



**PLANNING COMMISSION
STAFF REPORT- ORDINANCE AMENDMENT**

**JULY 18, 2019
OA_2019-0002**

SUMMARY

APPLICANT: COUNTY OF MENDOCINO
501 LOW GAP ROAD
UKIAH, CA 95482

REQUEST: Review and consider a recommendation to the Board of Supervisors on proposed amendments Mendocino County Code Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance, and Chapter 20.242 – Cannabis Cultivation Sites. Multiple changes are proposed, including regarding transferability of permits, reducing the minimum parcel size for nurseries from 10 to 5 acres, extending the phaseout of generators, providing for a limited extension of the Phase One Sunset Provision for Residential Districts, modifying the types of permits that may be applied for during Phase Two, and postponing the start of Phase Three until July 1, 2020.

LOCATION: Within the unincorporated areas of Mendocino County, not including the designated Coastal Zone areas of the County.

ENVIRONMENTAL DETERMINATION: Addendum to adopted Mitigated Negative Declaration.

FROM: JULIA ACKER KROG, CHIEF PLANNER
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL
ELIZABETH BURKS, LACO ASSOCIATES

INTRODUCTION

The Mendocino County Board of Supervisors (Board) established ad hoc committees in both 2018 and 2019 to review the County's cannabis cultivation ordinances and provide recommendations to the Board.

The 2018 ad hoc committee made its recommendations to the Board in November 2018, and at that time the Board directed staff to make a number of changes to Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance and Chapter 20.242 – Cannabis Cultivation Sites. Many recommended changes to Chapter 10A.17 were acted upon by the Board in December 2018, but several changes required amendments to Chapter 20.242 of the County Zoning Code, which requires review by the Planning Commission, and needed additional review under the California Environmental Quality Act (CEQA).

The 2019 ad hoc committee made its recommendations to the Board in May 2019, and the Board directed staff to make additional changes to Chapters 10A.17 and 20.242. Some of the directed changes are being made at this time, while others will take additional time for staff to review and prepare for adoption, such as creating a use permit based process for Phase Three.

PROPOSED CHANGES

1. Section 10A.17.040: Elimination of Paragraph (A)(4) Regarding Visibility of Cannabis Plants from a Public Right of Way or Publicly Traveled Private Road

The Board directed that this requirement be deleted, in part because the breadth of the statement made application unwieldy. One particular concern raised by the Board was how to apply this requirement when many roads in the County, private and public, are on ridgetops and allow for views of large portions of the County.

2. Section 10A.17.060 and Section 20.242.040: Reduction of Minimum Parcel Size for Type 4 Nursery Permits from Ten Acres to Five Acres

A Type 4 (Nursery) permit allows for the cultivation of cannabis that may take the form of either vegetative and non-flowering starts, or seeds, which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. A Type 4 permit is restricted to a parcel with a minimum of ten (10) acres, however, legal parcels in industrial zoning districts were not subject to this restriction.

In 2018, as part of OA_2018-0006 (the Overlay and Exceptions process), staff received direction to reduce the lot area standards associated with cannabis cultivation to engender greater land-use flexibility. As part of that ordinance amendment, it was determined that a parcel with a lot area between 3.5 and 4.99 acres, and which shared at least 50 percent of its boundaries with parcels five acres in size or larger, could obtain a permit as allowed for a five-acre parcel with similar zoning, subject to approval of an Administrative Permit. Additionally, that ordinance amendment determined that a parcel with a lot area between 7.0 and 9.99 acres, and which shared at least 50 percent of its boundaries with parcels 10 acres in size or larger, could obtain a permit as allowed for a 10-acre parcel with similar zoning, subject to approval of an Administrative Permit. Therefore, Staff allowed for a Type 4 permit to be located on a parcel as small as 7.5 acres, subject to the approval of an Administrative Permit.

In 2018, at the direction of the Board of Supervisors, it was requested that staff investigate the establishment of a 'Tiered Nursery' structure to allow for further nursery flexibility on smaller parcels. On May 14, 2019, rather than a 'Tiered' approach, Staff recommended to the Board a general reduction of the minimum acreage for Type 4 permits to 5 acres. The Board of Supervisors agreed with the Staff recommendation, and amendments are proposed to Section 10A.17.060 and Table 1 in Section 20.242.040.

In addition to the Board direction regarding acreage limits, Staff is proposing further changes to the asterisks following Table 1. Staff recommends allowing for a Type 4 permit on parcels as small as 3.5 acres, subject to the approval of an Administrative Permit. Staff believes this is consistent with the allowances made by the Overlay and Exceptions process.

3. Section 10A.17.070(F): Extension of Generator Phaseout

This provision of the ordinance currently requires that indoor or mixed-light cultivation sites need to have installed an alternative power source to the generator that will meet at least one-half of the sites' power requirements within 12 months of the initial application date, and the alternative power source needs to meet the needs of the site (and any required dwelling unit) by the end of the second permitted year. These provisions have proven burdensome for cultivators to meet, and the Board directed staff to research whether amendments could be reasonably made.

Staff is proposing an extension and modification of the two time periods. First, the existing 12 month period in which a cultivator must install alternative power sources meeting one-half of the sites' power needs is proposed to be extended to a total of four (4) years from the date of application. Second, the requirement to fully meet the power needs of the site by the end of the second permitted year is being modified to simply be within an additional two (2) year period, starting at the first renewal of the permit after the expiration of the 4 year period.

The proposed extension from 12 months to 4 years provides additional time for cultivators who applied even in 2017 to meet the fifty-percent alternative power source requirement. Note that even with this extension, 2017 applicants are already halfway through this extended time period. The modification of the time period to fully meet the power needs of the site with alternative power is generally consistent with the existing ordinance.

During this extended time period with generators, the generator and the cultivation site will remain subject to all of the existing requirements of the ordinance regarding noise, fuel storage and other issues. Additional cultivators may come into the program with a longer phaseout period, which would bring more cultivation sites into the regulated market as opposed to remaining in the black market.

4. Section 10A.17.070(K) and Section 20.242.040(E): Transferability of Permits

The ordinance currently provides that cultivation permits under Chapter 10A.17 and any required permit under Chapter 20.242 are non-transferable except to spouses/domestic partners, children, parents, or certain trusts for estate planning purposes, so long as the trust existed prior to January 1, 2016.

Cultivators have requested a broader ability to transfer permits. Phase One permits are only available to persons with proof of prior cultivation, and Phase Three permits are not currently allowed in all of the zoning districts where Phase One permits are allowed. Current cultivators have raised concerns about investing in property where a successor would not be able to apply for a new permit and not be able to take over the current permit.

Allowing for limited transferability of permits while not allowing for new cultivation permits may result in the phaseout of certain cultivation sites over time. However, given that permits may presently be transferred within a family from one generation to the next, there is no certainty to any reduction in the number of cultivation sites, and the IS/MND did not presume any environmental benefit on the basis of non-transferability.

Staff was given direction to create a process that would allow for the transferability of permits. Staff looked to the assignment of permit process found in the Coastal Zoning Code for coastal development permits and has incorporated that language into both Chapter 10A.17 and Chapter 20.242. This process requires the submission of certain documents to the County at the time of the transfer. Pursuant to Board direction, cultivation sites subject to the Sunset Provision of section 10A.17.080(B)(2) are not assignable.

Board direction was not clear as to whether this assignment prohibition extended to Cannabis Accommodation Combining District or non-conforming RR parcels that have received an administrative permit. Since both of these groups are technically made up of parcels that are otherwise subject to the Sunset Provision, they have been specifically excluded from eligibility for transfer in the draft ordinances prepared for the Planning Commission. However, Staff is requesting discussion and recommendation from the Commission on this topic.

5. Section 10A.17.080(A)(2) and Section 20.242.050: Amendments to Types of Permits Which May Be Applied For During Phase Two

The cultivation ordinances currently allow only for Type 1A and 2A cultivation permits during Phase Two. Phase Two, which began on January 1, 2018, is specifically for cultivation on industrially-zoned property and proof of prior cultivation is not required. Phase Two is currently limited to Types 1A and 2A Permits, which are indoor cultivation only.

The Board directed that mixed-light cultivation permits (C-B, 1B and 2B) also be allowed to apply during Phase Two, but only in greenhouses with odor filtration. Hoop houses and outdoor cultivation types remain excluded, which will minimize odor from any mixed-light cultivation site.

6. Section 10A.17.080(A)(3): Delay in Start of Phase Three to July 1, 2020

Phase Three is currently slated to open to applications on January 1, 2020. However, in 2018 the Board provided direction that Phase Three be revised in its entirety to require some level of discretionary permit and individualized review under the California Environmental Quality Act for each application. The process of rewriting Chapters 10A.17 and 20.242 to accommodate this change is anticipated to take some time and several meetings of the Board of Supervisors and Planning Commission. Staff requested that the start date for Phase Three be pushed back to accommodate the ordinance revision process. The Board gave such direction, with the caveat that the start date could be pushed earlier, depending on when the ordinance revisions were complete. The change to Section to 10A.17.080(A)(3) effectuates this direction.

7. Section 10A.17.080(B)(2)(b)(ii): Limited Extension of Sunset Period for Areas Near Coastal Zone

Chapter 10A.17 currently contains what is known as the “Sunset Provision for Residential Districts” in Section 10A.17.080(B)(2)(b). Cultivation sites on parcels located in specified residential districts (or districts where a dwelling unit is a principally permitted use and the parcel is less than 2 acres in size), may obtain a cultivation permit only for 3 years after the effective date of the ordinance adopting Chapter 10A.17, or May 4, 2020. This provision was added by the Board of Supervisors in response to public comment requesting that cultivation sites be removed from residential neighborhoods.

On May 14, 2019, the Board of Supervisors provided direction to staff to allow for a limited extension of the Sunset Provision, from May 4, 2020, to June 30, 2022, which would apply only to indoor cultivation sites which are permitted or in the permitting process, and within proximity to the Coastal Zone.

The Board directed Staff to recommend a definition of what area would qualify as “within proximity to the Coastal Zone.” This area was generally understood to be areas of the County subject to the Inland Zoning Code but located in the western portion of the County that typically identifies with being adjacent to the coast.

The Board focused the extension of the Sunset Provision on this area for two primary reasons, both of which relate to the limited opportunities for cultivators in this area to relocate from their existing sites. First, the lack of adoption of a cultivation ordinance in the Coastal Zone has meant that no parcels within the Coastal Zone have been available to be considered for relocation. Second, the zoning of parcels in the Inland Zone near the coast does not generally include the types of zones to which a cultivator can relocate. Property zoning is generally either of the type subject to the Sunset Provision, or Forestland or Timber Production, neither of which are permitted to host a relocation cultivation site.

In drafting the proposed ordinance, staff recommends that sites within two (2) miles of the Coastal Zone boundary be considered “within proximity” to the Coastal Zone. This distance is based upon review of mapping, which indicates that the bulk of permitted sites that are proximate to the Coastal Zone boundary are located within the two (2) mile distance that is suggested by staff.

Staff is also proposing a deadline of May 14, 2019, as the date by which a cultivator must have obtained the permits required for their cultivation site, or have applied for the permits required for their cultivation site. May 14 was the date direction by the Board was given for this change; creating this deadline rewards the cultivators who applied in a timely manner and limits the possibility for a last minute rush for permit applications. As indoor cultivation sites in these zoning districts require both a permit under Chapter 10A.17 and an administrative permit under Chapter 20.242, the proposed language requires both permits to have been obtained or applied for.

ENVIRONMENTAL DETERMINATION

In order to comply with the California Environmental Quality Act (CEQA) for the initial adoption of the County’s cannabis cultivation permit program (the adoption of Chapters 10A.17 and 20.242), the County adopted a Mitigated Negative Declaration (State Clearinghouse Number 2016112028). An addendum to the Mitigated Negative Declaration has been prepared to satisfy the requirements of CEQA for the adoption of the proposed ordinance amendments. Exhibit B of the proposed Planning Commission resolution attached to this staff report contains the addendum, which reviews the proposed changes and makes findings on the level of significance these changes entail for purposes of CEQA.

GENERAL PLAN CONSISTENCY ANALYSIS

Staff finds that the proposed amendments are consistent with the 2009 Mendocino County General Plan. The amendments would not constitute an increase in environmental impact, or change to existing land use provisions. The allowed uses would still only be permitted in areas already otherwise allowed for by the General Plan.

RECOMMENDED MOTION FOR THE PLANNING COMMISSION

Adopt the resolution recommending that the Board of Supervisors approve Ordinance Amendment No. OA_2019-0002 which will modify Chapter 10A.17 - Mendocino Cannabis Cultivation Ordinance and Chapter 20.242 – Cannabis Cultivation Sites of the Mendocino County Code and finding that the Addendum to the Adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed ordinance changes and that no subsequent environmental review is needed.

DATE

JULIA ACKER KROG
CHIEF PLANNER

ATTACHMENTS

1. Proposed Resolution
 - a. Proposed Ordinance – Redline
 - b. Draft CEQA Addendum

Resolution Number _____

County of Mendocino
Ukiah, California
July 18, 2019

OA_2019-0002

RESOLUTION OF THE PLANNING COMMISSION, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, MAKING ITS REPORT AND RECOMMENDATION TO THE MENDOCINO COUNTY BOARD OF SUPERVISORS REGARDING PROPOSED AMENDMENTS TO THE MENDOCINO COUNTY CODE CHAPTERS 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND 20.242 CANNABIS CULTIVATION SITES

WHEREAS, on April 4, 2017, the Board of Supervisors adopted Ordinance Number 4381, adding Chapters 10A.17 and 20.242 to the Mendocino County Code; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.; “CEQA”) and the CEQA Guidelines (Title 14 California Code of Regulations section 15000 et seq.) an Initial Study was prepared, which determined that the addition of Chapters 10A.17 and 20.242 to the Mendocino County Code will not have a significant effect on the environment with the implementation of mitigation measures, which supported the adoption of a Mitigated Negative Declaration (“MND”); and

WHEREAS, by Resolution Number 17-042, adopted on March 21, 2017, following a public review period as required by CEQA and the CEQA Guidelines, the Mendocino County Board of Supervisors adopted a MND for the addition of Chapters 10A.17 and 20.242 to the Mendocino County Code; and

WHEREAS, the County of Mendocino desires to amend Mendocino County Code Chapters 10A.17 – Mendocino Cannabis Cultivation Ordinance and 20.242 Cannabis Cultivation Sites, applicable to the unincorporated areas of Mendocino County; and

WHEREAS, County Staff has, pursuant to the direction of the Board of Supervisors of Mendocino County, prepared amendments to the Mendocino County Code Chapters 10A.17 – Mendocino Cannabis Cultivation Ordinance and 20.242 Cannabis Cultivation Sites, which are attached to this Resolution as Exhibit A and incorporated herein by this reference (the “Project”); and

WHEREAS, section 15164 of the CEQA Guidelines provides that an addendum to a previously adopted mitigated negative declaration may be prepared if only minor technical changes or additions to the project are necessary or none of the conditions described in CEQA Guidelines section 15162 calling for the preparation of a subsequent environmental impact report or mitigated negative declaration have occurred; and

WHEREAS, the Mendocino County Department of Planning and Building Services has prepared an Addendum to the adopted MND related to the proposed Project, which is attached to this resolution as Exhibit B and incorporated herein by this reference (“Addendum”), and which determines that none of the conditions described in CEQA Guidelines section 15162 will occur

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on July 18, 2019, at which time the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Addendum and the Project. All interested persons were given an opportunity to hear and be heard regarding the Addendum and the Project; and

WHEREAS, the Planning Commission has had an opportunity to review this Resolution and finds that it accurately sets forth the intentions of the Planning Commission regarding the Addendum and the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission, based on the evidence in the record before it and all the findings and determinations provided in the staff report and Addendum, makes the following report and recommendation to the Mendocino County Board of Supervisors regarding Ordinance Amendment OA_2019-0002 and the Addendum thereto:

1. The Planning Commission recommends that the Board of Supervisors review the Addendum prepared for Ordinance Amendment OA_2019-0002 and make the findings required by CEQA Guidelines section 15164.
2. The Planning Commission recommends that the Board of Supervisors find that the adoption of Ordinance Amendment OA_2019-0002 is consistent with the General Plan.
3. The Planning Commission recommends that the Board of Supervisors adopt Ordinance Amendment OA_2019-0002, making the changes to code sections as shown in the attached Exhibit A.

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary as the custodian of the document and other materials which constitutes the record of proceedings upon which the Planning Commission decision herein is based. These documents may be found at the office of the County of Mendocino Department of Planning and Building Services, 860 North Bush Street, Ukiah, CA 95482.

I hereby certify that according to the Provisions of Government Code Section 25103 delivery of this document has been made.

ATTEST: JAMES FEENAN
Commission Services Supervisor

By: _____

BY: BRENT SCHULTZ
Director

MARILYN OGLE, Chair
Mendocino County Planning Commission

EXHIBIT A

PROPOSED AMENDMENTS TO CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 – CANNABIS CULTIVATION SITES

Section 1: Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
- (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) ~~In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads~~Intentionally omitted.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.

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- (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or 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, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.
- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.

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- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (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.

Section 2: Section 10A.17.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants

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may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum two thousand five hundred (2,500) square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.

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- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of five thousand one (5,001) to ten thousand (10,000) square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of five thousand one (5,001) to a maximum of ten thousand (10,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 Permit. The legal parcel shall not be less than ~~ten (10)~~five (5) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

Section 3: Section 10A.17.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) Permit Density. 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
 - (1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two (2) Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of

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twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.

- (2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.
 - (3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half ($\frac{1}{2}$) of the combined power requirements by the expiration of ~~twelve (12) months~~four (4) years from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the ~~re-issuance~~renewal of a permit at the end of such four (4) year period that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit ~~by the end of the second permitted year~~within two years. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system as designated by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifiers from an approved source, maintain them in a readable

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state, comply with all data entry requirements, and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.

- (H) Fees: An application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review. A Permit fee shall be paid prior to issuance of any Permit. Once a Permit is issued, the Permittee may renew the Permit upon submission of a renewal application and payment of a renewal fee. No Permit shall issue without payment of the required fees.
- (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one (1) annual on-site compliance inspection (Type 4 Permits shall be subject to two (2) on-site compliance inspections annually), which shall serve as the inspection required to be performed prior to any renewal of the Permit, with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least twenty-four (24) hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
- (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.
- (K) Non-Transferability—Assignment of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter. A permittee may assign a Permit to another person subject to the following provisions:

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- (1) Submission of the following to the Agricultural Commissioner:
 - (a) An application fee as set by resolution of the Board of Supervisors;
 - (b) A completed application form as provided by the department, and the submission of information or documents pursuant to Section 10A.17.090 relating to the assignee, including, but not limited to, the Live Scan criminal history inquiry process outlined in Section 10A.17.090(M);
 - (c) A copy of the original Permit showing that it has not expired;
 - (d) Either:
 - (i) The original Permittee's request to assign all rights and responsibilities of the Permit to the assignee; or
 - (ii) In the event of the death or incapacitation of the original Permittee, evidence of such death or incapacitation;
 - (e) Evidence that assignee's legal interest in the real property involved allows for assignee's use of the Permit; and
 - (f) An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the Permit and all applicable laws and regulations.
- (2) The assignment shall be effective upon the department's written approval of the documentation submitted, notice that the assignee does not have a criminal history that includes any of the conditions listed in Section 10A.17.090(M), and the assigned Permit shall be granted subject to the terms and conditions of the original Permit.
- (3) Permits issued on parcels subject to the Sunset Provision of Section 10A.17.080(B)(2), including parcels located within a "CA" Cannabis Accommodation Combining District or non-conforming Rural Residential parcels that have been issued an administrative permit pursuant to Section 20.242.070(C), shall not be assignable pursuant to this Section 10A.17.070(K).

Section 4: Section 10A.17.080 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

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Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

(A) Permits under the MCCO will be issued in the following three phases:

- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
- (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
- (3) Phase Three: Starting January–July 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.

(B) Requirements specific to Phase One Permits.

- (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) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a

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comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

- (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

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- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
- (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date; provided, however, that indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit pursuant to Chapter 20.242), may be issued and/or renew a Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) 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.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.

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- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
- (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to

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continue or resume cultivation of cannabis on the origin parcel.

- (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
 - (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
 - (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
 - (6) If a Permit is granted pursuant to this paragraph (B), 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, unless otherwise allowed by this Chapter 10A.17; 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.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to

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serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.

- (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.
- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 5: Section 20.242.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.040 - Existing Cannabis Cultivation Sites.

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

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TABLE 1
Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac) * ¹ , * ² , * ³		NA	NA		NA	5	5	5	10	10	10	105
Cultivation Area Limit (sf)		2,500	500	501 — 2,500	2,500	2,501 — 5,000	2,501 — 5,000	2,501 — 5,000	5,001 — 10,000	5,001 — 10,000	5,001 — 10,000	22,000
Zoning District	RR 5* ¹	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	RL	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	FL* ⁴	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP	AP
	TPZ* ⁴	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP	AP
	I1* ⁵	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC	ZC
	I2* ⁵	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC	ZC
	PI* ⁵	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC

— = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

*1 Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

*2 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types 1, ~~and~~ 1-B ~~and~~ 4 following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*3 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types 2 ~~and~~, 2-B ~~and~~ 4 following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*4 Existing cultivation sites in the FL and TPZ zoning districts that were previously enrolled in a permit program pursuant to the County's Chapter 9.31 shall be required to

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obtain a zoning clearance unless the applicant seeks to expand beyond the size previously cultivated under such permit program.

*5 Parcels in Industrial zoning districts are not subject to a minimum parcel area.

(C) A reduction in the setback from a legal parcel line required by section 10A.17.040(A)(5) may be allowed following the issuance of an Administrative Permit, approved pursuant to section 20.242.070(C), subject to the following limitations: (1) the approved reduced setback for cultivation not within a structure shall be no less than twenty (20) feet from an adjoining property under separate ownership or an access easement, or (2) for cultivation within a structure, the setback shall be no less than the front, rear, or side yard setback (as applicable) setback for the zoning district in which the property is located. Any reduction of the setback pursuant to this section must comply with the required setback from an occupied legal structure and the reduced setback may not encroach into any corridor preservation setback, pursuant to sections 20.152.015 and 20.152.020.

(D) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue, but shall not be expanded or enlarged, subject the following planning permit and approval requirements.

(1) Planning Permit Requirements:

(a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding two thousand five hundred (2,500) requires an approved Zoning Clearance.

(b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding five hundred (500) square feet requires an approved Administrative Permit.

(c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between five hundred one (501) and two thousand five hundred (2,500) square feet requires an approved Minor Use Permit.

(d) Mixed Light Cultivation (pursuant to a MCCO C-B Permit) not exceeding two thousand five hundred (2,500) square feet requires an approved Zoning Clearance.

(i) 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.

(E) Transferability of Permits. ~~Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for~~

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~~estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.~~

A permittee may assign a permit to another person subject to the following provisions:

- (1) Submission of the following to the Agricultural Commissioner:
 - (a) An application fee as set by resolution of the Board of Supervisors;
 - (b) A completed application form as provided by the department;
 - (c) A copy of the original permit showing that it has not expired;
 - (d) Either:
 - (i) The original permittee's request to assign all rights and responsibilities of the permit to the assignee; or
 - (ii) In the event of the death or incapacitation of the original permittee, evidence of such death or incapacitation;
 - (e) Evidence that assignee's legal interest in the real property involved allows for assignee's use of the permit; and
 - (f) An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit and all applicable laws and regulations.
- (2) The assignment shall be effective upon the department's written approval of the documentation submitted, and the assigned permit shall be granted subject to the terms and conditions of the original permit.
- (3) Permits issued on parcels subject to the Sunset Provision of Section 10A.17.080(B)(2), including (i) parcels located within a "CA" Cannabis Accommodation Combining District and (ii) Rural Residential parcels (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to Section 20.242.070(C), shall not be assignable pursuant to this Section 20.242.040(E); provided, however, that such permits .

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Section 6: Section 20.242.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.050 - New Cannabis Cultivation Sites Located in Industrial Zoning Districts.

Establishment of a new cannabis cultivation site in the I1 (Light Industrial), I2 (General Industrial), and Pinoleville (PI) zoning districts, for ~~Type 1A and 2A~~ the following MCCO permits types, may be permitted issued on or after January 1, 2018, ~~may be permitted~~ subject to the requirements of Section 20.242.060: Type C-A, 1A and 2A, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house.

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ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION

FOR

MENDOCINO COUNTY

MENDOCINO CANNABIS CULTIVATION REGULATION

SCH NO. 2016112028

DRAFT

Date: June 29, 2019

EXHIBIT B

Modified Project Description and Project History

The Mendocino County Board of Supervisors (County) adopted a Mitigated Negative Declaration (MND) (SCH# 2016112028) for Ordinance No. 4381, known as the Medical Cannabis Cultivation Regulations, which added Chapters 10A.17 and 20.242 to the Mendocino County Code, on March 21, 2017. Since that time, the County has approved multiple modifications for minor changes, including one change that renamed the project title to the Mendocino Cannabis Cultivation Regulations. Previous modifications have had separate addenda filed under the previous and current title.

The current project involves modifications to the previously adopted ordinance, including several procedural or administrative changes to Chapters 10A.17 and 20.242 per direction of the 2018 and 2019 Cannabis Ad Hoc Committees. Specific changes include the following:

- Omitting the general limitation that previously prohibited the cultivation of cannabis in any location where the cannabis plants are visible from the public right of way or publicly traveled public roads;
- Amending the minimum legal parcel size for a Type 4 (Nursery) Permit from ten (10) acres to a minimum of five (5) acres (excluding industrial zoning districts);
- Modifying the requirements related to the use of generators; specifically, extending the timeframe of when the permittee must install an alternative power source to meet at least one-half ($\frac{1}{2}$) of the combined power requirements from the date of initial application (from twelve (12) months to four (4) years), and to require the cultivator commit, at the time of re-issuance of the permit, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit (from the end of the second permitted year to within two years of the renewal at the end of the 4 year period);
- Allowing for permits to be transferred to another person, subject to specific requirements, which were previously generally non-transferable under the ordinance;
- Amending which permit types (adding Type C-B, 1B, and 2B Permits for mixed-light cultivation) will be accepted beginning on January 1, 2018, under Phase Two in the Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I) zoning districts;
- Amending the start date of Phase Three from January 1, 2020, to July 1, 2020; and
- Revising the sunset provision for residential districts, to include additional allowances related to indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any required permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit required pursuant to Chapter 20.242). For such parcels, the sunset period will be extended by two years, until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

These changes do not substantially change the project description, discussion of environmental impacts or the adopted mitigation measures, and could not reasonably have a significant impact on the environment.

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Purpose

Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously adopted Negative Declaration (ND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent ND have occurred. Section 15162 states that when an ND has been adopted for a project, no subsequent ND shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- 1. Substantial changes are proposed in the project which require major revisions of the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
- 2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
- 3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous ND was certified as complete, shows any of the following: A) the project will have one or more significant effects not discussed in the previous ND; B) significant effect previously examined will be substantially more severe than shown in the previous ND; C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous ND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

No substantial changes are proposed which would require major revisions to the previously approved Mitigated Negative Declaration. None of the proposed changes to the project will increase the severity of previously identified significant effects. The proposed changes will not result in a new environmental effect.

No additional mitigation is required. The proposed changes do not affect the effectiveness of the mitigation measures as there will be no additional environmental impacts associated with the changes.

Explanation of Decision Not to Prepare a Supplemental Mitigated Negative Declaration

See Purpose section above. In every impact category analyzed in this review, the projected consequences of the proposed ordinance changes are either the same or less than significantly increased compared to the project for which the Mitigated Negative Declaration was adopted. Based upon this review, the following findings are supported:

Findings

1. For the modified project there are no substantial changes proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new significant effects or increase of severity of effects are anticipated.

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Omitting the general limitation that previously prohibited the cultivation of cannabis in any location where the cannabis plants are visible from the public right of way or publicly traveled public roads will not change the anticipated environmental impacts. Under the original wording of the Chapter 10A.17 cannabis plants were not to be visible from a public road however the MND acknowledged that other cannabis infrastructure such as new structures, fencing, and grading may be visible. Allowing for plants to be visible consistent with other related infrastructure is not incompatible with rural residential or agricultural uses and does not present a new unique aesthetic impact. In addition, any existing or proposed cultivation would be required to follow all applicable laws and regulations, including the provisions of Chapters 10A.17 and 20.242 of the Mendocino County Code, thereby alleviating any potential impacts.

Amending the minimum legal parcel size for a Type 4 (Nursery) Permit from ten (10) acres to a minimum of five (5) acres (excluding industrial zoning districts) does not present new significant effects, as the existing or proposed nursery would continue to be required to comply with all applicable laws and regulations, including the provisions of Chapters 10A.17 and 20.242 of the Mendocino County Code. The MND did not rely on the ten (10) acre minimum to reduce any environmental effect.

Within the MND the use of generators was noted as a contributor to air quality impacts, and wildfire hazards, as well as a source of increased ambient noise and hazardous materials at cultivation sites. Phasing out the use of generators as the primary source of power was documented in the MND as a performance standard that reduced baseline impacts in these areas. Modifying the requirements related to the use of generators, limited to extending the timeframe of when the permittee must install an alternative power source to meet at least one-half ($\frac{1}{2}$) of the combined power requirements (from twelve (12) months to four (4) years) and fully meet the combined needs of the cultivation operations and any required legal dwelling unit (from the end of the second permitted year to within two years of the renewal at the end of the 4 year period), does not present new significant effects. The change does not constitute a significant time increase, as the ordinance already allowed a cultivator at least up to 3 years for a cultivator to meet the alternative power source requirement, and an alternative power source would still be required. Although the analysis in the MND did rely on phasing out the generators, a specific timeframe was not the crucial factor in determining level of significance. Even with a delay in the phasing out of generators, there are additional requirements in the Ordinance that regulate their placement and how hazardous materials are handled that decrease impacts associated with their use. Therefore, no new potential impacts are anticipated.

Allowing for permits to be transferred to another person, subject to specific requirements, which were previously non-transferable under the ordinance (except in certain circumstances), would not present new significant effects. The MND did not rely on the existing language to reduce any environmental effects. Allowance for broader transferability would result in the continuation of the existing use, but such use and any future modifications would be subject to the terms and conditions of the Permit and all applicable laws and regulations. Therefore, no new potential impacts are anticipated.

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The addition of Permit Types C-B, 1B, and 2B for mixed-light cultivation to the permit types that will be accepted beginning on January 1, 2018, under Phase Two would not present new significant effects, as the cultivation would require compliance with all applicable laws and regulations, including the provisions of Chapters 10A.17 and 20.242 of the Mendocino County Code. In addition, the development of new cultivation sites within industrial zoning districts during Phase Two would be largely similar to the size and intensity of other manufacturing uses allowed in these districts.

Amending the start date of Phase Three from January 1, 2020, to July 1, 2020, would not present new significant effects, as only the start date would change and all other provisions would still be required.

Revising the sunset provision for residential districts would not present new significant effects. Only indoor cultivation sites (Types C-A, 1A, or 2A), within two miles of the Coastal Zone boundary and that have been issued a Permit (and issued any required permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit required pursuant to Chapter 20.242) as of May 14, 2019, may be issued and/or renew the Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site. The existing provision, including the expiration date of three (3) years following the effective date of the Medical Cannabis Cultivation Regulations, would continue to apply to all other permits within the residential districts. Sunset provisions were adopted to address community compatibility concerns raised during the public hearing process. The sunset provisions were not relied upon to reduce any environmental impacts identified in the MND. Any sites permitted in these areas are still required to adhere to the provisions of Chapters 10A.17 and 20.242 of the Mendocino County Code. The change does not result in new or unanticipated impacts.

2. For the modified project no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Based on the discussion in Finding 1, above, no new significant environmental effects resulting from the proposed ordinance amendment are anticipated. Further, there are no changes in circumstances or new information that would otherwise warrant any subsequent environmental review under Public Resources Code section 21166 or CEQA Guidelines section 15162.

3. For the modified project there has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted as complete.

There has been no new information of substantial importance which was not known and could not have been known at the time the previous MND was complete. The baseline conditions describing the overall impacts of existing cannabis cultivation remain the same.

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4. The proposed changes do not constitute a change in the level of significance previously discussed in the original MND. As such, it is concluded that: the current project will not have one or more significant effects not discussed in the previous MND. Furthermore, significant effects previously examined will not be substantially more severe than shown in the previous MND. There are no mitigation measures or alternatives previously found not to be feasible that would in fact be feasible and would substantially reduce one or more significant effects of the project.

As described above, the proposed changes do not involve changes to, or analysis of any mitigation measures. No new potential impacts have been identified requiring new mitigation measures to be developed.

5. Finally, there are no mitigation measures or alternatives identified in this analysis which are considerably different from those analyzed in the previous MND, and which would substantially reduce one or more significant effects on the environment.

The proposed amendments do not involve changes to, or analysis of any mitigation measures.

Conclusion

Based on these findings it is concluded that an Addendum to the adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed ordinance changes.