

Discussion Paper
KEY ISSUES AND POLICY OPTIONS

COMMERCIAL CANNABIS CULTIVATION
IN AGRICULTURAL ZONES

BACKGROUND

Two primary goals of the proposed Ordinance are to 1) provide opportunity for cultivators to move into more suitable agricultural and industrial lands; and 2) provide opportunities for agricultural operators to diversify into cannabis cultivation as a means of stabilizing farm incomes.

Agricultural lands are of great importance and carry many regulatory protections to ensure continued stability and productivity. Sonoma County's agricultural lands offer a combination of prime soils, stable topography, and availability of water making these lands very attractive to cannabis cultivation. However, careful consideration should be given to the direct and indirect impacts when contemplating allowing a new type of land use, especially one that has a variety of cultivation types and other unique characteristics related to security, access to children and potential to cause conversion of land use due to the high value of the product.

The proposed Ordinance defines cannabis as an agricultural product similar to state law which distinguishes the product from other agricultural crops or commodities due its unique nature as a controlled substance requiring increased security measures and the use of artificial lights and indoor growing environments. Cannabis cultivation structures, unlike traditional agricultural structures, would be subject to design review. As such, all land use regulations that apply to cannabis uses are grouped together separately from other agricultural uses in the special use regulations of the zoning code. Cannabis would not be protected under the "Right to Farm" Ordinance, which is intended to protect agricultural operations from being considered a nuisance by requiring a public disclosure to surrounding residential uses of potential incompatibility impacts such as noise, odor, or chemical use.

Cannabis would not be considered a qualifying agricultural use for a reduction in property taxes within Agricultural Preserves and would not receive tax breaks for the area under cultivation. A companion amendment to the County's Uniform Rules for Agricultural Preserves is proposed that would allow cannabis cultivation as a compatible use for lands under a Land Conservation Act (aka Williamson Act) contract subject to limitations. This would enable farmers to supplement their farm income with cannabis cultivation and retain their tax benefits on the balance of the agricultural land.

The Sonoma County General Plan designates three agricultural land use categories that correspond to the zoning districts with some distinctions between the three zones as discussed below. The General Plan also includes policies that protect agricultural land primarily for production or future agricultural use. The following describes the three agricultural zoning districts and the approximate range of parcel sizes.

Land Intensive Agriculture (LIA)

The LIA zone was originally mapped based on locations of prime soils suitable for intense crop production. They are generally located along the valley floors and are home to many wineries and tasting rooms. These lands are also generally designated as Scenic Resources in the General Plan with additional policies related to protection of the scenic qualities. The alluvial soils found in these lands are also potential recharge areas for groundwater. Approximately 49 percent of all LIA parcels are more than 10 acres in size. Thirteen percent are between 5 and 10 acres in size. Another 37 percent are less than 5 acres in size.

Land Extensive Agriculture (LEA)

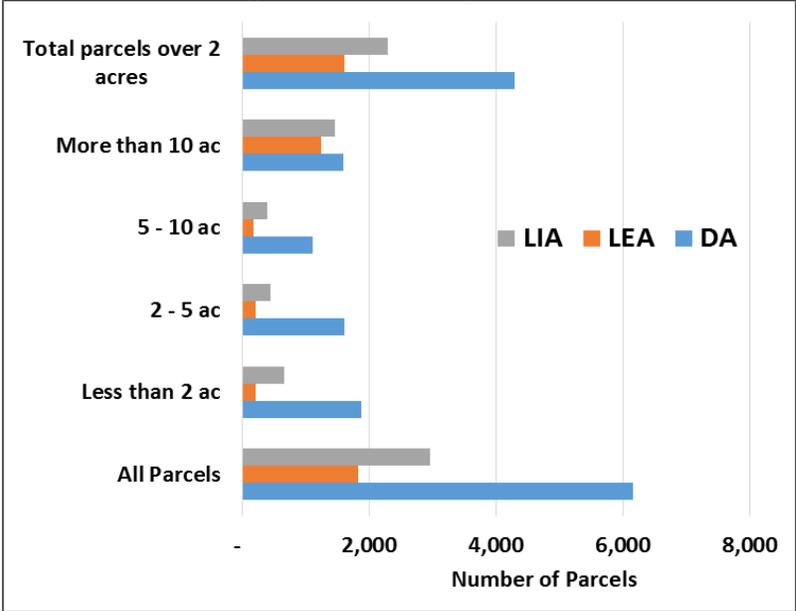
The purpose of the LEA zone is to enhance and protect lands best suited for permanent agricultural use and capable of relatively low production per acre of land. This zone is primarily used for grazing as well as crop production. LEA parcels are typically very large in size, with 68

percent being 10 acres or larger. Given the size of LEA parcels, cultivation sites may be situated so as to not be visible from public right of ways.

Diverse Agriculture (DA)

The DA zone allows a combination of small acreage intensive farming and part-time farming activities where farming may not be the principal occupation. Due to the allowance of parcel clustering, parcel sizes can vary widely. Approximately 30 percent of DA parcels are less than 2 acres, while 26 percent are larger than 10 acres. DA parcels tend to be located as a buffer between other agricultural and residential zones with greater potential to impose impacts on neighboring properties and communities than other agricultural zones. For these reasons, minimum parcel sizes and setback requirements (discussed more below) will be more important in DA zones to ensure impacts are mitigated.

Table 1: Parcels in Agricultural Zones by Size



KEY ISSUES

Allowing commercial cannabis cultivation on agricultural lands may cause compatibility issues with other agricultural and residential land uses, cause conversion or degradation of agricultural soils, and has the potential to convert agricultural land uses over time. The key policy questions for the Commission are where commercial cannabis, and related support businesses should be permitted, and at what scale and intensity.

Development Criteria and Standards

The following abbreviated list of proposed commercial cultivation standards (Exhibit B) may reduce impacts in the agricultural areas:

- A. Required adherence to Building Code and Grading Ordinance.
- B. Property Setbacks (outdoor and mixed light) - 100 feet from property lines, 300 feet from occupied residences and business on adjacent properties.
- C. Cultivation shall not be located on slopes that exceed 15%.
- D. No tree removal (unless pursuant to a use permit).
- E. Protection of important farmlands - no conversion of agricultural land unless offset.
- F. Cultural and historic resource protection - avoid or mitigate impacts to resources.

- G. Vegetation and fencing required for screening.
- H. Site Security Plan required.
- I. Odor filtration systems required (indoor/mixed light).
- J. All lighting shall be fully contained and not visible from offsite.
- K. Noise Limits- must not exceed noise limits within the General Plan.
- L. Annual permit renewals.
- M. Compliance inspections required.

The Department of Agriculture will be responsible for issuing zoning permits and conducting annual inspections for outdoor cultivation operations. PRMD would be responsible for permitting and inspections for any outdoor cultivation operations requiring a use permit as well as all other types of cultivation and related support activities. Support activities such as drying, trimming, and storage would be allowed separately from the cultivation size limitation expressed in the proposed Ordinance and Land Use Summary Table (Attachment A).

POLICY OPTIONS AND ANALYSIS

1. Cultivation Limits and Location.

The following range of policy options are related to the type and size of cultivation allowed on agricultural lands (all three districts).

Outdoor Cultivation

- A. **Allow Outdoor Cultivation in Agricultural Zones.** This option would allow all sizes of outdoor cultivation in all three agricultural zones up to the 1 acre limit in state law. Options include establishing limits on different size thresholds for each zone. Refer to Table 1 for size thresholds and zones.

Indoor Cultivation

- B. **Limit Indoor Cultivation.** This option restricts indoor cultivation to cottage (500 sf) and specialty (5,000 sf) in all three agricultural zones. Larger scale indoor operations would not be permitted on agricultural lands due to the industrial character.
- C. **Limit Indoor Cultivation to Existing Structures.** Indoor cultivation could be limited to existing structures only in order to preserve the soils for other agricultural production.

Mixed Light

- D. **Limit Mixed Light Cultivation in Agricultural Zones.** This option would limit mixed light cultivation to specialty and small scale up to 10,000 square feet in agricultural zones. Alternatively larger mixed light operations could be allowed only in some agricultural zones where parcel sizes are larger (primarily LEA parcels) or outside of designated scenic resource areas.
- E. **Expand Mixed Light Cultivation Limits.** This option would expand opportunities for all sizes of mixed light cultivation up to the maximum limit allowed in state law of 22,000 square feet.

Analysis

All three of the options above propose to limit indoor cultivation on agricultural land to some extent. This is because indoor facilities are more industrial in nature and may not be adaptable to

traditional agricultural uses if the cannabis use were to end, and may not be in keeping visually with the rural character of these lands. Mixed light operations, or greenhouses, would be adaptable to other types of agricultural uses and may not require the same limitations. Though they can also affect the scenic quality of agricultural areas.

Staff Recommendation: Option A - D. Option A provides maximum opportunities for outdoor cultivation which is better suited to utilize the prime soils and has the least impact on potential conversion issues. Indoor cultivation would be limited to cottage and specialty sizes (up to 5,000 square feet) and to existing structures for cultivation areas over 500 square feet. Mixed light operations are recommended up to 10,000 square feet in all three agricultural zones. Staff finds that while agricultural zoning designations are naturally more suitable for outdoor and mixed-light cultivation, small-scale indoor cultivation in accessory structures may be appropriate, particularly to support and supplement traditional agricultural uses. Members of the agricultural community and others have expressed interest in indoor cultivation in agricultural zones as it could supplement the income earned from traditional agriculture.

2. Permit Requirements

The following range of policy options are related to the level of permit required to allow the specified types of cultivation. The following permit thresholds are used as policy options:

- Zoning Permit – a ministerial, subject to standards, no conditioning authority
- Minor Use Permit – discretionary, can add conditions, hearing waiver if no protest
- Conditional Use Permit – discretionary, can add condition, noticed hearing

Zoning permits are considered a use “by right” and though they are subject to standards, there is no authority to add additional conditions to address site specific factors. Minor Use Permits are often approved administratively with a hearing waiver, but are discretionary in that conditions can be added to address compatibility or environmental concerns. Conditional Use Permits are discretionary permits, subject to project-specific environmental review, require a noticed hearing and may include additional conditions to address compatibility or environmental concerns.

The main policy question to consider in determining appropriate permit thresholds for ministerial zoning permits is what scale of use would be consistent with the General Plan, compatible with the neighborhood and reduce impacts in all circumstances where the use is allowed by right? Special consideration should be given to cumulative impacts of ministerial land uses in determining the appropriate permit thresholds. The following options are presented for each type of cultivation by size. Refer to the table: *Summary of Allowed Land Uses and Permit Requirements for Cannabis Uses*.

- A. Zoning Permit for Some Cultivation Types/Sizes.** This option would allow a ministerial zoning permit (by right) for some types of cultivation or sizes subject only to the standards. No notification or public hearing is required and no additional conditions to address site specific concerns can be added.
- B. Minor Use Permit for Some Cultivation Types/Sizes.** This option would allow a minor use permit instead of a conditional use permit for some types of cultivation or sizes. This provides for public notification, possible hearing waiver and usually exempt from environmental review or has no significant impacts. Minor use permits are often used for minor expansion of existing uses and are generally approved administratively by staff.
- C. Conditional Use Permit for Some Cultivation Types/Sizes.** This option would permit some types and sizes of cultivation with a conditional use permit which would require a public hearing for all cannabis uses and no ministerial permitting.

Analysis

Outdoor cultivation is generally similar to other crops, except for the need for screening, fencing and other security measures (i.e. guards). Generally solid fencing is discouraged in rural areas to retain the visual and scenic quality of agricultural areas, yet outdoor cultivation is often secured with solid 8-foot tall solid fencing and or screened to deter theft and access to youth. Indoor cultivation can require large industrial buildings that may have visual impacts on a cumulative basis and may convert valuable agricultural land, resulting in gradual depletion of farmlands. Mixed light cultivation likewise involves structures that can have a visual impact on a large scale or even on a small scale on a cumulative basis

Staff Recommendation: Options A and C. Staff recommends a zoning permit for all types of cottage size cultivation in all three agricultural zones. Zoning permits are recommended for larger outdoor operations (up to 10,000 square feet) in the LEA and DA zones as shown in table *“Summary of Allowed Land Uses and Permit Requirements for Cannabis Uses”*. In the LIA zone, staff recommends that only cottage sized grows be permitted with a zoning permit, and larger operations require a conditional use permit. Staff recommends that the “medium” sized mixed light cultivation operations (up to 22,000 sq. ft.) be considered in Phase II due to the potential to cause significant visual impacts and the recommendation is to limit this size during Phase I. Due to the uncertainty over the acceptance of this land use in some areas, staff does not recommend the minor use permit process and instead prefers to provide the opportunity for a public hearing before the Board of Zoning Adjustments to review larger operations on a case by case basis.

3. Establish Cultivation Standards

The proposed Ordinance includes a combination of minimum parcel sizes and cultivation standards to minimize impacts. Additional policy options related to cultivation on agricultural land are provided below.

- A. **Property Setbacks.** The proposed Ordinance includes a setback for outdoor and mixed light cultivation operations of 100 feet from property lines and 300 feet from occupied residences and business on adjacent properties. The Commission could modify these limits provided that equivalent mitigation is provided. The setbacks are intended to address odor and security concerns, visual impacts and access by youth with outdoor and mixed light operations.
- B. **Separation Criteria** The proposed Ordinance includes a 600 foot setback from sensitive uses for outdoor and mixed light operations. Sensitive uses include schools, parks, childcare centers, and alcohol or drug treatment facilities. These setbacks could be increased to 800 or 1,000 feet, similar to other jurisdictions, but could not be reduced below the 600 feet separation required in state law for schools. The Commission could consider changing the types of sensitive land uses that require separation other than schools (i.e. whether to include parks, or other businesses that primarily cater to children).
- C. **Minimum Parcel Sizes.** The staff recommendation includes minimum lot sizes relative to the size of the cultivation operations. The Commission could reduce or expand the minimum lot sizes for the size of operation as long as an equivalent mitigation of impacts is provided. The minimum lot sizes apply only to outdoor and mixed light or greenhouse operations as they are more apparent with greater potential for odor and security concerns. There are no minimum lot sizes proposed for indoor cultivation which can have odor controls and greater security.
- D. **Existing Structure Limitation for Indoor and Mixed Light Cultivation**

Agricultural lands contain prime soils and carry greater regulatory protections in order to keep land in productivity. For these reasons the staff recommendation includes restricting indoor and mixed light operations to existing structures within the LIA zone and only the “specialty” indoor size for other agricultural zones.

- E. **Permit Grouping.** The proposed Ordinance would allow a single entity to obtain multiple cultivation permits, but the total canopy cannot exceed one acre within Sonoma County. The Ordinance would also allow a single property owner to lease to multiple small-scale operators with ministerial zoning permits provided that the minimum lot size is met and the total area does not exceed the maximum allowed.

- F. **Allow in Agricultural Preserves on properties with Land Conservation Act (Williamson Act) contracts.** Cannabis operations are not currently listed as an allowed use in the Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones (“Uniform Rules”). A proposed companion amendment to the Uniform Rules would allow cannabis cultivation on land within an Agricultural Preserve under a Land Conservation Act contract as a compatible use, but would not provide tax breaks to that portion of the site used for cultivation.

Analysis

Setbacks are often used to ensure neighborhood compatibility and mitigate impacts of a particular land use such as odor, noise, or light. Setbacks are effective ways to mitigate these impacts as they focus on site design elements rather than regulating ongoing behaviors. Setback requirements would ensure space between a cultivation site and the property line and/or a neighboring structure.

A minimum parcel size is often used to disperse development intensities and the associated visual impact and ensure that cumulative impacts are minimized such as odor, light and crime. Similar to setbacks, minimum parcel sizes can also mitigate impacts experienced on neighboring properties. Unfortunately, high minimum parcel sizes increase the startup costs of a compliance business, especially with the cost of land in Sonoma County. This requirement also decreases the number of viable parcels within the unincorporated County.

Minimum lot sizes are used primarily to reduce cumulative impacts and overconcentration. They also serve to mitigate impacts associated with odor, noise, and aesthetics by providing more area to separate land uses, provide screening and attenuate noise. Larger lot sizes also reduce the potential access to children and can deter crime by providing more area for screening, fencing and on-site security.

The staff recommendation includes the ability for one parcel to allow multiple zoning permits. This allows for smaller growers to become established with a ministerial zoning permit, while larger operations would require use permits. Under the proposed Ordinance, cannabis permits would run with the operator and require annual renewal.

Staff Recommendation: Options A-F The proposed Ordinance includes the implementation of setbacks, minimum lot sizes, and separation criteria to minimize impacts to land surrounding cannabis operations. The limitation on existing structures would further protect prime soils and existing agricultural operations. Allowing permit grouping would allow more growers to relocate into more appropriate areas with a ministerial zoning permit. Finally, allowing cultivation on lands under a Land Conservation Act Contract would enable existing agricultural operations to diversify into cannabis cultivation which would increase financial stability of existing Sonoma County agriculture.