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BIG SUR FARMER'S ASSOCIATION PROPOSED PILOT PROGRAM

Overview and Summary

We are proposing a small scale, limited, sun grown pilot program in the Santa Lucia mountains of Monterey County. There is an extensive history and tradition of local citizens farming in these mountains going back for decades. (Evidence can be provided upon request). These particular geographic conditions produce a unique type and quality of cannabis that cannot be grown in greenhouses, and cultivating in this region was very successful and legal under the medical program.

There are strong economic, cultural, environmental, practical and social justice arguments in favor of this program that will be explored later in this proposal. We are proposing that sun grown cannabis be allowed to be cultivated only in a limited geographic area to demonstrate its effectiveness, safety, and success. Specifically, we are proposing it for Big Sur, Carmel Valley, and related areas in the Santa Lucia Mountains. We do not feel it is appropriate to row crop Cannabis in Salinas valley as it would affect farmland there and compete with existing greenhouse production. We are in the process of developing a specific map of the region for this program to equitably and precisely define its boundaries

We also selected this geographic area because it consists of pre-existing farms that can be brought into compliance. For the most part, this program would not create much new development, as farmers in this region have been cultivating cannabis legally and responsibly under the medical cannabis program. We would like to create a program to identify legacy farms and bring them into compliance. Thus, this pilot program will eliminate much of the danger associated with new development, shrink the black market, and create new tax revenue.

We believe that small scale, artisanal and boutique farms in the Santa Lucia mountains will supply a different segment of the market than current cultivation in Monterey County. Much like how microbreweries and small wineries in Napa provide a product that is markedly distinct from large scale produced alcohol products, Sun grown cannabis will have a different price point and serve a different clientele from mass produced cannabis.

Our program promotes best practice for environmental protections (water use, pesticides, carbon footprint, etc...) as well as best practices for security and quality of the product. Other counties have successfully created outdoor cultivation programs, and our proposal takes what works best for those areas. Additionally, any cannabis cultivation in the Coastal Zone will have to undergo the rigorous resource protections of the Coastal permit process. Thus, this pilot program does not require reinventing the wheel, but rather applying the preexisting regulatory framework of the coastal act to this new use.

PERMIT TYPES

The Coastal Act, as applied to Big Sur, has 4 types of planning permits, from hardest to easiest to acquire:

- 1) Coastal Development Permit (CDP)
- 2) Coastal Administrative Permit (CAP)
- 3) Administrative Design Approval (DA - admin)
- 4) Over the Counter Design approval (DA -OTC)

These permit types are correlated with the intensity of development that is proposed. Similarly, we propose that the permit type should be correlated to the size and intensity of the cultivation. We do not feel that the DA-OTC is appropriate for commercial cannabis operations.

LICENSE TYPES

There are 4 main outdoor license types that should be considered for this pilot program, from smallest to largest:

Type 1(C) (Specialty Cottage)	-	2500 sq ft of mixed light or 25 plants
Type 1 (Specialty Outdoor – Small)	-	5000 sq ft or 50 plants on non contiguous plots
Type 2 (Outdoor –Small)	-	5001-10,000 sq ft
Type 3 (Outdoor – Medium)	-	10,000 sq ft – 1 acre

Correlating permit types to license types is a substantial departure from the current ordinance in the sense that currently, all cannabis permits are “use” permits, which means a coastal development permit in the coastal zone. However, the CDP is a complicated, expensive, and time consuming process that does not makes sense for a small scale farmer. In fact, the Adult Use act was designed to include the small farmer and has been amended to lower regulatory hurdles for small cottage farms (see legislative analysis of AB2516 below). Thus, the cannabis program must not exclude small farmers by creating excessive regulatory hurdles. These farmers have until now been the back bone of the industry and were previously operating legally until the Monterey county regulations banned their livelihood.

Our proposal is to require a Coastal Development permit(CDP) for Type 2 and Type 3 outdoor cultivation. Only the full CDP process can assure that a farm of this scale is done in a way that fits the character of the community and protects natural resources. However, we believe only a Coastal Administrative permit should be required for Type 1 license type. This would lower the regulatory burden for these smaller farms, but would still provide ample resource protections. Finally, we are proposing that the administrative design approval is what should be required for the Type 1(C) license type. The type 1(C) was designed to allow the smallest of farmers to enter into the industry. These people typically only supplement their income with their boutique grow and wouldn’t be able to afford the expense of the CDP for such a small production. (please see discussion of Type 1(c) license type below for more information.) Overall, we want the program to focus on square footage more than number of plants, because with the variety of cultivation techniques available, square footage gives the farmer more flexibility to make their business economically feasible.

Summary:

License Type	1(C)	1	2	3
Permit Type	DA - admin	CAP	CDP	CDP

As a side note, I encourage planning staff to look into how many plants are in one of the large indoor grows in Salinas to compare to what we are proposing here. These are very modest numbers of plants, that would be regulated under a very robust pre-existing permitting system.

Additional requirements:

This pilot program also proposes additional cannabis specific requirements that the traditional coastal permit process does not include. Many of these are identified in the existing cannabis regulations for Monterey county, but some may need to be modified for sun grown cannabis (Operating plans, Security, pesticides, water conservation, registration of ownership, smell, fences/visibility, etc...) Our group has developed extensive ideas around how to tailor these requirements to sungrown farms, which can be provided at a future date, but for the sake of brevity are omitted here.

ZONING

Our program is designed to feature the geographical region where this specific plant grows best. Much like the grapes in Napa produce better wine than the grapes in Fresno, this program is designed to feature the best agricultural land in Monterey County for this particular crop. The idea is to create an ‘appellation’ for cannabis for the County which can be used to bolster the entire region’s reputation in the industry. This should have the effect of increasing the price point for the entire county, as a rising tide floats all ships.

Because of the focus on specific ecological context and microclimates, our program spans across a few different planning areas, containing the Coastal Zone of the BSLUP as well as the inland zones of Carmel Valley. Obviously, we don’t propose applying the coastal act to the inland areas, but we are suggesting that the resource protection requirements of the coastal act as applied to Big Sur serve as a template for the regulations that apply to sungrown commercial cannabis in the inland area. For example, the inland outdoor regulations might include items like a biological report for the larger cultivation types, much like the CAP or CDP process would.

There is some discretion for the RMA to decide how stringent the inland regulations need to be, but we believe that the Coastal regulation provide a good framework for appropriate resource protection.

Specific Zones where Sun Grown Commercial Cannabis Cultivation would be allowed

The first requirement to be eligible under this pilot program is that you must be in the designated geographic area of the appellation: Big Sur, Carmel Valley, Cachagua, Palo Colorado, and Arroyo Seco. As mentioned before, we will soon be able to provide a precise map to suggest the boundaries of this area.

The second requirement would be acreage

Type 3 would only be allowed for large parcels- 40 acres or more. Type 2 would only be allowed for parcels of 10 acres or more. Type 1 would only be allowed for parcels of 5 acres or more. Type 1(C) would be allowed on parcels of any size.

License Type	1(C)	1	2	3
Parcel Size	Any	5+	10+	40+

The Third requirement would be zoning designation

License Type	1(C)	1	2	3
RDR /40D (CZ)	Yes	Yes	No	No
WSC /40D (CZ)	Yes	Yes	Yes	No
RC / 20	Yes	Yes	Yes	No
RC/ 40	Yes	Yes	Yes	Yes
AG / Ranch	Yes	Yes	Yes	Yes

RATIONALE AND SUPPORTING ARGUMENTS FOR THIS APPROACH

Benefits of Outdoor Cultivation under this proposal:

- More sustainable: No lights, fans, equipment, etc...
- Healthier, cleaner product – Better Air and Water
- Support local economy – small businesses will benefit and hire local workers
- History and tradition builds brand and adds value (increase tax revenue)
 - Depending on tax rate –
 - Around \$1 - 2 million per year additional tax revenue from this program including retail sales
- Create economic engine around unique product
 - Napa wines bring a lot to Napa county
- Mostly established farms- not really new development, just allowing what was already legal in medical program
- Big Sur could use a boost – Sobranes fire, Pfeiffer canyon bridge, Mud Creek
- Avoids major outdoor cultivation projects
- Continue to eliminate black market and lower crime – Goal of the AUMA was to eliminate the black market, but Monterey County's initial ordinance actually increased it. This program would reverse that trend
- Best way to avoid potential harm of outdoor cultivation is to properly regulate it through permits and collect permit fees and tax money to enforce it
- Sungrown farms do not require the intensive capital investments like the greenhouse program did. These farmer's do not need to create infrastructure to produce an artificial climate, (light/water/temperature etc...), because the plant grows naturally in the ideal environment
- This program tailors the type of permit to the level of development, which is good policy and will let small businesses participate in this economy.

License Type 1(C) Cottage Farms

This license type was developed by the state legislature after it realized that small farmers were getting cut out of the industry. They saw a pattern across the state of large capital investment in big indoor farms and they wanted to reverse the trend. The AUMA made promises to small farmers to allow them to participate in the industry, but the regulatory hurdles made it impossible for the small farmers, which were the backbone of the industry, to come into compliance. In addition to this, farms that are 2000sq ft or less, are exempt from many state water requirements which will further lower regulatory hurdles.

Below are a selection of quotes from news articles covering the bill (AB2516) that created the 1(c) license type and a selection of the legislative analysis from the state senate and state assembly:

"To stave off the eradication of micro-farms, the Cottage Cannabis Farmers Bill creates a Type 1C or "specialty cottage" state cultivator license. By including Type 1C licenses in the statute, the legislature has given the California Department of Food and Agriculture an opportunity to set regulations which will encourage micro-farmers to comply with licensing, while preventing the cost of such compliance from being prohibitive to the continued operation of their farms."

"All of the government agencies involved in regulating the marijuana industry have indicated a clear preference for micro-farms over large-scale grows. Under the MCRSA, the Type 3 licenses are limited in the number of licenses permitted to discourage the creation of large growing operations. The MCRSA also has appellation provisions that prohibit cannabis from being marketed as coming from a region other than where it was grown. Appellations encourage the establishment of specialty micro-cultivators, with marketing strategies similar to those of microbreweries or small wineries."

"As this industry moves forward, we need to make sure that all farmers, regardless of size, can come into compliance – that's what success looks like," stated Assembly member Jim Wood, the bill's sponsor.

Legislative analysis from state assembly

"The author states many MM farmers across California grow only a handful of plants on relatively small plots of land. These small farmers often rely on MM cultivation to supplement their income, or simply as one product in a larger agricultural portfolio. According to the author, creating a specialty cottage license will allow CDFA to develop regulations and requirements with the special needs of this unique group of cultivators in mind. MMRSA was developed in part to ensure the MM industry adhered to standards designed to create safer neighborhoods, a cleaner environment, and a more consumer orientated industry. Supporters point out creation of a cottage license that provides a viable pathway to compliance for the small MM farmers that operate throughout the state will help expand the number of businesses that come into compliance with MMRSA."

Legislative analysis from state senate

"Cottage growers. Type 1 licenses encompass the smallest group, or "specialty" operations. However, according to the author, there are some growers who represent a smaller subsection that grow very few plants on relatively small parcels of land in order to provide supplementary income or are part of a larger diversified farm. These operations fit into the category of "cottage," which is already currently used for other commodities and products in state law. For example, "cottage food operations" are businesses located within private homes that do not gross more than \$35,000 annually and do not have more than one full-time employee, among other specifications. These entities are afforded regulations that better match their "cottage" operations. This bill seeks to provide similar accommodations for the unique needs of small "specialty cottage" medical marijuana growers."

Possible Concerns/Issues

Canopy – A new state definition exists that should be included to clarify issues related to outdoor cultivation

Taxes – Because these particular farmers have been forced out of the market for the past few years, and argument could be made that they should be eased into any tax structure. They should be given some initial break to get their business back up and running and then taxes could be increased later. In general, taxes for sungrown cultivation are much different than indoor cultivation. Sungrown only produces one cycle of plants per year and should have a much lower tax rate. Here is a sample of other county tax rates (that may need to be updated because the rates are changing constantly):

Tax Rates for Cannabis in California Counties

Calaveras County	1) For Outdoor and Mixed Light Licensees or Registrants: \$2.00 per square foot of registered or permitted canopy area commencing upon adoption of the voters until the Department of Food and Agriculture has established and implemented a track and trace program under Business and Professions Code 19335 et seq. And thereafter \$45.00 per pound of dry weight flower and bud and \$10.00 per pound of dry weight trim; 2) For Indoor Licensees or Registrants: \$5.00 per square foot of registered or permitted canopy area commencing upon adoption of the voters until the Department of Food and Agriculture has established and implemented a track and trace program under Business and Professions Code 19335 et seq; and thereafter \$70.00 per pound of dryweight flower and bud and \$15.00 per pound of dry weight trim; 3) A gross proceeds tax of seven percent (7%) on the manufacturing of cultivated cannabis; and a gross proceeds tax of seven percent (7%) on retail medicinal or legal cannabis storefronts, collectives, and dispensaries for general governmental purposes upon approval of the voters.
Humboldt County	There is a \$1 - \$3 per square foot, based upon type of grow, annual commercial marijuana cultivation tax. (Measure S.)
Inyo County	There is a 5% gross receipts tax on commercial marijuana businesses (but no less than \$1,250 per growing cycle for cultivation businesses) in the unincorporated area of Inyo County, with an increase to a maximum of 12.5% over time. (Measure I (November 2016).)
Lake County	There is a of \$1.00 per square foot of an outdoor cultivation site, \$2.00 per square foot of a mixed-light cultivation site, and \$3.00 per square foot of an indoor cultivation site, subject to annual CPI (Measure C (November 2016).)
Mendocino County	There is a 2.5 percent to 10 percent tax on growers and flat \$2,500 rate a year on other operators. (Measure AI and Measure AJ (2016).)
Monterey County	There is a tax on commercial marijuana businesses in the unincorporated area of Monterey County only (not cities) up to a maximum of: \$25 per square foot on cultivation with an annual adjustment by Consumer Price Index (CPI) thereafter; \$5 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other marijuana business activities with no CPI. (Commercial Cannabis Activity Tax Ballot Measure (Nov. 2016).)
Santa Cruz County	There is a tax with a maximum tax rate of 10% of gross receipts but sets the initial tax rate at 7%. The ordinance broadly defines "cannabis business" to include any for-profit or non-profit business that distributes, delivers, dispenses, exchanges, barter or sells either medical or non-medical cannabis and includes, but is not limited to, medical marijuana cooperatives and businesses, and any other business which transports, manufactures, compounds, converts, processes, prepares, stores, packages, sells at wholesale, or sells at retail, cannabis or products made of cannabis. (Tit. 4, Ch. 4.06 - Cannabis Business Tax.)
Solano County	There is a general business license tax on marijuana businesses within the County of up to 15% of annual gross receipts. (Measure C (2016).)
Sonoma County	A cannabis tax measure on the March 7, 2017, ballot passed. It imposes a maximum 10% tax on cannabis businesses.

Overall tax rates for outdoor seem to be between \$1/ sq ft and \$3/ sq ft and they are trending downward. We are recommending \$1/ sq ft initially and then an adjustment as necessary.

Land rush?

The goal of this program is to not disrupt the nature and character of Big Sur and the Santa Lucia Mountains. The indoor program created a rush to buy up limited inventory for commercial cannabis grows. However, the goal of this program is to allow sungrown cannabis to be grown in this region in a way that is big enough to be economically feasible, but not so big that it would be worth purchasing a property just for the right to cultivate cannabis. We do not want to see property changing hands across the region, we want to see established residents be able to continue their existing businesses.

Why not other areas?

We anticipate other areas of the county also wanting to be included in the sungrown program, and we understand the difficult place that this puts regulators in terms of choosing winners and losers. However, the county had no problem limiting cannabis cultivation to only certain greenhouses initially, so they should have no problem limiting it to the geographic area that has the best climate, and the most history and tradition with sungrown cannabis. Especially, if the county frames this program as a pilot program, it leaves the possibility of opening up to other areas if the county deems it a success. In reality, it doesn't make sense to open the whole county up to Sungrown cultivation. That would flood the market and create a variety of potential impacts in urban areas. Instead, this program limits Sun grown cultivation to more remote mountainous areas, where cultivation sites have already been developed and there is a history and tradition of cultivation in the area. This will *protect neighborhood character, and minimize potential for negative impacts on people, and communities* which is the stated purpose of the cannabis regulatory system. **(20.67.020 Purpose)**

Changes to the TEXT OF ORDINANCE

Changes to the text of the ordinance are relatively simple. They involve removing all mentions of banning outdoor cultivation and adding in the license types, permit types, and zones that are listed above. It will include a map that shows the geographic area of the pilot program. It will also need a special section for outdoor specific issues (Operating plans, Security, pesticides, water conservation, registration of ownership, smell, fences/visibility, etc...). The Big Sur Farmer's would be happy to supply input on these issues as they are experienced cultivating in these areas and can share what they understand to be best practices.

Support for this program based on the BSLUP

Big Sur Land Use Plan (BSLUP) supports outdoor cultivation because it makes agriculture the "preferred use of coastal lands" illegal (3.6.1). Agricultural cannabis has a long cultural history in the region, is a key to the local economy. Big Sur Land Use Plan states that agriculture is the "most appropriate" (5.4.2 General Policies #3) activity on private land and that Agriculture is the 'most appropriate' activity on private land. The land use plan clearly states:

Eight broad categories of land use are proposed for the Big Sur coast that reflect existing and traditional land uses and the priorities of the California Coastal Act. In all categories agricultural land use is a principal permitted use. (5.3.1)

Thus, this pilot program is not only consistent with the BSLUP, but it promotes its preferred and most appropriate use.

Scientific research and news articles:

The following are just a small sample of evidence that shows how our program would be better for the environment, decrease crime, improve economy and tax revenue and improve public health

State of California EIR (484 pages) – Outdoor is better for the environment than indoor when properly regulated

https://www.cdfa.ca.gov/calcannabis/documents/CDFA_CalCannabis_DEIR_Vol1.pdf

Cannabis legalization causing violent crime to fall in US states, study finds

- Rates of assault and murder decreasing in regions near Mexican border where cannabis use has been partially legalised

<http://www.independent.co.uk/news/world/americas/medical-marijuana-legalisation-cannabis-us-states-violent-crime-drop-numbers-study-california-new-a8160311.html>

In a 2014 study, researchers from the University of Texas looked at 16 years of data from states that had legalized medical cannabis.

- The evidence flatly contradicted the claim that cannabis legalization causes crime, and suggested that it may even decrease criminal behavior.

The marijuana industry created more than 18,000 new jobs in Colorado last year

https://www.washingtonpost.com/news/wonk/wp/2016/10/27/the-marijuana-industry-created-over-18000-new-jobs-in-colorado-last-year/?utm_term=.eff51c041792

What Colorado and other states tell us about how Cannabis will affect health

- Recreational legalization doesn't seem to make kids more likely to use marijuana.
- Medical marijuana legalization also doesn't seem to increase youth marijuana usage.
- Traffic fatalities have not increased in states that have legalized recreational marijuana use.
- States that allow medical marijuana reduce opioid painkiller overdose deaths and addiction problems.
- Tax revenues go up and arrest rates go down.

<http://www.businessinsider.com/marijuana-legalization-public-health-colorado-traffic-fatalities-2016-11/#future-unknowns-7>

News > California News

Why is Big Sur's weed legendary but still not legal?

The birthplace of 'Big Sur Holy Weed' can't sell cannabis, and growers are crying foul



By **LISA M. KRIEGER** | lkrieger@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: February 4, 2018 at 6:00 am | UPDATED: February 5, 2018 at 9:55 am

BIG SUR — For decades, hidden in creases of the wild and rugged Santa Lucia Mountains, farmers have eked out a living growing some of the nation's most esteemed cannabis, hanging onto the hope that someday they wouldn't fear arrest.

Marijuana in California is now legal. Yet the fate of farmers in Big Sur — the birthplace of legendary "Big Sur Holy Weed" in the Golden State's storied cannabis culture — remains more precarious than ever.

As springtime approaches, county officials are issuing licenses to high-tech greenhouse growers, mostly owned by well-funded outsiders, on the edge of urban Salinas — but are rebuffing small traditional farmers on parcels in the more remote reaches of Monterey County such as Big Sur.

It's a pattern seen throughout the 13 counties that make up the state's prime cannabis real estate, according to the California Growers Association.

"It's heartbreaking," said association director Hezekiah Allen, who warns that the trend could confound efforts to bring once-outlawed businesses into compliance with state law following the November 2016 passage of Proposition 64.

"The state passed legalization," Allen said. "But most small and mid-sized growers are still living in the shadow of prohibition."

Spencer, Craig x5233

From: Michael linder <bigsurlaw@gmail.com>
Sent: Wednesday, May 23, 2018 3:31 PM
To: Swanson, Brandon xx5334; Spencer, Craig x5233
Subject: BSFA Map and other Info
Attachments: BSFA Map.JPG

Hi Brandon and Craig,

Sorry I did not get this to you earlier, but it took awhile to gather and compile this information.

1) Map- Please see the attached map. It highlights the areas where existing farms are. It also has a number that represents an estimation of the number of farms in that area. Most of the white area in the middle of the map is Mountainous National Forest. We are suggesting a pilot program that encompasses all of the highlighted areas which is all part of the Santa Lucia Mountains. Please note that Carmel Valley and Palo Colorado are pretty close together 'as the crow flies'.

In order to have a successful program, we believe you need a large enough area to get good turnout. I am sure that you noticed that less people applied at first for the greenhouse program and many had a hard time following through all the steps. If this program area is too small, you might not get enough applicants to assess the potential of outdoor cultivation for Monterey county.

Also, The greenhouse program was in 4 different zones in different parts of the county. We think that this program should also extend to all the different zones in our initial proposal. There are actually better land use arguments for this program because these are pre-existing farms and this is a traditional appellation for this plant (neither of these were the case for the greenhouse program). We believe that Supervisor Alejo supports the Santa Lucia approach, as he said in a televised appearance.

We believe that a zoning overlay would address the concerns of including RDR in the program.

2) Resource protection. Pre-existing farms mean no new development, so resource concernss should be pretty low. We recommend that if a farm does want to modify the set up of their cultivation, that they are required to get a biological report to show the impact on resources.

3) Runoff- Runoff is a problem for illegal growers in the national forest who divert creeks etc and then water flows back into the ecosystem. The farmers in this program do not divert creeks and they grow mostly in above ground bags and don't put plants into the soil. They hand water or use drip irrigation. This plant doesn't like to stay soggy, the roots will rot and mold. The goal is to let it dry out between waterings, which means no runoff. In fact many cultivators use very little water at the end of the plants life at all. Thus runoff is not the problem that people think it might be in this cultivation style. If there are still concerns about runoff, simple drainage plans with Swales and erosion control measures could be provided, but in general they do not make sense in this context.

4) Water Source - Each farm would have to demonstrate their water source - for both quality and quantity.

5) Odor- Odor is not normally regulated in agriculture so any regulations related to odor should be reasonable and not overly restrictive. We recommend a 600 foot setback from the farm to the nearest neighboring structure. There should be a process where the farmer can get an annual exemption with neighbor written permission

6) Pre-existing farm Criteria- This is a difficult subject, because as we mentioned earlier, many farmers were deliberately secretive for many years and there wasn't a lot of documentation required by the state. There are a few different types of documents they might have: an agreement with a cooperative to grow on their behalf, a 99 plant certificate from a

medical doctor, or documentation for a dispensary showing that they grew for patients of the dispensary. The other obvious route is google earth images. 5 years ago is a good starting point for duration, but there are also many community members that were forced out of the area due to Fires, floods, or other issues and we think that they should be allowed to enter the industry even if nothing shows up on google earth 5 years ago. Perhaps we could put together a packet of photos and letters from these people and that could be reviewed on a discretionary basis? Perhaps, a rule that shows that they grew for at least 3 years total of the last 10 years, and some of that needs to be over 5 years old? We are trying to not make it too complicated, but also make something that works.

One suggestion:

A farm is considered pre-existing if it satisfies any of the following criteria:

- 1) Documentation that the grew legally under the Medical Cannabis program
- 2) Google Earth images that show that the farm was in existence at least 5 years ago
- 3) Sufficient evidentiary documentation that satisfies the director of planning (photos, letters, etc...)

7) **New Farms.** I wanted to throw out the idea of new cultivation in the area. It might be worth considering a pathway for this for people who can't prove their pre-existing status but still want to be involved in the industry. Perhaps you could require a full CDP in this situation (use permit).

Thanks again for your time and attention to this matter. Happy to help in any way if you have questions or want clarification.

Best Regards,
Mike

