



## MENDOCINO COUNTY *MEMORANDUM*

**Date:** May 14, 2019

**To:** Mendocino County Board of Supervisors

**From:** Supervisors Haschak and McCowen

**Subject:** Staff Request for Clarification on County Tree Removal Policy

Background: Chapter 10A.17 prohibits tree removal for the purpose of developing a cannabis cultivation site. Staff has identified several situations involving tree removal that require interpretation of the ordinance, including instances where the stated reason for removal was not directly related to the cultivation of cannabis but the result was that trees were removed in connection with site development. The ordinance language reads as follows:

- Sec. 10A.17.040 (K): Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.
- Sec. 10A.17.090 (T): 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 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 CalFire, 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.

## Staff Questions:

- If a parcel has multiple developed cultivation sites and tree removal is associated with only one of those sites, is the entire parcel ineligible?
- Even with a pre-existing 3 Acre Conversion permit from CalFire, are applications where tree removal occurred after May 4, 2017 to be denied?
- If a parcel associated with cultivation is denied due to tree removal, are future property owners rendered ineligible because of the prior tree removal?
- For the purposes of developing a cultivation site, is tree removal prohibited for ancillary development? For example, creating a roadway that requires the removal of trees but that is needed for improving or creating site access.

## Ad Hoc Recommendations:

- The Ad Hoc Committee recommends that in the first example only the site associated with tree removal would be ineligible since trees were not removed from other sites on the same parcel. The applicant would need to submit an amended application showing deletion of the ineligible site.
- In the second example, despite the issuance of a 3 Acre Conversion permit, the Ad Hoc Committee recommends that the site would be ineligible if tree removal occurred after May 4, 2017 but areas outside the boundaries of the 3 Acre Conversion would be eligible if all other conditions were met.
- The Ad Hoc Committee recommends that ineligible sites would remain ineligible for future owners to create a disincentive for tree removal and to prevent the original owner profiting from the tree removal.
- The Ad Hoc Committee recommends that tree removal to create an access road to a cultivation site would constitute tree removal for the purpose of cannabis cultivation and would therefore render the site ineligible for a permit.