

Attachment A

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Exhibit A - Discussion

Outdoor Cannabis Cultivation

Summary:

Staff seeks direction from the Board on whether to pursue development of outdoor cannabis cultivation regulations now, or wait until a later date to revisit the issue. Staff presented this item to the Cannabis Committee on June 6, 2018 at which time the Cannabis Committee recommended seeking direction from the full Board. The decision regarding whether to direct staff to begin preparation of outdoor cannabis cultivation regulations is multi-faceted. Of the 58 counties in California, 18 counties regulate cannabis cultivation, 40 have banned outdoor cultivation, and of the counties that do regulate cannabis cultivation, no two jurisdictions are the same. For those jurisdictions that regulate cultivation, each struggle with policy decisions regarding where to allow it, how much to allow, and how to develop regulations that consider residents, the environment, and the economy. This report is intended to provide a high-level summary of the options and issues for consideration.

Background

From 1996 to 2015, under the terms of the Compassionate Use Act and Senate Bill 420, collective and cooperative operations were allowed as uses of a similar character to those uses already listed in Monterey County Code. Cultivation of cannabis was considered an agricultural use which was allowed in most zoning districts, meaning the RMA did not permit or regulate such uses. The Health Department oversaw compliance with medical recommendation documentation.

On June 19, 2015, a Board Referral was submitted to County staff requesting preparation of an interim ordinance to temporarily limit cannabis operations while regulations were developed. On July 7, 2015, an interim ordinance was adopted by the Board that temporarily prohibited new collective or cooperative operations in the unincorporated areas of Monterey County. Exceptions to the Interim Ordinance allowed continued operations of collectives or cooperatives that could demonstrate to the satisfaction of the RMA that they had been legally operating prior to the adoption of the interim ordinance or had made “substantial progress” toward cultivation at a greenhouse or indoor cultivation site. Eleven requests for an exemption from the Interim Ordinance were submitted and six were approved. Obtaining an exemption from the Interim Ordinance provided the cannabis operator with temporary relief from enforcement, but did not guarantee the operator would be allowed to continue its activities once permanent regulations were adopted.

On July 12, 2016, the Board of Supervisors adopted regulations for commercial medical cannabis activities. The regulations became operative in November 2016 after election results were certified, and the Interim Ordinance and exemptions granted thereto were no longer in force or effect. The newly adopted regulations provided one year for all collectives or cooperatives to obtain permits or stop operations. That one year amortization period has passed.

Outdoor cannabis cultivation is currently not permitted anywhere in the County with the exception of small personal grows; up to six mature plants per adult or 100 square feet of medical canopy area or less per parcel for a qualified patient or primary caregiver. Any grow exceeding the allowable personal cultivation limits (6 plants or 100 square feet) is considered a commercial cannabis activity. Outdoor cultivation of commercial cannabis in any quantity is

prohibited under the cannabis regulations adopted by the Board of Supervisors on July 12, 2016, as amended on December 12, 2017 to include adult-use cannabis, and as amended on March 13, 2018 to change required setbacks.

In adopting the medical cannabis regulations in July 2016, it was the stated intent of the Board that the restrictions on outdoor cultivation were only a first step. This first step was meant to provide the County with experience in the newly regulated industry before considering expanding where and how commercial cannabis activities can legally occur. The initial policy decision also came at the recommendation of the Board ad hoc committee who, in early discussions on the subject, consulted with other jurisdictions who were regulating cannabis collectives and cooperatives at the time. Consultation with Santa Cruz County, Humboldt County, Mendocino County, and Butte County revealed a myriad of struggles with enforcement of plant limits, non-profit documentation verification, and environmental damages from outdoor cultivation in remote areas including water diversion, vegetation removal, grading, and substandard buildings and infrastructure.

Circumstances have changed since this original consultation leading to adoption of the County's cannabis regulations. These changes include state legislation and two years of experience with regulating the cannabis industry across the state. At the request of the Board, staff has begun to revisit the policy on outdoor cultivation.

Overview

Outdoor cultivation is defined by the state as: "cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants." The use of hoop-houses, greenhouses or similar structures to provide light deprivation and/or artificial lighting for mature plants is generally considered "mixed-light cultivation." It should be noted that the County does not currently include hoop-houses in its definition of "mixed-light cultivation." The only areas where mixed-light cultivation can currently occur is within greenhouses that were legally existing as of January 1, 2016.

Each outdoor cultivator is slightly different. The majority of outdoor cultivation sites have an area with southern exposure and maximum access to sunlight, that are cleared to provide a space to grow plants. Most outdoor cultivators grow in bags or pots spaced throughout the cleared area, as opposed to planting directly in the ground. However, there are some cultivators that still plant cannabis directly in the soil.

There are four size categories of outdoor grows that are licensed pursuant to state law:

- 1) Specialty Cottage Outdoor – less than or equal to 2,500 square feet or up to 25 mature plants;
- 2) Specialty Outdoor – less than or equal to 2,501 - 5,000 square feet of total canopy or up to 50 mature plants;
- 3) Small Outdoor – between 5,001 and 10,000 square feet of total canopy; and
- 4) Medium Outdoor – between 10,001 square feet and one acre of total canopy.

Each grow site requires access to water and often requires related accessory structures or outbuildings. Depending on the size and type of cultivation, watering can be done by hand or through a drip irrigation system. Hoop-houses, greenhouses, or outbuildings are often needed to maintain nursery operations to support the outdoor cultivation including “mother plants” and propagation of seedlings. Barns, sheds, or other buildings are also needed for drying, curing, processing, trimming, and storage of cannabis grown on-site. In addition, outdoor growers sometimes use temporary hoop-houses as a means to provide light deprivation which can stress a plant into flowering.

The above description only reflects a rudimentary understanding of outdoor cannabis cultivation and more research on the subject is needed.

Other Jurisdictions

One of the first steps in considering outdoor cultivation policies was to revisit other jurisdictions that have adopted outdoor cultivation policies under the new state legislation. Staff has researched outdoor cannabis regulations adopted by the following counties:

- Humboldt County
- Mendocino County
- Santa Barbara County
- Santa Cruz County
- Sonoma County
- Calaveras County

Staff chose the above referenced counties because they currently have outdoor cultivation regulations, and they also represent some of the highest numbers of state temporary licensed cultivation operations. Santa Cruz County and Sonoma County were included because they have many similarities to Monterey County. Many counties not listed above have banned outdoor cultivation or have significant limitations on the number of plants that can be grown.

Of the six counties researched, all have undergone some form of registration process to identify cannabis activities that were in operation prior to the Medical Marijuana Regulation and Safety Act (enacted October 2015). Three counties (Santa Barbara, Calaveras, and Santa Cruz) limit permitting and licensing only to those operations who registered and were verified to be previously existing through a series of pre-defined criteria. Others, including Humboldt, Mendocino, and Sonoma provided simplified permitting processes for those operations that were registered and more rigorous permitting (i.e. Conditional Use Permits) for new operations. In addition, each jurisdiction adopted some form of zoning restrictions that generally included permissible zoning districts, setbacks from property lines or setbacks to the nearest residential structure, limitations on cultivation size based on lot size, and/or limitations based on environmental resource constraints.

Each jurisdiction was contacted by County staff to understand issues and concerns that have arisen through outdoor cultivation permitting. The most common issue described by each agency was neighborhood opposition to cannabis activities. In response, many of the jurisdictions have decided to revise their permitting policies to add conditional use permit requirements for outdoor

cultivation. For example, Humboldt County has revised their regulations to require conditional use permits for all cannabis activities proposed to occur within the sphere of influence of any city, within a Community area. They have also limited the number of permits available as a result of a settlement agreement over their cannabis regulations. Sonoma County allows certain outdoor cultivation on agriculturally zoned lands with a ministerial permit. They are revising their regulations to require conditional use permits for any cultivation occurring on lands less than 10 acres. Santa Cruz County has elected to require a discretionary permit for cannabis licensing to take advantage of the CEQA statutory exemption in MAUCRSA that allows for the adoption of cannabis regulations that require separate site-specific discretionary review that are individually subject to CEQA (as Monterey County has done as well).

Other common issues shared by these jurisdictions include: unforeseen permitting obstacles such as building and fire code requirements for hoop houses; building and health code requirements for permanent and accessible restroom facilities; increased traffic on private roads and dirt roads; and odor complaints. In addition, Sonoma County has experienced problems with cultivation proposals that require U.S. Fish and Wildlife Service (USFWS) consultation. USFWS will not consult on cannabis projects due to federal law.

Permitting Challenges and Considerations

Based on feedback from various jurisdictions around the state and based on correspondence and communications received by Monterey County over the last two years, primary concerns surrounding outdoor cultivation include:

1. Odor;
2. Potential environmental damage including:
 - a. Land clearing and pest management;
 - b. Increased traffic on rural roads; and
 - c. Water availability;
3. Land value considerations;
4. Local enforcement and implementation; and
5. Staffing and resource limitations and priorities.

This list is not exhaustive but represents the most frequently raised issues with outdoor cultivation in Monterey County. With the exception of the potential for environmental damage, these issues are not unique to outdoor cultivation and some of these issues can be managed through appropriate regulations.

Odor:

Odor is a common nuisance complaint surrounding cannabis cultivation. Humboldt County has found in their latest EIR for their updated cannabis regulations that odor is a significant and unavoidable impact. Locally, odor complaints have made headlines in the City of Greenfield where indoor cannabis operations have created an odor that impacts many local residences in that community. Jurisdictions are attempting to minimize odor issues by limiting zoning districts where cultivation can occur, by requiring minimum lot sizes, and by requiring setbacks from property lines or to the nearest residential receptor on a neighboring property.

Environmental Concerns:

Jurisdictions are dealing with potential environmental impacts in different ways. Some jurisdictions require a conditional use permit process that ensures environmental review of each individual permit, while others have limited permitting to only existing operations that have historically existed in the jurisdiction. Environmental issues encompass traffic, water, land use compatibility concerns, wildlife impacts, drainage, and erosion. Specific policies could be explored to limit or prohibit cultivation in areas where significant environmental impacts may occur. Depending on the ultimate policy direction and permitting requirements, future ordinances and regulations may require separate environmental review.

Land Values:

Similar to Monterey County's greenhouse experience, other jurisdictions are seeing international and national investment companies investing in land that may be viable for legal commercial cannabis activity. This rush can lead to increased land values in some areas. With limited land and housing, and significant environmental resources in Big Sur and Carmel Valley, commercial use of lands for cannabis could have impacts on land and housing supplies. In addition, the Cattlemen's Association has expressed concern over land values in the County's grazing lands. Cattlemen need large areas of land for grazing and relatively affordable prices to remain viable and competitive. Increases in land values, specifically the Rural Grazing and Permanent grazing zoning designations, could impact the cattle business.

Local Enforcement and Implementation:

In considering the initial medical cannabis regulations for Monterey County, the Board ad hoc committee reviewed maps of Monterey County along with overlays of zoning districts applicable to various areas of the County. Big Sur, Cachagua, and South County have a mix of rural residential, resource conservation, and grazing land zoning districts that cover vast and remote areas of the County. Zoning maps are attached to this report to illustrate this point and will be provided at the Cannabis Committee meeting.

The main concern with outdoor cultivation is the capacity to enforce illegal grows. It has been staff's experience and the experience of other jurisdictions, that some individuals in the cannabis industry start operations without first obtaining local permission. In addition, anyone excluded by policies of any ordinance who wishes to operate will seek exceptions, variances, or zone changes. This pattern in remote areas of the County may lead to increased enforcement difficulties.

Staffing, Resources, and Competing Priorities:

The Board has adopted a number of priority project for the RMA. In addition to processing hundreds of land use entitlements each year, the RMA is actively working on the following policy updates as directed by the Board:

- Measure Z - Update to the 2010 General Plan
- Measure Z – Zoning Changes to Prohibit Drilling – BOS Referral (2018.15)
- Development Evaluation System (DES) – General Plan Implementation
- Short Term Rentals (STR) – BOS Referral (2016.02)
- Accessory Dwelling Units Ordinance Amendments – BOS Referral (2017.21)

- Ag Land Mitigation Program Ordinance - Sustainable Ag Land Conservation Program (SALC)
- Affordable Housing – BOS Referral (2018.03)
- STR Enforcement – BOS Referral (2018.10)
- Ag Housing – BOS Referral (2018.12)
- Moss Landing Community Plan Update
- Big Sur Land Use Plan Update

Depending on the priority of the effort, development of outdoor cannabis cultivation regulations would likely require diversion of limited staff resources from one or more of these efforts.

Industry proposals

Staff met with representatives from the Big Sur Farmers Association (BSFA) and a representative seeking permitting of outdoor cultivation in the South County area. Correspondence from both of these groups are attached.

Big Sur Farmers Association Proposal: BFSFA is advocating for a pilot program that would provide permitting options for small scale cannabis cultivation in what they are calling the Santa Lucia Mountains appellation. BFSFA has provided written comments on desired policy considerations for the pilot program, which include simplified permitting of cottage industry cultivation and Coastal Development Permits for small and medium cultivation. BFSFA recommended permitting is summarized below.

Proposed License Type:	<u>Specialty Cottage</u> >2,500 s.f. or 25 plants	<u>Specialty</u> 2,500-5,000 s.f. or 50 plants	<u>Small</u> 5,001-10,000 s.f.	<u>Medium</u> 10,001 s.f. - 1 Acre
Proposed Permit Type:	Administrative Design Approval	Coastal Administrative Permit	Coastal Development Permit	Coastal Development Permit

Key:

- “Design Approvals” are permits that can be approved at the staff level and involve little discretion.
- “Coastal Administrative Permits” can be approved by the RMA, Chief of Planning following public notice and are considered discretionary permit entitlements.
- “Coastal Development Permits” required public hearings before the Zoning Administrator or Planning Commission and are discretionary in nature.

BSFA also proposes additional permitting regulations be considered, including many of the regulations already applicable to cannabis cultivation under the County’s current regulations. Specifically, they propose to limit the pilot program to a set location within the Santa Lucia Mountain Appellation, and further limiting the types and sizes of potential cultivation operations as follows:

“Medium Outdoor cultivation would only be allowed for large parcels of 40 acres or more;
Small Outdoor cultivation would only be allowed for parcels of 10 acres or more;

Specialty Outdoor cultivation would only be allowed for parcels of 5 acres or more; and Specialty Cottage cultivation would be allowed on parcels of any size.”

Following the meeting with County staff, BSFA has also provided a map and some additional information to consider with their proposal. The map and other information provided by BSFA are attached. The map shows areas within Big Sur, Carmel Valley, and Arroyo Seco that have historically supported medical cannabis cultivation and would be considered to be within the Santa Lucia Mountains Appellation. BSFA estimates that there will be approximately 100 small outdoor cannabis farmers within the mapped region.

South County outdoor cultivation proposal: A letter from a representative of outdoor cultivators in South County was submitted to the County (attached). The letter requests that the County consider a permitting program that allows outdoor cannabis cultivation by “legacy farmers.” These “legacy farmers” are groups or individuals who were legally cultivating under the Compassionate Use Act and Senate Bill 420. The letter also proposes restrictions on permitting cannabis operations only on land that has access to a legally established water and power supply. The letter also suggests the adoption of a limited enforcement period for existing operators while the County develops such a program.

After meeting with County staff, additional information was provided by the representative describing how to verify previously existing operations, how to minimize environmental impacts, and other information on outdoor cannabis cultivation (attached).

Both proposals advocate strongly for regulations that provide an opportunity for cannabis cultivators who have historically operated in Monterey County to be given an opportunity to pursue permits to continue their operations.

Opposition to Outdoor Cultivation

Correspondence has been received by members of the public that oppose cultivation in grazing lands, particularly in the South County area. This correspondence is also attached. The arguments against permitting outdoor cultivation generally include odor, traffic on private dirt roads, limited access to water and power in certain areas, and potential environmental degradation brought about by land clearing, pest management, and exclusionary fencing.

Conclusion

Staff first seeks direction from the Board regarding whether to begin drafting regulations for outdoor cannabis cultivation. Second, and if directed by the Board in the first part, staff seeks guidance on the parameters for such regulations. Third, staff seeks the priority of such efforts given other adopted priorities for the RMA.

This report attempts to summarize relevant information and the challenges identified. Some challenges identified specific to Monterey County include:

- Big Sur, Carmel Valley, South County represent large areas of the County with significant environmental resources and mixed rural residential uses.

- Zoning approach to regulation (e.g., Grazing Lands and Conservation Zoning Districts) could be challenging.
- Limited access to services such as water, roads, and power in certain areas.
- CEQA
 - Potential EIR – high cost and time.
 - Statutory exemption from MAUCRSA for adoption of regulations that require subsequent discretionary review of permits set to expire July 1, 2019.
- Tax rates for outdoor cultivation.
- Limited staffing resources and other priorities from Board.

For these reasons, if the Board directs staff to prepare outdoor cannabis regulations, staff requests direction from the Board regarding the parameters for such regulations including:

1. Limited Zoning districts approach (e.g., only WSC, etc.);
2. Pilot program limited to Santa Lucia Mountains Appellation (Carmel Valley and Big Sur only);
3. Registration (only grows that can demonstrate they were legally established prior to a specific date, TBD);
4. Sonoma or Humboldt model (outdoor grows permitted based on zoning, lot size, setbacks, and other resource limitations); or
5. Some combination of the above.

If so directed, and dependent on the priority of such efforts assigned by the Board, staff would begin to develop more options and would return to the Cannabis Committee to provide additional information, progress updates, and to seek policy direction where appropriate. The development of regulations such as these are complicated and may warrant considerable staff time for consideration of new tax rates for outdoor cultivation, permit processes and fees, and the level of environmental review required. Public meetings and workshops before the Planning Commission are part of the process to gather broad community input in developing land use ordinances. Given the complexities and the legally required processes for ordinance adoption, it is likely that development of outdoor cannabis regulations would take at least one year to complete, depending on the level of CEQA review required.

Amendments applicable in the coastal zone require that the Board adopt a resolution of intent to adopt the ordinances, transmittal of the resolution of intent to the Coastal Commission for certification, and subsequent adoption of the ordinance by the Board of Supervisors. Due to this added requirement, the timeline for Coastal area regulations could be significantly longer.