



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: JUNE 2, 2021

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, ASSISTANT DIRECTOR
KRISTIN NEVEDAL, CANNABIS PROGRAM MANAGER
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL

SUBJECT: ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY
LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 –
MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 –
CANNABIS CULTIVATION SITES (OA_2021-0002)

On April 19, 2021 the Mendocino County Board of Supervisors (Board) held a noticed public hearing on OA_2021-0002, an ordinance adopting Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance and amending Chapters 10A.17 – Mendocino Cannabis Cultivation Ordinance and 20.242 – Cannabis Cultivation Sites (Ordinance). The agenda item was continued to the April 27, 2021 agenda with direction to staff to prepare options for Board consideration regarding several topics related to the draft Ordinance. On April 27, 2021, the Board provided direction to Staff on the draft Ordinance and directed that the draft Ordinance be referred back to the Planning Commission for additional review on several topics. On May 6, 2021 the Planning Commission reviewed the various topics as directed by the Board and provided recommendations including further recommended changes beyond those requested to be reviewed by the Board.

PLANNING COMMISSION RECOMMENDATIONS FROM MAY 6, 2021

At the May 6, 2021 Planning Commission hearing, the Planning Commission adopted a resolution which provided concurrence with several recommended changes from the Board meeting on April 27, 2021 and also provided further recommended changes to the proposed ordinance, as well as recommended considerations for the Board. Each recommended change from the Planning Commission is addressed individually below.

- (1) Revise *6 on Appendix A to read that "Parcels in the AG and RL zoning districts that have a minimum parcel size of ten (10) acres or larger may cultivate up to ten percent of the parcel area or 2 acres, whichever is less, with the issuance of a Major Use Permit."

Staff Comment: This recommendation from the Planning Commission provides a limitation of the required Land Use Permit for the Medium Outdoor cultivation type pursuant to *6 of Appendix A and additionally limits Medium Outdoor cultivation permit types in AG and RL zoned properties to no more than 2 acres or 10% of the parcel size, whichever is less. The effect of this recommendation from the Planning Commission is that all parcels greater than 20 acres in size would be limited to no more than 2 acres of outdoor cultivation and parcels less than 20 acres in size would be limited to outdoor cultivation of no more than 10% of the parcel area.

- (2) Revise the table on Appendix A for cultivation sites in the RR-10 zoning district as shown in the attached Exhibit A.

Staff Comment: This recommendation from the Planning Commission changes the required Land Use Permit for the Specialty Indoor, Specialty Mixed-Light and Small Mixed-Light cultivation types in the RR-10 zoning district from a Minor Use Permit to a Major Use Permit.

- (3) Revise *7 on Appendix A, and section 22.18.050(B)(2) to reflect that Persons who applied for a Phase 1 permit pursuant to Chapter 10A.17 that are not located in a Commercial Cannabis Prohibition (CP) Combining District, or sunset area (pursuant to MCC section 10A.17.080(B)(2)(b)) may apply for a Land Use Permit under Chapter 22.18. Subject to the issuance of an Administrative Permit, Phase 1 applicants need not comply with the zoning district or parcel size criteria within Appendix A, for applications for cultivation sites which do not exceed what was permissible for their parcel during Phase 1. Any cultivation beyond what was permissible for their parcel during Phase 1 shall be subject to the provisions of Appendix A, including zoning district and parcel size.

Staff Comment: This recommendation from the Planning Commission is to ensure and clarify that Phase 1 applicants applying for a Land Use Permit under Chapter 22.18 cannot increase the size or type of allowed cultivation beyond that which was allowed for their zoning district and parcel size under Chapter 10A.17 and Chapter 20.242.

- (4) Add the following definition for “tilled”: “land which has been turned or stirred by plowing or harrowing or hoeing.”

Staff Comment: The source of this definition is <https://www.vocabulary.com/dictionary/tilled>. This definition is only applicable to cultivation in the RL zoning district.

- (5) Add the following definition for “previous crop history”: “a demonstrated history of use of an area of land for a plant or plant product that can be grown and harvested extensively for profit or subsistence, which plant or plant products may fall into six categories: food crops, for human consumption (e.g., wheat, potatoes); feed crops, for livestock consumption (e.g., oats, alfalfa); fibre crops, for cordage and textiles (e.g., cotton, hemp); oil crops, for consumption or industrial uses (e.g., cottonseed, corn); ornamental crops, for landscape gardening (e.g., dogwood, azalea); and industrial and secondary crops, for various personal and industrial uses (e.g., rubber, tobacco)”.

Staff Comment: The source of this definition is <https://www.britannica.com/topic/crop-agriculture>. This definition is only applicable to cultivation in the RL zoning district. Staff has modified the word “fibre” in the above definition to be spelled “fiber” in the proposed ordinance. Note that both spellings are correct and refer to the same thing, but the latter is more often used in the United States.

- (6) Require that the “prior crop history” of a proposed cultivation site in the RL zoning district be shown during the time frame of January 1, 2000 and January 1, 2020.

Staff Comment: This allows for a prior crop history to be demonstrated during a 20 year period.

- (7) Revise section 22.18.050(C)(3) to require the cultivation site be limited to the footprint of the site that has been previously tilled with a prior crop history.

Staff Comment: This clarifies that cultivation in the RL zoning district would be limited to the footprint of the areas previously tilled and with a prior crop history as demonstrated during the period of January 1, 2000 and January 1, 2020. Expansion beyond the footprint of the area previously tilled and with a prior crop history would not be allowed.

- (8) Revise the third paragraph of section 22.18.030 to read as follows: *One Land Use Permit for cannabis cultivation may be applied for and granted on a legal parcel. The Land Use Permit may allow for one nursery, one outdoor cultivation type, one mixed light cultivation type, and/or one*

*indoor cultivation type pursuant to the limitations identified in Appendix A. Additional outdoor canopy may be allowed so long as the parcel qualifies for *6 of Appendix A.*

Staff Comment: This language clarifies the allowance for multiple cultivation permit types on a single parcel provided the cultivation of each type does not exceed the maximum allowed for that zoning district.

- (9) Revise the finding in section 22.18.070(H)(1) to remove the word “cleared” and rely on the definitions of tilled and previous crop history.

Staff Comment: This would make cultivation in the RL district permissible on lands that have been previously tilled and have a previous crop history as demonstrated in aerial photographs during the period of January 1, 2000 and January 1, 2020.

Section 22.18.070(H)(1) would now read: *The proposed cultivation site is located on a site that has been previously tilled and has a previous crop history.*

- (10) Revise the finding in section 22.18.070(I)(1) to replace the word “unintended” with the term “growth-inducing,” rewording the sentence for clarity if necessary.

Staff Comment: Initially the Planning Commission recommended wording revisions to the finding in section 22.18.070(I)(1); however, as noted in item 16 below the Planning Commission ultimately chose to strike the finding entirely.

- (11) Revise section 22.18.050(B)(3) to include the sentence: “This paragraph shall not be construed as permitting Phase 1 applicants that do not currently utilize water delivery to begin doing so.”

Staff Comment: This recommendation clarifies the intention of the previously discussed direction from the Board to phase-out water delivery for Phase 1 applicants applying for a Land Use Permit under Chapter 22.18.

- (12) Revise section 22.18.070(J) to include the following additional finding: “Medium indoor and medium mixed light shall use renewable energy sources for heating, cooling and energy light loads.”

Staff Comment: This recommendation provides greater clarity on the previous Planning Commission recommendation from March 19, 2021 and the Board direction from April 27, 2021 regarding what types of energy use at a cultivation site for Medium Indoor or Medium Mixed-Light requires the use of renewable energy sources. Minor revisions to the language within the ordinance were made to provide clarity on this recommendation of the Planning Commission.

- (13) Revise section 22.18.070(J)(2) to refer to cultivation “structures” as opposed to cultivation “sites” and end the sentence before the word “however.”

Staff Comment: This revises one of the findings applicable to all Mixed-Light and Indoor Cultivation sites to read as follows: *The proposed cultivation structures will not project above an existing ridgeline.* The result of this is recommendation is that there is no flexibility provided for sites that are proposed on parcels located entirely on-top of a ridge and are unable to locate development such that it would not project above a ridgeline.

- (14) Revise section 22.18.070 to include the finding: *Cultivation structures will be sited and designed to avoid or minimize visual impacts from public rights of way.*

Staff Comment: Public rights of way may be a confusing terminology as it is not a defined term and has not been previously used in any zoning regulations; therefore, Staff recommends this be

revised to instead read “public roads” which is not a defined term but is used more commonly in existing zoning regulations.

- (15) Revise section 22.18.070 to include the finding: *Lighting should not leave mixed light and indoor cultivation areas. Security lighting shall be shielded and down cast.*

Staff Comment:

If the Board chooses to include this finding in the proposed Ordinance, staff recommends revision of the phrase “cultivation areas” to “cultivation structures”. This modification provides greater consistency with other findings within the same section applicable to Mixed-Light and Indoor Cultivation.

- (16) Delete finding (1) from section 22.18.070(I).

Staff Comment: Initially the Planning Commission recommended wording revisions to the finding in section 22.18.070(I)(1), as noted in item 10 above; however, the Planning Commission ultimately chose to strike the finding entirely.

- (17) Revise section 22.18.070(B) to strike the clause “to the maximum extent feasible”

Staff Comment: The above clause was discussed by the Planning Commission and reviewed and approved as part of the Resolution. However, in re-reviewing the video of the Planning Commission meeting, staff saw a separate change recommended by a majority of the Planning Commission that would create an outright prohibition on removal of oak woodlands, as opposed to avoiding or minimizing any impact. This was inadvertently not captured in the Resolution.

To implement this recommendation, staff would recommend striking “oak woodland,” from section 22.18.070(B), and adding a separate finding applicable to all Land Use Permits to read “*The proposed cannabis cultivation site will not result in removal or impacts to oak woodland resources.*” Staff recommends this be added as a new finding (C), and re-lettering the paragraphs in this section accordingly.

The Board may accept or reject the change as stated in the Commission’s Resolution, and may accept or reject the recommendation related to oak woodlands.

In addition to the specific changes to the ordinance recommended above, the Planning Commission made further recommendations for the consideration of the Board of Supervisors, as follows:

- (18) Consider creating a separate definition of “parcel” for section 22.18 related to parcels created by certificates of compliance as raised during the meeting.

Staff Comment: The Planning Commission was primarily concerned with the allowance for Certificates of Compliance to establish a parcel upon which a Land Use Permit could be sought. Staff would like to note that unlike Chapter 10A.17 a legal parcel under Chapter 22.18 is defined in section 20.008.048(A) of Mendocino County Code as “*Parcel*” means a unit of land or lot which, upon application, is eligible for a Certificate of Compliance. Staff does not believe it necessary to change the definition of parcel, as Certificates of Compliance are a typical way of demonstrating you have legal parcels on your site.

- (19) Consider further defining “emergency situations” for the purpose of water delivery.

Staff Comment: This could be something that could be defined by applicants and reviewed by Staff in their Land Use Permit applications or alternatively the Board could consider establishing a definition.

Emergency is defined in one section of the County Zoning regulations applicable to the Coastal Zone. Section 20.308.040(B) defines Emergency as *a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services*. In the Coastal Zone, this comes into play when addressing Emergency Coastal Development Permits and the code gives additional authority to the Director of Planning and Building Services in section 20.536.055(a), as follows: *In cases of a verified emergency, temporary emergency authorization to proceed with remedial measures may be given by the Director or his or her designee until such time as a coastal development permit application is filed.*

As opposed to “Emergency” the Board could instead consider using the phrasing of “Disaster”. Disaster is defined in the Coastal Zone regulations when talking about exemptions from needing to obtain a coastal development permit (section 20.532.020) when a structure is destroyed by disaster. As used in that section of County Code, *“disaster” means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owners.*

- (20) Consider allowing a cultivation site to use a water source on a separate parcel if there is an easement or other form of water sharing agreement.

Staff Comment: This is intended to clarify the finding in section 22.18.070(D) which requires that *“the cultivation site is served by a legal water source located on-site...”* Staff finds this to be an appropriate clarification and encourages the Board to incorporate this recommendation of the Planning Commission. The parenthetical *“(or on a separate parcel if there is an easement or other form of water sharing agreement)”* could be added after the phrase *“on-site.”*

- (21) Consider requiring applicants to provide the documentation showing their legal right to access the property.

Staff Comment: The concern expressed by the Commission was regarding wanting to see a legal deeded easement to demonstrate access to the parcel and ensuring that the easement is adequate for the proposed cannabis operation, specifically referring to it as needing to be commercial in scope. Staff does not find that this is necessary as the required finding in section 20.196.020(B) already requires that all sites demonstrate *that adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.*

- (22) Consider adding a requirement for the priority processing of applications from Phase 1 applicants that are complete.

Staff Comment: Staff has no objection to this approach.

- (23) Recommend the establishment of a mechanism allowing Phase 1 applicants applying for permits under Chapter 22.18 to continue cultivating during the application process of Chapter 22.18.

Staff Comment: Staff has been working to determine if there is a pathway that may be able to allow individuals to continue cultivating while in application process.

- (24) Recommend that the Board of Supervisors prioritize identifying mechanisms and resources to identify groundwater supply and security for Mendocino County communities.

Staff Comment: Staff recommends inclusion of the County Water Agency and Division of Environmental Health in any discussions regarding future study of groundwater resources within the County.

ATTACHMENTS

- A. Planning Commission Packet 5.6.2021
- B. Adopted Planning Commission Resolution
- C. Draft Ordinance (Redline incorporating changes from 5.6.2021 Planning Commission)

- D. Draft Appendix A (Redline incorporating changes from 5.6.2021 Planning Commission)
- E. Draft Ordinance and Appendix A (Clean)