



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
▶ 860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482
120 WEST FIR STREET · FT. BRAGG · CALIFORNIA · 95437

BRENT SCHULTZ, DIRECTOR
TELEPHONE: 707-234-6650
FAX: 707-463-5709
FB PHONE: 707-964-5379
FB FAX: 707-961-2427
pbs@mendocinocounty.org
www.mendocinocounty.org/pbs

MEMORANDUM

DATE: OCTOBER 18, 2018

TO: PLANNING COMMISSION

FROM: MARY LYNN HUNT, CHIEF PLANNER
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL
PAUL JUNKER, MICHAEL BAKER INTERNATIONAL

SUBJECT: OA_2018-0008_/R_2018-0005: AMENDMENTS TO MENDOCINO COUNTY CODE CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 - CANNABIS CULTIVATION SITES; PROPOSED ADDITION OF CHAPTER 20.118 – CANNABIS ACCOMODATION (CA) COMBINING DISTRICT AND CHAPTER 20.119 – CANNABIS PROHIBITION (CP) COMBINING DISTRICT TO THE MENDOCINO COUNTY CODE, AND REZONING OF CERTAIN PROPERTIES TO THE CA AND CP DISTRICTS.

REQUEST: The Mendocino County Planning Commission is requested to make its report and recommendation to the Board of Supervisors on the following actions: (1) Amend the Mendocino County Code - Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance, (2) Amend Chapter 20.242 - Cannabis Cultivation Sites, of the Inland Zoning Ordinance (Mendocino County Code, Title 20, Division I), (3) Add Chapter 20.118 - Cannabis Accommodation Combining District and Chapter 20.119 - Cannabis Prohibition Combining District to the Inland Zoning Ordinance (Mendocino County Code, Title 20, Division I), and (4) Rezone certain properties to apply the Cannabis Accommodation Combining District in areas within the Covelo Core and Covelo-Fairbanks Road, Laytonville, South Leggett, and the Mitchell Creek areas near Fort Bragg; and apply the Cannabis Prohibition Combining District to the Deerwood and Boonville Road-Woody Glen areas of Ukiah Valley.

SUMMARY: Amendments to County Code Chapters 10A.17 - Mendocino Cannabis Cultivation Ordinance and 20.242 - Cannabis Cultivation Sites would provide greater flexibility for setbacks and lot sizes in the review of cannabis cultivation permits. The new Chapter 20.118 - Cannabis Accommodation (CA) Combining District is intended to support continued operation of existing cultivation sites and the new Chapter 20.119 - Cannabis Prohibition (CP) Combining District is intended to prohibit new commercial cannabis uses and would sunset existing permitted commercial cannabis uses. Also proposed is the establishment of the first CA and CP Districts.

Establishment of the Mitchell Creek North and Mitchell Creek South CA Combining Districts were considered in the study. Staff is recommending that these proposed districts be removed from the rezone proposal due to insufficient support from the property owners within the proposed areas.

BACKGROUND: Mendocino County circulated a Request for Proposals for assistance with Cannabis Zoning Exemptions – an effort intended to identify and implement strategies to facilitate the permitting of commercial cannabis uses in Mendocino County. Michael Baker International (“Michael Baker”) was selected to assist the County and, following selection, contract execution and scope refinements, Michael Baker formally initiated work on December 5, 2017. Initial strategies and approaches were developed and three small working groups (Overlay Sub-Groups of the Cannabis Overlay Working Group) were established by the County to provide guidance on what was then referred to as Opt-In, Opt-Out, and Exceptions code amendments. The general approach of Michael Baker’s effort was presented to the Board of Supervisors on January 23, 2018, and Michael Baker proceeded with work with adjustments in approach as directed by the Board.

From January to June 2018, Michael Baker led more than 15 meetings with members of the Cannabis Overlay Working Group, including meetings with the three Overlay Sub-Groups that were tasked with helping to guide development of what is now referred to as the Cannabis Accommodation (CA) Combining District, the Cannabis Prohibition (CP) Combining District, and the Exceptions to the current regulations. These meetings led to the creation of three Framework documents that were presented to the Board of Supervisors in a public presentation on June 12, 2018. The Framework documents were revised based on Board recommendations and preparation of draft regulations commenced; these documents are provided as Attachment 3 of this report.

Through Board discussions on January 23, 2018, Michael Baker received direction to rely on the Overlay Sub-Groups to guide and develop policy options for this effort. As such, Overlay Sub-Group members were encouraged to meet with and represent the broader community in this process. Meetings with the Overlay Sub-Groups resulted in the Framework documents that were presented for Board review on June 12, 2018. At the June meeting, the Board directed Michael Baker to hold meetings for each community that was considered for either a CA or a CP Combining District.

PUBLIC PARTICIPATION: Community input was received through three primary venues: a series of community meetings held on July 26 and July 27; a dedicated email address of cannabisoverlay@mendocinocounty.org; and through online community surveys for locations proposed as CA or CP Combining Districts. Brief summaries of community input are provided below and a more detailed summary is provided as Attachment 2 of this report.

Community Meetings: Following Board review and incorporation of Board-directed revisions, the draft Framework documents were presented at community workshops on July 26 and 27, 2018, in Covelo, Laytonville, Mitchell Creek, and Ukiah. Noticing for these meetings, and possibly the time of meetings, did not allow many residents to attend. In all, approximately 150 residents were in attendance at these meetings and many comment cards from participants were collected.

Meetings conducted in Covelo and Laytonville were lightly attended, in part due to limited advance notice and in part due to scheduling during working/business hours. While lightly attended, comments at these meetings were overall supportive of the CA provisions proposed for these communities. While the approach was supported in Covelo, there was strong sentiment that the size of the proposed district was too small and that a much broader solution was needed.

A meeting held in Ukiah to discuss the Deerwood and Boonville Road/Woody Glen CP Districts generated strong support from community members for the district. Some concerns were expressed by advocates of cultivation that widespread prohibitions could impact cannabis growers and the County economy, but no opposition to the proposed districts was voiced.

The Mitchell Creek meeting was well attended with regard to number of participants, but homeowners felt they were underrepresented. The discussion included comments about the benefits of cultivation as well as concerns regarding the negative impacts of cultivation on Mitchell Creek neighborhoods.

In the community meetings, it became clear that a convenient and relatively anonymous canvassing of residents was required to gain a sense of community support for the Combining Districts that were proposed for this effort. The use of an online survey was identified as an alternative for the currently proposed Combining Districts as compared to the petition of landowners that will be required for future cannabis Combining Districts (see discussion below).

Community Emails: – www.cannabisoverlay@mendocinocounty.org

As part of the community input process, a web address was established to receive comments from the public: cannabisoverlay@mendocinocounty.org. This address has received more than 150 messages, including a combination of comments and requests for assistance with the survey. Comments have been reviewed and consolidated into recurring messages. Requests for assistance or general questions received direct email responses.

At least 88 email comments were received regarding the Mitchell Creek CA District, and these comments were almost 90 percent in opposition. Specific concerns are described in Attachment 2, but generally the concerns, in order of frequency cited, were impacts to water supply, increased crime, traffic, lack of

noticing, commercial use incompatibility, impact on property value, and general environmental concerns.

Input on the Deerwood and Boonville Road/Woody Glen CP Combining Districts were consistently in favor of the district. In total, 28 comments were received and all supported establishment of the districts.

Email comments on Covelo, Laytonville, and South Leggett CA Combining Districts were very light. Comments were generally either in favor or requested additional information. Concern over the relationship of sensitive use buffers and tribal lands were noted in these districts.

Community Surveys: Proposed regulations require a demonstration of 60 percent of affected property owners to qualify a district for consideration. Requiring a petition would not have been feasible for some of the currently proposed Combining Districts due to schedule constraints, size of proposed districts, and other concerns expressed by community members. As an alternative, community surveys over the internet were conducted to gauge landowner support for the currently proposed districts. The survey process was not without flaws, including the following issues:

- Assessor Parcel information is not always accurate due to property sales, changed mailing addresses, and similar issues.
- The postcards used for the survey were, in some cases, discarded by recipients as junk mail.
- Some individuals felt the questions were unclear or poorly worded.
- Not all residents have easy access to the internet.

While there were challenges with the online survey, there was strong correlation between input received through community meetings, email comments, and the surveys and it is recommended that the County rely upon the survey results to demonstrate landowner preference.

Michael Baker has conducted many planning related surveys and the response levels to the Mendocino County surveys ranged from acceptable to very high, though none of the surveys resulted in a response from 60 percent of all owners. Requiring a positive survey response from 60 percent of all property owners within a proposed district is an unrealistic expectation. Therefore, the survey results are presented as percent of respondents versus percent of all property owners.

The outcomes of the surveys, regarding whether the 60 percent community support was met, are noted below. In brief, all proposed districts received 60 percent favorable responses, except for Mitchell Creek North and Mitchell Creek South (these districts received very low support and are not recommended for adoption). Additional information on the survey methodology and the detailed results are provided in Attachment 2.

- Covelo Core CA District: Approval rate: 81%
- Covelo Fairbanks Road CA District: Approval rate: 60%
- Mitchell Creek North CA District: Approval rate: 10%
- Mitchell Creek South CA District: Approval rate: 33%
- Laytonville CA District: Approval rate: 80%
- South Leggett CA District: Approval rate: 88%
- Deerwood CP District: Approval rate: 94%
- Boonville Road/Woody Glen CP District: Approval rate: 92%

PROPOSED Mendocino County Code Amendments:

Chapter 20.118 - Cannabis Accommodation (CA) Combining District:

The proposed addition of Chapter 20.118 can be found in Exhibit C of the attached Planning Commission resolution. Below is a brief summary of Chapter 20.118.

- Chapter 20.118 both provides direction for how future CA districts may be established and creates the County's first CA districts.

- The chapter establishes provisions related to the expected future CA districts, including:
 - CA Combining Districts will be primarily residential in use and zoning designation.
 - CA Combining District will include at least 10 parcels.
 - Parcels within an CA Combining District must be contiguous, with limited exceptions.
 - Applicants seeking to establish a CA Combining District must demonstrate support of affected landowners (petition or alternative means as approved by the County).

- Once established, a CA Combining District would modify regulations as follows:
 - Sunset Provision for Residential Districts would not apply to permitted cannabis cultivation uses.
 - Cannabis cultivation permit types (C) Small Outdoor, (C-A) Small Indoor, Artificial Light, and (C-B) Small, Mixed Light would not be subject to current 2-acre minimum lot size.
 - Property line setback noted in Sec. 10A.17.040 (A)(5) would be reduced to 20 feet.
 - Property line setback noted in Sec. 10A.17.040 (A)(5) may be reduced to less than 20 feet or waived subject to Administrative Permit approval.
 - Setback from an occupied residential structure on adjacent property noted in Sec. 10A.17.040 (A)(2) could be reduced to 20 feet subject to Administrative Permit approval.

- In order to provide assurances and support the investment required for permitting and initiating commercial cannabis cultivation, CA Combining Districts would be subject to the following restrictions on modification:
 - Not eligible for repeal by property owner request for 10 years after date of approval.
 - After 10 years, a request to repeal or amend a CA Combining District could be initiated by petition of 60% or more of all current property owners within that district.
 - Parcels adjacent to the CA Combining District could be added to a CA Combining District within the initial 10-year period.
 - If a CA Combining District is repealed, at any time, permitted cultivation authorized through the district could continue for three years. At three years following the date of repeal of the CA Combining District, rights for cultivation that does not meet the standards of the underlying zone would cease.

- Six communities or neighborhoods were studied as possible CA Combining Districts:
 - Covelo, Core
 - Covelo, Fairbanks Road
 - Laytonville
 - Mitchell Creek, North
 - Mitchell Creek, South
 - South Leggett

Based upon the results of community surveys, staff is recommending against the establishment of the Mitchell Creek North and Mitchell Creek South Combining Districts.

Chapter 20.119- Cannabis Prohibition (CP) Combining District:

The proposed addition of Chapter 20.119 can be found in Exhibit D of the attached Planning Commission resolution. Below is a brief summary of Chapter 20.119.

- Chapter 20.120 both provides direction for how future CP districts may be established and creates the County's first CP districts.

- The chapter establishes provisions related to the expected future CP districts, including:
 - CP Combining Districts will be primarily residential in use and zoning designation.
 - CP Combining District will include at least 10 parcels.
 - Parcels within an CP Combining District must be contiguous, with limited exceptions.
 - Applicants seeking to establish a CP Combining District must demonstrate support of affected landowners (petition or alternative means as approved by the County).

- Once the district is established, cannabis cultivation sites and cannabis facilities (with limited exceptions) would be prohibited within a CP Combining District.
- Existing permitted cannabis cultivation sites or permitted cannabis facilities located within a newly adopted CP Combining District would be permitted to continue operations for three years from the date of establishment of that district. At three years following the date of establishment of the CP Combining District, rights to operate commercial cannabis cultivation sites and facilities would cease.
- In order to provide assurances to existing and future residents choosing to reside in a CP Combining District, CP Combining Districts would be subject to the following restrictions on modification:
 - Not eligible for repeal by property owner request for 10 years after date of approval.
 - After 10 years, a request to repeal or amend a CP Combining District could be initiated by petition of 60% or more of all current property owners within that district.
 - Parcels adjacent to the CP Combining District could be added to a CP Combining District within the initial 10-year period.
 - Changes to the underlying zoning of a CP Combining District would have no effect on the prohibition of cannabis cultivation and/or facilities established through the CP Combining District.
- There are currently two areas being considered for the creation of a CP Combining District:
 - Boonville Road/Woody Glen
 - Deerwood

As noted above, the period to cease existing, permitted cannabis operations following approval of a CP Combining District would be three years. In discussions with the Board of Supervisors on June 12, 2018, there was interest in reducing this period. Upon further discussion, staff maintains that the three year period for cessation of uses is appropriate. This period is provided to cannabis operators that have been granted County permits and may, based upon granting of such permits, have made significant investments in property improvements. The three year period is consistent with the timing established under Sunset provisions and it grants cannabis operators a reasonable period to seek an alternative site upon which to conduct legally permitted cannabis operations.

Changes to Chapter 10A.17:

The proposed amendments to Chapter 10A.17 - Mendocino Cannabis Cultivation Ordinance can be found in Exhibit A of the attached Planning Commission resolution. Below is a brief summary of proposed Chapter 10A.17 amendments.

- Section 10A.17.040 would be modified to reference the setback reductions proposed in Chapter 20.242.040 and the development standards of the CA Combining District.
- Section 10A.17.080(B)(2)(b) would be modified to note that within a CA Combining District and parcels zoned Rural Residential (lot size (5) acres [R-RL-5]) that are between 3.5 and 4.99 acres that could be exempted from Sunset provisions subject to issuance of an Administrative Permit.

Changes to Chapter 20.242:

The proposed amendments to Chapter 20.242 - Cannabis Cultivation Sites can be found in Exhibit B of the attached Planning Commission resolution. Below is a brief summary of proposed Chapter 20.242 amendments.

- Table 1, Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type, of Section 20.242.040, Existing Cannabis Cultivation Sites, would be modified as follows:

- New Note 2: A parcel between 3.5 and 4.99 acres, and that shares at least 50 percent of its boundaries with parcels 5 acres in size or larger, may be granted cannabis cultivation permit types 1, 1-A, and 1-B following the approval of an Administrative Permit.
- New Note 3: A parcel between 7.0 and 9.99 acres, and that shares at least 50 percent of its boundaries with parcels 10 acres in size or larger, may be granted cannabis cultivation permit types 2, 2-A, 2-B, and 4 following the approval of an Administrative Permit.
- New Section 20.242.040(C) would allow reduction of required setbacks for structures used for cultivation or for cultivation sites, subject to various limits that include:
 - Setback for cultivation not within a structure shall be not less than 20 feet from a parcel under separate ownership of an access easement.
 - Setback for cultivation within a structure shall be not less than otherwise required front, rear, and side yard setbacks.
 - No setback reduction may encroach within a corridor preservation setback as established under Sections 20.152.015 and 20.152.020.
- Section 20.242.070(C) would be modified to provide procedures and findings for granting a setback reduction in conjunction with Phase 1 planning permits, subject to issuance of an Administrative Permit.

ENVIRONMENTAL RECOMMENDATION: The Board of Supervisors of Mendocino County, on April 4, 2017, adopted Ordinance Number 4381, thereby adopting Chapters 10A.17 and 20.242 to the Mendocino County Code and the associated Mitigated Negative Declaration for the County of Mendocino Medical Cannabis Cultivation Regulations (SCH# 2016112028). In considering the appropriate level of review under the California Environmental Quality Act (CEQA) for the currently proposed County Code amendments, the County reviewed the provisions of CEQA and the CEQA Guidelines, including Section 15162 (Subsequent EIRs and Negative Declarations) and Section 15164 (Addendum to an EIR or Negative Declaration).

The adjustments to development standards provided through amendments to Section 10A.17 and Section 20.242 are relatively minor in scope and apply only to cannabis uses that can demonstrate they were in existence as of 2016, and therefore only apply to existing uses. Further, granting reduced development standards to individual properties requires issuance of an Administrative Permit, an action that would be subject to analysis and review under CEQA if it is determined there is the potential for impacts to the environment. Similarly, the CA Combining District will only allow the permitting of cultivation sites that can demonstrate prior existence and will not provide a basis for permitting new cultivation sites. Additionally, through the process of permitting, including site inspection and required compliance with County, regional, and state permitting standards, the potential for negative impacts resulting from unpermitted cultivation is reduced through the process of securing and maintaining a cannabis cultivation permit.

An Addendum to the existing Mitigated Negative Declaration (SCH# 2016112028) has been prepared and is provided as Exhibit M of the attached Planning Commission resolution. The incorporated analysis and findings establish the basis for determining that the Addendum is supported and its adoption is appropriate under the provision of CEQA and the CEQA Guidelines.

GENERAL PLAN CONSISTENCY ANALYSIS: The purpose and intent of the proposed amendments is to support cannabis cultivation that currently exists and, except for limited aspects of development standards, could be legally permitted under current regulations. The adoption of the County's cannabis regulations was analyzed by the Mitigated Negative Declaration, which found that the proposed regulations, as mitigated, did not conflict with, and in fact addressed and complied with the policies of the General Plan and Ukiah Valley Area Plan identified as relevant. The proposed amendments would similarly bring existing commercial cultivation operations in the County into compliance with new regulations, allowing for slightly greater flexibility in setbacks and lot sizes. As such, the proposed amendments are consistent with the adopted General Plan. The CP Combining District is proposed to maintain the residential qualities of neighborhoods where residents feel commercial cannabis cultivation and facilities are incompatible with existing residential uses.

Based upon the above, staff has determined that the amendments would not result an increase in an environmental impact or substantial increase to currently allowed cannabis related uses and that the cannabis-related uses addressed by the proposed amendments would be permitted under the current

General Plan. Therefore, the proposed amendments are consistent with the 2009 Mendocino County General Plan.

RECOMMENDED MOTION FOR THE PLANNING COMMISSION

Adopt the resolution making the Planning Commission's report and recommendation regarding Ordinance Amendment No. OA_2018-0008/Rezone No. R_2018-0005 in the form attached to this staff memorandum.

ATTACHMENTS:

1. Proposed Planning Commission Resolution
 - Exhibit A – Amendments to Chapter 10A.17
 - Exhibit B – Amendments to Chapter 20.242
 - Exhibit C – Proposed Chapter 20.118
 - Exhibit D – Proposed Chapter 20.119
 - Exhibit E – Covelo Core Map and APN's
 - Exhibit F – Covelo-Fairbanks Road Map and APN's
 - Exhibit G – Laytonville Map and APN's
 - Exhibit H – South Leggett Map and APN's
 - Exhibit I – Mitchell Creek North Map and APN's
 - Exhibit J – Mitchell Creek South Map and APN's
 - Exhibit K – Deerwood Map and APN's
 - Exhibit L – Boonville Road/Woody Glen Map and APN's
 - Exhibit M - Addendum to previously adopted Mitigated Negative Declaration for the County of Mendocino Medical Cannabis Cultivation Regulations (SCH# 2016112028)
2. Summary of Public Input
3. Cannabis Framework Documents