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MEMORANDUM

DATE: APRIL 27, 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)

OPTIONS FOR CONSIDERATION AS DIRECTED ON APRIL 19, 2021

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.

The discussion on April 19, 2021 generally followed the memorandum prepared by Supervisor McGourty dated April 18, 2021 (Memorandum), therefore staff has attached the Memorandum here for ease of use as Attachment A. For the benefit of the Board, staff has included the definitions of the various Cultivation Permit Types under State law and current limitations on Cultivation for Phase 1 below.

Definition of Cultivation Permit Types (per Title 3, Division 8, Chapter 1 (commencing with section 8000) of the California Code of Regulations):

Outdoor cultivation means the cultivation of mature cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants outside the canopy area.

Mixed-Light Tier 1 cultivation means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:
(1) Natural light and light deprivation without the use of artificial light or with the use of artificial light at a rate above zero, but no more than six watts per square foot; or
(2) Natural light and artificial lighting at a rate above zero, but no more than six watts per square foot;

Mixed-Light Tier 2 cultivation means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:
(1) Natural light and light deprivation and the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot; or
(2) Natural light and artificial lighting at a rate above six and below or equal to twenty-five watts per square foot.

Indoor cultivation means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five watts per square foot.

Current Cultivation Permit Sizes (Chapter 10A.17) [Note: Staff has modified the descriptions of the current Cultivation Permit sizes to align with the State Definitions.]

Maximum cultivation permit size, per parcel, is as follows:

- Small Outdoor, allows for 5,001 – 10,000 square feet of mature plant canopy. (Currently does not allow for hoop houses or greenhouses.
- Small Mixed-Light Tier 1, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Small Mixed-Light Tier 2, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Small Indoor, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Each cultivation permit is allowed to also have a nursery license not to exceed 12,000 square feet of immature plant canopy.

Note: The combination of one Small Mixed-Light cultivation permit and one nursery permit at 12,000 square feet has resulted in 22,000 square feet of hoop house and/or greenhouse structure development for some applicants operating under Chapter 10A.17.

#6 ON MEMORANDUM:
OPTIONS REGARDING LIMITATIONS ON HOOP HOUSE AND GREENHOUSE STRUCTURES

Option 1:

Allow the Cultivation types that presently exist within the Ordinance and leave discretion for limitations on hoop house or greenhouse structures to the discretion of the Planning Commission. [Note: This is how the Ordinance is presently drafted.]

Maximum permit size is as follows:

- Medium Outdoor, allows for 10,001 – 43,560 square feet of mature plant canopy.
- Medium Mixed-Light Tier 1, allows for 10,001 – 22,000 square feet of mature plant canopy.
- Medium Mixed-Light Tier 2, allows for 10,001 – 22,000 square feet of mature plant canopy.
- Medium Indoor, allows for 10,001 – 22,000 square feet of mature plant canopy.

Note: the above list does not include potential increased cultivation areas allowed by proposed *6 of Appendix A.

Considerations for Supplemental Findings:

In consideration of Option 1, the Board could add required supplemental findings to the Ordinance to ensure that these types of Cultivation are in line with the vision of the Board. Staff includes potential supplemental findings below.

Option 2:

Limit the Mixed-Light and Indoor cultivation permit types within the Ordinance, by removing the allowances for Medium Mixed-Light cultivation permits and Medium Indoor cultivation permits. This would result in the permitting of no more than 10,000 square feet of Mixed-Light or Indoor cultivation.

Option 3:

Limit the Mixed-Light and Indoor cultivation permit types within the Ordinance to Specialty Cottage or Specialty size permits.

- Specialty Cottage Mixed-Light, allows for up to 2,500 square feet of mature plant canopy.
- Specialty Cottage Indoor, allows up to 500 square feet of mature plant canopy.

- Specialty Mixed-Light permit sizes, allow for 2,501 – 5,000 square feet of mature plant canopy.
- Specialty Indoor permit sizes, allow for 501 – 5,000 square feet of mature plant canopy.

Option 4:

Limit the zoning districts in which Mixed-Light cultivation permit types and Indoor cultivation permit types are allowed.

Example Zoning Restrictions Include

- Limiting Mixed-Light and Indoor cultivation permit types to Industrial zoned properties; or
- Prohibiting Mixed-Light and Indoor cultivation permit types in Rangeland.

Option 5:

Remove all Mixed-Light and Indoor cultivation permit types from the Ordinance. Consider altering the definition of the Outdoor cultivation permit type to prohibit hoop house and greenhouse structures. Additionally, consider restricting the size of hoop house and greenhouse structures allowed for the propagation of immature plants to 1,000 square feet as referenced in the Memorandum.

Potential limitation language for Outdoor: *Outdoor cultivation shall exclude the use of structures, including greenhouses, hoop houses, glasshouses, conservatories, hot houses and any similar structure.*

Additional Staff Comments on Options:

If one of Options 3, 4 or 5 is selected, the Board may want to consider how to handle Phase 1 applicants who already have existing Mixed-Light or Indoor Cultivation activities on their site who may desire to apply for a Land Use Permit under the proposed Ordinance.

Potential Supplemental Findings applicable to Mixed-Light and Indoor Cultivation:

1. The proposed cannabis cultivation site will not result in grading, cutting and/or filling that would significantly and permanently alter or destroy the appearance of natural landforms.
2. The proposed cannabis cultivation site will not project above an existing ridgeline; however, if no alternative site is available below the ridgeline, a finding shall be made that the cannabis cultivation site will be sited and designed to reduce visual impacts.

#7 ON MEMORANDUM:

EXPANSION INTO RANGELAND (ALL CULTIVATION ON RANGELAND)

The Board expressed a desire to limit cultivation in the Rangeland (RL) zoning district under the proposed Ordinance to the following:

“rangeland that has been previously cleared and tilled with a previous crop history.”

The Board discussed that the eligibility of rangeland using the above exception language must be visible in aerial photographs in 2015 or earlier. Staff has several recommendations and comments for the Board regarding the above exception:

1. Consider limiting allowable Cultivation types and sizes on RL zoned properties as opposed to the exception language contained above, as verification may prove difficult like it has for proof of prior cultivation in Chapter 10A.17.
2. Consider aligning the date of verification to the proof of prior cultivation date of January 1, 2016, and/or provide a date range during which verification must be demonstrated.
3. Consider adding definitions or clarifications of “tilled” and “previous crop history”.

4. Consider authorizing the high-resolution satellite imagery that may be obtained for enforcement activities for use by Cannabis Program staff in verifying eligibility of RL zoned properties that apply for a Land Use Permit under the proposed Ordinance.

The Board also recommended that a supplemental finding be added related to cannabis cultivation sites proposed on RL zoned properties. Staff has also prepared the following draft supplemental findings for consideration of the Board (numbers 2 through 5); however, these are based off of policies contained within the General Plan related to development of RL properties and would be addressed through the existing Use Permit findings in section 20.196.020:

1. The proposed cannabis cultivation site is located on a site that has been previously cleared and tilled and has a previous crop history in compliance with the provisions of this Chapter.
2. The proposed cannabis cultivation site will retain movement corridor(s) adequate (both in size and in habitat quality) to allow for continued wildlife use based on the species anticipated to use the corridor and maintain compatibility with adjacent uses. [Note: this finding was adapted from General Plan Policy RM-30.]
3. The proposed cannabis cultivation site will not result in a need for unintended expansion of infrastructure in conflict with other policies. [Note: this finding was adapted from General Plan Policy RM-106.]
4. The proposed cannabis cultivation site will not adversely affect the long-term integrity of the agricultural areas or agricultural uses in the area. [Note: this finding was adapted from General Plan Policy RM-106.]
5. The proposed cannabis cultivation site will not undermine the integrity and economic viability of agricultural operations by causing or contributing to piecemeal land use conversion, land fragmentation, urban encroachment, the introduction or concentration of incompatible uses on lands adjoining or within agricultural areas, or the extension of growth-inducing urban services such as public water or sewers. [Note: this finding was adapted from General Plan Policy RM-108.]

COMMENTS ON DIRECTIVES

Consensus was reached on several items by the Board on April 19, 2021. Staff has several comments for consideration of the Board on a few of the consensus items:

1. The Board directed that staff use the Chapter 10A.17 slope restrictions for the proposed Ordinance. Staff has reviewed both the Chapter 10A.17 regulations and the proposed Ordinance related to slope restrictions and does not see a difference between the two regulations, as both appear to limit development on hillsides exceeding fifteen (15) percent. Existing slope regulations are found in section 20.242.070(C)(2) and the proposed Ordinance restrictions are found in the proposed required finding contained in section 22.18.070(B).
2. The Board directed that staff allow for cultivation on up to ten (10) percent of the parcel area for sites zoned Agricultural (AG) and Rangeland (RL) with the caveat that in the RL district it shall only be allowed where existing disturbed soil is present. Staff wishes to affirm two points on this with the Board:
 - a. Confirm that Upland Residential (UR) is not included in this directive, and
 - b. Confirm whether the same exception language provided for all cultivation in RL (noted above) applies to this directive.
3. The Board directed that all new wells related to cannabis cultivation activities require a hydrological study. Staff recommends that the Board consult with the Division of Environmental Health staff regarding implementation of this directive, as presently the County does not have a hydrologist on staff nor adopted procedures for hydrological studies outside of the Coastal Zone.

4. The Board directed that no water hauling be authorized as the primary water source, but may be utilized on an emergency basis. Staff recommends the Board consider a supplemental finding related to water hauling if required or this language could be added to the existing recommended findings in section 22.18.070(D), as follows:

The proposed cannabis cultivation site is primarily served by a legal water source located on-site that does not rely upon water delivery, except delivery of water may be utilized in emergency circumstances.

5. The Board directed that generators and internal combustion engine water pumps shall not be the primary source of power for cultivation activities. Staff recommends the Board consider a supplemental finding related to generators/internal combustion engines, as follows:

The proposed cannabis cultivation site does not rely upon generators as their primary power source and/or internal combustion engine water pumps, except use of such items may be authorized in emergency circumstances or as a back-up power source or water pump.

6. The Board had discussed concerns related to application work flow within the Department. Staff recommends inclusion of additional language to section 22.18.060 to address this, as follows:

The Department may establish periods of time during which it will and will not accept applications for Land Use Permits pursuant to this Chapter as it deems appropriate to manage workload.

ATTACHMENTS

- A. Memorandum by Supervisor McGourty dated April 18, 2021.