



MENDOCINO COUNTY MEMORANDUM

Date: August 22, 2017

To: Mendocino County Board of Supervisors

From: Supervisor McCowen

Subject: Agenda Item 5(a) Amendments to Chapter 10A.17

I am providing my recommended changes in writing for ease of discussion. This memo is divided into two parts, the first part is keyed to the redline version of Staff recommended changes. Black underline shows 1) staff language that I agree with; 2) paragraphs beginning Comment: that explain my proposed changes. Red underline shows modified or additional language that I am recommending. The changes are best understood by a side-by-side comparison of the redline version in the packet and the changes recommended herein.

Proposed Modifications to Staff Recommendations:

Sec. 10A.17.040 (A)(1) [page 2]

Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein that is in existence at the time a Permit is initially applied for.

Comment: The date a permit is initially applied for is appropriate because permits are applied for on an annual basis and a facility could be established *after* a permit is applied for, but *before* a permit is issued.

Sec. 10A.17.040(B) [page 3]

The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H) or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure.

Comment: I believe the direction of the Board was to modify the measurement to create a 1,000 foot separation between cultivation site and the *location where the sensitive use occurs*, not the exterior boundary of a potentially much larger parcel on which the sensitive use is *located*. The intent of "any fenced, maintained or improved area" is to include such areas as school playgrounds or neighborhood parks.

Sec. 10A.17.070(D) [page 5]

Delete "excluding Type 4 permits" and revise the last sentence to read:

A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, may not exceed a total square footage of 22,000 square feet per legal parcel, of which not more than 10,000 square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the

mature flowers are destroyed, and not used for commercial purposes, shall not be required to obtain a separate cultivation permit.

Comment: Excluding Type 4 Permits but then adding them back in seems confusing. Also, I believe it is appropriate to clarify that the total square footage that may be grown to maturity with a Type 4 Permit, in combination with any other Permit, is limited to 10,000 square feet.

Sec. 10A.17.090(T) [page 15]

No application shall be approved which identifies or would require removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a **cannabis** cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a **cannabis** cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("Cal-Fire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a **cannabis** cultivation site, the County shall deny the application. Notwithstanding the foregoing, for **cannabis** cultivation sites created prior to **January 1, 2016** **May 4, 2017**, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible, or otherwise resolved, as required by the resource protection agencies including Cal-Fire, the NCRWQCB and the CDFW. **County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.**

Comment: Ideally, no trees would have been illegally removed. But upon reflection I do not follow the logic of allowing applicants who removed trees unlawfully prior to January 1, 2016 to seek permits while denying the same opportunity to applicants who removed trees unlawfully between January 1, 2016 and May 4, 2017. In both cases, the trees have been removed and the cultivation sites have been created. Further, without the prospect of obtaining a permit, there is a reduced incentive to remediate the site.

Sec. 10A.17.100(C)(1) [page 17]

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 **County** permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan....

Comment: I believe this change clarifies that the permits referred to are County permits since it is unknown when various State agencies may be able to issue required permits. This is consistent with long standing Board direction where applicants are required to enroll or apply for State programs or permits, but not have the permits in hand.

Sec. 10A.17.140(D)

Termination of Permit. After issuance of a Notice to Terminate Permit, the Permit shall be terminated upon ~~the~~ a final determination after the hearing on the order to show cause **affirming the determination to terminate the permit in question** pursuant to section 10A.17.150.

Comment: The addition incorporates language from Sec. 10A.17.150(D) Determination after Hearing.

Additional Modifications for Discussion:

Sec. 10A.17.020 Definitions (page 3)

Comment: The definitions for “Cultivation” and “Cultivation site] both include “processing” or “processed” – does staff have a recommendation on possible deletion of these terms?

Sec. 10A.17.060 (C) [This section not in staff memo – page 11 of complete ordinance as adopted April 4, 2017]

~~If plant starts are tiered vertically in racks during their growing phase, the maximum allowed power usage shall be 35 watts per shelf.~~

Comment: Delete as per Board direction regarding lighting requirements.

Sec. 10A.17.080(B)(2)(d) [page 9]

If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, except not more than once in every five years, the Person qualified to apply for a Permit to cultivate on such site may file a Notice of Non-Cultivation with the Department of Agriculture.

Comment: After considerable reflection, I have come to believe that this modification may encourage more applicants to come forward. That aside, I do not see the harm in making this modest change that has been the subject of numerous requests.

Sec. 10A.17.080(B)(3)(c)(ii) [page 10]

Delete ~~material~~ and add natural