I: Permitting of cultivation sites existing as of January 1, 2016.

The Lead Agency estimates there are several thousand existing cannabis cultivation sites within the inland portions of Mendocino County. Until the ordinance is adopted and applications for permits are accepted, the number of operators of existing sites who will seek and secure permits pursuant to the proposed ordinance is somewhat speculative. However, based on participation in prior registration and regulatory systems and demonstrated interest in the preparation of the ordinance, it is reasonable to anticipate a minimum of several hundred applications, affecting a gross acreage of several thousand acres, **with significantly fewer acres directly impacted by cultivation and related infrastructure development.** During the **abruptly shortened application** period of the 2016 permit program, the Mendocino County Agricultural Commissioner's Office received approximately 152 voluntary registrations and statements of interest and the Mendocino County Sheriff's Department received approximately 340 permit applications.

Each permit may require physical changes to the existing operations to come into compliance with federal, state and local regulations. Such changes may include, but are not limited to the following:

- 1) **Regrading or reconstructing public and private access roads and cultivation sites to improve drainage and reduce the risk of erosion, sedimentation and slope failure;**
- 2) **Modifying or installing surface water intakes, pumps and irrigation lines to comply with water rights and related regulations and Department of Fish and Wildlife regulations;**
- 3) **Modifying or installing new surface water impoundments (small dams) and/or installation of water storage tanks to reduce withdrawals during low stream flow conditions;**
- 4) **Installation of fencing, construction of storage sheds and similar efforts to secure the cannabis crop as well as to safely store pesticides, fuels, fertilizers and other chemicals which may be hazardous to human health or to the health of sensitive plant or animal species or habitats; and**
- 5) **Relocation of greenhouses and/or outdoor cultivation sites to conform to mandatory minimum setbacks.**

Each of these actions will take place within a context of an environmental setting already acknowledged to have been substantially degraded by unpermitted and/or unregulated cultivation practices as described above. Current cultivation sites vary widely in their circumstances, characteristics, maintenance and prior efforts to conform to regulatory and other standards.

Phase 2: Permitting of new medium and large indoor artificial light cultivation sites in Industrial zoning districts, beginning on January 1, 2018.

The type and the intensity of impacts associated with the development of new indoor cultivation sites in Industrial zoning districts during Phase 2 are largely the same as other manufacturing uses allowed in the Industrial zoning districts. For this reason, while the ordinance does not establish a maximum number of medium and large indoor cannabis cultivation sites within Mendocino County, the impacts associated with cannabis cultivation in this phase will be limited. **Impacts will be further minimized** by the **limited** number of parcels that are situated within the County's Industrial zoning districts.

Phase 3: Permitting of new cultivation sites in agricultural zoning districts or in selected zoning districts, with completed watershed assessments, after January 1, 2020.

New cultivation sites, other than medium and large indoor artificial light operations located in Industrial zoning districts (Phase 2), are only allowed in the Agricultural Zones or in Rural Residential, Upland Residential or Range Land zoning districts where a watershed assessment has been completed. Permits for Phase 3 will only be available after January 1, 2020. Because of the watershed assessment required in the RR, UR and RL zoning districts, it is anticipated that the majority of Phase 3 permits will be issued on lands zoned for agriculture and would be substantially the same as existing agricultural cultivation with added protections limiting the cultivation area and requirements to avoid sensitive habitat areas as described in the ordinance. During this phase, the number or density of cultivation sites will be substantially limited by the availability of legal lots located in Agricultural zoning districts and by the number of legal lots with RR, UR, or RL zoning that are located within a watershed with a completed watershed assessment. Activities that may occur in Phase 3 include, but are not limited to the following:

- Site clearing and grading;
- Vegetation removal and soil preparation;
- Road development and stream crossings;
- Installation of water storage and irrigation equipment;
- Construction of greenhouses, hoop houses, fences and accessory structures;
- Installation of temporary or permanent sanitary facilities (such as portable toilets or septic systems);
- Application of pesticides and fertilizers; and,
- Extension of infrastructure to industrial zoned lots and development of power and water sources on AG, RR, UR and RL lots.

In nearly all cases, the anticipated uses which may affect the environment will take place within an existing comprehensive regulatory system. For example, the process of perfecting surface water rights for irrigation, securing permits to construct in-stream water intakes, irrigation lines and water storage facilities, requires several permits and opportunities for agencies to impose appropriate conditions to limit or avoid impacts to habitat, water quality and other stream values. Similar regulatory systems apply to limit erosion and sedimentation from grading.

The analysis of the potential effects of cultivation activities will take place in the context of state and federal regulations which apply to various aspects of cannabis cultivation. In some cases, regulatory compliance may be sufficient to reduce potential effects below the threshold of significance. (See *Citizens Opposing A Dangerous Environment v. County of Kern*, 228 Cal.App.4th 360 (5th Dist. July 25, 2014), *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 and *Tracy First v. City of Tracy*: (2009) 177 Cal.App.4th 912.

Limitations on Project Description

The following cannabis cultivation is **NOT** subject to the proposed ordinance and is **NOT** included in the project description, either with regard to sites currently existing or which are established in the future:

1. Cultivation that is not legal under state law;
2. Cultivation on sites in any zone other than those specifically listed in the proposed ordinance, including cultivation within the Coastal Zone;
3. Cultivation on sites which fail to meet the minimum parcel size established by the proposed ordinance;
4. Cultivation not authorized by the property owner ("trespass grows") including all cultivation which may occur on public lands;
5. New cultivation sites in TPZ and FL Zoning Classifications established after January 1, 2016;
6. Cultivation sites which cannot establish a legal right to their source of water for irrigation; and
7. Cultivation sites which cannot demonstrate, if applicable, that a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection ("CalFire") has been issued. Or, alternately, for existing operations occupying sites created through prior unauthorized conversion of timberland that cannot demonstrate that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.