

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

PROJECT TITLE: Planning Commission Zoning Workshop on Cannabis “Opt Out” Regulations

APPLICANT: Trinity County Community Development Services Cannabis Division

PROPERTY OWNER: Not applicable

REPORT BY: David Colbeck, Interim Deputy Director, Environmental Compliance Specialist II, Department of Transportation

LOCATION: Countywide

GENERAL PLAN DESIGNATION: Various, see discussion below.

ZONING DISTRICT: Various, see discussion below.

SITE CHARACTERISTICS: Not applicable

INTRODUCTION AND BACKGROUND:

Purpose of Workshop

The purpose of this workshop is to explore process, criteria, and additional direction for establishment and/or continued regulation of Cannabis uses in identified geographic areas of the County (referred to as “opt out” areas). The direction provided by the Planning Commission will be considered by the Board of Supervisors in establishing criteria for “opt out” provisions in the County’s Commercial Cannabis regulations. These criteria would be used to evaluate existing temporary and new opt out areas, and may be used to evaluate established permanent opt out areas.

Recommended conduct of workshop. Staff recommends the following steps for conducting this workshop:

1. Staff introduces the item
2. County consultant provides a verbal presentation with slides
3. Planning Commission asks clarifying questions (if any)
4. Public comment accepted on all discussion items
5. Planning Commission general discussion (if any)
6. Staff walks through each numbered discussion item, requesting Commissioner input on each item
7. Planning Commission to continue Workshop to March 10, 2022 regular meeting if more time is needed

Attachment A provides a workshop action sheet to help guide public comment and Planning Commission input. As directed by the Chair, Commission input may be provided individually and/or through the use of informal non-binding straw polling.

Existing Restrictions on Location of Various Cannabis Uses

County Code contains various restrictions by use type regarding where Cannabis can be located, including a combination of buffers, setbacks, zone district requirements, and other location-based exclusions for specified special districts, identified areas, and community areas (referred to as “Opt Out” areas). Table 1 (Attachment B) provides an annotated summary of countywide restrictions. These regulations apply to privately owned land in the unincorporated County. Cannabis activities are not allowed on land owned by local, state, or federal government. A breakdown of land ownership in the County is provided in Table 2.

TABLE 2: TRINITY COUNTY LAND OWNERSHIP SUMMARY

Area	Acreage	% of Total
Private	515,415	24.3%
Local Government	7,307	0.3%
State Government	2,752	0.1%
Federal Government	1,598,690	75.3%
Total	2,124,165	100%

Summary of Cannabis Uses in Trinity County

A summary of the Cannabis cultivation licensed through the County Cannabis Program is provided in Table 3.

TABLE 3: TRINITY COUNTY CANNABIS CULTIVATION SUMMARY

Assumption	Use Type	# of Sites	Canopy Acreage	Other Supporting Acreage	Total Acreage
Existing	Outdoor	111	25.50	63.75	89.25
	Mixed	85	19.50	48.75	68.25
	Indoor	2	00.02	00.05	00.07
	Total	198	45.02	112.55	157.57
New	Outdoor	151	57.78	144.45	202.23
	Mixed	177	40.63	101.58	142.21
	Indoor	4	00.05	00.13	00.18
	Total	332	98.46	246.16	344.62
Total	All	530	143.45	358.71	502.19

Source: Cannabis Program Final EIR, Volume 2 Draft, Table 2-3. Page 2-24. Note that these figures are based on information gathered during the development of the Cannabis Program Final EIR and do not represent the current state of the program after the Superior Court ruling on September 7, 2021 (see Cannabis License Status within each Opt Out section)

A summary of all Cannabis land use types known or anticipated to be licensed through the County Cannabis Program is provided in Table 4.

TABLE 4: TRINITY COUNTY CANNABIS ACTIVITY SUMMARY

Cannabis Use Type	Existing Sites	Assumed New Sites	Total # of Sites ¹
Cultivation	198	332	530
Nursery	2 ²	6	8
Distribution	2	2	4
Distribution (Transport only)	8	15	23
Testing	0	2	2
Retail Non-Storefront	0	2	2
Microbusiness	0	3	3
Manufacturing	0	2	2
Total	210	364	574

Notes:

1/ 2018 data from Cannabis Program Final EIR

2/ County conditional use permits issued for two sites; no State licenses issued.

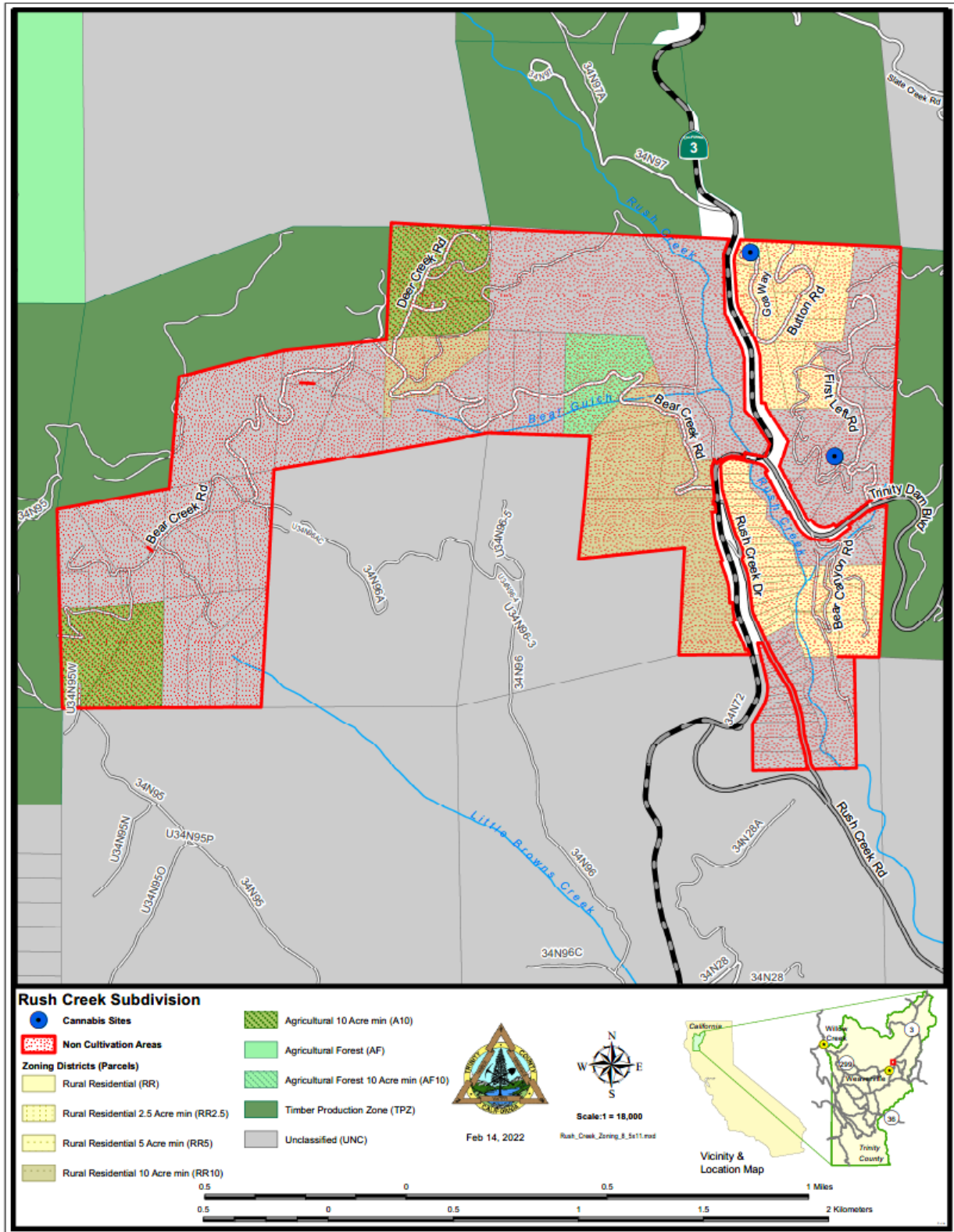
Rush Creek Estates Opt Out Urgency Ordinance

On August 18, 2020 the Trinity Board of Supervisors adopted Ordinance No. 315-845 entitled “An Urgency Interim Ordinance of the Board of Supervisors of the County of Trinity Imposing a Temporary Moratorium on the Issuance of Commercial Cannabis Cultivation Licenses Within the Area of Rush Creek Estates” (Rush Creek Estates Opt Out Urgency Ordinance). This Ordinance covers the Rush Creek Estates Opt Out Area shown in red on Figure 1. This area is located generally in the eastern and central area of the County. It contains 101 parcels totaling 907 acres zoned as shown in Table 5.

The Ordinance was adopted as an “urgency” measure pursuant to California Government Code Section 65858 which allows the regulation to take effect immediately upon approval for a 45-day period with two allowed extensions. The Board extended this Ordinance once on September 29, 2020 for 10 months and 15 days which is the maximum allowed period for a second extension, and again on July 7, 2021 for one year which is the maximum and final allowed period under this section of the code. The Ordinance will expire July 7, 2022. Staff proposes to return prior to expiration with an amendment to the County’s Commercial Cannabis Cultivation Regulations to incorporate the Rush Creek Estates Opt Out Area into Section 17.43.050, *Limitation on Location to Cultivate Cannabis*.

As shown on Figure 1, there are approximately two cultivation sites that have been licensed, or in the application process, operating within the Rush Creek Estates Opt Out Area. To date, this operator has not submitted an environmental checklist for review pursuant to the County Transition Plan and Cannabis Program Final EIR (see discussion of Current Licensing Environmental Review below). The Urgency Ordinance prohibits new and transferred cultivation licenses, but is silent regarding the status of the existing operator. A general discussion of transferability is provided later in this staff report.

FIGURE 1: RUSH CREEK ESTATES OPT OUT AREA



Note: This map shows one CCL currently in process and one CCL that has been revoked

TABLE 5: RUSH CREEK ESTATES OPT OUT AREA ZONING

Zone District	Acreage	% of Total
UNC	567.7	62.6
RR10	110.1	12.1
A10	84.5	9.3
RR5	47.8	5.3
RR2.5	42.6	4.7
RR	27.9	3.1
AF10	26.1	2.9
Total	906.8	100.0

Lewiston Opt Out Urgency Ordinance

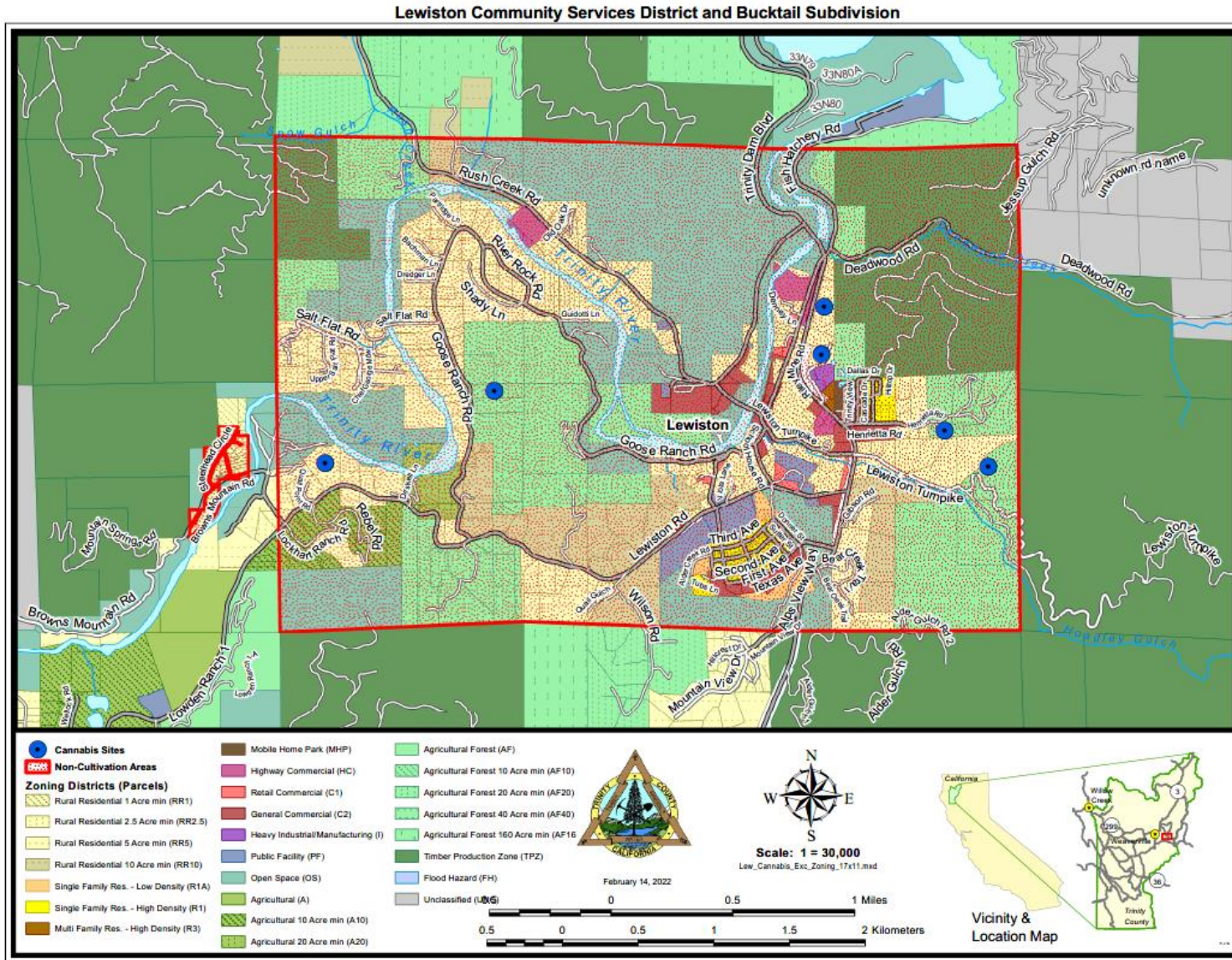
On June 15, 2021, the Board adopted Ordinance No. 315-850 Ext 1 entitled “An Urgency Interim Ordinance of the Board of Supervisors of the County of Trinity Imposing a Temporary Moratorium on the Issuance of Commercial Cannabis Cultivation Licenses Within the Area of Lewiston” (Lewiston Opt Out Urgency Ordinance). This Ordinance covers the Lewiston Opt Out Area shown in red on Figure 2 and the Lewiston Expansion Opt Out Area shown in red on Figure 3.

The Ordinance was also adopted as pursuant to Government Code Section 65858. As allowed under that section of the Government Code, the Board extended the Ordinance once on June 20, 2021 for 10 months and 15 days which will expire June 15, 2022 unless extended a second and last time for up to one year. Staff proposes to return prior to expiration with an amendment to the County’s Commercial Cannabis Cultivation Regulations to incorporate the Lewiston Opt Out Area and Lewiston Expansion Opt Out Area into Section 17.43.050, *Limitation on Location to Cultivate Cannabis*.

The Lewiston Opt Out Area (Figure 2) is located generally in the eastern and central area of the County. It contains 646 parcels totaling just over 2,942 acres zoned as shown in Table 6. As shown on Figure 2, there are approximately six existing cultivations sites that have been licensed, or in the application process, operating within the Lewiston Opt Out Area. To date, only one of these operations has submitted an environmental checklist for review pursuant to the County Transition Plan and Cannabis Program Final EIR (see discussion of Current Licensing Environmental Review below).

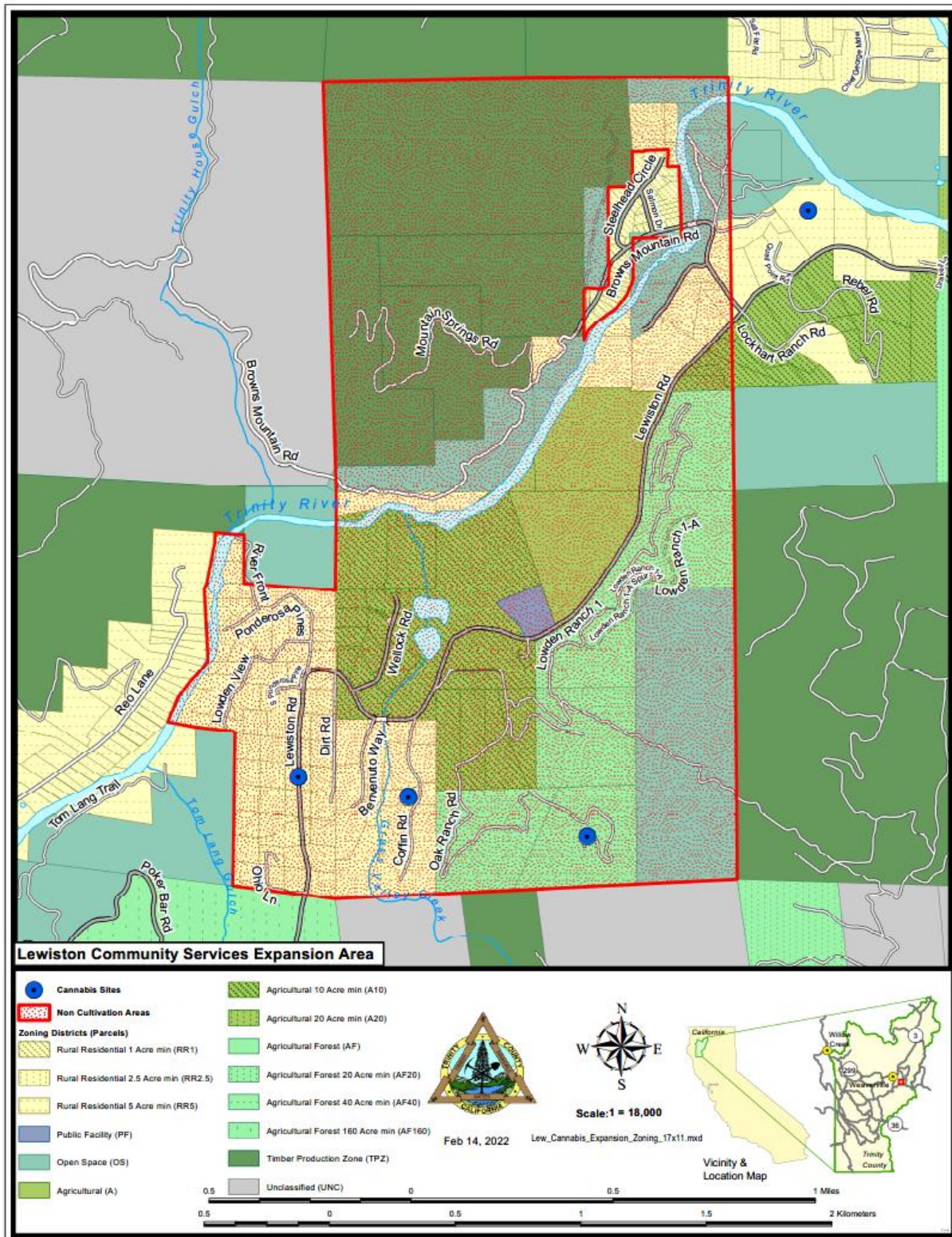
The Lewiston Expansion Opt Out Area (Figure 3), also referred to as the Grass Valley Creek area, is located immediately west of the Lewiston Opt Out Area. It contains 119 parcels totaling just over 1,882 acres zoned as shown in Table 7. As shown on Figure 3, there are approximately four existing cultivations sites that have been licensed, or in the application process, operating within the Lewiston Expansion Opt Out Area. Currently, only one of these operations has submitted an environmental checklist for review pursuant to the County Transition Plan and Cannabis Program Final EIR (see discussion of Current Licensing Environmental Review below). The Lewiston Expansion Opt Out Urgency Ordinance prohibits new cultivation licenses in Lewiston Expansion Opt Out Area. New manufacturing licenses in the Lewiston Expansion Opt Out were prohibited in the Lewiston Opt Out Urgency Ordinance discussed above. Current licensed cultivators may transfer their licenses to properties outside the area or to a new owner of their legally licensed property within the area. A general discussion of transferability is provided later in this staff report.

FIGURE 2: LEWISTON OPT OUT AREA



Note: This map shows several CCLs that have previously been licensed. Only one is currently in environmental review.

FIGURE 3: LEWISTON EXPANSION OPT OUT AREA



Note: This map shows several CCLs that have previously been licensed. Only one is currently in environmental review.

TABLE 6: LEWISTON OPT OUT AREA ZONING

Zone District	Acreage	% of Total
OS	484.4	16.5
AF20	437.7	14.9
RR5	387.3	13.2
RR2.5	369.6	12.6
RR10	260.4	8.9
RR1	245.0	8.3
AF40	174.0	5.9
AF160	136.9	4.7
C2	120.6	4.1
A10	64.1	2.2
PF	51.9	1.8
R1	40.7	1.4
A20	40.6	1.4
HC	36.9	1.3
C1	27.1	1.0
R1A	26.9	1.0
MHP	9.0	<1
R3	8.1	<1
I	5.6	<1
AF10	5.5	<1
Total	2,942.2	100.0

TABLE 7: LEWISTON EXPANSION OPT OUT AREA ZONING

Zone District	Acreage	% of Total
TPZ	358.3	19.0
AF	298.9	15.9
OS	294.4	15.6
RR5	292.4	15.5
A10	291.4	15.3
A	129.6	6.9
AF40	118.3	6.3
RR2.5	82.1	4.4
RR1	9.2	<1
PF	7.3	<1
Total	1,882.0	100.0

The Lewiston Opt Out Urgency Ordinance prohibits new and transferred cultivation licenses in the Lewiston Opt Out Lewiston Expansion Opt Out areas between June 15, 2021 and June 15, 2022, and prohibits any expansion of an existing cultivation site. This ordinance also prohibits new manufacturing licenses. Current licensed cultivators may transfer their licenses to properties outside the area or to a new owner of their legally licensed property within the area. A general discussion of transferability is provided later in this staff report.

ENVIRONMENTAL REVIEW FOR CURRENT LICENSEES:

Pursuant to Section 15162 through 15164 of the CEQA Guidelines, the County has developed a Cannabis Program Environmental Checklist to demonstrate site-specific CEQA Compliance for each commercial Cannabis licensee/applicant. When it can be documented that the impacts of a Cannabis project fall within the scope of the County's certified Cannabis Program Final EIR, the project can be considered a "subsequent activity" under CEQA, and may rely on the Cannabis Program Final EIR for CEQA clearance.

The Checklist enables the County to identify appropriate mitigation measures for each project site based on specific site conditions, and requires the applicant to commit to specific actions to implement each mitigation measure. The CEQA environmental review process is site specific so the contents of each Checklist will be unique to each project. Not all identified programmatic mitigation measures will apply to every project site. The Commercial Cannabis Program Transition Plan contains more information on the current environmental review and licensing process:

https://www.trinitycounty.org/sites/default/files/Planning/CANNABIS/Programmatic_EIR/Resources/Complete_Transition_Plan_BOS_Review_v.2_101521%20%282%29.pdf

COURT ORDERED SETTLEMENT AGREEMENT

A Superior Court Order was issued on September 7, 2021, (*Trinity Action Association, Inc. v County of Trinity, et al*; Trinity County Superior Court Case No. 19CV001) requiring the County to adhere to a Settlement Agreement with Trinity Action Association (August 2019) and prohibiting the County from licensing any Cannabis operation without first completing site-specific CEQA review. The Court allowed compliant Cannabis operations to continue harvesting and related activities through October 31, 2021 within the terms specified in the court order. Subsequent to October 31, 2021 very few licenses in Trinity County have satisfied the requirement for site-specific CEQA review. To date, there are no current licenses issued within the Rush Creek Estates, Lewiston, and/or Lewiston expansion opt out areas.

APPEALS OF LICENSES WITHIN OPT OUTS:

Numerous appeals have been filed with the Planning Commission regarding both the denial and approval of Cannabis licenses. Several of these appeals have been related to the opt out areas. For background, the following is a list of some of these appeals specific to the Lewiston and Rush Creek areas.

These appeals agenda items can be located and reviewed here:

Planning commission: <https://www.trinitycounty.org/Agendas-Minutes-Staff-Reports>

Board of Supervisors: <https://www.trinitycounty.org/BOS-Agenda-Minutes>

PLANNING COMMISSION MEETING DATE: 03/11/2021, ITEM NO. 5

REQUEST: An appeal of Planning Director's decision to approve a renewal of Commercial Cannabis License 2020-453 (Lewiston).

OUTCOME: Vote was split 2-2 resulting in denial of the appeal

BOARD OF SUPERVISORS MEETING DATE: 04/20/2021

REQUEST: Appeal of Planning Commission Decision in item above.

OUTCOME: Upheld Planning Commission's decision to deny appeal

PLANNING COMMISSION MEETING DATE 10/08/2020, ITEM NO. 2

REQUEST: An appeal of Planning Director's Decision to approve Commercial Cannabis Cultivation License 2020-691 (Lewiston).

OUTCOME: Item tabled per staff recommendation

PLANNING COMMISSION MEETING DATE May 9, 2019, ITEM NO. 4

REQUEST: Appeal of Planning Director's decision to issue a Commercial Cannabis Cultivation License (Weaverville)

OUTCOME: The vote was 3-2 resulting in denial of the appeal

WORKSHOP DISCUSSION ITEMS:

Table 1 provides an overview of existing locational controls on commercial Cannabis activities. As noted earlier in this report, the County relies on a combination of buffers, setbacks, zone district requirements, and other location-based exclusions for specified special districts, identified areas, and communities (referred to as "Opt Out" areas).

The County currently has no established policies, standards, or criteria for consideration of new, modified, or expanded geographically based exclusion areas. In general, opt out areas have been considered on a case-by-case basis. Staff has identified the following considerations for establishment or modification of opt out areas (in no order). Specific discussion points are identified for each item.

Input from the Planning Commission is requested as to whether and which of these items would be appropriate to include in a draft general policy for consideration by the Board. Attachment A provides a workshop action summary to help guide public comment and Planning Commission input. It should be noted that issuance of cannabis licenses and use permits can only occur in compliance with CEQA and the Settlement Agreement, both of which are described in more detail below.

1. Area Specific Considerations – The County's authority to consider new or amended opt out areas derives from its authority to protect the general health, safety, and welfare of the community. Reasons for creation of new or amended opt out areas should be clear, substantiated, consistent, unique to the area under consideration, and not have adverse social equity outcomes. Examples could include the following:

- Water quality/quantity concerns
- Unique topography and/or geographic conditions
- Infrastructure (including road conditions and capacity) and/or utility/service constraints
- Safety, crime, nuisance, compliance history, and/or illegal activity
- Land use compatibility and/or community character concerns
- Other appropriate factors

For each area of concern, information should be provided that documents how the proposed area experiences the issue in a way unique from other regions individually and the rest of the county as a whole. Thresholds for acceptability should be derived from relevant policies and standards in the County's General Plan and/or other adopted planning or environmental documents.

Discussion Points:

- a. Does the Planning Commission agree these considerations are relevant?
- b. Are there other relevant area specific considerations?

2. Effects of Other Geographically-Based Restrictions – It may be relevant to consider the number and proximity of other locational controls in an area. Too many restricted areas in proximity could potentially create unequitable burdens on other regions in the County. The size and geographical area proposed for the opt out area may also be relevant.

Considerations when establishing regulatory boundaries are that they should be logical (reflect the application of facts and data relevant to the decision), equitable (not favor one interest group to the detriment of another), and avoid both internal islands (sometime called “carve outs”) and external islands (sometimes referred to as “leap frogging”).

Discussion Points:

- a. Does the Planning Commission agree these considerations are relevant?

3. Treatment of Existing Licensees in Restricted Areas – Where existing licensees are operating in an area in which the Cannabis use is otherwise prohibited by ordinance, direction is requested regarding the various issues summarized below.

- Expiration: This option would establish a set point at which an existing previously authorized cannabis use would expire. This could be the next point at which the license would require renewal, a similar point one or two renewal cycles in the future to allow for a “wind down” or transition period, or an arbitrary date such as within a specified number of years of the effective date of the prohibition. For ease of enforcement the expiration should occur automatically.
- Exception: This option would create an exception or exemption in the zoning regulations for an existing previously authorized cannabis use. This is often referred to as “grandfathering”. This would allow existing otherwise compliant operators (legal nonconforming uses) to continue so long as they follow all other regulations. Specific provisions should be include to address proposals to expand or modify the nonconforming use (discussed further below).

Section 17.43.050 of the Commercial Cannabis Cultivation regulations includes exceptions for cultivation applicants to locate within the following otherwise restricted areas based on their status related to the North Coast Region Water Quality Control Board (NCRWQCB) Order #2015-0023 entitled “Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region” issued August 13, 2015:

- May continue to cultivate within a timber production zone (TPZ) if they completed enrollment in the NCRWQCB Order #2015-0023 by August 1, 2016
- May continue to cultivate in the Weaverville Community Services District if they submitted an application for enrollment under NCRWQCB Order #2015-0023 by December 31, 2016

- May continue to cultivate in the Lewiston Community Services District if they submitted an application for enrollment under NCRWQCB Order #2015-0023 by January 15, 2017
- May continue to cultivate in the Coffee Creek Volunteer Fire District if they submitted an application for enrollment under NCRWQCB Order #2015-0023 by November 30, 2017
- May continue to cultivate in the Trinity Center Community Services District if they submitted an application for enrollment under NCRWQCB Order #2015-0023 by November 30, 2017
- Expansion: Expansion could include expansion of the intensity of the use within the same footprint and/or expansion of the footprint of the use (for example, stacking). Chapters 17.43 through 17.43G are silent on the issue of expansion or modification within a restricted area. The Rush Creek Estates Opt Out Urgency Ordinance is also silent on these issues. The Lewiston Opt Out Urgency Ordinance prohibits any expansion of an existing cultivation site, and does not speak specifically to modification.
- Violations – The County relies on Sections 8.64 (Abatement of Nuisances) and 8.90 (Violations – Penalties) to enforce Cannabis regulations. There is no distinction in the County’s enforcement process currently for violations based on site location. Staff could explore establishment of more stringent rules and procedures for violations on sites within restricted areas, such as license revocation and/or loss of “grandfathering” protections.
- Transfer: Whether or not the license can be transferred to another location outside of the restricted area (relocation), and the ease and expense with which this can be accomplished should be considered as a way of incentivizing relocation out of prohibited area. Presumably transfer to another property within the restricted area would not be allowed, but transfer to an otherwise compliant property outside of the restricted area could be. Currently in County regulations transferability of Cannabis licenses varies by use type. Transfer to new owners upon sale of a property and transfer by the same licensee to a new site are treated separately. Table 8 provides a summary of County regulations regarding Cannabis license transfers.

Section 17.43.030(E) of the County Commercial Cannabis Cultivation Ordinance specifies the conditions under which ownership of a cultivation license may be transferred. Pursuant to the Cultivation Ordinance, ownership of a license may only be transferred under the following conditions:

- As part of the sale of the property, provided the new owner applies for and qualifies for the license.
- To other property owned or rented (with permission to cultivate) by the licensee, provided the operator applies for and qualifies for the license at the new location. Presumably this would not apply within any restricted area or opt out.
- License transfers are restricted to once per calendar year.

Transfer of nursery licenses is expressly precluded. Testing licenses may be transferred to a new owner. Manufacturing licenses may be transferred to a new owner and/or a new location. The code

is silent regarding transferability of distribution, retail non-storefront, and/or microbusiness licenses and therefore transfer is presumed to be prohibited¹.

As summarized in Table 8, The, general provisions described above may not apply in opt out areas, depending on the language in the opt out ordinance.

TABLE 8, CANNABIS LICENSE TRANSFERABILITY

Cannabis Use Type	Transferable?	Restrictions
Cultivation	Yes (see opt out exceptions)	Section 17.43.030(F) allows transfer to new owner and/or transfer to new location. Rush Creek Estates Opt Out prohibits transfer to new owner and/or new location within the opt out area. Lewiston and Lewiston Expansion Opt Out prohibits transfer to new owner and/or new location within the opt out areas. Transfer to new location outside of the areas is allowed.
Nursery	No	Precluded by Section 17.43A.040(I).
Distribution	No	Express permission not provided in code.
Testing	Yes	Section 17.43C.050(I) allows transfer to new owner.
Retail Non-Storefront	No	Express permission not provided in code.
Microbusiness	No	Express permission not provided in code.
Manufacturing	Yes	Section 17.43F.060 allows transfer to new owner and transfer to new location.

- Other Incentives to Relocate – In addition to allowing transfers of licenses as discussed above, the County could consider other incentives to relocate. Humboldt County has established various “accommodations” for pre-existing Cultivation Sites. Among those is the “Retirement, Remediation, and Relocation” or “RRR” program (Humboldt County Code Section 55.5.6.5.9) to encourage the relocation of eligible pre-existing cultivation sites operating in “inappropriate, marginal, or environmentally sensitive” sites to environmentally superior sites. The Humboldt regulations identify the following requirements for eligibility in the RRR program:
 - Period of Operation of RRR Site (e.g. January 1, 2006 through January 1 2016)
 - Zone District of RRR Site (e.g. TPZ, RA, U, AG FR, or AE)
 - Criteria for RRR Sites (e.g. irrigation water without required rights or permits, underperforming roads, slopes in excess of 15 percent, non-compliant setbacks, and other criteria)
 - Criteria for Relocation Sites (e.g. zone district, minimum parcel size in relation to cultivation area, water source, owner occupancy, energy sources, and other performance standards)

¹ In general zoning is considered to be a “permissive” regulation meaning that if a particular activity is not expressly allowed, it is generally presumed to be precluded absent other substantiated interpretation of related language in the regulations.

Eligible pre-existing sites may receive a zoning clearance certificate or special permit for cultivation on the relocation site of up to four times the original area, not to exceed 20,000 square feet. To receive the benefit the operator must fully remediate the pre-existing site including removal of all cannabis-related improvements, regrading, and revegetation/restoration, and other terms documented by a recorded covenant on the property.

Discussion Points:

- a. Expiration: Should authorization for existing licensees in prohibited areas expire? If so at what point?
 - Immediately when regulation becomes effective
 - At next license renewal
 - After two renewal cycles
 - At an arbitrary future date established in the regulations
- b. Exception: Should otherwise prohibited existing operations be allowed to continue?
- c. Expansion: Should existing licensees in prohibited areas be allowed to expand the intensity or footprint of their operation?
- d. Modification: Should existing licensees in prohibited areas be able to modify their operation if it does not change the intensity or footprint?
- e. Violations: Should the staff explore more stringent rules and procedures for violations on sites within restricted areas, such as license revocation and/or loss of “grandfathering” protections.
- f. Transfer: Should existing licensees in prohibited areas be allowed to transfer their license:
 - To a new owner in the event of a sale?
 - To another property within the restricted area?
 - To another property outside the restricted area?
- g. Other Incentives to Relocate – Should the County explore an incentive program?

4. Prohibited License Types – As shown in Table 1, the County general regulations and the two Urgency Ordinances contain considerable variation regarding prohibitions by Cannabis license type. Input from the Commission is requested regarding development of a more comprehensive and consistent policy regarding Cannabis prohibitions by use type.

Discussion Points:

- a. Should opt out prohibitions automatically apply to all Cannabis use types?
- b. Should opt out prohibitions apply only to cultivation?
- c. Should opt out prohibitions apply to various Cannabis use types as determined on a case-by-case basis?
- d. Should opt out prohibitions apply to future Cannabis use types, such as storefront retail and processing?

5. Term Limits for Geographic Prohibitions – There are various options for establishing term limits for opt out regulations ranging from none at all to automatic expiration at a certain “sunset” point. Currently the geographic or locational controls in the Commercial Cannabis regulations are all permanent with no term limits. The Rush Creek Estates Urgency Ordinance will expire July 7, 2022 unless adopted as a permanent regulation. The Lewiston Opt Out Urgency Ordinance will expire June 15, 2022, and has one more one year extension, unless adopted as a permanent regulation.

While the County may reevaluate any aspect of any land use regulation at any time, the County could also add a requirement for regular review of the Cannabis regulations and/or including regular review of only certain components. For example, the County could add a requirement for evaluation of the geographic restrictions in Section 17.43.050 of the Cultivation Ordinance every five years. This could be accompanied by a staff report on implementation, and staff recommendations for potential change. The County could also apply specific terms to specific controls. For example prohibitions established in a particular geographic area could be set to automatically sunset five years from the effective date, unless extended or otherwise modified by the Planning Commission and/or the Board.

With particularly controversial land use matters this approach could provide a useful interim regulatory step that allows for a “trial period” to explore options and observe the effects of a particular regulatory approach. On the other hand, it could also exacerbate public concerns about an issue by not providing decision-making certainty.

Discussion Points:

- a. Should implementation of the Cannabis regulations (in whole or in part) be regularly reviewed and, if so, how frequently?
- b. Should prohibitions in specific community areas expire on a particular date, and/or require regular review at set intervals?

6. Variances –

Trinity County Code section 17.43.050(A)(8) establishes setback requirements for the cultivation of commercial Cannabis. Unless specifically excluded in the Opt Out ordinance, an applicant would be eligible to receive a variance on these setback requirements as part of an Opt Out application. Variances are allowed through the procedure in TCC 17.31.

Discussion Points:

- a. Should current/potential licensees in the Opt Out areas be able to receive a variance?
- b. Should variances be annual approvals through the Planning Commission?

7. Input From Public – It is important to consider different perspectives including those of residents, property owners, and active cultivators. Required public hearings with broad public outreach are important to ensure this occurs. The Board of Supervisors appointed an Ad Hoc Committee of Supervisor Keith Groves (District 1) and Supervisors Dan Frasier, District 5 to discuss Cannabis regulatory issues, including Opt Outs. This Committee regularly reports out to the full Board regarding weekly meetings held with standing Committee members, open public meetings, and private meetings with stakeholders and interested parties. Further, Planning Commission and Board of Supervisors meetings, such as this workshop, are publicly noticed and available via Zoom in order to provide for public input to decision-makers.

STAFF/AGENCY COMMENTS: Not applicable

PUBLIC COMMENTS RECEIVED: Not applicable.

GENERAL PLAN CONSISTENCY: See Table 1 (Attachment B).

ZONING CODE COMPLIANCE: See Table 1 (Attachment B)

SUBDIVISION CODE COMPLIANCE: Not applicable

ENVIRONMENTAL REVIEW: The proposed adoption of a process, criteria, and additional direction for establishment and/or continued regulation of Cannabis uses in identified geographic areas of the County (referred to as “opt out” areas) was anticipated as part of the Trinity County Cannabis Program and CEQA clearance is provided by the Trinity County Cannabis Program Final Environmental Impact Report (EIR) (SCH #2018122049) (see Attachment C). The Cannabis Program EIR was certified by the Board of Supervisors on December 21, 2020 (Resolution 2020-10). Pursuant to CEQA Guidelines Sections 15153 (Use of an EIR From an Earlier Project) and/or Section 15168 (Program EIR), no further environmental review is required. Under such circumstances, CEQA Guidelines Section 15061(b) direct that a Notice of Exemption (NOE) be filed.

STAFF RECOMMENDATION: Staff requests the Planning Commission provide direction regarding the workshop discussion items. Input received at this workshop will be used by staff to draft a policy for consideration by the Board of Supervisors. Staff proposes to return to the Planning Commission’s April 14, 2022 regular meeting with an amendment to the County’s Commercial Cannabis Cultivation Regulations to incorporate the Rush Creek Estates Opt Out Area, Lewiston Opt Out Area, and Lewiston Expansion Opt Out Area into Section 17.43.050 (Limitation on Location to Cultivate Cannabis). Other amendments to the Commercial Cannabis Cultivation Regulations may be appropriate following policy direction from the Board.

ATTACHMENTS:

- A – Workshop Action Summary
- B – Table 1, County Zoning Location Restrictions by Cannabis Use Type
- C – Relevant Excerpts from 2020 Cannabis Program Final EIR

**ATTACHMENT A
WORKSHOP ACTION SUMMARY**

Summary of Item	Discussion Points	Input from Planning Commission
1. Area Specific Considerations		
Reasons for creation of new or amended opt out areas should be: clear, substantiated, consistent, unique to the area under consideration, and not have adverse social equity outcomes. See examples and further discussion in staff report.	a. Does the Planning Commission agree these considerations are relevant?	
	b. Are there other relevant area specific considerations?	
2. Effects of Other Geographically-Based Restrictions		
Geographically-based regulatory boundaries should be: logical (reflect the application of facts and data relevant to the decision), equitable (not favor one interest group to the detriment of another), and avoid both internal and external islands. See examples and further discussion in staff report.	a. Does the Planning Commission agree these considerations are relevant?	
3. Treatment of Existing Licensees in Restricted Areas		
Regulations for existing licensees operating in an area in which the cannabis use is otherwise prohibited by ordinance. See examples and further discussion in staff report.	a. Expiration: Should authorization for existing licensees in prohibited areas expire? If so at what point? <ul style="list-style-type: none"> • Immediately when regulation becomes effective • At next license renewal • After two renewal cycles • At an arbitrary future date established in the regulations 	
	b. Exception: Should otherwise prohibited existing operations be allowed to continue?	
	c. Expansion: Should existing licensees in prohibited areas be allowed to expand the intensity or footprint of their operation?	

	d. Modification: Should existing licensees in prohibited areas be able to modify their operation if it does not change the intensity or footprint?	
	e. Violations: Should the staff explore more stringent rules and procedures for violations on sites within restricted areas, such as license revocation and/or loss of “grandfathering” protections.	
	f. Transfer: Should existing licensees in prohibited areas be allowed to transfer their license: <ul style="list-style-type: none"> • To a new owner in the event of a sale? • To another property within the restricted area? • To another property outside the restricted area? 	
	g. Other Incentives to Relocate -- Should the County explore an incentive program?	
4. Prohibited License Types		
Many of the Cannabis prohibitions apply solely to cultivation and not to other Cannabis use types. Should various geographical prohibitions apply to other cannabis license types (e.g. nurseries, manufacturing, distribution, testing, retail non-storefront, and microbusiness)? See examples and further discussion in staff report.	a. Should opt out prohibitions automatically apply to all cannabis use types?	
	b. Should opt out prohibitions apply only to cultivation?	
	c. Should opt out prohibitions apply to various cannabis use types as determined on a case-by-case basis?	
	d. Should opt out prohibitions apply to future Cannabis use types, such as storefront retail and processing?	

5. Term Limits for Geographic Prohibitions		
The County could add a term limit for opt out regulations, could require regular review of the cannabis regulations, and/or could require regular review of only certain components. See examples and further discussion in staff report.	a. Should implementation of the cannabis regulations (in whole or in part) be regularly reviewed and if so, how frequently?	
	b. Should prohibitions in specific community areas expire on a particular date, and/or require regular review at set intervals?	
6. Variances		
The County could prohibit variances for properties in the Opt Out zones.	a. Should current/potential licensees in the Opt Out areas be able to receive a variance?	
	b. Should variances be annual approvals through the Planning Commission?	
7. Input from Public		
Public outreach should be broad to ensure that all affected perspectives are considered.	a. Is the current public outreach process for opt outs adequately robust?	
	b. How could public outreach be improved?	

ATTACHMENT B

TABLE 1: COUNTY ZONING LOCATION RESTRICTIONS BY CANNABIS USE TYPE

Location Requirement	Cultivation ¹	Nursery ²	Distribution ³	Testing ⁴	Retail Non-Storefront ⁵	Micro-business ⁶	Manufacturing ⁷
BUFFERS²⁴							
1,000 ft buffer from youth oriented facility, school, church, or residential treatment facility	X	X ⁸	X ⁸	X	X	X ¹⁷	X
500 ft buffer from school bus stop	X	X ⁸	X ⁸	X	X ⁸	X ¹⁷	X ⁸
500 ft buffer from property line	X ^{8,9}					X ^{8,17}	
350 ft buffer from residential structure on adjoining parcel	X ^{8,10}					X ^{8,17}	
ZONE DISTRICTS							
Allowed by right in all zones except TPZ ¹¹ , R1, R2, R3	X				X ²¹	X ¹⁷	
Conditionally allowed in A, C3, M1, M2, I, SUD (on industrial parcels only), AP ¹²		X				17	
Conditionally allowed in A, AF, C2, C3, I, SUD (on industrial parcels only)			X ¹⁵			17	
Conditionally allowed in C2, C3, I				X			
Conditionally allowed in A, AP, AF, C2, C3, I, SUD (on industrial parcels only)						17	X ^{18,21}
Conditionally allowed A, AP, AF, C2, C3, I, SUD (on industrial parcels only), RR, U							X ^{19,21}
Conditionally allowed in C3, I, SUD (on industrial parcels only)							X ^{20,21}
Excluded in Ruth Lake SUD w/in Ruth Lake Recreation Area		X				17	
SPECIAL DISTRICTS							
Excluded on lease lots in Ruth Lake CSD	X		X ¹⁴		X	X	X
Excluded in Weaverville CSD	X ¹¹				X	X ¹¹	
Excluded in Trinity Center CSD	X ¹¹				X	X ¹¹	X
Excluded in Lewiston CSD (specified Sections)	X ¹¹				X	X ¹¹	X
Excluded in Coffee Creek Volunteer Fire District	X ¹¹				X	X ¹¹	X
OTHER RESTRICTED LOCATIONS							
Excluded on parcels with no legal dwelling	X					X	
Excluded in Whiskeytown-Shasta-Trinity NRA	X	X ¹³	X ¹⁴		X	X	X
Excluded in Bucktail Subdivision	X				X ¹⁶	X	X
Excluded in Weaverville Historic District							X

TEMPORARY OPT OUT AREAS							
Excluded in Rush Creek Estates Opt Out Area	X ²²						
Excluded in Lewiston Opt Out Area	X ²³						X ²³
Excluded in Lewiston Opt Out Expansion Area	X ²³						X ²³

Notes:

- 1/ Commercial Cannabis Cultivation Regulations, Chapter 17.43
- 2/ Wholesale Cannabis Nursery and Resale of Auxiliary Nursery Products, Chapter 17.43A
- 3/ Distribution Regulations for Commercial Cannabis, Chapter 17.43B
- 4/ Cannabis Testing Facilities Regulations, Chapter 17.43C
- 5/ Cannabis Non-Storefront Retail, Chapter 17.43D
- 6/ Cannabis Microbusiness, Chapter 17.43E
- 7/ Cannabis Manufacturing, Chapter 17.43F
- 8/ Variances allowed
- 9/ Applies to medium license category only
- 10/ Applies to specialty cottage, specialty and small license categories only
- 11/ Exceptions:
 - May continue to cultivate within a timber production zone (TPZ) if applicant completed enrollment in the NCRWQCB Order #2015-0023 by August 1, 2016
 - May continue to cultivate in the Weaverville Community Services District if applicant submitted an application for enrollment under NCRWQCB Order #2015-0023 by December 31, 2016
 - May continue to cultivate in the Lewiston Community Services District if applicant submitted an application for enrollment under NCRWQCB Order #2015-0023 by January 15, 2017
 - May continue to cultivate in the Coffee Creek Volunteer Fire District if applicant submitted an application for enrollment under NCRWQCB Order #2015-0023 by November 30, 2017
 - May continue to cultivate in the Trinity Center Community Services District if applicant submitted an application for enrollment under NCRWQCB Order #2015-0023 by November 30, 2017
- 12/ With restrictions
- 13/ Excluded in RD1 within this area
- 14/ Distributor (Transport Only) Type 13 license types allowed. Distributor Type 11 license types not allowed
- 15/ Distributor (Transport Only) licenses types allowed in any zone district with a use permit
- 16/ Units 1, 2, and 3
- 17/ Must hold a Cultivation license. If conducting Distribution, Retail, or Manufacturing must meet the zoning requirements for that use type.
- 18/ Type 6, Type N, and Type P
- 19/Microbusiness conducting specified Type 6 activities
- 20/Type 7 only
- 21/ Prohibited on prime agricultural soil
- 22/ Urgency Ordinance No. 315-845. Prohibits new and transferred cultivation licenses in Rush Creek Estates Opt Out Area until July 7, 2022
- 23/ Urgency Ordinance No. 315-850 Ext 1. Prohibits new and transferred cultivation licenses in Lewiston Opt Out Area until June 15, 2022. Prohibits any expansion of an existing cultivation site. Current licensed cultivators may transfer their licenses to properties outside the area or to a new owner of their legally licenses property within the area. Prohibits new manufacturing licenses in Lewiston Opt Out Area and Lewiston Opt Out Expansion Area.
- 24/ All required setbacks within the applicable zone district also apply

ATTACHMENT C

Relevant Excerpts from 2020 Cannabis Program EIR

Cannabis Program Final EIR

As described in the staff report, CEQA coverage for this action is provided under the certified 2020 Cannabis Program Final EIR. Relevant excerpts from the EIR are as follows:

Excerpt #1 -- Chapter 2, "Modification to Cannabis Program Since Release of the Draft EIR", Section 2.1.1, "Commercial Cannabis Opt Out Areas" and "Environmental Analysis", pages 2-1 to 2-2:

The past and current commercial cultivation ordinance lists specific geographic locations where new commercial cannabis cultivation is prohibited as established in Trinity County Code Section 17.43.051. These designated geographic areas have been informally referred to as "Opt Outs," "Carve Outs," or "Opt-Out Areas" but are referred to as Opt-Out Areas for this discussion. This section of code specifically states:

Within the legal boundaries of the Weaverville Community Services District, Coffee Creek Volunteer Fire District and Trinity Center Community Services District, Bucktail Subdivision and within the following area [sic] of the Lewiston Community Services District: Mt. Diablo Meridian, Township 33N, Range 8W, Sections 17, 18, 19, 20, and Mt. Diablo Meridian, Township 33N, Range 9W, Section 24, 13, which are in proximity to high density areas, and therefore, create a substantial risk of a public nuisance.

In August 2020, the Rush Creek area became a commercial cannabis cultivation Opt-Out Area through the adoption of an urgency ordinance. Although Opt-Out Areas currently exist and have been removed, modified, and added in the past when amendments have been adopted for the cannabis cultivation ordinance, a consistent process has not been established.

A process for establishing Opt-Out Areas that includes criteria and additional direction for creating or modifying areas where commercial cultivation is prohibited may be included in a new ordinance. Potentially, other noncultivation license types within the Cannabis Program may also be considered as prohibited activities within Opt-Out Areas. This process may consider factors such as public input, population size or density, environmental and topographic elements, infrastructure, utilities, safety, existing illegal cannabis operations or abandoned cultivation sites, proximity to sensitive receptors, nearby land uses, General Plan land use designations and zoning districts, parcel size, existing licensed commercial cannabis operations, and other factors that are relevant to adoption of an Opt-Out program and associated provisions. Specific guidelines may also be included in the process related to commercial cannabis operations licensed prior to adoption of an Opt-Out Area that may not comply with the new or modified Opt-Out Area provisions.

The process for the addition, modification, or removal of Opt-Out Areas, including specific provisions, may be done through the adoption of a resolution by the Board of Supervisors rather than an ordinance amendment. Although the ordinance would reference the Opt-Out Area process and general provisions, the adoption of actual Opt-Out Areas would be done by resolution with a map exhibit identifying the boundaries of the Opt-Out Area. The provisions may include specific conditions for an Opt-Out Areas, such as the number, size, density, location, or type of licensed commercial cannabis operations; exclusion of new licensed commercial cannabis operations; transferability of licensed commercial cannabis operations; or other provisions as adopted by the Board of Supervisors. A

resolution creating Opt-Out Areas may include resolution renewal timeframes, sunset clauses, or provisions establishing expiration dates.

ENVIRONMENTAL ANALYSIS

The establishment of Opt-Out Areas would provide opportunities to reduce some of the Cannabis Program environmental impacts to local communities for the following areas:

- ☐ visual character (DEIR Impact 3.1-2),*
- ☐ odors (DEIR Impact 3.3-3),*
- ☐ groundwater (DEIR Impact 3.10-2), and*
- ☐ construction noise (DEIR Impact 3.12-1).*

The Opt-Out Area provisions would not completely avoid or mitigate the countywide impacts identified in the DEIR or ensure that they would be applied to all communities where impacts are anticipated to occur. However, these provisions would not create a new significant impact or result in an increase in severity of significant impacts identified in the DEIR.

Excerpt #2 -- Chapter 4, "Comments Received After the Draft EIR Review Period", Section 4.2.6, "Use of Opt-Out Action as Mitigation", pages 4-11 to 4-12:

Several comments requested that the DEIR consider the use of opt-out action as a mitigation measure to address environmental impacts associated with land use compatibility.

Opt-out areas consist of defined geographic areas (e.g., a residential community) where some or all commercial cannabis land uses are prohibited to address concerns regarding land use compatibility and quality of life concerns. The Cannabis Program currently does not have a regulatory process to consider requests for land areas to opt out. As described in Chapter 2, "Modifications to Cannabis Program Since Release of Draft EIR," of this document, the County has proposed modifications to the Cannabis Program that would include opt-out provisions that may limit or exclude cannabis uses in certain areas of the county. Should opt-out provisions be included in the ordinance creating the Cannabis Program, such provisions would become part of the guiding County regulation and would not be considered a mitigation to address a specific environmental factor.

The DEIR identifies environmental impacts and mitigation measures (where feasible) that include environmental issues such as odor, dust, noise, and traffic that can create nuisances to sensitive land uses (e.g., residential uses). These impacts are addressed in DEIR Sections 3.3, "Air Quality," 3.12, "Noise," and 3.14, "Transportation/Traffic." While the implementation of opt-out areas may reduce these impacts locally for communities participating in the opt-out provisions, it would not fully mitigate all environmental impacts identified in the DEIR countywide. For example, air quality impacts identified in DEIR Section 3.3, "Air Quality," involve the entire North Coast Air Basin (see DEIR pages 3.3-14 through 3.3-23). Opt-out areas would also not mitigate traffic noise anticipated to be generated countywide from buildout of commercial cannabis uses (see DEIR pages 3.12-11 through 3.12-13).