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TO: Honorable Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

DATE: September 12, 2017

**SUBJECT: Medical Cannabis Cultivation Program
Discussion of Amendments to Chapter 10A.17**

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. Certain amendments to Chapter 10A.17 were adopted by the Board at its meeting on August 29, 2017, by Ordinance No. 4392.

The Board of Supervisors has previously provided direction regarding certain additional changes to Chapters 10A.17 and 20.242 that were not a part of the amendments adopted on August 29, 2017, and has separately mentioned other aspects of these chapters that it would like to discuss further. This memorandum reviews the proposed changes on a topic by topic basis.

Allowance for a One-Year Period of Non-Cultivation

Section 10A.17.080(B)(2)(d) currently reads as follows:

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.

This language is within subdivision (B) regarding requirements specific to Phase One permits and is further within paragraph (2), which is specific to cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation. For instance, this language would apply to cultivation sites in a commercial zone or a single family residential zone (the latter of which is also subject to the sunset provision).

On August 22, 2017, Supervisor McCowen proposed revising section 10A.17.080(B)(2)(d) to allow a Permittee to not cultivate on such a site one year out of every five years without extinguishing the Permittee's ability to obtain an annual permit for the cultivation site.

Staff asked the Board for additional time to determine if this paragraph was the appropriate place for the revision, or if additional changes needed to be made to either Chapter 10A.17 or 20.242. In reviewing Chapter 20.242, a corresponding change would need to be made to section 20.242.040(C)(2).

Staff would recommend that section 10A.17.080(B)(2)(d) be revised as follows:

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; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

Staff would recommend that section 20.242.040(C)(2) be revised as follows:

Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section; provided, however, that such ability shall not be extinguished if the Permittee files a Notice of Non-Cultivation pursuant to section 10A.17.080(B)(2)(d).

Staff would also like to confirm that this language is intended to be limited to cultivation sites not listed in Table 1 of section 20.242.040. The current placement of the

language means that the allowance to not cultivate for a year would not specifically apply to those zones listed in Table 1: RR-5, RR-10, AG, UR, RL, FL, TPZ, I1, I2 and PI. If the Board intends for the language to apply to any zone where cultivation is allowed during Phase One, staff would recommend that the above language be moved from its current location, paragraph (2)(d), to a new paragraph (5). This would make the language applicable to all zones where cultivation is allowed in Phase One. A corresponding change would take place in section 20.242.040. Additional language may be desired to clarify that the fallow period exception does not apply to land affected by the sunset period.

Administrative Permit Process for Setback

On August 29, 2017, the Board amended section 10A.17.040 regarding how a setback from certain sensitive receptors was measured so that the setback is 1000 feet from a cannabis cultivation site 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.

In addition, on August 22, the Board provided general direction that section 10A.17.040 should be further amended to allow applicants to seek a reduction in the setback upon the issuance of an administrative permit pursuant to Chapter 20.242. This change requires minor changes to section 10A.17.040(B), but would also require revisions to section 20.242.070. Staff recommends revising section 20.242.070 to create special findings that would be made for the reduction of a setback from a sensitive receptor.

Staff intends to develop certain findings and standards and present the proposed ordinance changes to the Planning Commission at an upcoming Commission meeting, and bring an ordinance to the Board of Supervisors for its review and approval.

Additional Zoning Code Changes

As part of a zoning code amendment related to the administrative permit process and findings outlined above, staff will bring forward any clarifying changes to Chapter 20.242. One example is related to industrial zoning districts. Chapter 20.242 does not specifically exempt industrial zoning districts from minimum parcel sizes, but staff does not believe that five to ten acre minimum lot sizes were anticipated to be applied to industrial properties. Staff will review the ordinances and bring changes forward for discussion to the Planning Commission and the Board.

Material Flow vs. Natural Flow

In his memorandum dated August 22, 2017, Supervisor McCowen suggested deleting the word “material” from section 10A.17.080(B)(3)(c)(iii) and replacing it with the word “natural.” This subsection is in regards to the restoration of an origin site that is being relocated; the existing requirement is that the applicant must “remove illegal dams, ponds or other in-stream water storage to restore material stream flows, unless such features will continue in use.”

Replacing the word “material” with “natural” would match the phrasing of the mitigation measure of the Mitigated Negative Declaration relevant to the relocation of a cultivation site. Staff will incorporate this change with a subsequent set of amendments to Chapter 10A.17.

Good Standing Procedure/Determination

Business and Professions Code section 26055 was amended by Senate Bill 94 in July and now contains a more detailed procedure for the issuance of state licenses. Under paragraph (g)(2), prior to issuing a state license for any commercial cannabis activity (including cultivation, possession, manufacture, distribution, processing, storing, testing, packaging, labeling, transportation, delivery or sale of cannabis), the licensing authority (the state agency responsible for the issuance, renewal or reinstatement of the license) shall notify the local jurisdiction of the receipt of an application.

In response, the local jurisdiction:

1. May notify the licensing authority that the applicant is not in compliance with a local ordinance or regulation, in which case the licensing authority shall deny the application; or
2. May notify the licensing authority that the applicant is in compliance with all applicable local ordinances and regulations, in which case the licensing authority may proceed with the licensing process; or
3. May provide no notification in response to the state, in which case after 60 business days, the licensing authority shall make a rebuttable presumption that the applicant is in compliance with all local ordinances and regulations.

In the event the local jurisdiction provides no notification, the statute allows the local jurisdiction to later notify the licensing authority that the applicant is not in compliance

with a local ordinance or regulation. In this case, the licensing authority shall not presume compliance with local ordinances or regulations, and may commence disciplinary action in accordance with state law. If such action is not taken prior to renewal of the license, the license shall not be renewed until the local jurisdiction notifies the licensing authority that the licensee is in compliance with local ordinances.

Under the statute, there is no penalty to the County for not responding to the state's notice of the receipt of an application. However, the County could develop separate form letters for approved permits and denied applications to provide to the state in response to such a notice.