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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: 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

Since documents for this item were originally made available on March 10, 2017, County staff has worked further with the California Department of Fish and Wildlife (CDFW) regarding Mitigation Measure BIO-1, and has also reviewed and found several items in the proposed Initial Study/ Mitigated Negative Declaration (IS/MND) that need correction or clarification. This memorandum reviews these proposed changes.

Mitigation Measure BIO-1

The IS/MND and the Mitigation Monitoring and Reporting Program (MMRP) were presented as Attachments 4a) and 4b) respectively to the original staff memorandum made available to the public on March 10, 2017. Since publication of these items, there are suggested changes to Mitigation Measure BIO-1 which have been developed in consultation with CDFW.

The Mitigation Measure as presented in Attachments 4a) and 4b) reads:

BIO-1: Mendocino County shall amend the MCCR to require qualified County staff and/or qualified third party inspectors to review Cultivation Permit applications and identify locations where habitat suitable for sensitive species may exist. Prior to the pre-permit site inspection applications will be checked against publically available aerial imagery and databases such as the California Natural Diversity Database, California Native Plant Society Inventory of Rare and Endangered Plants, and United States Fish and Wildlife Service List of Threatened and Endangered Species to evaluate the potential for sensitive habitat on-site. During the pre-

permit site inspection County staff and third party inspectors will determine if sensitive species are present. If it is determined that sensitive species are present or could be present CDFW will be consulted. 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 cultivation permit. In Phase 1 this Mitigation Measure is limited to areas of new disturbance, non-contiguous expansion of existing sites and relocated sites.

The proposed revised Mitigation Measure developed in consultation with CDFW would read:

BIO-1 Mendocino County shall amend the MCCR to require 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 CDFW prior to the issuance of a Cultivation Permit to evaluate if there is a possibility for presence of sensitive species. 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 Cultivation Permit. The County shall develop policies in consultation with CDFW to (1) determine required qualifications of third party inspectors and (2) 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 clause (2) of the preceding 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.

This proposed change represents a collaborative effort between the County and CDFW to ensure that Mitigation Measure BIO-1 is effective. Pursuant to CEQA Guidelines Section 15074.1, mitigation measures may be replaced with equally or more effective measures. Based on consultation with CDFW the revised Mitigation Measure is found to be more effective than that which was previously proposed.

Finding: The proposed Mitigation Measure BIO-1 is equivalent at mitigating or avoiding potential significant effects and will not in and of itself cause any potentially significant effect on the environment.

IS/MND Errata

County staff has developed an errata sheet for the IS/MND. This errata sheet makes certain typographical changes to the IS/MND, changes for consistency with other documents made available on March 10, 2017, and includes the revised Mitigation Measure BIO-1.

Mitigation Monitoring and Reporting Program

County staff have developed a revised MMRP that reflects the proposed change to BIO-1. The revised MMRP also has updated code section references for all mitigation measures in the final column. The version of the MMRP made available on March 10, 2017, had several outdated code section references in the final column.

CEQA Resolution

County Counsel has prepared a revised proposed resolution to adopt the IS/MND. A redline of the resolution previously made available is attached to this supplemental memorandum; the clean version has been substituted as Attachment 4 to the agenda packet.

The revised resolution includes the IS/MND errata sheet as a new Exhibit C, and adopts the IS/MND inclusive of the changes made by Exhibit C. Exhibit B of the resolution, the MMRP, has been replaced with a revised version containing the updated Mitigation Measure BIO-1 and the updated code section references.

ATTACHMENTS:

- 1) Redline Draft of Revised Resolution Adopting a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Medical Cannabis Cultivation Regulation (Exhibits Omitted)

RESOLUTION NO. 17-

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO
ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE MEDICAL CANNABIS
CULTIVATION REGULATION**

WHEREAS, the County of Mendocino desires to regulate the cultivation of medical cannabis within the unincorporated areas of Mendocino County in a manner consistent with current State law, including the Medical Cannabis Regulation and Safety Act ("MCRSA"); and

WHEREAS, County staff has, under the direction of the Board of Supervisors of Mendocino County, prepared draft regulations in the form of two (2) proposed new chapters of the Mendocino County Code: Chapter 10A.17- Medical Cannabis Cultivation Ordinance and Chapter 20.242 - Medical Cannabis Cultivation Site Regulation of the Mendocino County Inland Zoning Ordinance, which chapters are together known as the Medical Cannabis Cultivation Regulation or "MCCR"; and

WHEREAS, an Initial Study was prepared for the MCCR and noticed and made available for agency and public review on November 9, 2016 (SCH# 2016112028), and subsequently recirculated on December 5, 2016, in accordance with the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*; "CEQA") and the State and County CEQA Guidelines, which Initial Study recommended the adoption of a Mitigated Negative Declaration; and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public meeting on December 1, 2016, to solicit public comments on the proposed MCCR, and subsequently held a public hearing on December 15, 2016, which it continued to January 19, 2017, at which times the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Initial Study/Mitigated Negative Declaration and the MCCR. All interested persons were given an opportunity to hear and be heard regarding the Initial Study/Mitigated Negative Declaration and the MCCR; and

WHEREAS, on January 19, 2017, the Planning Commission adopted Resolution No. PC 2017-001, making its report and recommendation to the Board of Supervisors on the MCCR, Initial Study/Mitigated Negative Declaration, and revisions to the County's Policies and Procedures for Agricultural Preserves and Williamson Act Contracts ("Policies and Procedures"); and

WHEREAS, on January 24, February 7 and February 14, 2017, the Board of Supervisors held additional public meetings regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures, at which times the Board of Supervisors heard additional public testimony and gave additional direction to County staff regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures; and

WHEREAS, pursuant to the direction of the Board of Supervisors, mitigation measures AES-1, AG-4, AIR-1, BIO-1 and BIO-3 were modified and mitigation measure AIR-2 was eliminated, as described in more detail in the ~~memorandum~~ memoranda accompanying this

resolution as well as the errata attached to this resolution as Exhibit C, which errata also makes certain clarifying changes to the Initial Study/Mitigated Negative Declaration; and

WHEREAS, CEQA Guidelines section 15074.1 provides that prior to deleting and substituting for a mitigation measure, a lead agency shall hold a public hearing on the matter and adopt specified written findings; and

WHEREAS, on March 21, 2017, the Board of Supervisors held a duly noticed public hearing on the MCCR, the Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures at which time the Board of Supervisors heard and received all relevant testimony and evidence presented orally or in writing regarding the MCCR, Initial Study/Mitigated Negative Declaration and revisions to the Policies and Procedures; all interested persons were given an opportunity to hear and be heard; and

WHEREAS, as part of its report and recommendation to the Board of Supervisors on the MCCR and Initial Study, the Planning Commission recommended that the proposed draft revisions to the Policies and Procedures be brought before the Board of Supervisors; and

NOW, THEREFORE BE IT RESOLVED, based on the evidence in the record before it, that the Board of Supervisors makes the following determinations and findings:

1. The recitals set forth in the above resolution are true and correct and incorporated herein by this reference.

2. The Initial Study/Mitigated Negative Declaration for the MCCR was prepared pursuant to CEQA and the CEQA Guidelines.

3. Revised mitigation measures AES-1, AG-4, AIR-1, BIO-1 and BIO-3 are, for the reasons described in the ~~memorandum~~ memoranda accompanying this resolution and in the record as a whole, equivalent at mitigating or avoiding potential significant effects and will not, in and of themselves, cause any potentially significant effect on the environment.

4. Because standards are already in place, including mitigation measure AIR-1, the elimination of mitigation measure AIR-2, for the reasons stated in the ~~memorandum~~ memoranda accompanying this resolution and in the record as a whole, does not cause any potentially significant effect on the environment and the in-place standards mean that equivalency at mitigating or avoiding potential significant effects has been achieved.

5. The Board of Supervisors hereby certifies that the Initial Study/Mitigated Negative Declaration, in the form attached to this resolution as Exhibit A and as modified by the errata attached to this resolution as Exhibit C, has been completed, reviewed and considered, together with the comments received during the public review process, in compliance with CEQA and the State and County CEQA Guidelines, and finds that the Initial Study/Mitigated Negative Declaration reflects the independent judgment and analysis of the Board of Supervisors.

6. The Board of Supervisors hereby finds and determines, on the basis of the whole record before it, that there is no substantial evidence in the record that there is any significant environmental impact that might arguably be anticipated to occur as a result of the MCCR that cannot be adequately mitigated through the conditions of approval and that there is no substantial evidence that the MCCR will have a significant effect on the environment.

7. The Board of Supervisors hereby adopts the Initial Study/Mitigated Negative Declaration attached to this resolution as Exhibit A, as revised by the errata attached to this resolution as Exhibit C, and the Mitigation Monitoring and Reporting Program attached to this resolution as Exhibit B and incorporated herein by this reference. The Board of Supervisors hereby directs the Department of Planning and Building Services to file a notice of determination following the adoption of the MCCR in accordance with CEQA and the CEQA Guidelines.

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy