



COUNTY OF MENDOCINO CANNABIS DEPARTMENT

860 N BUSH ST.
UKIAH, CALIFORNIA • 95482

PHONE: 707-234-6680

cannabisprogram@mendocinocounty.gov

<https://www.mendocinocounty.org/departments/cannabis-department>

DATE: March 8, 2024
TO: Cannabis Department Staff
FROM: Steve Dunicliff, Interim Cannabis Director
RE: Internal Procedure# 01 - Mendocino County Cannabis Department Procedure for Cultivation Sites with Potential Violations of Mendocino County Code Sections 10.A.17.040(K) and 10.A.17.090(T), Commonly Referred to as "Tree Removal" Violations.

PREVIOUS POLICY

None.

PURPOSE

To promote consistency and efficiency in Mendocino County Cannabis Department (hereby "Department") processes when potential violations of Mendocino County Code (hereby "MCC") Sections 10.A.17.040(K) and 10.A.17.090(T) are discovered in application review, site inspections, performance reviews, renewal review, community complaint investigations, or any other circumstance consistent with current Department practices.

DEFINITIONS

MCC Sec. 10.A.17.040(K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns. For purposes of this Section 10.A.17.040(K), "for the purpose of developing a cultivation site" shall mean the alteration, grading, removal, or other development of land to create, or expand, a cultivation site, as that term is defined in Section 10.A.17.020.

MCC Sec. 10.A.17.090(T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (l) of Section 10.A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-three-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource

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protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.

MCC Sec. 10A.17.020 "Cultivation site" means one (1) or more locations or facilities on one (1) legal parcel (or one (1) or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit for the cultivation of cannabis where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, or processed, or that does all or any combination of those activities. One (1) or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

The Department and any authorized contractors performing work on behalf of the Department shall be responsible for adhering to this procedure.

SCOPE

The Department and any authorized contractors performing work on behalf of the Department shall be responsible for adhering to this procedure.

POLICY

When the Department, or the Department designee, is reviewing or investigating applicant or permit holder cultivation sites as defined in MCC Sec. 1 0A.17.020 and observes potential violations of MCC Sec. 1 0.A.17 .040 (hereby "violations" for purpose of this document only) those observations shall be documented. For example, any combination or individual circumstance described below may apply:

- Historical aerial or satellite imagery may be viewed in different years to make observations regarding the changes to the landscape. The type of imagery used shall be consistent with the current Department Practice at the time of the review. Those images shall be retained for comparison.
- During a Department site inspection at a cultivation location, when potential violations are observed, photographs may be obtained. Those photographs shall be retained.
- During review, documents from outside agencies, including but not limited to the California Department of Fish and Wildlife, CalFire, etc., or internal Departments, including but not limited to, Code Enforcement, may be discovered that describe violations, such as Notice of Violations. These documents shall be retained.

When these violations are properly documented, the reviewer shall provide a brief narrative describing their determination as to how the observations confirm the presence of a violation.

All Mendocino County commercial cannabis cultivators shall have the opportunity to complete an Affidavit for Tree Removal (hereby "affidavit"). The reviewer shall confirm that there is an affidavit on file, and if there is not, provide the applicant/permit holder reasonable time to complete and submit the affidavit. It is possible the applicant/permit holder may submit a new affidavit that shall supersede any previously submitted affidavit. However, the applicant must ensure that all relevant

documentation supports the most current affidavit and that the scope represents the entirety of the project accurately. The applicant/permit holder may elect to provide additional proof, with or without the affidavit, to clarify the observations, such as arborist reports, photographs, invoices, species identifying information, etc.

The narrative, supporting documentation, and the affidavit shall be presented to reviewer's direct supervisor, and/or a Department designee, such as an additional subject matter expert, for a second opinion and/or a more detailed analysis of the findings. Those additional findings shall be documented and added to the record.

The second opinion shall support one of the following outcomes:


- **Reasonable Evidence.** Evidence is defined as the available body of facts or information indicating whether a belief or proposition is true or valid. Therefore, reasonable evidence means evidence that a reasonable person would find sufficient to determine whether one conclusion is more likely than another. Reasonable evidence shall include Mendocino County Code Enforcement or California Department of Forestry issued violations regarding tree removal at the subject cultivation site, or other evidence submitted by the applicant or received by the Department. This evidence may contradict the affidavit and should be noted and documented as such. If the noted and documented evidence wholly contradicts the affidavit, an affidavit was not provided, or the affidavit supports a violation, reasonable evidence is grounds for denial in accordance with MCC Sec. 10A.17.100(0), or the applicant/permit holder may apply for an application or permit modification within the timeframe specified by the Department.
- **Inconclusive Evidence.** Inconclusive evidence means that the evidence did not resolve fully all doubts or questions and is without results. In instances of inconclusive evidence, the Department shall defer to the facts attested to in the affidavit. The affidavit shall either support a violation via the facts submitted under penalty of perjury and is grounds for denial in accordance with MCC. Sec. 10A.17.100(0), or the affidavit shall support that no violation was committed and is not grounds for denial unless future evidence that wholly contradicts the affidavit is discovered. If no affidavit was supplied, then the Department may require additional information of the applicant/permit holder to make a determination. If the applicant/permit holder is non-responsive, the applicant/permit holder may be denied in accordance with MCC Sec. 10A.17.100(D)(b).
- **No Violation Observed.** The evidence submitted does not reflect a violation. The documentation conclusion shall be retained, and no further action is required by the applicant/permit holder or the Department at this time.

RESPONSIBILITY

Any Department staff or authorized contractors performing any functions described in the scope are responsible to ensure compliance with this procedure and the subsequent revisions of this procedure. Failure to adhere to this policy may jeopardize the integrity of the Department findings and tree removal violation review process. That failure would be considered unacceptable performance and be subject to Department accountability measures.

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AUTHORITY

Procedure Approved:  _____ Date: 5/11/23

John Burkes, Executive Office Special Assignment

Reaffirmation Approval:  _____ Date: 3/22/24
Steve Dunicliff, Interim Cannabis Director