



MEMORANDUM

DATE: JANUARY 19, 2017

TO: PLANNING COMMISSION

FROM: MARY LYNN HUNT, SENIOR PLANNER

RE: AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER 10A.17- MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 - MEDICAL CANNABIS CULTIVATION SITE REGULATION OF THE MENDOCINO COUNTY INLAND ZONING ORDINANCE, COLLECTIVELY CALLED MCCR.

INTRODUCTION:

Request: Provide its Report and Recommendation to the Mendocino County Board of Supervisors (Board) regarding the establishment of the Medical Cannabis Cultivation Regulation (MCCR) to govern the commercial cultivation of medical cannabis in unincorporated Mendocino County, outside the coastal zone (as defined by the County's Local Coastal Program), consistent with the State's current medical cannabis laws by adopting two proposed Mendocino County Code amendments: (1) Chapter 10A.17- Medical Cannabis Cultivation Ordinance of the Mendocino County Code, administered by the Agricultural Commissioner's Office (ACO); and (2) Chapter 20.242 - Medical Cannabis Cultivation Site Regulation of the Mendocino County Inland Zoning Ordinance, administered by the Department of Planning and Building Services (PBS).

Summary: A public meeting before the Planning Commission was held regarding the MCCR and the associated Initial Study on December 1, 2015. At this meeting public comment was received and direction was given to staff and the CEQA consultant (LACO Associates) regarding information to report back on.

At a public hearing held before the Planning Commission on December 15, 2016 staff and LACO Associates presented written and verbal staff reports describing the MCCR and a supplemental staff report summarizing responses to the Planning Commission's direction based on public comments at the previous meeting.

The following discussion summarizes changes recommended by staff and the consultant team, memorializes direction received from the Planning Commission and provides additional information requested by the Planning Commission.

Summary of changes recommended by staff and consultants based on first public meeting, public hearing and agency comments

- Remove Mitigation Measure AIR-2, Prohibition on burning excess plant materials. This can be addressed through already existing limitations on burn days and through the incorporation of AIR-1 requiring a referral to the Mendocino County Air Quality Management District. This would require deleting the reference to this mitigation measure in the Initial Study, but no other changes would be required. The proposed change is as follows:

A) Air Quality d, e)

The proposed MCCR provides several mechanisms to prevent air quality impacts, particularly odors, from impacting sensitive receptors and large numbers of people who may object to the strong odor associated with cannabis cultivation during the flowering phase. Furthermore, cannabis cultivation is identified as an agricultural use. Odors from agricultural operations on appropriately zoned parcels are a typical and anticipated

circumstance and are not typically defined as a nuisance.

According to the MCAQMD, there is currently insufficient evidence that the burning of vegetated matter from the growing of cannabis would not result in significant odors that could affect nearby receptors. Therefore Mitigation Measure AIR-2 will be applied to prohibit burning of excess cannabis plant material.

If concentrated by ventilation systems, the odors from larger indoor, and greenhouse cultivation operations have a substantially greater potential to generate offensive odors on adjacent properties, even where mandatory setbacks from property lines and adjacent residences have been met. Mitigation Measure AIR-3 addresses this impact by requiring filtered ventilation systems be installed in mixed light and artificial light cultivation structures.

With mitigation incorporated, these impacts are reduced to less than significant level.

- Reword Mitigation Measure BIO-2 to be consistent with the request in the comments received from the California Department of Fish and Wildlife (CDFW) dated December 18, 2016. This would have a referral to CDFW occurring during the application process for the cultivation permit rather than the applicant receiving signoff from CDFW prior to application submittal. This change does not change the intent or the effectiveness of the mitigation measure, only clarifies the procedural requirements. the proposed change is as follows:

BIO-1: Mendocino County shall amend the MCCR to require referral of Permit Applications to CDFW for each proposed cultivation site. to require a sign off from CDFW for each proposed cultivation site to evaluate if there is a possibility for presence of sensitive species. Prior to submittal of the MCCR cultivation permit, cultivators will need to coordinate with CDFW who may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. Upon referral, CDFW may recommend approval of the proposed development, ask to be included in the pre-permit site inspection (Ordinance Section 10A.17.100(B) or request additional studies in order to make the determination that no impacts to sensitive species will occur. If it is determined that a sensitive species could occur, the required cultivation and operations plan shall be revised to incorporate measures to protect sensitive species to the satisfaction of CDFW or if impacts cannot be avoided, another location must be selected for cultivation. A cultivator that cannot demonstrate to the satisfaction of CDFW that there will be a less than significant impact to sensitive species biological resources will not be issued a cultivation permit. The County may eliminate this requirement at such time CDFW authorizes the County to perform this function based on available mapping and training of Agricultural Commissioner's staff and the qualifications of third party inspectors to identify sensitive species habitat. CDFW will remain involved when a sensitive resource is identified.

- Change the MCCR to clarify that the intent is to allow multiple cultivation sites on each legal parcel so long as the total area cultivated does not exceed the maximum allowed for the zone and permit type issued.

Staff proposes changing MCCR Section 20.242.040 A) 2. to read: "Each legal parcel may have only one or many more medical cannabis cultivation location(s) established on the legal parcel where the cultivation of medical cannabis is occurring, either for site regardless if the cultivation site is for personal use or any other allowed use allowed by this Chapter or Chapter 10A.17." Staff also proposes to add the following additional sentence to the definition of "Cultivation site", found in MCCR Chapter 10A.17 Section 10A.17.020, which reads: "One or more areas of cannabis cultivation may exist on the legal parcel used for that purpose."

There are numerous changes to be made throughout MCCR Chapter 20.242 to take singular "site" out and refer to the Legal parcel, in places, and the cultivation area in other places. The CEQA analysis assumed the potential of multiple sites on a single legal parcel based on wording in Section 10A.17.070. This section allows for multiple owners of the same legal parcel to each have a cultivation site on the parcel so long as the total cultivation area does not exceed the maximum allowed for the zone. Therefore the proposed changes above do not affect the CEQA review.

- Changes to the Aesthetics section of the IS

The visibility restriction specified in the MCCR (Section 10A.17.040 (A)(4)) applies to plants rather than cultivation sites. The following is a proposed clarifying correction on page 30, Aesthetics a) and c):

...Per Section 10A.17.040(A)(4) of the proposed MCCR, cultivation sites plants will not be visible from public

roads or publicly traveled private roads. Scenic vistas will not be affected from the most typical vantage points.

Although there is a requirement that cultivation sites plants may not be visible from a public road or publicly traveled private road, changes in the landscape may be visible as a result of the relocation or expansion of existing cultivation sites under Phase 1 implementation, or the installation of new cultivation sites under Phase 3 implementation. Potentially visible features may include new structures, fencing, limited vegetation removal, and grading for roadway or site development. Per Policy DE-85 of Chapter 3: Development Element of the Mendocino County General Plan related to *Community Character Policies*, "Viewshed preservation shall be considered when development is located in a highly scenic environment, adjacent to or atop a ridgeline or hill, and in similar settings."

- Change to Table 1 and 2

In the staff report dated December 15, 2016, page 8, it was noted that the version of Table 2, published with MCCR (included as Tables 3 and 4 in the IS) incorrectly shows that a MCCO type 1 permit for a medium outdoor cultivation suite would be allowed in I1 and I2 zoning districts with a Zoning Clearance. Staff recommends that error be corrected as a Planning Commission recommendation to the Board of Supervisors.

Summary of Planning Commission Recommendations understood from December 15, 2016

- Change wording of Mitigation Measure AES-1 to include fully shielded security lighting and have it apply to all structures.

The recommended change reads as follows:

AES-1: Mendocino County shall modify the MCCO prior to its adoption by the Board of Supervisors to require that all new structures used for mixed-light cultivation shall be constructed or retrofitted in a manner so as to fully contain any light or light glare involved in the cultivation process. Security lighting shall be motion activated and fully shielded.

Encourage the Board of Supervisors to pursue an Oak Woodland Protection Ordinance and Countywide Grading Ordinance by 2020 when permits for new cultivation will be available.

- Eliminate dwelling unit requirement from UR zoned parcels and allow new cultivation permits (beginning in 2020) in this area consistent with a future Oak Woodland Protection Ordinance and Grading Ordinance.
- Maintain that parcels in the RR1, RR2 and RR5 zoning districts require a residence, however allow an exception in the RR10 zone.

Staff and LACO Associates recommend that in order to receive an exception from the residential requirement in the RR10 zone an administrative permit be required. The required findings for the administrative permit are outlined in Sec. 20.242.080 C) of the MCCZ. An additional finding should be required that for any cultivation site proposed without a residence on the same legal parcel the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the site with a residence in the future. For parcels that will need on-site sewage disposal systems to be developed this may require the identification of a primary and reserve leach field to be identified in order to issue the administrative permit.

The existing proposed language outlined in Sec. 20.242.080 C) regarding administrative permit findings reads as follows:

- A) Administrative Permit. In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit medical cannabis cultivation sites based on the following special findings.
- 1) The medical cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
 - 2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the medical cannabis cultivation site will, to the maximum extent feasible, avoid or

minimize its impact on environmentally sensitive areas including hillsides exceeding 15%, prime soil, oak woodland, and timber resources.

- 3) The medical cannabis cultivation will avoid or minimize odor and light impact on residential uses.
- 4) For any new medical cannabis cultivation site established after January 1, 2020 and that is not located in an Industrial Zoning District (I1, I2, and PI) or an AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a CWA 404 permit from the Army Corps of Engineers or a CWA 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
- 5) The Administrative Permit granted for the medical cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
 - In RR zones less than 2 acres require that new cultivation sites be indoors or in greenhouses to reduce odor conflicts in neighborhood settings. This was the recommendation that was generally understood, however Staff and LACO Associates would request further clarification to ensure that it is consistent with the Planning Commission's intentions.

Additional information requested by the Planning Commission

- Provisional licenses

Staff continues to review the procedure used previously in Humboldt County, where the County provided an applicant for a permit an affidavit in which the applicant stated that he or she would follow State and local laws regarding cannabis cultivation.

- Can a single owner lease more than 2 permits?

As currently proposed, it would be possible for a single owner to lease more than 2 permits, if that owner owned multiple legal parcels eligible for a cultivation permit.

- Does a permit go with the land or the person?

A Cultivation permit issued by the ACO would be to a specific person on a specific legal parcel. The application materials, such as a site plan and operations and cultivation plan are site specific and would not be applicable or transferrable to another site.

In cases where an Administrative Permit or Minor Use Permit is required the term of the permit is not to exceed 10 years. These permits will run with the land regardless of owner; however they do require any future owners to operate in a consistent manner with the permit conditions. In any case the Cultivation permit through the ACO requires annual renewal.

- Look at eliminating all cultivation sites (including existing) in RR1 and RR2 zones. There could be a sunset provision for existing cultivators.

This would not be in keeping with current Board direction; however it is something that the Planning Commission can consider recommending. Under CEQA all existing cultivation sites are considered part of the baseline. This recommendation would be policy based rather than CEQA based.

- If the allowance for outdoor cultivation sites is eliminated in RR1 and RR2 zones could there be an exception for properties in Laytonville where the issues of odor and neighborhood compatibility have not been voiced by the community?

The County of Mendocino General Plan includes community specific policies and action items related to Laytonville. Among these are Policy CP-L-2: The County shall support, encourage, and facilitate community

planning in Laytonville; Action Item CP-L-2.1: Continue to refer discretionary projects to, and consider recommendations of, the Laytonville Area Municipal Advisory Commission (MAC) prior to taking action on the proposal; and Policy CP-L-8: The County supports local industries which maintain Laytonville and Long Valley’s unique and rural character.

If the overall intent is to eliminate cultivation from RR1 and RR2 zones in every area except Laytonville, staff and LACO Associates recommend that this should be a community specific effort and should be done in the context of updating the Community Specific Policies of the General Plan related to Laytonville. This issue could come before the Laytonville MAC as the first step in a General Plan amendment allowing the local community to participate in the process and more thoroughly analyze the compatibility of cultivation use within the context of Laytonville Community planning Goals and Policies.

- Are we encouraging outdoor cultivation sites in RR zones by requiring a higher level of discretionary review for indoor sites versus outdoor sites?

Table 1 below lists the various types of cultivation allowed in RR zones and the required permits. As currently proposed, only ministerial zoning clearance review would be required for outdoor cultivation in these zones. For indoor operations, depending on size, either an administrative permit or a use permit is required. As currently proposed there is a more stringent permitting path for indoor cultivation compared to outdoor cultivation in the RR zones. Based on the testimony received, your Commission could consider recommending altering these requirements to favor indoor cultivation as a way to reduce neighborhood conflict.

Table 1: RR zones and permitting requirements currently proposed for existing and new cultivation sites.

	Zoning Clearance	Administrative Permit	Use Permit
RR2	Small Outdoor, Small Mixed Light and Medium Outdoor	Small Indoor (up to 500 square feet)	Small Indoor (501-2,500 square feet)
RR5	Small Outdoor, Small Mixed Light, Medium Outdoor, and Medium Mixed Light	Small Indoor (up to 500 square feet)	Small Indoor (501-2,500 square feet)
RR10	Small Outdoor, Small Mixed Light, Medium Outdoor, Medium Mixed Light, Large Outdoor, Large Mixed Light and Nursery	Small Indoor (up to 500 square feet)	Small Indoor (501-2,500 square feet)

REQUESTED ACTION:

Staff requests that the Planning Commission receive the staff report, take public comment, deliberate, ask questions of staff and LACO Associates, and consider adoption of Resolution, which formalizes recommendation to the Board of Supervisors on this matter.