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TO: Honorable Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

DATE: August 8, 2017

**SUBJECT: Medical Cannabis Cultivation Program
Topics for Discussion/Direction at August 8, 2017, Meeting**

The Board of Supervisors adopted Ordinance No. 4381, which added Chapters 10A.17 and 20.242 to the Mendocino County Code, on April 4, 2017, and the ordinance was effective on May 4, 2017.

At the July 18, 2017, meeting of the Board of Supervisors, the Board provided direction on several aspects of the County's Medical Cannabis Cultivation Program and ordinances. Staff is returning to the Board with proposed ordinance changes in response to the Board's direction.

1. Permits/Code Compliance Remediation Plan

In response to Board direction, staff is proposing the following modifications to Section 10A.17.100:

- Renumber so that paragraphs (A)-(D) become (A)(1)-(4), and then number the remaining paragraphs accordingly. Proposed changes to second large paragraph under (D) will include:
 - Clarifying and amending the remediation plan requirement to specify what it is, how it is formed, and how it may be used.
 - Removing language that may have been interpreted to limit this paragraph to violations discovered only during the "pre-permit site

inspection”; clarifying the language to explicitly make this paragraph apply whenever a code violation is known to exist prior to an issued Permit for an entity in the application process.

- Clarifying that the remediation plan will be the primary mechanism to obtain code compliance from entities in the application process, but such process does not foreclose the use of other tools, such as admin citations
- Clarifying the timelines regarding the remediation plan and who has authority to dictate those timelines and authorize extensions.

2. Revisions to Application Process

Following the July 18, 2017, meeting, staff discussed how to improve the permit application process. A primary point of concern was the detail of site plans being submitted with permit applications. In many instances, staff is needing to ask applicants for additional information regarding a submitted site plan in order to finalize the review of an application.

Staff would like to set up at least one workshop to review with applicants and agents the requirements of a site plan under Chapter 10A.17. Staff also recommends revising the County’s application process so that applicants first stop at the Department of Planning and Building Services so that Planning staff may perform a basic zoning clearance, determine whether an administrative or use permit is required, and review the site plan to determine if all required elements are present, before the applicant pays any fees or turns in an application to the Department of Agriculture. These changes should lessen the amount of time spent reviewing applications and communicating with applicants regarding providing additional information.

3. Application Deadline

The Board of Supervisors gave direction to extend the deadline for submittal of Phase One applications from December 31, 2017, to June 30, 2018. Section 10A.17.080(A)(1) would be amended consistent with this direction.

4. Tree Removal

The Board provided direction to staff to clarify Chapter 10A.17’s prohibition on tree removal. The prohibition on tree removal stated in Section 10A.17.040(I) would remain unchanged. Section 10A.17.090(T) is proposed to be changed as follows:

No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a 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 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 (“CalFire”) 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 cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to January 1, 2016, through prior unauthorized conversion of timberland, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.

5. Multiple Permits on One Parcel

The Board provided direction to staff to provide more information regarding the possible amendment of Section 10A.17.070(D) regarding the allowance of multiple permits for a combination of permit types on a single parcel. In addition, staff is recommending changes to clarify that a maximum of one permit may be granted for each legal parcel. Staff recommends the following changes to the paragraph:

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.

6. Exemption Stacking

The Board provided direction to staff to more clearly place limitations on cultivation by qualified patients, persons with an identification card or primary caregivers. Staff proposes the below changes to Section 10A.17.030. In addition, minor changes to paragraph (A) are also shown to clarify that the provisions of Chapter 10A.17 only currently apply to the area of the County governed by the Inland Zoning Code.

- (A) Except as provided for by paragraph (B) of this Section, cultivation of cannabis for medical use shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis for medical use only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating medical cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Registration with the Agricultural Commissioner on an annual basis and maintaining such registration.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of 100 square feet of medical cannabis on a legal parcel may be cultivated by a qualified patient or patients.
 - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a

maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of 100 square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for, up to a maximum total of 200 square feet on a legal parcel.

7. Proof of Prior Cultivation

The Board provided direction that proof of prior cultivation could consist of providing evidence that a prior cultivation site was located on a parcel where the site could have been in compliance with the setback requirements of the County's Chapter 9.31. Staff proposes the following changes to Section 10A.17.080(B)(1):

Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) provisions of section 10A.17.040. Evidence shall include:

8. Collective Agreements

Paragraph (P) of Section 10A.17.090 currently requires an applicant to provide proof, by way of a written agreement, that the applicant is authorized by one or more dispensaries or processors to produce medical marijuana for the members of the collective or processors. Members of the public have claimed that certain dispensaries are making compliance with this paragraph difficult and have asked for a different mechanism to take its place.

The Board's provided direction to eliminate this requirement. Paragraph (P) will be replaced by the phrase "Intentionally Omitted."

9. State Felony Requirements

Staff will review the most recent revisions to the Business and Professions Code and will evaluate whether additional changes to Section 10A.17.090(M) are necessary at this time.

10. Relocation and Extinguishment of Prior Cultivation Site

Questions were raised as to whether the relocation provisions applied to properties that are not subject to the sunset provisions of Section 10A.17.080(B)(2)(b). Staff does not believe that the relocation provisions (found in Section 10A.17.080(B)(3) contain any provisions that limit relocation to properties subject to the sunset provisions of Section 10A.17.080(B)(2)(b).

11. Third Party Inspector Role

At the July 18, 2017, Board of Supervisors meeting, County staff asked the Board for direction regarding the role of third party inspectors. In its memorandum prepared for the meeting, staff presented concerns regarding the need for third party inspectors, given that the Department of Agriculture has hired additional staff and will be inspecting the cultivation sites at least twice a year (once before permit issuance and at least once during cultivation), has the ability to inspect more often, and when the Code Enforcement Division has the ability to respond when a complaint is filed. The Board of Supervisors did not provide specific direction regarding third party inspectors but asked staff to find a them role.

Staff remains concerned about the role of third party inspectors in the ordinance itself. The Department of Agriculture has hired six inspectors to perform the County's inspections, reducing or eliminating the need to rely on third parties for this service. Entities that desired to serve as a third party inspector could still serve as private consultants to cultivators to assist cultivators with the application process and with maintaining compliance with Chapter 10A.17. Staff recommends that third party inspectors be eliminated from the ordinance, and that they can instead serve as consultants to individual cultivators. Elimination of third party inspectors from the ordinance would require refunding fees paid by applicants in order to become third party inspectors.

12. Enforcement Issues

County Counsel staff propose to make the following changes to Section 10A.17.140:

- Number the paragraphs for ease of use
- Proposed changes will include:
 - Amending the code enforcement provisions of this section based on whatever changes are made with respect to the role of third party inspectors.
 - Clarifying that an administrative citation may be issued at any time a violation is discovered by the County, as permitted by Chapter 1.08.
 - Explicitly identifying the reasons, other than the one already explicitly identified, on which a Notice to Terminate may be issued

13. Additional Issues to be Discussed at the Meeting by Staff

- Septic System Requirements
- Road Easements
- Ability to Relocate from Coastal Zone to Inland Zone
- Potential Provisional Permit Status
- Correction to Zoning Tables exempting all Industrial zones from requiring a minimum acreage
- Fees for Multiple Permits
- Expansion of previously existing sites in future years
- Number of Inspections to be conducted by Department of Agriculture, including the definition of cycle.
- Concerns regarding setback requirements