



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: MAY 6, 2021

TO: PLANNING COMMISSION

FROM: PLANNING AND BUILDING SERVICES STAFF

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.

Staff has prepared a redline of the Draft Ordinance and Appendix A based upon Board direction, which are attached to this agenda packet. No changes were directed by the Board to Chapters 10A.17 or 20.242.

Board of Supervisors Direction/Request for Planning Commission Input:

(1) Draft Appendix A modifications beyond those recommended by the Planning Commission on March 19, 2021:

(a) Remove Small and Medium Indoor Cultivation allowances for the Agriculture (AG), Rangeland (RL), Upland Residential (UR) and Rural Residential (RR) districts.

Staff note: This results in limitation of Small and Medium Indoor Cultivation to solely Industrial zoned properties.

(b) Remove Medium Mixed-Light Cultivation allowances from the RL and UR districts.

Staff note: This results in limitation of Medium Mixed-Light Cultivation to solely AG and Industrial zoned properties.

(c) Remove allowance for cultivation on 10% of the parcel area for the UR district.

Staff note: This results in limitation of the *6 footnote on Appendix A to AG and RL zoned properties, with additional language applicable to properties that would be eligible within the RL district (see section d below).

- (d) Cultivation shall only be allowed in the RL district on lands which have been previously cleared and tilled and has a prior crop history.

Specifically requested input related to cultivation on RL properties:

- (1) The Board had discussed a desire to have a prior crop history demonstrated prior to a particular date. The Board recommended that the date be prior to January 1, 2015 and that there shall be visible evidence as determined through aerial photography of the compliance. The Board is seeking Planning Commission input on the best date and method for verification of this or possibly consideration of time-frame.
- (2) The Board is seeking direction from the Planning Commission on definitions for “tilled” and “crop history”. Staff offers the following tentative definitions for consideration of the Planning Commission:

“Tilled” means land which has been turned or stirred by plowing or harrowing or hoeing. (source: <https://www.vocabulary.com/dictionary/tilled>)

OR

“Tilled” means soils which have been prepared for agricultural use by mechanical agitation of various types, such as digging, stirring, and overturning. (source: <https://en.wikipedia.org/wiki/Tillage>)

OR

“Tilled” means land which has been worked by plowing, sowing, and raising crops. (source: <https://www.merriam-webster.com/dictionary/till>)

Alternatively, CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 1, section 3501 defines **“Agricultural Activity”** as *the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.*

“Previous crop history” means 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. Crops 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). (source: <https://www.britannica.com/topic/crop-agriculture>)

OR

“Previous Crop history” means cropping undertaken during the planting season immediately preceding the said season. (source: <https://www.lawinsider.com/dictionary/cropping-history>)

OR

“Cropping history.” A record of the crop that was on the land during each of the 3 years preceding the current inventory year.

(source:

https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/nri/?cid=nrcs143_014127)

- (2) The Board recommended requiring a hydrological study for projects that rely upon a well and where water usage is equal to or greater than 1,500 gallons per day.

Staff note: This change has been incorporated in sections 22.18.050(C) and 22.18.070(D).

- (3) There was general consensus of the Board to direct staff to include language regarding discouragement of fencing unless deemed appropriate through the Planning Commission process, providing it is not deemed otherwise necessary.

Staff note: This would be addressed through a guidance document produced by the Department and in individual Land Use Permits as Conditions of Approval.

- (4) Staff clarified with the Board that there would be a limitation of one (1) Land Use Permit per legal parcel; however multiple cultivation types may be pursued on a legal parcel. For example, an individual on an AG zoned property could, in the most extreme instance, apply for one Land Use Permit (a Major Use Permit) for a Medium Outdoor permit type of up to 10% of the parcel area, a Medium Mixed-Light permit type of up to 22,000 square-feet of cultivation area, and a Specialty Indoor permit type of up to 5,000 square-feet of cultivation area.

Staff note: This clarification has been incorporated into section 22.18.030. Staff would also 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.*

- (5) The Board directed that staff amend the eligibility criteria for Phase 1 applicants under section 22.18.050 to allow those that have resolved any tree removal violations with the relevant resource agency.

Staff note: This change has been incorporated into section 22.18.050(B)(1)(a).

- (6) Staff presented supplemental findings for consideration of the Board in a memorandum dated April 27, 2021 and the Board supported inclusion of supplemental findings as follows:

Findings applicable to Land Use Permits for cultivation on RL zoned properties:

- The proposed cultivation site is located on a site that has been previously cleared and tilled and has a previous crop history.
- The proposed cultivation site will retain movement corridor(s) adequate (both in size and habitat quantity) to allow for continued wildlife use based on the species anticipated to use the corridor and maintain compatibility with adjacent uses.

Findings applicable to Land Use Permits for cultivation on AG and RL zoned properties:

- The proposed cultivation site will not result in a need for unintended expansion of infrastructure in conflict with other policies.

Staff note: Staff has deleted the language "in conflict with other policies" as that refers to conflict with other policies in the General Plan, which would already be captured by Staff in review of a Land Use Permit.

- The proposed cannabis cultivation site will not adversely affect the long-term integrity of the agricultural areas or agricultural uses in the area.

Findings applicable to Land Use Permits for all cultivation:

- There is an adequate water source to serve the cultivation site. The cultivation site is served by a legal water source located on-site and does not rely upon water delivery, except delivery of water may be utilized in emergency situations. For cultivation sites for which a hydrological study is required, an additional finding shall be made that the groundwater extraction of the proposed cultivation site will not have an adverse affect on the groundwater supply, and that there is sufficient groundwater to supply the cultivation site.

Staff note: This finding amends the previous finding language contained in section 22.18.070(D).

- The proposed cultivation site does not rely upon a generator as a power source and/or an internal combustion engine water pump.
- The proposed 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.

Findings applicable to Land Use Permits for Mixed-Light and Indoor cultivation:

- The proposed cultivation site will not result in grading, cutting and/or filling that would significantly and permanently alter or destroy the appearance of natural landforms.
- The proposed 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 cultivation site is sited and designed to reduce visual impacts.

Findings applicable to all Medium Mixed-Light cultivation sites in the AG zoning district:

- The cultivation site shall not involve the coverage of the native soil with base rock or similar medium that makes future cultivation of the site infeasible.

- (7) The Board directed that Phase 1 applicants who apply for a Land Use Permit under Chapter 22.18 phase out use of delivered water by January 1, 2023.

Staff note: This has been added to the draft ordinance in section 22.18.050(B)(3). In addition, this language may in the future be part of an amendment to Chapter 10A.17.

- (8) The Board directed that staff add a standard condition related to sites that have any water delivery to require that permit holders be required to maintain a tracking log of emergency water deliveries, including information regarding gallonage, the delivery company, the source of the water for the delivery company, and the date of delivery.

Staff note: This would be addressed through a guidance document produced by the Department and in individual Land Use Permits as Conditions of Approval.

- (9) The Board had discussed concerns related to application work flow within the Department and directed staff to include additional language in section 22.18.060 to specify that 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.

- (10) The Planning Commission previously recommended to the Board on March 19, 2021 that they consider requiring renewable energy sources for Medium Indoor and Medium Mixed Light Tier 1 and Tier 2 in order to reduce greenhouse gas emissions due to high energy use. The Board supports this recommendation.

Staff note: This has been added to section 22.18.050(C)(1). The Board specifically recommended listing Sonoma Clean Power and solar power as examples. Staff recommends leaving these examples out, as there may be the potential for some confusion in implementation. Sonoma Clean Power identifies itself as using less than 50% renewable energy sources, as it does not include hydroelectric power as a renewable energy source. Staff recommends to the Commission, and would like to recommend to the Board, leaving this phrase undefined to allow for more nuanced definition in the future. Staff also welcomes additional recommendations from the Commission regarding this phrasing.

ATTACHMENTS

1. Proposed Resolution
 - a. Proposed Ordinance – portions in Redline
 - b. Proposed Appendix A to Chapter 22.18 - Redline
2. Memorandum to BOS April 19, 2021 (without attachments*)
3. Memorandum to BOS April 27, 2021 (with attachment)

*Associated attachments from the April 19, 2021 Board of Supervisors meeting can be found at:
<https://mendocino.legistar.com/LegislationDetail.aspx?ID=4913960&GUID=32E4C264-BA15-480E-8AD3-8F36B60EFF6D&Options=&Search=>