EARLY IMPLEMENTATION DEVELOPMENT AGREEMENTS POLICY (CANNABIS)

This policy describes the opportunity to apply for a development agreement authorizing indoor or mixed light cannabis cultivation projects prior to Yolo County's adoption of a new land use ordinance covering cannabis cultivation and related activities, anticipated in early 2019. This policy includes two portions of the Yolo County Code that are referenced herein: (1) the County's development agreement ordinance ("DA Ordinance") (Title 8, Chapter 5 of the Yolo County Code); and (2) the County's interim Medical Marijuana Cultivation Ordinance ("Interim Ordinance") (Title 5, Chapter 20 of the Yolo County Code. The Yolo County Code is available online at: http://www.amlegal.com/codes/client/yolo-county_ca/.

All matters not directly addressed herein shall be resolved by the County Administrator or his designee in a manner consistent with the overall purpose and intent of this policy. Any conflict between this policy and the DA Ordinance and/or the Interim Ordinance shall be resolved in favor of this policy unless otherwise required by California law. The Yolo County Code will be revised to incorporate relevant aspects of this policy prior to the approval of any development agreement covered by its terms.

ELIGIBILITY, APPLICATION PROCESS, AND REVIEW

A. Eligibility.

All of the following eligibility requirements must be satisfied:

- Applicant must be an existing cannabis cultivation license holder or in the process of renewing its license pursuant to the interim Yolo County Medical Marijuana Cultivation Ordinance ("Interim Ordinance");

- Licensed site must meet the applicable standard for flood protection pursuant to federal (FEMA) and state requirements;[1]

- Proposed project must include indoor (exclusively artificial light) or mixed-light (combination of natural and artificial light in a greenhouse) cannabis cultivation. Other types of cultivation, including but not limited to outdoor cultivation and hoop houses, are not eligible for a development agreement. The size of the cultivation component of the operation shall conform to limits in state law applicable to indoor and mixed light facilities currently eligible for permitting (note that "large" facilities will not be permitted by the state until 2023);

[1] Under state law, development agreements may only be entered into in state-designated urban and urbanizing areas where 200-year flood protection is provided or adequate progress has been made, and/or other applicable state flood protection requirements are met. Development agreements may only be entered into in state-designated non-urbanized areas where the FEMA standard of flood protection is met.

- Other cannabis-related uses and activities authorized under state law may be proposed in addition to indoor or mixed-light cultivation as part of an integrated project on licensed premises, excepting only retail.

Eligibility to submit an application is not an assurance that a project will be recommended for approval or ultimately approved.

B. Application Process.

The application process has two parts: an initial letter of intent, followed by a full application for a development agreement and any other County permits and entitlements.

Letter of Intent

A letter of intent should express the applicant's interest in applying for a development agreement for an eligible project. The letter should (a) document how each of the eligibility requirements set forth above is satisfied, and (b) include a summary of information required by Yolo County Code Section 8-5.201 for a proposed development agreement. This includes, among other things, a legal description of the project site, a description of proposed uses, information on the height and size of the buildings proposed for construction thereon, and a summary of any proposed public benefits. Please review Section 8-5.201 carefully in preparing your letter of intent.

The letter should address each category of information required by Section 8-5.201 in summary fashion, providing enough information to enable the County to provide guidance to an applicant on any additional information that may be required for a full application for a development agreement.

Interested applicants must submit a letter of intent to apply for a development agreement **no later than 4:00 on April 6, 2018**. Letters shall be submitted either electronically or by hand-delivery, as follows:

via e-mail to susan.strachan@yolocounty.org
or
via hand delivery to Susan Strachan, 625 Court Street, Room 202, Woodland CA 95695

The application fee for a letter of intent shall be the amount established by the Board of Supervisors for a pre-application for a discretionary land use entitlement ($2,255.30).[2] Payment (a check or money order made payable to the County of Yolo) should be included with the letter of intent if delivered by hand, or provided separately via mail or by hand delivery if the letter is submitted electronically. Cash will not be accepted. This amount is a deposit only and the applicant will be notified if additional fees will be necessary to fully cover the cost of staff and outside consultant time devoted to review.

[2] All fees described in this policy are intended to defray staff and consultant expenses and are separate from the "public benefit" elements of any development agreement (which may include additional monetary payments).

Following receipt of a letter of intent and fee payment, a representative of the County will meet with the applicant within 10 days or as soon as reasonably possible if it is not feasible to meet within the 10-day period. The meeting will review the letter of intent and, as indicated above, focus on identifying additional information—including information necessary for tribal consultation under California law (AB 52) and any other permit applications (building permits, flood hazard development permits, etc.)—needed for a full development agreement application. If a letter is incomplete or otherwise insufficient to support such a discussion, it will be returned to the applicant with information on what must be included in a resubmitted letter.

Development Agreement Application

Following consultation with the County regarding a letter of intent, unless the County otherwise directs, the applicant may submit a complete development application at its earliest convenience. A full application should include:

- All information required by Yolo County Code Section 8-5.201, including additional detail (beyond that included in the letter of intent) that the applicant believes is necessary or helpful to the County's consideration of the application;

- All additional information required for responses to the previously issued Request for Proposals (as modified by the addendum thereto) for nursery and processing facilities, including environmental site information, neighborhood compatibility information, safety and security plan, and operating plan (see **Attachments 1-2** hereto); and

- Any other information identified by the County during the letter of intent consultation as necessary to process the development application. This may include, among other things, biological and cultural resource surveys (or funding for completion of a survey during the application review process), title report, and a Phase 1 environmental site assessment.

The application will be reviewed and accepted as complete (or rejected as incomplete) in accordance with Yolo County Code Section 8-5.106, which applies generally to development agreement applications.

A development agreement application shall be submitted by hand delivery to the same location as for letters of intent, described above. The deadline for development agreement applications is **4:00 p.m. on Friday, May 18, 2018**. A check or money order payable to Yolo County shall be included in the amount established by the Board of Supervisors for a development agreement ($7,814.60), plus any additional fees for other permits and/or entitlements identified as required for the proposed project.[3] These amounts are deposits and additional fees will be charged if needed to fully cover the cost of staff and outside consultant time devoted to an application.

[3] Additional permits and/or entitlements may be identified as the application and environmental review process proceeds.

III. Application Review.

An application for a development agreement will be considered in accordance with Article 3 (Sections 8-5.301 through 304) of the Development Agreement Ordinance and applicable provisions of California law. This will include, at a minimum completion of environmental review pursuant to the California Environmental Quality Act (CEQA) and two public hearings: one before the Planning Commission pursuant to Section 8-5.301 of the Yolo County Code; and one before the Board of Supervisors pursuant to Sections 8-5.302 and 303. Application review will also include a site visit.

The CEQA process for a development agreement and any related approvals is no different than for other discretionary land use entitlements. It will include an initial evaluation of potential exemptions, possibly aided by preparation of an initial study, and projects that are not exempt will be evaluated in a negative declaration, mitigated negative declaration, or environmental impact report (as appropriate). Mitigation measures adopted at the time of project approval must be integrated into project operations.

Applicants will bear all costs associated with CEQA review. Costs can vary greatly depending on project scope and complexity, as well as environmental conditions of the site and its surroundings. Outside consultants and other experts will likely be used for projects requiring more complex environmental documents and/or to augment staff resources when necessary. Fees established for CEQA document preparation will apply (generally, an initial deposit is collected and applicants cover any costs beyond the amount of the deposit).

The County Administrator may, in his sole discretion, prioritize processing of applications based upon the availability of staff and consultant resources, project complexity, and other factors. The amount of time necessary to process a development agreement application, perform environmental review, and conduct necessary public hearings could take 6-9 months or longer, depending on the complexity of the project and the CEQA review process (including tribal consultation pursuant to AB 52).

OTHER INFORMATION FOR POTENTIAL APPLICANTS

A. Development Agreement Preparation.

Applicants are not required or encouraged to submit a proposed development agreement with their application. Instead, all development agreements will conform to a template under preparation by the Office of the County Counsel. Some standard terms and provisions will include:

> *Term*—The standard term will be 10 years. During the term, an applicant will have a vested right to develop and operate the project described in the agreement subject only to successful maintenance of all required state licenses and approvals and compliance with updated uniform codes (e.g., the Building Code), limitations set forth in Yolo County Code Section 8-5.204, and modification or termination rights (discussed below). Some projects may be recommended for a term of less than 10 years, depending upon the facts

and circumstances of a particular application.

Public Benefits—Applicants shall propose public benefits in a development agreement, and this will be a factor in whether an application is ultimately approved. Proposals may include payments tied to canopy area, net proceeds, gross receipts, or other metrics—any such proposals, of course, should be developed in consideration of the proposed general tax and represent more than a commitment to simply pay the tax if approved. Proposals may also include construction or funding for public infrastructure or other amenities of general benefit to local communities.

Unless otherwise specifically agreed, revenues provided through a development agreement will be available for allocation by the Board of Supervisors to the same uses specifically described in the general tax ordinance approved contemporaneously with this policy. The Board reserves the right to direct revenues to other governmental purposes. Staff will strive to ensure equity among applicants (through appropriate means, including recommendations on project approval) so that similar projects include comparable public benefit provisions.

Offsets—Payment obligations under a development agreement may be offset (reduced) by the sum of any tax revenues paid pursuant to a County cannabis tax. Other non-monetary benefits proposed by an applicant could be similarly offset (i.e., reduced or eliminated) in the event a tax measure is approved. These matters will be specifically negotiated and (if applicable) described in each development agreement.

Place of Sale—Each development agreement should designate the County of Yolo as the "place of sale" for sales tax purposes.

Annual review—All development agreements will include standard annual review provisions that meet the requirements of Article 5 of the Development Agreement Ordinance. An administrative fee will be included in each agreement to cover this review, which will also function as the process for annual renewal of the cultivation license conferred by the agreement.

Modification or Termination—Article 6 of the Development Agreement Ordinance provides for hearings to terminate or modify a development agreement in the event of a breach. Any such determination must be supported by substantial evidence that the applicant has not complied with the terms of the agreement.

Lastly, all development agreements recommended for approval will include indemnity and defense provisions and other terms common to such agreements. Applicant must possess all necessary state licenses for activities covered by the development agreement at the time of project approval.

B. Performance Standards.

All development agreement applicants should be aware of the County's interest in addressing two of the most frequently raised concerns with cultivation operations: odor and, for greenhouse

and similar operations, lighting and other aesthetic impacts. All development agreements approved pursuant to this policy will include language requiring prevention of all significant offsite odor and lighting/aesthetic impacts. The objective is to achieve as close to a "zero impact" outcome for each project, particularly for offsite odor impacts, as may be feasible with current technology. In providing a recommendation to the Board of Supervisors regarding each development agreement, staff shall include information on distances to the land use types addressed in siting requirements of the Interim Ordinance and whether those distances and other factors are sufficient to protect public health, safety, and welfare during project operations.

Various technologies and other means are available to accomplish this outcome. Applicants should consider and propose specific technologies to be implemented for a particular project. Staff review of a development agreement application will include careful evaluation of whether the proposed approach provides sufficient assurances that impacts will be avoided. County staff may retain one or more outside experts to provide an objective evaluation of potential efficacy. Each development agreement will affirmatively establish the applicant's burden to develop, install, and maintain all equipment and other measures necessary to prevent all significant offsite odor and lighting impacts throughout the term of the agreement.

Applicants should also be aware that the full array of other potential environmental and operational (including public safety) issues will also be assessed during the application review process. Some examples include: cultural resource protection; energy efficiency, potentially including a commitment to purchase energy from the Valley Clean Energy; public safety concerns and related measures, including coordination with law enforcement and local fire protection districts; and traffic impacts, including infrastructure improvements or other measures may be necessary to reduce or avoid project impacts.

A "good neighbor" policy may also be included in development agreements. The County is presently developing a standard approach to neighbor communications. It may include:

- Providing a 24-hour method of communication (e.g., phone number, potentially with a website or e-mail also) for nearby residents and landowners to use in contacting an on-site (or local) responsible party with questions or concerns;

- A protocol for responding to all inquiries in a timely manner and, if needed, taking corrective action expeditiously; and

- A recordkeeping system to ensure inquiries and any responsive actions are maintained for at least five years.

Lastly, all development agreements will include language that obligates cultivators to take all reasonable steps to eliminate the potential for illegal diversions. This will include reporting obligations in the event illegal diversions occur to assist law enforcement in apprehending responsible parties. Repeated illegal diversions, particularly if a cultivator is not implementing appropriate preventative measures, will be a basis for terminating a development agreement. And of course, consistent with the County's current ordinance, an owner or licensee's conviction of a diversion-related crime would also be a basis for termination.