



Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

August 21, 2017

Mendocino County Board of Supervisors
501 Low Gap Road, Room 1010
Ukiah, CA 95482

RE: Agenda Item 5A: Discussion and Possible Action Including (1) Adoption of Resolution Approving and Adopting an Addendum to the Previously Adopted Mitigated Negative Declaration, in Compliance with California Environmental Quality Act Requirements, for Amendments to Chapter 10A.17 of the Mendocino County Code; and (2) Introduction and Waive Reading of an Ordinance Making Certain Amendments to Chapter 10A.17 -Medical Cannabis Cultivation Ordinance

Dear Chair McCowen and Board Members,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1100 members. MCFB would like to provide comments below for the proposed recommendations and revisions to Chapter 10A.17 for agenda item 5A on August 22, 2017.

10A.17.040 (A)(1) Youth Oriented Facility

MCFB understands that current permits for cannabis cultivation should not be restricted based on the possibility of future youth oriented facilities being established within the 1000 foot setback restrictions. However, if a youth oriented facility is established in the future within the 1000 foot setback, there needs to be some process in place that provides a disclaimer (for lack of a better description) to the operator of the youth facility to let them know that cannabis cultivation is occurring. Since not all in home childcare operations are permitted, it will be a challenge to know if any such new facilities exist unless complaints are filed related to cannabis cultivation. Likewise, if cannabis cultivation site locations/addresses are not publicly available, then it would be a challenge for a future youth oriented facility operator to know what cultivation sites may be located within 1000 feet. The county should consider a process for how to resolve conflicts between future youth oriented facilities and existing cannabis cultivation sites if the 1000 foot setback requirement is removed for future youth oriented facilities.

10A.17.040 (B) Measurement of Set Back

The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(G) to the boundary line of a legal parcel or access easement.

Minor edit: 10A.17.040 (G) no longer describes the fencing requirement. This should be amended to read: 10A.17.040 (H).

10A.17.040 (J) Tree Removal [also 10A.17.090 (T)]

This section makes it clear that the prohibition of tree removal is directly connected to the cannabis cultivation site and does not unduly restrict the removal/trimming/maintenance of trees as needed for safety or disease concerns. There was discussion at the Board level over the last month regarding this issue, but it seems that the existing ordinance language provides clear direction on this topic. Since there are mandates for defensible space from Cal Fire [as referenced in 10A.17.110 (H)] and/or insurance companies mostly related to structures, the cannabis cultivation permit process needs to continue to separate tree removal as related to cultivation sites from other tree removal actions.

At the August 8th Board meeting, Supervisor Brown stated that the jurisdiction to administer and enforce timberland conversion permits should remain under the jurisdiction of Cal Fire. MCFB agrees with this statement and does not encourage the county to take on the responsibility and liability of confirming proper implementation of timberland conversion permits issued by Cal Fire.

10A.17.070 (D) Permit Numbers Per Parcel

(D) A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that a Person may obtain two (2) separate Permits of different Permit types, excluding Type 4 permits, on a single legal parcel if the total square footage of the two Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person may apply for and obtain a Type 4 Permit in combination with any other Permit, but the total square footage of the cultivation site shall not exceed 22,000 square feet.

The amended language regarding Type 4 permits is still confusing. The third line of the ordinance language states that a person may obtain 2 separate permits on single legal parcel excluding Type 4 permits. So this seems to indicate that a Type 4 permit is a standalone permit. However, the new language added to the end of the paragraph states that a person CAN have a Type 4 permit in combination with another permit type as long as the total square footage for the cultivation area remains under the Type 4 permit maximum of 22,000 square feet. MCFB offers the following suggestions in red below to attempt to clarify the language.

(D) A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that a Person may obtain two (2) separate Permits of different Permit types, ~~excluding Type 4 permits~~, on a single legal parcel if the total square footage of the two Permits does not exceed the ~~largest~~ maximum square footage ~~allowed for the largest permit nor the maximum overall square footage permitted on a parcel for the relevant zoning district.~~ ~~A Person may apply for and obtain a Type 4 Permit in combination with any other Permit, but the total square footage of the cultivation site shall not exceed 22,000 square feet.~~

10A. 17.070 (J) Removal of Third Party Inspectors

MCFB does not have specific comment on the use or non use of third party inspectors. However, MCFB is concerned regarding the potential impacts to the time committed for cultivation site inspections for staff of the Agricultural Department. Since May, when the cannabis cultivation permit process started, it seems that the Agricultural Department has been inundated with demands related to the administration of the cannabis program. Other programs under the purview of the Agricultural Department have seemed to take a back burner and if this continues there could be additional impacts to the traditional agricultural industry in Mendocino County. MCFB encourages the Board to continue to work with the staff of the Agricultural Department to ensure that a balanced amount of time is spent on cannabis and non-cannabis related issues.

10A.17.080 (A)(1) Phase 1 Permit Time Frame

MCFB understands that the Board is attempting to work with the existing cannabis cultivation community in the county to encourage as many cultivators as possible to come into compliance with the ordinance. Since the ordinance application process continues to evolve, it seems logical to allow for a full year under phase one to allow for applicants to submit applications. However, MCFB has some concerns related to the extension of the phase one application process.

First, the proof of prior cultivation language did not add language to clarify that proof of prior cultivation documentation was only applicable to inland cultivation and not prior cultivation in the coastal zone. At the August 8th Board meeting, it was stated that relocation/proof of prior cultivation in the coastal zone would not be accepted since the negative declaration EIR for this ordinance did not include analysis of any cannabis cultivation in the coastal zone. This needs to be clarified in the proof of prior cultivation submittal and accepted documentation language.

Second, Chair McCowen asked staff to provide summary statistics of where the current permit applications are located based on zoning designation and staff responded that the information would be provided. MCFB supports this request since phase one will allow for cultivation on forest lands/TPZ, range land and agricultural lands. MCFB would appreciate the opportunity to see where the current 600+ permits are located in relation to zoning designation so that there is an understanding of what a possible extension of the application process through June 2018 might add to the current level of cultivation on property zonings important to agriculture. This will also be relevant to understand what impacts look like on agricultural zoned properties with the future permitting of phase three.

Finally, it is the understanding of MCFB that the compliance forms for Williamson Act contracted properties will be distributed by the county assessor's office later this year. Since cannabis is an allowable use, but not a qualifying use for the purpose of meeting the compliance threshold of a Williamson Act contract, it is important that Williamson Act contracted properties under the cannabis permit process are being reviewed for compliance with maintaining 50% of the property in qualifying commercial agriculture. If additional properties with a Williamson Act contract come into the cannabis program following the deadline for submitting compliance reports for the county in 2017, there needs to be a process in place to ensure that the qualifying commercial agricultural activities are continuing.

10A.17.100 (C) (1 a-d) and 10A.17.100 (C) (2) Permit Review

If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.

The new language for these sections specifically discuss violations related only to phase one permits (one example above). It seems that similar violations may be found in phase two and phase three as well so MCFB questions why the language is being limited to phase one only.


10A.17.140 (A) and 10A.17.140 (C)(4) Violations and Penalties

If at any time the Department of Agriculture determines that a law related to a Permit is being violated, the Department of Agriculture may issue a notice of violation or an administrative citation(s) pursuant to Mendocino County Code Chapter 1.08 and notify other interested public agencies or County departments of such violations. After the violation(s) have been cured, the correction must be confirmed. Failure by the Permittee to schedule a re-inspection with the Department of Agriculture to confirm the correction will result in an unscheduled compliance inspection.

MCFB is concerned that this section provides the Agriculture Department with a broad ability to determine violations of laws under the jurisdiction of outside agencies. If during an inspection, the Agricultural Department is suspect of a violation such as illegal water diversion or tree removal, and the applicant cannot demonstrate that corrective actions with the relevant agency are occurring, then the department should contact the relevant agency (DFW, Cal Fire, etc) to have that agency make the determination of violation. The permit can be held or suspended, pending the correction of the violation, but the Agricultural Department should not have sole discretion to determine non jurisdictional violations.

MCFB encourages the Mendocino County Board of Supervisors to consider the comments and recommendations above. As always, if there are any questions on the comments and recommendations above, please do not hesitate to contact the MCFB office.

Sincerely,



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President

Mendocino County Chief Planner, Mary Lynn Hunt
Mendocino County Interim Agricultural Commissioner, Diane Curry
Mendocino County Council, Katharine Elliott
Mendocino County CEO, Carmel Angelo