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TO: BOARD OF SUPERVISORS

FROM: MARY LYNN HUNT, SENIOR PLANNER

SUBJECT: AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER 10A.17 – MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 – MEDICAL CANNABIS CULTIVATION SITE REGULATION OF THE MENDOCINO COUNTY INLAND ZONING ORDINANCE (OA_2016-0003), COLLECTIVELY CALLED MCCR, INCLUDING REVISIONS TO POLICIES AND PROCEDURES FOR AGRICULTURAL PRESERVES AND WILLIAMSON ACT CONTRACTS REGARDING CANNABIS CULTIVATION

PROJECT: The Mendocino County Board of Supervisors (Board) intends to establish the Medical Cannabis Cultivation Regulation (MCCR) to govern the cultivation of medical cannabis in unincorporated Mendocino County, outside the coastal zone. The MCCR will be established through proposed Mendocino County Code Amendments to add two new chapters. Chapter 10A.17—Medical Cannabis Cultivation Ordinance (MCCO) of the Mendocino County Code—will be administered by the Agricultural Commissioner's Office to regulate cannabis cultivation, establish a permitting program, and require compliance with environmental and public health regulations. Chapter 20.242—Medical Cannabis Cultivation Site Regulation, of the Mendocino County Zoning Ordinance Inland (MCCS)—will be administered through Planning and Building Service (PBS) to regulate land use and zoning to ensure the location and scale of cannabis cultivation is compatible with the County's land use and environmental setting.

Note that the MCCR identifies exceptions from the general regulations for non-commercial and smaller scale cultivation by patients and caregivers. The Board has directed County Staff to prepare follow-up ordinances to regulate post-cultivation activities such as processing, manufacturing, distribution, and retail sales of medical cannabis. The MCCR does not regulate non-medical cannabis cultivation (including cultivation pursuant to the recently approved Proposition 64).

An Initial Study of the potential environmental effects of the adoption of the MCCR has been prepared pursuant to the California Environmental Quality Act (CEQA). A related DRAFT Mitigation Monitoring and Reporting Program (MMRP) has also been prepared to summarize measures needed to minimize or avoid potentially significant effects of the project (Initial Study and MMRP are attached to the Planning Commission Resolution as Exhibit A).

The Initial Study has been circulated for review and comment by the public and by a variety of State and Local agencies. The comment period ended January 5, 2017. Public Hearings have been held by the Planning Commission and at their January 19, 2017 meeting, the Commission voted (5-2) to recommend approval to the Board of Supervisors with proposed recommendations as outlined with their Resolution (attached to this packet as Attachment 1).

BACKGROUND

PROPOSED MEDICAL CANNABIS CULTIVATION REGULATION (MCCR)

The MCCR would allow the cultivation of medical cannabis in the unincorporated county, outside the coastal zone. The MCCR will be implemented in phases, with the initial phase limited to the regulation of existing cultivation sites (Phase 1). New cultivation operations in industrial zoned properties will become eligible for permits under the MCCR in 2018 (Phase 2) and new cultivation sites will become eligible for permits in 2020 (Phase 3).

REVISION TO POLICIES AND PROCEDURES FOR AGRICULTURAL PRESERVES AND WILLIAMSON ACT CONTRACTS REGARDING CANNABIS CULTIVATION.

In 2015, the County removed its regulations regarding the Williamson Act from Chapter 22.08 of the County Code and separately adopted by Resolution No. 15-156 new Policies and Procedures for Agricultural Preserves and Williamson Act Contracts ("Policies and Procedures"). The Policies and Procedures are currently silent regarding cannabis cultivation, but changes are proposed to clarify how cannabis cultivation should be addressed.

WILLIAMSON ACT POLICIES AND PROCEDURES: Proposed are changes to the Policies and Procedures that would make cannabis cultivation a use compatible with a Williamson Act contract, but not a use that would qualify property for a contract. Changes are proposed to the definition of "agricultural use" for the Policies and Procedures that would specify that cannabis cultivation is not an agricultural use. Other sections of the Policies and Procedures, including Sections 5.2 (eligibility), 8.2 (qualifying agricultural uses), and 9.4 (compatible uses), refer back to this defined term. Cannabis cultivation would include planting, growing, harvesting, drying, curing, grading and trimming of cannabis in its natural state. Specifically excluded would be manufacturing, distributing and dispensing of cannabis or cannabis products. Lastly, the Policies and Procedures make cannabis cultivation (and other cannabis uses) incompatible with a Williamson Act contract for open space purposes.

One reason to make cannabis cultivation a compatible, but not qualifying use, is that cannabis cultivation will only be able to occupy a relatively small portion of contracted land. The largest cultivation permit sizes under the MCCR are 22,000 square feet (or ½ acre) for a nursery permit, or 10,000 square feet for a large cultivation permit. These sizes establish that cannabis cultivation on its own cannot meet the requirement that at least 50% of contracted property be used for agricultural purposes. For example, a 10 acre parcel of prime agricultural land would be required to have at least 5 acres of the property in agricultural use, but the largest MCCR permit currently proposed would be a 0.5 acre nursery. An additional 4.5 acres of agricultural uses would need to be on the property to meet the 50% requirement. Because cannabis cannot be the primary agricultural use on the property, it is appropriate to make it a compatible use.

Current Williamson Act contract holders were provided notice of the January 19, 2017, meeting of the Planning Commission. The Planning Commission's report and recommendation on the proposed MCCR includes a recommendation regarding the proposed Policies and Procedures changes. A redline of the Policies and Procedures is attached to the Planning Commission's resolution as Exhibit B.

CEQA REVIEW

BASELINE

Pursuant to CEQA Guidelines Section 15125, the Initial Study is required to identify the existing baseline set of physical characteristics. This is typically a snapshot of conditions at a single point in time that applies to the project location prior to implementation. For purposes of the MCCR Initial Study, the baseline date is August 26, 2016—the date on which the County submitted requests for early consultation to Responsible and Trustee agencies and other interested parties. Note that all existing cannabis cultivation as of August 26, 2016, including any environmental degradation related to such cultivation, is included in the baseline and is not addressed as a potential effect of adopting the MCCR.

ANTICIPATED PROJECT IMPACTS

The Initial Study identifies potential project impacts in each phase of implementation. During Phase I,

project impacts are related to the work needed to bring existing cultivation sites into compliance with state and local regulations or to relocate cultivation sites to less environmentally sensitive sites. During Phase 2, the type and the intensity of impacts associated with the development of new indoor cultivation sites in industrial zoning districts are expected to be similar to those of other manufacturing uses allowed in the industrial zoning districts. In Phase 3, impacts are related to the establishment of new cultivation sites, primarily in agricultural zones.

In each phase, potential impacts are reduced by requirements to comply with an array of existing and anticipated resource protection laws and regulations, including environmental protections included in the MCCR. After taking such regulations into consideration, the Initial Study identifies potentially significant effects to Aesthetics, Agriculture and Forestry, Air Quality, Biological Resources, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, and Utilities and Service Systems. In each case, mitigation measures have been identified which reduce the impact to less than significant levels. Most of such mitigation measures consist of modifications to the MCCR.

REVISED DRAFT ORDINANCES

CHANGES TO 10A.17 PURSUANT TO BOARD DIRECTION OF 1.24.17

On January 24, 2017, the Board of Supervisors adopted the majority of the proposed edits to the Draft Chapter 10A.17 ordinance presented that day from the Agricultural Commissioner. The Board requested that staff revise the following 2 items: 1) Re-work the proposed definition of "Park" to more clearly convey that the definition is intended to refer to community-type parks; and 2) Condense the many references of the process and justification for fees associated with different elements within the program in the document into a single statement. The definition of "Park" has been edited slightly and the reference to State Park has been removed, as it appeared on the 24th that the Board did not intend explicit inclusion of State Parks in the definition. A new paragraph, Section 10A.17.030 (E) has been added which details the process for payment and justification for fees associated with different elements with the program. Additionally, the sections within the Draft Chapter 10A.17 that establish specific fees have been edited for brevity to reference this new section. These changes are shown in red and in Attachment 2 which is an updated draft of the MCCR, including Chapter 10A.17.

CHANGES TO MCCR PURSUANT TO MITIGATION MEASURES

Attachment 2 also includes changes showing how the ordinances would be revised to reflect the mitigation measures outlined in the Initial Study. These changes are described in more detail in Section 1 of the Planning Commission resolution.

PROPOSED ENFORCEMENT TEXT CHANGES

In a separate memorandum attached to this agenda packet as Attachment 3, County Counsel's Office is proposing changes to several sections of proposed Chapter 10A.17 related to enforcement issues.

RECOMMENDATION

Staff seeks direction from the Board of Supervisors regarding (1) the Planning Commission's Resolution making its report and recommendation to the Board on the MCCR, including proposed changes to the County's Williamson Act Policies and Procedures; (2) the changes made by the Agricultural Commissioner in response to Board direction given on January 24, 2017; and (3) changes being proposed by the County Counsel's Office related to enforcement issues.

Attachments:

1. Planning Commission Resolution
 - a. Exhibit A – Initial Study and Mitigation Monitoring Reporting Program
 - i. Attachment A: Chapters 10A.17 and 20.242
 - ii. Attachment B: Standard Conditions Applicable to all Discharges, Found in RWQCB Order 2015-0023
 - iii. Attachment C: BMPs related to Discharges of Water Resulting from Cannabis Cultivation and Associated Activities, found in RWQCB 2015-0023
 - iv. Attachment D: Summary Table Report from DFW Natural Diversity database
 - v. Attachment E: California Native Plant Sensitive Species Search queried 9-15-2016
 - vi. Attachment F: US Dept. of Fish & Wildlife list of threatened and endangered species in project location, queried on 9-15-2016
 - b. Exhibit B – Williamson Act Changes
 - c. Exhibit C – Proposed Ordinances (Please refer to Attachments A and B of Exhibit A)
2. Redline of MCCR showing changes required by mitigation measures and in response to Board direction
3. County Counsel Memorandum Related to Chapter 10A.17 and Proposed Text Changes