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MEMORANDUM

DATE: APRIL 19, 2022

TO: HONORABLE BOARD OF SUPERVISORS

FROM: RUSS FORD, SENIOR PLANNER, PLANNING & BUILDING SERVICES

SUBJECT: REZONE R_2019-0013 TO ADD A CANNABIS ACCOMMODATION (CA) COMBINING DISTRICT TO THE CURRENT ZONING DESIGNATION OF RURAL RESIDENTIAL (RR)

BACKGROUND

On December 4, 2018, the Mendocino County Board of Supervisors adopted Ordinance No. 4420 that approved amendments to Chapter 10A.17 (Mendocino Cannabis Cultivation Ordinance) and Chapter 20.242 (Cannabis Cultivation Sites) of the Mendocino County Code (MCC) and established Chapters 20.118 and 20.119 in Mendocino County Code. Chapter 20.118 (Cannabis Accommodation (CA) Combining Districts) is intended to benefit neighborhoods comprised of sites currently engaged in cannabis activities by providing access to modified regulations regarding cannabis activities, primarily related to cultivation activities:

- Sunset Provision for Residential Districts would not apply to permitted cannabis cultivation uses.
- Permitted cultivation activities would be limited to 2,500 square feet of flowering cannabis.
- Reduced setbacks of cultivation sites to property boundaries.

The subject Rezone application, R_2019-0013, requests to create a Cannabis Accommodation Combining District of ten (10) parcels 3.9± miles southeast of Fort Bragg City center, lying on the east and west sides of Franklin Rd. (CR 414D), 0.2 miles south of its intersection with Simpson Ln. (CR 414), located at multiple addresses (APN's: 019-450-08, 019-440-21, 019-440-25, 019-480-08, 019-480-09, 019-480-10, 019-480-33, 019-480-34, 019-480-35, 019-480-36). The applicant, a Mendocino County resident, long-time business operator, and cannabis cultivator, seeks to continue their small cannabis production operation which has existed with continued use on the subject property which they own.

Additional background information on the ordinance history and project can be found in the Planning Commission staff report (Attachment A).

County staff presented the project and associated Addendum to the previously adopted Mitigated Negative Declaration on February 3, 2022. County staff provided the Planning Commission with a staff recommendation of denial and an alternate recommendation of approval including possible adoption of the addendum to the previously adopted Mitigated Negative Declaration. At their meeting on February 3, 2022 the Planning Commission, by resolution (PC_2022-0003, Attachment B), recommended denial of the project to the Board of Supervisors finding:

> *"That the proposed Commercial Cannabis Accommodation Combining District is inconsistent with the requirements of Chapter 20.118 of Mendocino County Code. Commercial Cannabis Accommodation Districts are intended to be neighborhood or community in scale. The boundaries of the proposed District consist of only a small portion of the area in which it is situated, though certain impacts like traffic will impact the entire surrounding area. The boundaries also exclude properties that reasonably should be included if attempting to be neighborhood or community in scale, such as the parcels adjacent along Franklin Road. The proposed District boundaries are*

designed in an irrational and arbitrary manner and are not proposed at a community or neighborhood scale.

GENERAL PLAN AND ZONING CONSISTENCY

The entirety of the proposed Cannabis Accommodation "CA" Combining District is located within the Rural Residential land use classification and Rural Residential zoning district, but varies in terms of the minimum parcel size criteria with three parcels located west of Franklin Road zoned with a 2-acre (80,000 square-feet) minimum parcel size requirement (RR2) and seven parcels located east of Franklin Road zoned with a 5-acre minimum parcel size requirement (RR5).Staff finds that the proposed CA Combining District aligns with the intent of the Rural Residential zoning designation and Rural Residential land use classification given the existing residential development on the parcels within the proposed CA Combining District and due to the fact that commercial activities are allowed, with approval of additional permits on Rural Residential parcels.

Beyond zoning district and land use classification consistency, staff reviewed the project for consistency with General Plan Policies and has identified several principles and policies that are pertinent to the consideration of this application. The General Plan promotes employment opportunities within proximity to residential communities, but only when those employment opportunities are consistent with local community needs and environmental constraints (Planning Principle 2-2b).

General Plan Policy DE-49: Expand economic opportunities that respect the individual character of each community area.[1]

The proposed CA District is located southeasterly of the Fort Bragg Community Area. There are no community specific policies that address the appropriateness of the proposed CA District with the individual character of the community. Staff therefore reviewed the submitted public comment letters and past correspondence on establishment of a CA District in the Mitchell Creek area that was County-initiated in 2018 to understand the character of the community area and appropriateness for commercial activities. The majority of the comment letters stated that this community area is primarily residential in nature and evidenced a strong desire to keep the community residential in nature without additional allowances for commercial activities beyond what presently exists. As opposed to supporting an accommodation district, commenters generally desired this area to remain subject to the Sunset Provision included as part of Chapter 10A.17. This sentiment expressed by members of the community leads staff to find that the economic opportunity afforded by the CA District may be contrary to the character of the community area and may create a conflict among land uses if allowed.

General Plan Policy DE-51: Encourage home occupations and cottage industries in conjunction with residential uses when limited in scope and compatible with residential or neighborhood character. Cottage industries and home occupations that grow beyond site or building limitations or become incompatible with the neighborhood should be relocated to appropriately zoned properties.[2]

As cultivation within the proposed CA District is limited to the Cottage Permit, Staff finds that General Plan Policy DE-51 is applicable to the site. While Policy DE-51 encourages cottage industries with residential uses it also states that the use shall be limited in scope and compatible with residential or neighborhood character. The location of the proposed CA District is within what staff would consider to be the middle of the Mitchell Creek area, requiring that traffic associated with any cannabis cultivation activities within the proposed District would traverse through approximately half of the residential neighborhood before reaching the destination. Employees and/or owners of sites within the proposed CA District traverse approximately 1 mile of roads (Simpson Lane and Franklin Road) through residential areas before reaching the subject site. Staff finds that allowance for continued commercial cannabis activities within the proposed CA District has the potential to disrupt the residential character of the neighborhood. When the Board of Supervisors adopted the Sunset Provision it was intended to ensure that existing cultivation sites in residential areas with small parcel sizes were relocated out of these areas, generally finding that commercial cultivation of cannabis was incompatible in denser residential neighborhoods. The CA District process was established in response to Board of Supervisors direction that there may be denser residential neighborhoods within the County where commercial cultivation of cannabis was appropriate. With regards to this particular application and neighborhood, staff finds that commercial cultivation of cannabis may be incompatible with

[1] Mendocino County General Plan Chapter 3: Development Element; Policy DE-49 Pg 3-83

[2] Mendocino County General Plan Chapter 3: Development Element; Policy DE-51 Pg 3-83

the Mitchell Creek neighborhood and pursuant to Policy DE-51 may be a use that should be relocated to an appropriately zoned property.

Staff finds that the proposed CA Combining District could be considered inconsistent with certain Mendocino County General Plan goals and policies discussed above, as well as planning principles. As noted previously, the General Plan promotes employment opportunities within proximity to residential communities, but only when those employment opportunities are consistent with local community needs and environmental constraints (Planning Principle 2-2b). It is not clear that the proposed CA Combining District is compatible with the character of the area.

CANNABIS ACCOMMODATION COMBINING DISTRICT

The application was initiated in response to the County's *Sunset Provision,* regarding existing commercial cannabis cultivation operations on parcels less than two acres in size. As discussed further in the Planning Commission staff report, 70% (7) of the property owners signed the owner petition and support creation of the accommodation district. Three property owners did not vote for reasons unknown to staff.

Mendocino County Code section 20.118.020 states that "*a CA Combining District may range from neighborhood to community in scale, but in no case be composed of fewer than ten (10) legal parcels as that term is defined in section 10A.17.020. All parcels within a CA Combining District shall be contiguous (excepting separations by public or private roads, rail lines, utility easements, or similar linear public facilities).*" Neither Mendocino County Code nor the Mendocino County General Plan define either "neighborhood" or "community". The Mendocino County General Plan states that *unless otherwise defined by Policy, standard dictionary definitions of words and terms shall be used. The Glossary to this General Plan provides definitions of many commonly used planning terms; these may be used as a starting point in resolving disputes about the meanings of words in Goals or Policies* (Mendocino County General Plan page 1-10).

The Merriam Webster Dictionary defines community and neighborhood as follows:

"Community" means *a group of people who live in the same area (such as a city, town, or neighborhood)* or *a group of people who have the same interests, religion, race, etc.*[3]

"Neighborhood" means *the people living near one another* or *a section lived in by neighbors and usually having distinguishing characteristics.*[4]

Staff does not believe that the proposed CA District is at either a neighborhood or community scale. While section 20.118.020 does provide that a proposed CA District must have a minimum of 10 parcels, based on the above definitions and consideration of the area surrounding the proposed CA District, the proposed district leaves out areas that would most reasonably need to be included to encompass a coherent community or neighborhood.

The proposed CA District has a contiguous area of 7 parcels east of Franklin Road and also includes 3 parcels to the west of Franklin Road that are nearly kitty-corner to the other 7. However, several parcels located primarily west of Franklin Road were not included in the proposed CA District. It is unclear to staff what distinguishing characteristics the 10 selected parcels for the proposed CA District share that separates them from being reasonably considered to be part of a larger community and/or neighborhood. In the opinion of staff, the shape of the proposed CA District cannot be said to include all relevant properties that would reasonably be community or neighborhood in shape.

Using the above definition from Merriam Webster, a community is considered to be a group of people who live in the same area (such as a city, town, or neighborhood). Staff finds that this would reasonably include additional parcels within the Mitchell Creek area beyond what is proposed within the current application. A community in this instance would at minimum include all parcels with frontage along Franklin Road, particularly the lots directly adjacent on either side of the 3 parcels located west of Franklin Road. In addition, as discussed above, this area comprises a small subset of what is generally referred to as the Mitchell Creek area and all access from the proposed CA District and main County roads and State Highways will travel through a large portion of the Mitchell Creek area. To give context to the size of what

[3] Community Definition & Meaning - Merriam-Webster, www.merriam-webster.com/dictionary/community

[4] Neighborhood Definition & Meaning - Merriam-Webster, www.merriam-webster.com/dictionary/neighborhood

the County-initiated rezone in 2018 considered to be an appropriate neighborhood or community scale for a CA District in Mitchell Creek, this application is approximately 2.09% of the size of what was considered in 2018 to reasonably be the neighborhood or community. While the application meets the base requirement of being comprised of a minimum of 10 parcels, it does not appear to be proposed at a community or neighborhood scale.

The proposed CA District appears to have been gerrymandered to include only select properties in order to obtain the requisite 60% landowner support at the time of application. While gerrymandering is most commonly used to refer to the drawing of electoral districts for political gain, the proposed district appears to have been drawn in such a manner to exclude certain properties so that the district could meet the base requirements for support of the establishment of a CA District.

By not including the excluded areas within the CA District, the boundaries as proposed become less rational and appear to be arbitrarily set to meet the County Code's support requirement. This shape, however, comes at the expense of identifying a coherent district that corresponds to a community or neighborhood in size and shape. Approving a district with an arbitrary or irrational shape introduces a concern that the County is using its zoning power in a way that does not bear a substantial relationship to public health, safety, morals or general welfare.

ENVIRONMENTAL DETERMINATION

If denied, the project is Statutorily Exempt pursuant to section 15270 of the California Environmental Quality Act (CEQA) guidelines. CEQA does not apply to projects which a public agency rejects or disapproves. However, an Addendum to the previously adopted Mitigated Negative Declaration (SCH #2016112028) was prepared for the Project in accordance with CEQA and the State and County CEQA Guidelines. The Addendum is part of Attachment A to this memorandum and the previously adopted Mitigated Negative Declaration is Attachment E to this memorandum.

RECOMMENDATION

Adopt a Resolution denying Rezone R_2019-0013 (Moulton – Franklin Road) to create a Cannabis Accommodation Combining District over ten parcels in the Mitchell Creek area of Fort Bragg; and authorize Chair to sign same.

ATTACHMENTS

A. Planning Commission Staff Report, February 3, 2022
B. Planning Commission Resolution PC_2022-0003
C. Planning Commission Public Comment
D. Resolution of the Board Denying the Project
E. Board Resolution No. 17-042, which adopted Mitigated Negative Declaration (SCH #2016112028) for the Cannabis Cultivation Regulations.