

MONTEREY COUNTY

COUNTY ADMINISTRATIVE OFFICE



Joann Iwamoto
Cannabis Program Manager
Intergovernmental & Legislative Affairs

168 West Alisal St., 3rd Floor
Salinas CA 93901-2680
(831) 796-3017
www.co.monterey.ca.us

Date: December 7, 2018

To: Cannabis Committee

From: Resource Management Agency

Subject: Framework Development of the Pilot Outdoor Grow Program

cc: Interested Parties

SUMMARY:

Based on direction from the Board of Supervisors, staff has developed the framework for a pilot program that would allow limited outdoor cultivation in Big Sur, Carmel Valley, and Cachagua planning areas. Pilot programs are generally limited in scope to study and evaluate potential issues of a broader program. Concerns with outdoor grows generally include nuisances on neighborhoods such as odor and traffic, security, and environmental impacts.

Following Board direction, staff met with industry representatives. On one hand, outdoor growers that started under the 1996 Compassionate Use Act have advocated to be allowed to be part of the commercial cannabis industry. On the other hand, existing commercial cannabis operators made significant investment based on how codes were drafted, which excluded outdoor grows.

Based on input received so far, staff has mapped out a process for ordinance development and identified policies for consideration within the ordinance. Staff is seeking direction from the Cannabis Committee on the following items to help frame a pilot program for outdoor grows:

1. Scope
2. Eligibility Criteria
3. Environmental considerations
4. Process

This report is outlined in such a way that it flows from broad framework options into more specific policy decisions. Each section in this report builds on the sections before it. This is necessary because broad framework decisions will affect the criteria and process that follow. Following input on these items, staff will conduct public outreach, outline an ordinance, and return to the Cannabis Committee with more specific policies and options in February 2019.

State law allows use of a statutory CEQA exemption if an ordinance is adopted before July 1, 2019, and the process requires a discretionary permit that is subject to CEQA review (CEQA Option A). In order to meet the July 1 deadline, Planning Commission hearings need to be concluded in May of 2019, which leaves only five months for ordinance development. If a programmatic CEQA review is conducted (CEQA Option B), staff would aim to have draft ordinances completed by July 1, 2019 for evaluation in a CEQA document likely delaying adoption to the end of 2019.

Ordinances generally become effective 30 days after adoption. However, the Big Sur area is within the Coastal Zone meaning Title 20 regulations must be certified by the California Coastal Commission before they can take effect in that area. The Coastal Commission certification process will add at least four months to the coastal ordinance adoption timeframe and perhaps more.

- Staff recommends a pilot program that:
- Focuses uses in the WSC (Big Sur) and Rural Density zoning designations
- Were previously cultivated under the Compassionate Use Act
- Limits the scope of the outdoor cannabis regulations to a limited number of properties while also taking advantage of previously disturbed areas where cultivation has occurred in the past
- Establishes 10 acres as the minimum lot size for outdoor grows.
- Limits canopy to small grows (10,000 square feet or less)
- Requires discretionary review of all individual commercial cannabis permits that are themselves individually subject to CEQA

DISCUSSION:

Scope of the Pilot Program

On July 10, 2018, the Board of Supervisors provided direction to staff to prioritize developing a pilot program that would permit limited outdoor cannabis cultivation within Supervisorial District 5. Direction also included excluding Districts 2 and 3. Staff proposes that the pilot program be considered in the Santa Lucia Mountain range portions of the Big Sur Land Use Plan (coastal), Carmel Valley Master Plan, and Cachagua Area Plan (*Attachment A*).

Staff is seeking direction on the scope of a pilot program. There is a wide variety of ways to set up a pilot program, and staff has identified five possible approaches for consideration:

1. *Only sites that were previously cultivated under the Compassionate Use Act;*
2. *A limited number of permits within each area;*
3. *Restricted to specified zoning districts or on parcels of a minimum size;*
4. *Develop an overlay district based resource constraints, sensitive receptors, and other criteria; or*
5. *Allow within the region but control through discretionary permitting and land use regulations.*

Staff has begun discussions on this issue with industry representatives for a preferred approach. The decision on how to define the scope of the pilot program will also impact appropriate criteria selection,

environmental review considerations, and ordinance process.

Other approaches not listed here may also be considered. Regardless of the approach, additional criteria will need to be developed for each option. A summary of each option is provided in the criteria discussion below.

Eligibility Criteria

The next key policy consideration is where, and under what circumstances, outdoor cannabis cultivation might be permitted. County and industry representatives have considered a number of approaches to zoning regulations that effectively locate outdoor cultivation activities in areas where they will be least impactful on neighborhoods and the environment. Building on the pilot program options outlined above, staff has outlined five criteria for consideration, either individually or a combination thereof:

Previously Cultivated

This option would require development of policies that establish standards for the demonstration of “previous cultivation” as legally established under the Compassionate Use Act, and would require consideration of disqualifiers for eligibility. The County does not currently have information on the number or location of previously cultivated sites and would consider a registration process or some other approach to defining the scope of this approach. Verification of previous cultivation could require some combination of historical aerial imagery, collective cultivation agreements, and other appropriate documentation. Individuals who cannot pass background checks and policies developed to disqualify previously cultivated sites that were particularly harmful to habitats, slopes, view sheds, vegetation, or neighborhoods could be developed. This approach would limit the scope of the outdoor cannabis regulations to a limited number of properties while also taking advantage of previously disturbed areas where cultivation has occurred in the past. Previous cultivation could theoretically aid in limiting/reducing potential environmental impacts for CEQA review purposes.

Limited Number of Permits

This option would require identification of the appropriate number of permits that will be provided for the pilot program and a process for how the limited permits will be allocated. In the spirit of a pilot, a limited number of permits by geographic area could be established as a test case. The Big Sur Farmers Association has indicated in the past that there are at least 60 interested growers in the Big Sur area and at least 50 interested growers in the Colchagua area for a total of 110 permits. This number is somewhat large for a pilot program. In limiting the number of permits, consideration must be given to how those limited permit numbers will be assigned. Demand for permits may exceed the number of permits allowed creating a competition for limited permits. The process and criteria for how those permits would be allocated would need to be created. This would likely require a competitive selection process which would require a discretionary process for consideration. If this becomes controversial, it could affect the time to process an ordinance.

Zoning

Staff recommends identifying appropriate zoning districts and/or establishment of minimum lot sizes for permit qualification. Zoning districts vary between Big Sur, Carmel Valley, and Cachagua and there can be many different circumstances to consider within each zoning designation. To start Big Sur is located in the coastal zone meaning uses are subject to zoning regulations in Title 20 of the Monterey County Code as well as the 1982 General Plan. Carmel Valley and Cachagua are located in the inland areas and

are subject to zoning regulations in Title 21 and the 2010 General Plan. *Attachment B* shows the range of zoning districts by area plan. The districts can be broken down into larger categories of Residential, Agriculture, Resource Conservation, and Commercial/Industrial.

Commercial cannabis is currently allowed in commercial, industrial and farmland designations within pre-existing structures (greenhouses). Since operators have invested based on the current regulations, staff would not recommend expanding to allow outdoor grow in these zoning districts. Said designations are also very limited in the subject planning areas.

Staff would be concerned allowing outdoor grow in grazing (rural or permanent) lands because of the potential impact to the cattle industry, increasing land values. Similarly, Resource Conservation and Open Space designations are intended to protect certain lands.

Zoning Overlay

This option would require development of criteria to be used as a basis for including or excluding specific lots/areas on a map. While some areas could be established at the start, processing of zoning map amendments would be required for adding future lots.

Criteria such as minimum lot sizes, specified zoning designations, known resource constraints, and proximity to sensitive land uses, would need to be considered and thresholds developed within those criteria for use in the mapping and zoning exercise. Once the criteria and thresholds are developed, RMA staff could map areas that meet the established criteria. Only those properties within the mapped area would be eligible for permits.

Regulations within the new zoning overlay district could also be created to establish minimum standards for permitting within the mapped area. As was the experience with the current cannabis regulations, this approach could lead to multiple requests for zoning amendments to add the zoning overlay to parcels that were not included originally.

Lot Size

Inherent in the zoning designations are minimum parcel sizes. Commercial, industrial, and high/medium/low density residential designations are categorized as more urban in nature that equates to allowing smaller lots. Rural densities typically require a 5-acre minimum lot size. Agriculture and Resource conservation and Public lands often have large minimum areas ranging from 10 acres in resource conservation areas to 160 acres in grazing lands.

With a relatively large minimum parcel size together with zoning district limitations, the number of properties that would qualify for a permit would be limited while also minimizing land use compatibility and nuisance's problems such as odor. Establishing criteria requiring larger lot sizes would allow larger setbacks to reduce impacts on neighboring properties.

Depending on the allowable zoning and the minimum parcel size selected, staff could perform an analysis of parcels and develop theoretical maximums. As a subcomponent of this approach, a sliding scale of minimum parcel sizes could be developed based on canopy or area of cultivation. For example: grows of less than 1,000 square feet on lots of 5 acres or more and grows greater than 1,000 square feet on lots of 10 acres or more.

Grow Size

The industry is generally in favor of limiting canopy to small grows (10,000 square feet or less) but would like to maintain maximum flexibility in permit qualifications. Additional outreach to industry representatives and to Land Use Advisory Committees could be scheduled to review and discuss policy recommendations moving forward (See Public Outreach discussion).

Criteria-based Regulation

Development of regulations could be designed so that they are applicable to each application for a permit within specified zoning designations. Regulations would likely include a mixture of the items presented in the options above. With this approach, all properties in the Big Sur, Carmel Valley, and Cachagua planning could qualify for permitting subject to the regulations that are developed. Other than limitation to three planning areas, this approach is similar to the permeant program approved for indoor and mixed-light cultivation. The ultimate scope of this approach would be difficult to predict without specific limiting factors (such as the existing greenhouse only policy in the adopted regulations).

Environmental Considerations

There are two options currently being discussed on how to address California Environmental Quality Act (CEQA) review requirements. Two options for CEQA compliance include:

- A. Use the Statutory exemption provided in from MAUCRSA for adoption of regulations that require subsequent discretionary review of permits. Exemption set to expire July 1, 2019; or
- B. Programmatically evaluate environmental impacts of the regulations pursuant to CEQA.

The timelines for permitting cannabis operators are similar with both CEQA Options A and B. Option A would take less time for ordinance processing but more time in permitting, while Option B would take more time for ordinance development and less time for permitting in specified cases. Industry representatives are contemplating the two options described above. As of the drafting of this memorandum, no consensus has been reached.

Option A – Statutory Exemption

In order to qualify for a Statutory Exemption from CEQA, the pilot program would need to require discretionary review of all individual commercial cannabis permits through discretionary permit process that are themselves individually subject to CEQA. By avoiding the time, effort, and cost associated with performing environmental review, the pilot program can be developed more expeditiously than if CEQA documentation were necessary for the program itself; however, additional time will be needed following adoption of the program to process discretionary permits for each application and to conduct environmental review on each individual application. There are benefits to a discretionary review of permits including exercise of judgement by a hearing body and mandatory public notice of each individual application affording neighborhoods the opportunity to comment. The drawbacks to this approach are that it can also be burdensome and cost prohibitive for small family farmers to pay discretionary permit and environmental review fees in every case.

This option could be used for all of the options presented above.

Option B – Programmatic Review

Option 2 could allow outdoor cultivation with or without a discretionary permit if the location, size, and other relevant factors are consistent with regulations and if the impacts are fully evaluated in the programmatic environmental review. Depending on the specific policies developed, some applications may still require separate discretionary review if otherwise required in County Code (i.e. development on slopes, tree removal, etc.). This approach will take longer for processing ordinances because it will involve drafting and public comment periods for an environmental document but can save time in permitting after adoption.

This option makes the most sense if the scope of the pilot program is limited (Options 1, 2, and possibly 4) and the regulations are crafted in a manner that mitigate potentially significant environmental impacts. This would likely require more restrictive criteria in the regulations than might be required under CEQA Option A. If adoption of the regulations would result in any significant unavoidable environmental impacts, an Environmental Impact Report (EIR) would be required pursuant to CEQA. EIRs are often time consuming and expensive.

This approach could be particularly beneficial to smaller growers or growers in areas where environmental impacts can be avoided. Public notice of permitting would not be provided for those that do not have a discretionary permit requirement unless otherwise required by the ordinance. This may limit public participation in individual applications.

CEQA Option B makes the most sense if Approach Options 1, 2, and possibly 4 are selected. The potential environmental impacts from Approach Options 3 and 5 are difficult to predict at this time.

Public Outreach and Ordinance Processing

In the past, staff has provided multiple opportunities for public participation in program development. With Cannabis Committee public meetings, some or all of the typical public participation meetings can be folded into regular reports to the Cannabis Committee. Condensing public meetings can save time in some cases. Staff is seeking direction from the Cannabis Committee on the following public outreach efforts:

1. Meetings with Industry representatives;
2. Land Use Advisory Committee meetings for Big Sur, Carmel Valley, and Cachagua;
3. Agricultural Advisory Committee and Big Sur Multi-Agency Advisory Committee review;
4. Public town hall style meetings; and/or
5. Planning Commission workshops.

The first three items can be folded into the process with relatively minimal staff effort or impact to ordinance development timelines. Items 4 and 5 require more staff time for preparation and execution. The Planning Commission will ultimately need to make a recommendation to the Board of Supervisors on the pilot program.