



# Monterey County

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## Board Report

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July 10, 2018

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### **REF150048 - INLAND & REF160042 - COASTAL**

### **OUTDOOR COMMERCIAL CANNABIS (MARIJUANA) CULTIVATION**

Consider options for regulating outdoor cannabis cultivation in the unincorporated areas of Monterey County.

**Location:** County-wide

**Proposed CEQA action:** Draft regulations for outdoor cannabis cultivation would be evaluated pursuant to the requirements of CEQA.

#### **RECOMMENDATION:**

1. The Board Cannabis Committee recommends that the Board of Supervisors provide direction to staff on outdoor cannabis regarding whether to begin drafting regulations in Monterey County.
2. If the Board directs staff to pursue outdoor commercial cannabis regulations, staff has identified some initial parameters for the Board to consider for a pilot program based on:
  - a. Specific zoning (e.g., Watershed and Scenic Conservation zoning district in Big Sur), or appellation (e.g., Santa Lucia Mountains);
  - b. Canopy area of outdoor cultivation (such as smaller specialty cottage or specialty cultivation sizes only); and/or
  - c. Historic cultivation operations that can demonstrate they were legally established prior to a specific date, TBD (registration and verification process).

#### **SUMMARY:**

The Cannabis Committee directed staff to seek direction from the Board on whether outdoor cannabis cultivation regulations should be pursued now, or revisited at a later date. If so directed, staff would include this ordinance work as part of the work program. Staff would request direction on how this relates as a priority for limited staff resources in conjunction with other Board directed priorities (cannabis setbacks, STR, ADU, affordable housing, homeless, DES, GPU implementation, etc.).

Developing regulations for outdoor grows would involve providing the Cannabis Committee with additional information and progress updates to seek policy direction where appropriate. Regulations such as these are complicated and will warrant considerable staff time for consideration of new tax rates for outdoor cultivation, permit processes and fees, and the level of environmental review required. The level of CEQA review will depend largely on the footprint allowed and the permit process required.

Public meetings and workshops before the Planning Commission are part of the process to gather broad community input in developing land use ordinances. Amendments applicable in the coastal zone would also 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.

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 and the level of priority for this task over others. Due to an added requirement of Coastal Commission certification, the timeline for getting regulations adopted in the Coastal areas could be significantly longer.

If outdoor cannabis cultivation regulations are pursued, staff recommends that the Cannabis Committee consider the following parameters to those regulations:

1. A pilot program limited to a specific zoning area (e.g., WSC zoning district/Big Sur), or an appellation (e.g., Santa Lucia Mountains);
2. Limitation to smaller cultivation activities (specialty cottage or specialty cultivation sizes - 5,000 s.f. or less); and/or
3. Limitation to current operator only who can meet criteria of historic cultivation operations and can demonstrate they were legally established prior to a date certain (registration and verification process).

Staff also seeks direction from the Board regarding priorities for the RMA given limited staffing resources and other Board adopted priorities.

## DISCUSSION

Initial regulations for cannabis cultivation in Monterey County specifically excluded outdoor cultivation (except personal grows) for the following reasons:

- Negative experiences with enforcement shared by other Counties.
- Outdoor grows have potentially significant environmental impacts that could trigger the need to prepare an environmental impact report.
- Increase land values/development pressure that could negatively affect agricultural operations and open space in Monterey County.
- There is already about 8 million square feet of potential growing capacity with existing indoor/mixed light facilities.
- Indoor/Mixed Light facilities are better suited to meet stringent security requirements.

After two years of permitting mixed-light and indoor operations, significant progress has been made, but permitting issues remain unsettled. However, the Board has requested staff evaluate options for outdoor cannabis cultivation.

Staff has reviewed the current state laws relative to outdoor cannabis cultivation licensing, reached out to other jurisdictions who have adopted outdoor cannabis regulations (see **Exhibit B**), and met with

industry representatives (**Exhibits C and D**), and reviewed correspondence from members of the public opposed to outdoor cultivation in South County (**Exhibit E**).

In summary, other jurisdictions are continuously evaluating their regulations and many are considering requiring additional restrictions on where outdoor cultivation may be permitted and increasingly requiring discretionary permits (such as a Use Permit) for outdoor cultivation. Outdoor cultivation advocates request consideration of a program that would permit limited outdoor cultivation in Big Sur, Carmel Valley, and South County. Opponents to outdoor cultivation argue that permitting outdoor cultivation will create objectionable odors, result in traffic on private dirt roads, require extension of water and power in rural areas, and lead to environmental degradation brought about by land clearing, pest management, and exclusionary fencing. More information on state law, other jurisdictions regulations, and industry input are contained in the **Exhibit A**.

Based on feedback from various jurisdictions around the state and 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; and
4. Local enforcement and implementation.

This list is not exhaustive but represents the most frequently raised issues with outdoor cultivation. 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. Monterey County would have similar challenges and some unique considerations related to outdoor cultivation. To address these and other concerns, staff recommends if outdoor cultivation is to be permitted, that limits or parameters to those regulations be considered to address industry desires while maintaining a relatively manageable program, and minimizing potential environmental degradation and to minimize land use compatibility conflicts.

Resources for preparing regulations are limited. Staff is currently working on ordinances to address setbacks for retail operations and, based on prior Board direction, staff is also contemplating the following changes to the adopted cannabis regulations:

1. Bring County ordinances into alignment with state regulations by adding new state license types (microbusiness, packaging, labeling, and infusion).
2. Simplify and expedite the cannabis discretionary permit process (e.g., allow certain operations to be permitted with an administrative permit versus a use permit).
3. Add a mandatory condition to address odors from cannabis operations.
4. Allow non-store front retailers (delivery-only operations) to operate in non-commercial zones.

5. Add language to allow the RMA Director to amend the annual Cannabis Business Permit.
6. Add language to require operators to provide necessary information to the California Cannabis Authority (JPA).

In addition to these cannabis regulatory updates, the Board has assigned other priorities to the RMA including:

- 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

Given staffing resource limitations and competing priorities, if the Board desires to move forward with outdoor cannabis regulations the RMA requests direction from the Board regarding the priority of such an effort.

A more detailed discussion is provided in **Attachment A**.

#### OTHER AGENCY INVOLVEMENT:

This report has been drafted by the Resource Management Agency and reviewed by the Office of County Counsel. As part of the RMA presentation at the Board on July 10, other County Departments may wish to address the Board with regard to regulations for outdoor cannabis cultivation in the unincorporated areas of Monterey County.

#### FINANCING:

Funding for staff time associated with drafting this report is included in the FY17-18 adopted Budget.

If directed by the Board to prepare outdoor cannabis cultivation regulations, additional funding needs for program development, regulation implementation, and enforcement will likely be needed from various County departments. The actual staffing needs and resource costs will largely be dependent on the specific regulations developed. If staff is directed to wait to develop outdoor cultivation regulations, there would be no impact of the budget or financing.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Outdoor cannabis ordinances would align with several of the Board's Strategic Initiatives. Processing these amendments would allow the County to process applications in a timely manner in accordance with new state law, provide additional regulations to maintain health and safety within this emerging industry, and allow for new economic opportunities that currently do not exist.

Check the related Board of Supervisors Strategic Initiatives:

X Economic Development

X Administration


X Health & Human Services

- Infrastructure

-X Public Safety

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Reviewed by: Brandon Swanson, RMA - Planning Services Manager

Approved by: Carl P. Holm, RMA Director 

The following attachments are on file with the Clerk of the Board:

Attachment A - Discussion

Attachment B - Status of regulations in other counties

Attachment C - Big Sur Farmers Association correspondence

Attachment D - South County Industry correspondence

Attachment E - Letters in opposition to outdoor cultivation

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Pharmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Planning File REF150048