



PLANNING DEPARTMENT COUNTY OF TEHAMA

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Kristen Maze
Planning Director

February 13, 2018

Liz Merry
Representative
P.O. Box 474
Manton, CA 96059

RE: Application Completeness and Process for the Proposed Ordinance (Rezone #17-06); Establishment of Cannabis Cultivation, Distribution, Sales, Manufacturing and Testing Limitations for Personal and Commercial Purposes Countywide

Dear Ms. Merry,

Thank you for your response to the Tehama County Planning Department's December 11, 2017 incomplete letter. The Planning Department received your letter on January 24, 2018. The letter appears to dispute the Lead Agency's (Tehama County Planning Department) authority and determination that an Environmental Impact Report (EIR) is required without an Initial Study, pursuant to CEQA Guidelines § 15060(d), § 15063(a) and the Tehama County CEQA Procedure Guidelines, Section VIII Environmental Impact Reports.

The Director of Planning, as the lead agency authority, has determined that an EIR is required for this proposed rezone Initiative (quasi-legislative act) based on several factors that were identified during the preliminary review done December 1- December 11, 2017. During the review with the different Tehama County departments and other responsible agencies, the factors identified included the 1.4 million acres of land within the affected zone districts. This could significantly impact public services and cause land use conflicts as stated in the Board of Supervisors latest findings (Ordinance No. 2040 adopted 5-2-17). Based on these findings, the impacts on crime, fire hazards, life, health, safety, and welfare are evidence of social or economic significant impacts on the County.

The proposed physical introduction of cannabis on approximately 1.4 million acres of land is considered substantial evidence pursuant to CEQA Guidelines §15064(e), which states "If the physical change (introduction of cannabis in one form or another) causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant." In addition, the proposed project could have significant physical effects on the environment pursuant to CEQA Guidelines §15064(d). The countywide rezone initiative would cause a physical change by introducing cannabis through the planting, cultivation, presence, distribution, sales, manufacturing and testing limitations for personal and commercial purposes on up to 1.4 million acres of land

within the proposed zone districts. This could cause adverse economic or social impacts on people, as well as significant effects on public services and land use. This 1.4 million acres includes all of the lands affected by the zone districts that are specifically identified within the proposed ordinance (See Attachment A, Project Description Chart). This table does not include city and government (State/Federal) jurisdictional lands. The Breakdown of those zones and their acreage are as follows;

- Airport (AV-Dwellings 17.08.090(H) only ;44 acres),
- Agricultural (AG-1 through 4; 1,038,232 acres),
- Commercial (C-1 through 4 with various combining districts; 3,817 acres),
- Industrial (M-1 and M-2 with various combining districts; 2,947 acres),
- Natural Resource and Primary Flood (NR and PF-Dwellings 17.08.090(H) only; 55,780 acres),
- Public Agency (PA-Non-City/State/Federal Lands-Dwellings 17.08.090(H) only; 1,630 acres),
- Planned Development (PD; 2,302 acres),
- Residential One-Family (R-1 with various combining districts; 46,144 acres),
- Multi-Family Residential; includes R-2,R-2-MH, R-3 and R-4 Districts; 162 acres),
- Residential Estates (RE with various combining districts; 18,181 acres),
- Sun City Special Plan; Master Planned Community (SCSP-Dwellings 17.08.090(H) only; 3,408 acres),
- Timber Production Zone (TPZ-Dwellings 17.08.090(H) only; 239,477 acres).

Dwellings can be or are permitted in all of the zoning districts above.

Some of the zone district lands contain permitted dwelling units, which would be allowed to cultivate cannabis for personal indoor recreational and medicinal purposes as a right (Proposed Ord. Section 17.08.090(H)), without a waiver on a case by case basis as currently required pursuant to Tehama County Ordinance 2040. The 2014-2019 Tehama County Housing Element, adopted by the Board of Supervisors on September 30, 2014, states on pages 1-6 that 18,218 households or dwelling units are constructed in the unincorporated area of Tehama County. Since this information has been adopted by the County, it is considered substantial evidence regarding the accepted number of households or dwelling units within Tehama County that would be affected by the proposed rezone initiative Section 17.08.090(H).

The applicants speculation regarding the number of legal/illegal tenant occupancies, illegal citizen occupied dwellings, etc. needs actual data that is considered substantial evidence pursuant to CEQA Statute § 21082.2(a)&(c). Please provide substantial fact based numbers and specific evidence of your assertions for the County to consider. Regardless, if the rezone initiative is adopted, anyone of the permitted dwellings within the County are eligible for the cultivation of personal indoor recreational and medicinal cannabis as long as they comply with the current established laws.

Although the state of California recognizes cannabis as "agriculture", it is not considered to be an "agricultural crop". The use of a pesticide for the cultivation of medical marijuana falls under the broad definition of "agricultural use" in the Food & Agricultural Code (FAC § 11408), the California Department of Food and Agriculture has taken an official position that marijuana/cannabis is not an agricultural crop at this time. As with other outdoor agricultural products that emit noxious and/or offensive odors, such as dairy farms, the County may

regulate these uses through a conditional use permit process and/or prohibit them in some or all zone districts.

The EIR referenced in your response letter is a program level EIR, where the study and analysis only considers the environmental impacts of licensed cannabis cultivation activities conducted in accordance with the Proposed Program. Based on the review of the state level analysis the study for public services, among other sections of the report reveals a lack of detailed analysis or no analysis of Tehama County. The following statements from the document demonstrate the vague manner in which the States program level EIR addressed local level government services and settings for public services:

4.11.3 Environmental Setting/ Fire Protection and Emergency Service/ Local Government Fire Departments "In most areas of the state where cannabis cultivation could occur under the Proposed Program, fire protection would primarily be the responsibility of the local city or county fire department. The resources of these local fire departments vary throughout California." Page 4-11.3 [California Department of Food and Agriculture June 2017 Cal Cannabis Cultivation Licensing Project No. 16.015 Draft PEIR]

4.11.3 Environmental Setting/ Police Protection/ Local Government Fire Departments "In unincorporated areas within California, police protection service is typically provided by the county sheriff's department. These county departments often cover large, sparsely populated areas and, therefore, have longer response times for their service areas than their city counterparts." Page 4-11.4 [California Department of Food and Agriculture June 2017 Cal Cannabis Cultivation Licensing Project No. 16.015 Draft PEIR]

The EIR required for this rezone initiative must provide information specific to Tehama County and the significant effects of the introduction of state/local permitted/licensed, personal indoor/outdoor cultivation, sales, distribution, possession etc. will have on the unincorporated area of Tehama County. The State Program EIR is not legally defensible for the proposed rezone initiative at a local level of analyses, it simply does not provide enough relevant detailed data specific to Tehama County nor does it analyze the impacts of local program related personal and/or recreational cultivation. In fact, even the States Program EIR documents the increase in criminal activity related to the presence of cannabis "On balance, the information contained in the literature and from available news stories suggests that cannabis cultivation is potentially at elevated risk for crime" Page 4-11.7 [California Department of Food and Agriculture June 2017 Cal Cannabis Cultivation Licensing Project No. 16.015 Draft PEIR]. Furthermore, the States Program EIR indicates that local law enforcement could become strained or significantly impacted by entities seeking new cannabis cultivation businesses under the program, which does not even take into account the personal recreation and/or medicinal indoor/outdoor cultivation proposed in this rezone initiative. The Program EIR states "In areas of California that would experience a large number of new cannabis cultivation businesses under the Proposed Program, it is possible that existing police protection services could be strained to provide resources beyond their existing capacities." Page 4-11.9 [California Department of Food and Agriculture June 2017 Cal Cannabis Cultivation Licensing Project No. 16.015 Draft PEIR]. For these reasons and as an example of the information specific to Tehama County that is needed, the County will require the following information for a base line analysis, along with other additional environmental data.

Pursuant to Procedures for Preparation and Processing of Environmental Documents (CEQA) Section I. Introduction C. Project Application subsections 3, In order to proceed with an environmental analyses regarding public services, County staff will need the number of cannabis related code enforcement (Health Dept./Fire Dept.) charges for the past five years, and criminally related cannabis law enforcement cases for the past five years.

Even though the States Program EIR doesn't specifically correlate the increase in criminal activity with the proposed physical change through the planting, cultivation, presence, distribution, sales, manufacturing and testing limitations for personal and commercial purposes on up to 1.4 million acres of land within Tehama County's proposed zoning districts, it may causes adverse economic or social effects on people, as well as significant effects on public services and create land use conflicts. The information above continues to support the County's position and requirement of an EIR pursuant to CEQA Guidelines §15064(e) and (d). Therefore, based on all the proposed application and the size of the area that will be introduced to cannabis in one form or another, the County is confident that an EIR is appropriate at this time.

The Master Planning Department Application for your project consists of two parts:

- Part 1: The land use, project description and applicant/property owner information and acknowledgements,
- Part 2: Environmental Information Form that includes project information required to support, process, and proceed with the discretionary request (Ordinance; Rezone #17-06).

The Environmental Information Form needs to be signed by the applicant in order the project to be considered complete. The CEQA Environmental Agreement for the related consultant and service fees is required prior to moving forward with the proposed project. The County requires a deposit of \$20,000 and a signed agreement to cover the initial cost of the services. As per the Tehama County CEQA Procedure Guidelines Section I. Introduction (C) Project Application (1)(c), The application for filing shall include "the appropriate environmental fee as set forth on the County's fee schedule." All lead agencies preparing EIRs may charge and collect a reasonable fee to recover the estimated costs incurred in preparing the EIR (14 California Code of Regulations §15045).

The EIR will be conducted by a third party and subject to a reimbursement agreement and deposit(s) prior to the project moving forward in the process [Tehama County's CEQA Procedure Guidelines Section VIII. EIRS (G) Consultant Selection Procedure for Private Projects (1) & (2)]. Should the applicant refuse to enter into such an agreement, the County may schedule the project for a hearing with a recommendation of disapproval without prejudice. The applicant may request the Planning Commission to consider the proposed project as is and be recommended for approval to the Board of Supervisors with a CEQA Exemption. The force of these requirements is vested in CEQA Statute § 21082.

A third party consultant will prepare all aspects of the EIR, of which the associated consultant cost will be reimbursed and required before the proposed project can move forward through the public review process. As stated above, this requirement for a consultant to prepare an EIR for the rezone initiative will take the form of a written agreement between the applicant and the Tehama County Board of Supervisors, and a \$20,000 deposit for the consultant services will be required at the time of approval and signing by the Board of Supervisors or within 10 business days of the date of Boards approval. Once the agreement has been signed by both parties and the deposit amount of \$20,000 dollars is received, the Planning Department will start the Request for Proposal (RFP) process that will ultimately result in the selection of a consultant. At that time, the applicant will be notified of the CEQA consultants

full cost estimate and another deposit will be required to submit before hiring the project consultant in the amount of \$60,000. Once the CEQA consultant is hired an additional amount of \$20,000 is required upon receiving the consultant's first invoice. The applicant is responsible for the full cost of the consultant's fees for the project as it moves through the public review process.

This letter acts as further notification that the application is considered incomplete until such time as the Environmental Information Form is signed by the applicant, and that the project will not move forward through the project review process until the Environmental deposit fees associated with the EIR consultants reimbursement agreement are submitted to the County according to the terms of the agreement as noted above. Since the applicants letter dated January 24, 2018 does not appear to support an EIR for this proposed rezone initiative or the agreement deposit terms, the applicant has 15 days from the date this letter is mailed to submit a written appeal of these requirements. The appeal shall be in the form of a letter that outlines the reasons why the EIR should not be required. This appeal shall be heard by the Board of Supervisors pursuant to Tehama County's CEQA Procedure Guidelines Section VIII. EIRS (D) Appeals. We look forward to working with you on this proposed project. Please do not hesitate to contact me or Kristen Maze if you have any questions.

Regards,



Scot Timboe
Planner III

Cc: Jason Browne P.O. Box 9152 Red Bluff, CA 96080
Tehama County Board of Supervisors
Tehama County Counsel

ATTACHMENT A
REZONE NO. 17-06-COUNTYWIDE PROJECT DESCRIPTION CHART
EFFECTED TEHAMA COUNTY ZONING DISTRICTS

ZONING DISTRICT CATEGORY	ACRES	PARCEL ESTIMATE
Proposed Ordinance Section 17.08.090(A)Pg.12 Personal and Collective Outdoor Cultivation		
AG-1,AG-2,AG-3,AG-4, RE AND R-1 DISTRICTS NO CONDITIONAL USE PERMIT	1,102,557	29,857
Proposed Ordinance Section 17.08.090(B)(1)Pg.13 Commercial Outdoor Cultivation; Specialty Cottage exceeding 5 acres in areas classified as Rural Large Lot and Rural Small Lot and Designated R-1		
R-1 DISTRICTS WITH CUP/AREA LESS THAN 2,500 SF	54,409	3,561
Proposed Ordinance Section 17.08.090(B)(2)Pg.13-14 Specialty, Small and Medium Outdoor, Nursery, Processor and Producing Dispensary Meeting Sections 26050 and 26062 of the BPC		
AG-1,AG-2,AG-3,PD,M-1 AND M-2 DISTRICTS WITH CUP/5,000 SF TO 1 AC.	1,030,502	11,853
Proposed Ordinance Section 17.08.090(C)Pg.14 Commercial Outdoor Cannabis Cultivation for Hemp Production Purposes		
AG-4 DISTRICT (COMMUNITY OF CAPAY) WITH CUP NOT LESS THAN 5 AC.	12,979	300
Proposed Ordinance Section 17.08.090(D)Pg.15 Commercial Distribution and Sales of Cannabis for Recreational and Medicinal Purposes (Retail Sales)		
C-1,C-2,C-3,C-4,PD,M-1 AND M-2 DISTRICTS WITH CUP	9,066	1,101
Proposed Ordinance Section 17.08.090(E)Pg.15 Commercial manufacturing on Non-Volatile Cannabis Plant Conversion for Recreational and Medicinal purposes and Testing Laboratories		
C-2,C-3,PD,M-1 AND M-2 DISTRICTS WITH CUP	1,869	960
Proposed Ordinance Section 17.08.090(F)Pg.15 Commercial Manufacturing of Volatile Marijuana Plant Conversions for Recreational and Medicinal purposes		
M-1 AND M-2 DISTRICTS WITH CUP	2,947	298
Proposed Ordinance Section 17.08.090(G)Pg.16 Outdoor Cannabis Cultivation, Distribution and Sales <u>PROHIBITED</u>		
R-2,R-3, R-4, G-R,AV,PF, PA,NR, FS, AND TPZ DISTRICTS PROHIBITED	297,610	NA
Proposed Ordinance Section 17.08.090(H)Pg.16 Personal Indoor Cannabis Cultivation for Recreational and Medicinal Purposes (NO CUP)		
Indoor Personal Cultivation allowed in all Permitted Dwellings-18,218* (House Elem. Est. 0.06% Growth)		
Proposed Ordinance Section 17.08.090(I)Pg.16 Commercial Indoor Cannabis cultivation for Recreational and Medicinal Purposes (WITH CUP)		
Indoor Commercial Cultivation allowed in M-1 and M-2 Districts-248 structures (Est. 0.0 to 0.1% Growth)		
* US CENSUS 2013 Dwelling Estimate 18,218 or Planning Dept. GIS (Zoning, Structure and General Plan Layers).		
Acerages above will not add up to the 1.4 million acres referenced in the content of the letter due to the overlapping zoning districts and the applicants specifically located proposed uses.		