



Mendocino County

Legislation Text

File #: 23-0164, Version: 1

To: Board of Supervisors

From: County Counsel Cultural Services Agency

Meeting Date: February 7, 2023

Department Contact: Christian Curtis

Phone: 707-234-6885

Department Contact: Kristin Nevedal

Phone: 707-234-6335

Department Contact: Steve Dunicliff

Phone: 707-463-4441

Item Type: Regular Agenda

Time Allocated for Item: 2 Hours

Agenda Title:

Discussion and Possible Action Regarding the Handling of Vegetation Modification in Connection with Applications for Commercial Cannabis Cultivation Under Mendocino County Code Chapter 10A.17 (Sponsor: County Counsel and Cannabis)

Recommended Action/Motion:

Provide direction regarding a potential ordinance amendment for the handling of vegetation modification in connection with applications for commercial cannabis cultivation under Mendocino County Code Chapter 10A.17.

Previous Board/Board Committee Actions:

On October 4, 2022, the Board disbanded the Cannabis Ad Hoc Committee and suggested the discussion of vegetation modification return for further discussion at the next General Government Committee. The vegetation modification discussion at the General Government Committee occurred on December 12, 2022, and was continued to allow for further discussion and community input. Due to reorganization of the General Government Committee at the beginning of 2023, this vegetation modification was moved to be discussed with the Board of Supervisors.

Summary of Request:

Mendocino County only allows commercial cannabis cultivation with a permit under Chapter 10A.17 of the Mendocino County Code. Permits may not be granted if certain trees (commercial species or true oak) are removed “for the purpose of developing a cannabis cultivation site . . .” The ordinance requires staff to deny permits where prohibited tree removal has occurred or is contemplated, but exceptions exist for safety or disease concerns. This limitation on tree removal was enacted as an environmental mitigation measure and was part of the County’s basis for determining that no Environmental Impact Report was needed prior to adoption of the ordinance.

Administration of this part of the ordinance has presented certain challenges. Because the ordinance applies retroactively, the Cannabis Department (the “Department”) is often required to determine whether tree removal was consistent with 10A.17 years after the removal occurred. Because it is more restrictive than other laws, applicants are prohibited from cultivating in areas where tree removal was entirely lawful or even

permitted by responsible agencies. In many cases, there may have been no need to document the types of trees or the reasons for their removal at the time that the tree clearing happened.

A substantial number of current applications propose cultivation activities in areas from which trees have been removed. For each such application, the Department needs to determine whether the trees removed were of a prohibited species, whether they were removed for the purpose of developing a cultivation site, and whether they fell within the ordinance's exemption for "safety or disease concerns." In many cases, there may be substantial questions about the sufficiency and reliability of the evidence available to make that determination.

The Department, in working with counsel, has developed an affidavit form which, along with other applicant submissions, will give it an evidentiary basis to begin to make these determinations. Additionally, the Department is working to develop standards to cover (1) when the submissions or extraneous information may warrant further inquiry and (2) when the totality of the evidence is sufficient to grant or deny the application. The Department is requesting direction from the Board of Supervisors and input from the public prior to implementation of this draft document.

Additionally, the Department would like to ask the Board of Supervisors to consider a possible ordinance amendment to clarify certain ambiguities in the existing ordinance related to tree removal. Although the Department Head's interpretation is entitled to substantial deference, a few of the current ambiguities touch on important policy issues that may be more suitable for Board resolution.

Alternative Action/Motion:

Provide direction to staff.

Does This Item Support the General Plan? Yes

Strategic Plan Priority Designation: An Effective County Government

Supervisory District: All

vote requirement: Majority

Supplemental Information Available Online At: n/a

Fiscal Details:

source of funding: n/a

current f/y cost: n/a

annual recurring cost: n/a

budget clarification: n/a

budgeted in current f/y: N/A

if no, please describe:

revenue agreement: N/A

Agreement/Resolution/Ordinance Approved by County Counsel: Yes

CEO Liaison: Executive Office

CEO Review: Yes

CEO Comments:

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Executed By: Atlas Pearson, Senior Deputy Clerk

Final Status: Direction Given to Staff

Date: February 7, 2023

