

# Exhibit A

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# Exhibit A - Discussion

## Cannabis Cultivation Amendments

### **Outdoor Pilot Program Revisions**

In June 2019, the Board of Supervisors adopted ordinances adding Chapters 20.69 (coastal) and 21.69 (inland) to the Monterey County Code that established regulations for limited outdoor cannabis cultivation in the Big Sur, Carmel Valley, and Cachagua planning areas for a five-year term ("Pilot Program"). The County has received only three applications for outdoor cannabis cultivation and only two of those applications are for cultivation within an area allowed under the current regulations. Those interested in participating in the Pilot Program have expressed difficulty in meeting Pilot Program regulations as the primary reason for lack of participation. Given the lack of participation, the Board and the Cannabis Committee has directed staff to meet with industry representatives and gather feedback. Staff conducted a stakeholder meeting in March 2020.

On August 5, 2020, the Board of Supervisors Cannabis Committee reviewed a summary of the feedback provided by the industry and considered providing direction to staff on potential amendments to the Pilot Program. Potential amendments included:

1. Revising the proof of prior cultivation regulations to require one form of evidence rather than two;
2. Reduce setbacks from the nearest off-site structure (currently 500 feet);
3. Extend the 5-year pilot program expiration date to 7-10 years;
4. Consider allowing light deprivation but maintain restrictions on use of artificial lighting;
5. Allow up to 1 acre of canopy on lots of 10 acres or more and maintain the 10,000 square foot canopy limitation on lots of less than 10 acres;
6. Expand the Program to allow cultivation in other planning areas;
7. Expand the Program to allow cultivation in other zoning districts;
8. Consider providing limited enforcement policies for outdoor cannabis cultivation applicants; and
9. Consider a retirement, relocation, and remediation (RRR) program.

At the hearing, the Committee requested additional information on potential revisions to the evidence of prior cultivation, setbacks, light deprivation, and canopy area (items 1-5) and generally agreed to exclude revisions to the planning areas, zoning districts and enforcement policies (items 6-8) from the current efforts.

Staff is returned to the Cannabis Committee on October 30, 2020 with additional information at which time, the Cannabis Committee directed staff to prepare ordinances amending the outdoor cannabis regulations with specific direction on the scope of those revisions.

### **Current Outdoor Cannabis Regulations**

On June 18, 2019, the Board of Supervisors adopted Chapters 20.69 and 21.69 of the Monterey County Code (coastal and inland) creating a Pilot Program for limited outdoor commercial cannabis cultivation in the Big Sur, Carmel Valley, and Cachagua plan areas within Supervisorial District 5, and only on lots that could provide proof that they historically cultivated cannabis.

The purpose of the Pilot Program is to: (1) gather data and gain experience for future consideration of long-term regulations for outdoor cultivation at the end of the five-year period; (2) to provide an opportunity for those that previously cultivated in the subject areas an opportunity to participate in the legalized cannabis market; and (3) to protect public health, safety, welfare and the environment.

Regulations were adopted to minimize nuisances, protect neighborhood character, and protect the environment. Regulations were developed with feedback from the Cannabis Committee, the Planning Commission, cannabis industry representatives, the Land Use Advisory Committees (LUACs), the Agricultural Advisory Committee (AAC), public comments, and with guidance from County staff involved in permitting and enforcement.

As adopted, an Administrative Permit (Inland – Carmel Valley and Cachagua) or Coastal Administrative Permit (Coastal- Big Sur) are required to allow outdoor cannabis cultivation up to 10,000 square feet of canopy on “Qualified Properties.” Administrative Permits and Coastal Administrative Permits are discretionary permits that include review by all relevant County departments, environmental review, and notification to neighbors and the public. This review provides an opportunity for public involvement in permitting of individual properties.

In adopting the current regulations, the Board also considered alternative regulation proposals from the Big Sur Farmers Association (“BFSA”), and a representative seeking permitting of outdoor cultivation in the South County area.

BFSA advocated for a pilot program that would provide permitting options for small scale cannabis cultivation in what they called the Santa Lucia Mountains appellation. BFSA provided written comments on desired policy considerations for the pilot program, which included simplified permitting of cottage industry cultivation and Coastal Development Permits for small and medium cultivation.

During review of the ordinance in 2019, correspondence was received by members of the public that opposed cultivation in grazing lands, particularly in the South County area. The arguments against permitting outdoor cultivation generally included 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.

Ultimately the Board of Supervisors adopted a five-year pilot program permitting limited outdoor cannabis cultivation with the following key regulations:

- Must be in the Carmel Valley Master Plan, Cachagua Area Plan, or Big Sur Land Use Plan areas.
- Must be in one of the following zoning districts:
  - Big Sur Land Use Plan – Rural Density Residential (RDR) or Watershed and Scenic Conservation (WSC) zoning;
  - Carmel Valley Master Plan area – Rural Density Residential (RDR) zoning; or
  - Cachagua Area Plan – Rural Density Residential (RDR) and Resource Conservation (RC) zoning.
- Must provide two forms of evidence of prior cultivation:
  - Photographs of cultivation that existed on the lot prior to January 1, 2016;

- Documentary evidence that cannabis was cultivated on the lot; and/or
- Any other form of evidence acceptable to the Appropriate Authority.
- Must meet the following minimum setback requirements:
  - 1,000' from a school, childcare center, youth center, playground, or drug recovery facility;
  - 50' from any public road;
  - 500' from nearest offsite structure; and
  - 150' from a stream, river, or watercourse.
- Limited to 10,000 square feet of canopy
- Limited to Outdoor cultivation (not including light deprivation techniques).

### **Stakeholder/Industry Meeting**

On March 9, 2020, at the direction of the Cannabis Committee and the Board of Supervisors, Cannabis Program staff organized and conducted a stakeholder meeting specifically for the outdoor grow cannabis industry and identify barriers to applicants obtaining the necessary land use entitlements. During the meeting, the sentiment of open-ended responses was generally critical of the County with obvious respondent frustration with the existing regulations.

Interested parties asked for waivers of fees associated with permitting and licensing and/or taxes relief, and grace periods for bringing properties up to code as components of an equity program within Monterey County.

As reported to the Cannabis Committee on April 1, 2020, there were six main areas that were identified as barriers to the Program:

1. Zoning
  - Respondents were mostly split evenly between Cachagua (16) and Big Sur Land Use (15) Area Plans, with others in the Arroyo Seco, Bradley, Central Salinas Valley, South Monterey County Planning Areas.
  - Respondents were primarily in Resource Conservation (12) and Rural Density Residential (8) zoning, with others in Watershed and Scenic Conservation (4) and Rural Grazing (4).
  - The most common lot size amongst respondents was 40 acres. With the current ordinance, the maximum canopy is limited to two and one-half percent of the total square footage of the lot, not to exceed 10,000 square feet of canopy on any one lot. In order to reach this maximum, a cannabis site would have to be located on a 10-acre parcel.
  - Most respondents (26) would be interested in a larger canopy area for properties larger than 10 acres.
  - The group was supportive of expanding the pilot program to include existing gardens in all districts, planning areas, and zoning types.
2. Setbacks
  - The overwhelming majority of respondents are 50' or greater away from any public road (35).

- Respondents were split evenly between satisfying the 500' setback from nearest offsite structure requirement, with 17 satisfying the requirement and 18 most commonly within 200' away, and likely to receive their neighbor's written authorization for a reduced setback.
- Most respondents (30) meet the 150' setback requirement from a stream, river, or watercourse while the other 6 do not, most commonly due to ephemeral creeks.

3. Path to compliance

- Most respondents (26) can provide photographic evidence of the site existing before January 1, 2016, with 8 unable to do so.
- Respondents were split evenly between the medical cannabis cultivation documentation requirement, with 16 able to provide it and 17 unable to do so.
- 19 respondents can provide additional evidence of cultivation prior to January 1, 2016, with 11 unable to do so.
- Respondents were split evenly with regards to the opportunity to relocate their farm to a more appropriate lot, with 17 saying yes and 15 saying no. Transferability could be developed through an RRR program, but this appropriate lot would still be required to satisfy the qualifying criteria as outlined in the ordinance.
- Most respondents (30) agreed that the five-year term of the pilot program was too short, especially when considering that acquiring state and local permits could take up to a year or more.
- Most respondents (32) agree that it is their goal to come into compliance and be a part of the commercial cannabis industry.
- Because the parcels of interested parties are not commercial properties and contain residences which may have been constructed/expanded upon without proper permits, the industry is requesting that only the cultivation site be subject to compliance inspections.

4. Enforcement

- Interested parties believe that the District Attorney's Office and Sheriff's Office are pursuing the low hanging fruit of those with intentions to become compliant rather than the truly illegal operators, often threatening felonies, fines and jail time.
- Becoming a legal and permitted operator would make their sites publicly known in remote locations.

5. Cost as a barrier to entry

- ALL respondents agreed that they would incur large initial financial burdens upfront with no guarantee of the program being continued after the five-year pilot.
- Participants would like outdoor cultivation taxes to be based on gross receipts as opposed to canopy as it insulates them from crop losses due to factors out of their control, such as unpredictable weather patterns.
- Unlike the greenhouse industry whose larger scale attracts investors, the outdoor grow pilot program is limited in scale and the costs required to become operational are disproportional to the economic opportunity.
  - Costs include state licenses, County permits, consultant fees, CEQA studies, and taxes.
- Prohibiting hoop houses and light deprivation techniques puts the Program at competitive disadvantage relative to the greenhouse market and other counties which allow light deprivation.

## 6. County priorities

- a. Parties interested in the Program believe that the greenhouse industry represents much different interests and as such, would like to see formation of a separate outdoor cannabis committee that would address their concerns.
- b. Because the current ordinance is restrictive, the Program has not generated any tax revenue or data to offset the staff time to amend Titles 20 and 21 and likely will not generate either for at least another year. Additionally, Chapter 7.100 needs to be amended to add an outdoor cultivation tax rate.
- c. Based on direction from the Board of Supervisors, any work related to code amendments will need to be prioritized with the current workload.

After review of the feedback and as directed by the Cannabis Committee staff has prepared ordinances that amend specific regulations which are described below.

## **Revisions to the Existing Regulations**

### Setback Requirements

#### *Existing Code Requirements*

Within the current regulations, outdoor cultivation must meet the following minimum setback requirements:

- Be located more than 1,000' from a school, childcare center, youth center, playground, or drug recovery facility;
- Be located more than 50' from any public road;
- Be located more than 500' from nearest offsite structure; and
- Be located more than 150' from a stream, river, or water course.

#### *Discussion of revisions*

These four setback requirements each served a purpose. The 1,000 foot setback from schools and youth facilities is a standard in state law, but can be reduced by local jurisdictions. The setback is intended to keep youth from being exposed to cannabis. The road setback is intended to maintain typical yard regulations and to make grow sites less visible from public roadways. The setback from the nearest offsite structure was intended to mitigate odor and noise impacts within residential settings. The stream setback is intended to protect water quality and biological resources. As discussed under the "Setback" heading stemming from the industry meeting, the primary barrier is the setback from the nearest offsite structure (18 respondents) with setbacks from a stream, river, or watercourse affecting 6 of the respondents.

Reducing or revising the setbacks required from a school, childcare center, playground, and youth-oriented facility, reducing the setback from a public road, and reducing the setback required from a stream, river, or water course are not included in the draft ordinances. These setbacks stem from state law and zoning regulations and are consistent with the General Plan requirements.

Setbacks from the nearest offsite structure are reduced by the within the proposed ordinances. Required setbacks from a cultivation site to the nearest off-site structure are currently 500 feet to minimize nuisances such as noise and odor to nearby property owners. Within the zoning

ordinance, most setbacks are measured from a property line and not from an off-site structure. For context, a typical football field is 300 feet long. Odors can travel a much greater distance. Many would-be applicants have expressed difficulty meeting the 500 foot setback requirement due to the way properties are developed in some of the mountainous areas of the County (Big Sur and Cachagua). Often, homes are built along ridges in a somewhat compact manner due to limited access along steep hillsides. Many stakeholders have indicated that their neighbors are amenable to cannabis cultivation adjacent to them. The problem is that not all neighbors will be amenable. Reducing the setback requirement from the nearest off-site structure would increase the severity of odor and other cultivation-related nuisances for neighbors who are not amenable. 250 feet was suggested by staff as a balance between providing some attenuation of odor while also removing the setback as a barrier to permitting for most stakeholders. Larger setbacks will exclude some applicants but provide greater protections from neighbors, while smaller setbacks would allow more properties to qualify but place cannabis cultivation sites closer to neighboring residential uses.

#### *Exception Process*

To provide additional relief from the setback requirement, the proposed ordinance expands and clarifies the potential for the appropriate authority to consider further reductions in setbacks. Setbacks can be reduced when there are prevailing winds, topography, vegetation or other barriers that act as buffer between cannabis cultivation sites and adjacent structures. The problem with discretionary exception processes is that the outcome can be unpredictable for staff and the public. The benefit is that it is a reasonable way to address the issues at hand (odor, etc..) without a rule that predetermines success or failure of a specific application.

#### Five-year Program term

##### *Existing Code*

The Program is set to expire five years from its adoption (June 2024). The ordinance is crafted to ensure that permits issued pursuant to the pilot program expire when and if the pilot program expires. The five-year term was adopted to provide an opportunity for the County to gather data and gain experience for future consideration of long-term regulations for outdoor cultivation at the end of the five-year period. With limited participation, the County has gained little experience with permitting and enforcing outdoor cultivation to date (over one year into the Program).

##### *Discussion of potential revisions*

Industry representatives have expressed concern with investment in start-up costs of a cannabis business under a program that is set to expire in five years (now less). Some potential growers do not have the funding needed to pay for preparation of plans and reports, permit fees, infrastructure, and other costs of establishing a commercial cannabis cultivation business. Lenders and financiers, as well as individuals investing their own money, are hesitant to invest in a business that has no guarantee of operating beyond the five-year expiration date. To address this concern, the proposed ordinances extend the pilot program term to 8 years.

#### Canopy Size Limit

##### *Existing Code Requirements*



The current regulations limit the canopy of outdoor cultivation to 2.5% of the total square footage of the lot, not to exceed 10,000 square feet of canopy on any one lot. This regulation stemmed from discussions during the drafting of the current pilot program that small, local farmers should be given the options to participate in the legal cannabis industry. 10,000 square feet aligns with the State license definition for “Small Outdoor” license types. The size of a garden would be reduced on lots less than 10 acres total as an overall percentage of the lot size.

#### *Discussion of revisions*

The industry would like to the opportunity to cultivate more than 10,000 square feet of canopy on larger lots. To address this issue, the ordinance proposes to increase the maximum allowable canopy to 20,000 square feet.

There is no data currently available on the average size of canopy that existed under the medicinal rules. Allowing larger canopy areas could lead to conversion of uncultivated lands, but it is hard to know without information about previously medicinal grows. Larger changes could shift the Program from the small/boutique grower concept to a larger grow concept. Staff and the Cannabis Committee considered larger allowable canopy areas to be a shift that would benefit from knowledge that might be gained by first implementing the smaller program.

#### Planning geographic area restrictions

The current regulations limit outdoor cultivation to location within the Big Sur, Carmel Valley, and Cachagua Planning areas only. This limitation stemmed from interest in those specific communities where cannabis cultivation under medicinal rules was prevalent and was a limitation in scope for the pilot program (sometimes referred to as the Santa Lucia Appellation). There are individuals interested in outdoor cultivation in the Central Salinas Valley planning areas.

The Cannabis Committee was receptive to expanding the Pilot Program to apply to the Central Salinas Valley area as part of this efforts but still would like the pilot to remain small and manageable. The proposed ordinance expands the pilot program to include the Central Salinas Valley Area Plan.

#### Zoning Districts

The current regulations require outdoor cultivation to be located in one of the following zoning districts:

- Big Sur Land Use Plan – Rural Density Residential (RDR) or Watershed and Scenic Conservation (WSC) zoning;
- Carmel Valley Master Plan area – Rural Density Residential (RDR) zoning; and
- Cachagua Area Plan – Rural Density Residential (RDR) and Resource Conservation (RC) zoning.

These zoning restrictions were developed based on community feedback and based on review of land uses and typical development patterns within various zoning types.

The industry would like to see cultivation allowed in all zoning districts and there is specific interest in expanding the program to allow cultivation in grazing lands in the Cachagua Planning

area. The desire of the industry is to allow those who have historically cultivated to be given the opportunity to cultivate in the legalized market regardless of the area or zoning district. Grazing lands often have large lot sizes and large areas where cultivation can maintain setbacks and other regulatory requirements. Grazing lands have not been included in cannabis permitting regulation to date because of potential impacts on grazing land values, difficulty in enforcement on large and remote lots, and because grazing lands often support diverse biological habitats. Traditional cattle ranchers rely on large plots of land at reasonable cost or lease rates for grazing. Commercial cannabis opportunities could increase land values in grazing districts. Higher density residential zonings (i.e. High, Medium, and Low Density Residential zonings) have been excluded from the program because of the smaller lot sizes and residential character of these districts throughout the County. Commercial and Industrial zones are already covered by the commercial cannabis regulations adopted by the Board.

Specific requests to include grazing land in the Cachagua area and within the Central Salinas Valley area have been made. The ordinance expands the pilot program to include these zoning districts in these two areas.

#### Other Revisions not included

Staff and the Cannabis Committee consider many other policy revision in response to industry feedback including:

1. Revising the proof of prior cultivation regulations to require one form of evidence rather than two;
2. Consider allowing light deprivation (hoop houses);
3. Expand the Program to allow cultivation to all areas;
4. Expand the Program to allow cultivation in all zoning districts;
5. Consider providing limited enforcement policies for outdoor cannabis cultivation applicants; and

For a variety of reasons, staff and the Cannabis Committee chose not to include revisions addressing the above listed changes in this ordinance. Revisions to the Program may be considered at the end of this pilot process.

#### **Indoor Cultivation Energy Requirements**

In review of certain indoor cultivation applications, applicants have had difficulties complying with the exiting energy requirements applicable to Indoor cannabis cultivation. The current ordinance requires:

*“Onsite renewable energy generation shall be required for all indoor (cultivation activities using artificial lighting only including Type 1A, 1C, 2A, 3A and 4 state license types) cannabis cultivation activities. Renewable energy systems shall be designed to have a generation potential equal to or greater than one-half of the anticipated energy demand.”*

On smaller industrially zoned parcels, the ability to solar panels on the property sufficient to generate enough power to offset at least half of the projected energy demand is expensive and in

some cases, not feasible. In response to this, the CAO's Cannabis Program provided a report to the Board of Supervisors and requested direction. On March 5, 2020, the Board considered the item and requested that staff prepare an ordinance amending the renewable energy requirements to be in line with similar regulations in other jurisdictions.

The proposed ordinances revise the renewable energy requirements in the inland and coastal zones to require onsite renewable energy generation to the maximum extent feasible and purchase of carbon offsets to achieve carbon neutrality or participation in a renewable energy purchase program by the cultivator.

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