

Attachment A

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DISCUSSION

Introduction

At the Board of Supervisors hearing on July 12, 2016, as part of the consideration of adopting ordinances regulating medical marijuana in Monterey County, the Board directed staff to return in September with a report on options to develop regulations for limited outdoor medical cannabis cultivation. Specific reference was made to minimizing foreseeable environmental impacts.

Drawing from information gathered throughout the medical cannabis regulation process, including community outreach events and public comment, staff developed a list of options to consider. Each of these options has accompanying issues. These issues are discussed at a very broad level in this report to provide context.

On Friday, August 26th, 2016, staff presented these options to the Board of Supervisors Ad Hoc Committee for Medical Marijuana (Committee). The Committee recommends making no changes at this time for reasons explained in this report. If the Board desires to explore amending the recently adopted ordinances, a more detailed analysis of issues and policy considerations will need to occur.

Summary of Issues

Outdoor cultivation has some recognized benefits. Most notably, it is far less energy intensive than indoor cultivation. However, it also raises environmental and other issues to consider, such as:

Enforcement: The Sheriff's Office and the District Attorney have both expressed opposition to outdoor cultivation for a variety of reasons. One of their primary concerns is the ability to detect and enforce against illegal cannabis operations and any associated illegal activities. The Sheriff's Office has limited resources to cover the vast areas of the County. Responses to illegal cannabis operations or activities often require a team of Sheriff deputies to ensure the safety of those involved. With resources spread thin, obtaining search warrants and organizing a team to serve that warrant, while still maintaining public safety response throughout the County, can be difficult. In addition, there are vast and remote areas of the County, particularly around Las Padres National Forest, Fort Hunter Liggett, and east towards the San Benito and Fresno County borders. These areas have long emergency response times, significant environmental resources, limited public services and facilities, and large remote areas where cultivation could go undetected without regular proactive efforts such as fly-over's which are costly.

Security: Outdoor cultivation or cultivation in hoop houses would not have the security benefit of limiting access through lockable entry points. Most jurisdictions require security fencing around outdoor cultivation sites. Security fencing could include cyclone fencing, razor wire, and lighting. Comments made during the public hearing process on the medical marijuana ordinances suggested surrounding agricultural fields with razor wire for security. Such fencing would raise concerns about environmental impacts, such as impacts on wildlife corridors, aesthetic impacts, and light pollution. Options may exist to locate and design security measures to minimize these impacts but these considerations would need to be balanced with minimizing the potential for theft and related public safety impacts.

Biological: Monterey County contains a variety of unique and sensitive biological habitats such as Coastal resources, oak woodlands, redwoods, chaparral communities, meadow lands, mountains, and rivers. If ordinances to permit outdoor cannabis cultivation are proposed, environmental review would need to include analysis of potential impacts from clearing of areas for cultivation, construction of security fencing, construction of new hoop houses and associated facilities, diversion of water resources, and any proposed measures to keep wildlife away from the crops.

Neighborhood character: New commercial cannabis operations may change the character of a neighborhood. If shared resources are involved such as water systems, private roads, or open spaces, environmental review would need to analyze whether the proposed ordinance would create additional demands on those resources through increased water use, increased traffic on the roads, and visual changes through conversion of natural lands. Residences, schools, parks, churches, and community centers can be particularly sensitive to odors and activities associated with cannabis operations. Cannabis plants have a strong odor that can be carried some distance by wind. In addition, additional permitting of cannabis may have economic impacts. The County is already seeing significant economic forces affecting land prices and lease rates related to cannabis. Increased land costs can have indirect impacts on housing and traditional agriculture as well as increase development pressures.

Traditional agriculture: Cannabis operations could compete with food production, cause the conversion of food crops to cannabis, and influence land values to where traditional agriculture cannot afford to compete. With the current market value of cannabis being considerably higher than the value of food crops, market forces may increase demand for greenhouses, hoop houses, and conversion of areas of land from traditional row crops in the Salinas Valley. Traditional agriculture has been the County's largest economic resource and has been an important source of food crops world-wide. Cannabis could also compete with the 2010 General Plan vision for a Monterey County wine industry since the areas identified for viticulture seems to be an area of interest for the marijuana industry. Combined with aesthetic impacts such a fencing and lighting requirements, views of traditional row crops and vineyards could be interrupted. Row crops, vineyards, and livestock grazing (traditional agriculture) are different than cannabis in that cannabis is a federally illegal controlled substance, is high value monetarily, and there are still social stigmas and crime associated with cannabis that are not common to traditional agricultural uses. In addition, waste material is considered toxic and hazardous so it must be hauled off and not simply tilled back into the ground. Hauling waste material could avoid impacts to water quality, but it could also increase traffic, increase requirement for soil amendments, and impact landfills accepting the materials.

Water quality: Conversion of uncultivated lands to cultivated lands may result in changes to drainage patterns and cause erosion. In addition, runoff from agricultural lands containing fertilizers and pesticides may lead to water quality impacts through percolation and/or runoff. Other counties have identified impacts to wildlife drinking from streams near marijuana grows. Some regulations are already in place to avoid or minimize these impacts including permit requirements for conversion of lands on slopes.

Water: A significant constraint to any development or use of land in Monterey County is water availability. This issue was addressed in the adopted ordinances by acknowledging that existing structures and greenhouses have a historic or potential water use and by requiring new water conservation measures for cannabis operations and by requiring a Use Permit finding that the project will have no significant adverse environmental impact. Conversion of previously uncultivated lands to cultivated lands or construction of new structures to house cannabis operations would likely create additional demands for water. Analysis of the water demand and

impact on groundwater basins would be needed. The source of the water supply can also raise issues. For instance, use of a small or large water system for cannabis irrigation can raise issues for other users of the same system regarding infrastructure and well interference. Comments received during the processing of the medical marijuana ordinances indicated that some are seeing a proliferation of marijuana cultivation operations in rural areas. These operations often begin by importing water in trucks to the site until a well can be drilled, and wells may have been drilled without required permits.

Utilities: Many remote areas of the County have limited access to public utilities such as public roads, sewer, water, and electricity. New cannabis operations may necessitate the need for new wells, new septic systems, use of generators, and longer traffic trips. Environmental review would need to consider air quality, noise, and fire safety impacts of generators and traffic on dirt roads and impacts of new wells and septic systems. Demands for housing and caretaker facilities may also increase in areas where commercial cannabis operations are considered.

Each option for amending the recently adopted ordinances will have unique environmental and social impacts with varying degrees of severity. None of the above is intended as a definitive determination of environmental impacts, as any ordinance which the Board would initiate on this matter would require specific environmental analysis.

Potential Options

When it comes to the magnitude of impacts on the resources described above, the following options may address some of these concerns:

1. **Wait; Do nothing at this time.** The Board could consider amending zoning codes after gaining experience with the approved regulations and seeing what happens with County and State ballot measures, State regulations and licensing requirements (estimated 2018), financial impacts, and other relevant information.
2. **Establish permissible areas or “Greenzones”.** Staff could attempt to map known constraints such as water supply, biological resources, areas with adequate public services and utilities, slopes, visually sensitive areas, and sensitive receptors. This map could help identify the most environmentally appropriate areas for cannabis operations. It is unknown at this time where and how large these areas may be, and the mapping itself can become controversial. Even within permissible areas, individual applications would need to be evaluated and regulations would apply on a more detailed, site specific level. This option could exclude existing operations and involve consideration of new operations in areas determined appropriate. At a cursory glance the majority of Permanent Grazing or Rural Grazing lands will have significant resource limitations.
3. **Regulatory requirements.** Without specifying where a cannabis operation might be permitted, comprehensive regulations could be crafted and individual review required to avoid or minimize environmental impacts on a case-by-case basis. This approach would put a greater burden on applicants to provide information such as hydrology reports and biological reports and would provide the least predictability in outcome. Regulations would need to be crafted that require an adequate water supply, setbacks from environmentally sensitive habitat, avoidance of slopes, and a variety of other considerations.
4. **Permit existing operations only.** Existing operations could be considered as part of the environmental setting already existing in the County. Existing physical conditions on the

ground are often referred to as “baseline” conditions under CEQA. Often, baseline conditions are the same or similar to the “no project” alternative. CEQA requires consideration of environmental impacts that may result from a “project”. If the project consists of permitting of existing conditions, the project would likely not result in impacts from baseline conditions and therefore would likely not require an Environmental Impact Report (EIR). Significant hurdles with this option 4 include difficulties in determining which existing operations were legally established and which were not. Gaining from experience with the Interim Ordinance exemption determinations, this determination is not easily made. Cultivators who established operations in violation of County code (including during the interim moratorium) may be rewarded for their illegal activities. In addition, some of the existing operations may not be conducted in an area or in a manner that warrants approval. The number and location of existing operations is largely unknown. Industry representatives have estimated that there are approximately 200 cultivation operations existing in the County.

The Committee has discussed and debated many of these of issues over the course of the last year. The Committee recommends Option 1 – waiting – to provide the opportunity to learn from the experience of implementing the recently adopted medical marijuana regulations and to consider all of the potential consequences of allowing outdoor cultivation. Additionally, a number of events will occur in the fall that will have bearing on this issue, including the vote on the cannabis tax which will affect whether the medical marijuana regulations become operative and the vote on the statewide initiative on non-medical marijuana use. After the State begins implementing regulations and licensing requirements for medical marijuana and the County implements its ordinances if they become operative and after more is known about the impacts of this industry, the subject could be revisited.

Current and Future Environmental Review

This report is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 of the CEQA guidelines. Section 15262 exempts feasibility and planning studies for potential future actions where no project is approved, adopted, or funded.

Future review under CEQA of any future ordinance will depend on the option selected and the specifics of any policies or regulations applied.

Process and Timeline

If the Board ultimately desires to explore amending the recently adopted ordinances, detailed ordinance work, public outreach meetings, environmental review, and public hearings will all be required. These efforts are likely to take several months to a year depending on the changes desired and the priority or urgency assigned to accomplishing these tasks. If this task is deemed a priority, it could delay efforts on other ordinances in the works.

If the Board chooses to wait until the recently approved regulations can be implemented and staff can analyze the program’s successes and failures (Option 1), no new actions would be immediately required. Staff recommends revisiting this matter two years after the operative date of the ordinances or some other timeframe desired by the Board. Staff selected two years to allow time for the State guidelines to be completed.