



TRINITY COUNTY

PLANNING DEPARTMENT

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January 19, 2017

TO: MEMBERS IN SESSION

SUBJECT: Agenda Item 4, January 19, 2017 Planning Commission meeting.

Discuss and/or take action regarding requests to allow the growing and harvesting of commercial cannabis in the Agriculture-Forest (AF) Zoning District.

PURPOSE:

The purpose of this item is for the Commission to discuss and then make recommendations to the Board of Supervisors and/or direction to staff concerning whether commercial cannabis growing should be an allowable use, with or without a use permit, in the AgForest Zoning District.

BACKGROUND:

The Agricultural Forest District or "AF" District is located in Section 14 of the County Zoning Ordinance. Its purpose is for the production and harvesting of trees and management of the land for forestry related purposes. This zoning district pre-dates the creation of Timberland Production Zone contract zoning created by the State. (See Exhibit "A" for full text of the AF Zone) While not listed in the allowable uses, the County has allowed development of one single family dwelling on an AF zoned property to facilitate management of the land.

There have been several inquiries from property owners of land zoned AF to grow and harvest commercial cannabis. Staff informed them that the zoning district does not allow any use other than uses relating directly to forest products and/or processing.

GENERAL PLAN POLICIES:

Most land zoned Ag-Forest has a "Resource" land use designation, although it is sometimes found in areas with the "Agriculture" land use designation. The description of "Resource Land" is located on page 11 of the land use element of the General Plan and reads as follows:

"Resource lands are those areas designated for the production of the variety of natural resources that occur within Trinity County. Natural resources include timber production, mineral production, and important grazing areas. Activities necessary for the production of the various resources are encouraged in this area, and can include industrial development sited adjacent to the resource base being used (timber, ore, etc.) if adequate transportation facilities and access are available and if an acceptable low level of environmental impact can be maintained."

Under the “Economic Findings and Policies” section (p.17) is found the following:

“Important timber, agriculture, recreation, scenic, mineral, and wildlife resources should be protected for use. These resources are critical to the economic well-being of Trinity County.”

CANNABIS IMPACTS TO AG-FOREST LANDS:

An astute gentleman came to the counter two weeks ago and asked about growing cannabis on his 23 acre parcel zoned Ag-Forest in the Wildwood area. Staff explained the purpose of Ag-Forest and its relationship to the county’s resource base and that the only uses allowed are those directly relating to the growing and processing of forestry products. He reminded us that there is a size limitation on a commercial cannabis grow of 10,000 sq. ft. canopy area, plus the extra 5,000 sq.ft. under the 150% provision, and that he has an area larger than that on his property with no trees which would be a good site to grow cannabis. Wouldn’t it be possible to meet the County’s objective of managing the timber resources on his land and also have a limited area for cannabis? Couldn’t both forestry farming and cannabis farming coexist on the same parcel and still meet the goals and objectives of the General Plan?

Staff reviewed aerial photos of his parcel and confirmed that there is an area without trees, perhaps from activities of a prior owner or naturally occurring. This area meets all of the cannabis setback requirements and does not appear to be associated with an area needed for a log landing.

Based on this example, it may be possible to manage a parcel zoned Ag-Forest for forestry purposes and also have an area to develop a commercial cannabis operation.

Adding “*commercial cannabis cultivation, 10,000 sq.ft. or less canopy area*” to the Ag-Forest zoning district list of allowable uses would require an amendment to the Zoning Ordinance. Also, if added, should it be allowed with or without a Planning Commission issued use permit.

RELATIONSHIP TO TIMBERLAND PRODUCTION ZONE:

While preparing this report, staff noted that Ag-Forest (AF) zoning does not allow any activity except those associated with forestry, yet there is a desire to determine if cannabis farming should be allowed in Ag-Forest.

Interestingly, the Timberland Production Zone (TPZ) which is established for forestry purposes allows “grazing and other agricultural uses” without a use permit (See Exhibit “B”). This should probably be deleted from the TPZ provisions, because it appears to be in conflict with State law pertaining to TPZ. Or if the Commission and Board still agree that “grazing and other agricultural uses” is a “compatible use” with timberland production, then perhaps limited cannabis cultivation should be considered in TPZ as well as Ag-Forest.

Section 51115 of the California Government Code states that: "Parcels zoned as timberland production shall be zoned so as to restrict their use to growing and harvesting timber and to compatible uses. The growing and harvesting of timber on those parcels shall be regulated solely pursuant to state statutes and regulations."

Section 51115.5 of the California Government Code reads: "(a) The zoning of a parcel pursuant to this chapter shall give rise to a presumption that timber operations, as defined in Section 4527 of the Public Resources Code, may reasonably be expected to and will occur on that parcel."

Section 51116 of the California Government Code reads: "The county or city may bring any action in court necessary to prohibit a use not permitted with respect to land zoned as timberland production, including, but not limited to, an action to enforce the zoning restrictions by specific performance or injunction."

The Commission and Board should also be aware that there have been at least ten inquiries from owners of TPZ land asking how to be removed from TPZ. The California Government Code describes this process beginning with Section 51112. The request is processed by the County using the procedure for rezoning property and takes a minimum of ten years to complete. This means that the new zoning classification goes into effect ten years after approval. This may be an issue that should be discussed further in the future.

CANNABIS URGENCY ORDINANCE:

To avoid the ordinance amendment process, a suggestion was made to simply amend the urgency ordinance to allow commercial cannabis growing in the Ag-Forest Zone. However, the urgency ordinance is not written to state what "is" allowed, it states where cannabis is not allowed (See Ord. 315-816 (A-1), section 5). It appears, then, that it would be more appropriate to go through the zoning ordinance amendment process, including public hearings before the Planning Commission and Board of Supervisors. Compliance with the requirements of the California Environmental Quality Act (CEQA) would also be necessary.

If other amendments to the Zoning Ordinance are being proposed, it would be more cost effective to process them all at one time. If one application is prepared relating to cannabis cultivation, then one environmental document could be prepared. If only one Notice of Determination is necessary, then only one submittal of Fish & Wildlife fees would be necessary.

PUBLIC COMMENTS:

Staff received one letter from the public (See Exhibit "C", letter from Liz McIntosh) with comments pertaining to allowing cannabis cultivation in the Ag-Forest Zoning District. It raises an issue regarding options that should be addressed.

She writes: "Cannabis cultivation is similar in use to other uses listed in the AgForest Zone." Section 30A is cited as a means to allow cannabis cultivation in Ag-Forest.

Section 30.A reads: “If any ambiguity arises concerning the appropriate classification of a particular use within the meaning and the intent of this Ordinance, or with respect to matter of height, area requirements or zone requirements as set forth herein, the Planning Commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretations and thereafter such interpretation shall govern. Similar use, as used in the Ordinance, means the same character of use and no less restricted in nature, i.e., generates no more traffic, parking, dust, noise, etc., and if retail uses are specified, “similar” means retail.”

As the Commission can see from the Ag-Forest Zoning provided as Exhibit “A”, there are no uses listed which the Commission can find are similar to cannabis cultivation. Also, the provisions of Section 30.A are not intended to be a way to avoid the normal amendment process. The assumption is that the Commission finds that a use is of the same type or character as a use already listed.

RECOMMENDATION:

There are several options available to the Commission.

1. Recommend that the Board retain the Ag-Forest Zoning District as it is currently written, which means that commercial cannabis cultivation would not be allowed.
2. Recommend that the Board direct staff to initiate an amendment to the Agricultural Forest Zoning District to add “commercial cannabis cultivation, 10,000 sq.ft. or less canopy area” to the list of uses, subject to first obtaining a Planning Commission issued use permit.
3. Recommend that the Board direct staff to initiate an amendment to the Agricultural Forest Zoning District to add “commercial cannabis cultivation, 10,000 sq.ft. or less canopy area” to the list of uses permitted without a use permit.

Respectfully submitted,



John Alan Jelichich,
Interim Planner

SECTION 14. AGRICULTURAL FOREST DISTRICT OF AF DISTRICTS

Subject to the provisions of Section 30, none but the following uses, or uses which in the opinion of the Planning Commission are similar in nature will be allowed. See Section 30.A.

- A. **USES PERMITTED:** Management of land and forest for the production and harvest of trees and other natural resources (including tree farming), management of land and forest in a manner designed to provide protection from fire caused either by man or nature, insects, diseases, or other catastrophe, logging, primary wood processing plants and operations, and accessory buildings and uses.
- B. **USES PERMITTED SUBJECT TO FIRST SECURING A USE PERMIT IN EACH CASE:** Other uses which are incidental to the primary purpose of "A- F" district including, but not limited to a permanent wood processing installation.
- C. Reserved.
- D. Reserved.
- E. **FOR SUBDIVISION PURPOSES, THE MINIMUM PARCEL SIZE REQUIRED:** A corner and an interior lot - 10 acres. (315-200)
- G. **MINIMUM LOT WIDTH REQUIRED:** No requirement.
- I. **MAXIMUM ALLOWABLE LOT COVERAGE BY ALL STRUCTURES:** No requirement.
- J. **MAXIMUM ALLOWABLE HEIGHT:** No requirement.
- K. **MINIMUM FRONT YARD REQUIRED:** Twenty (20) feet. (Ord. 315-722)
- L. **MINIMUM SIDE YARD REQUIRED:** (Interior and Exterior lot lines) Twenty (20) feet.
- M. **MINIMUM REAR YARD REQUIRED:** Twenty (20) feet. (Ord. 315-722)
- N. **GENERAL REQUIREMENT:** Any petition to establish, reclassify or amend, the agricultural-forest classification shall state that the minimum duration of such classification shall be 5 years. Upon the termination of the original or subsequent 5 year period, either the owner or the Trinity County Planning Commission may petition for reclassification of any portion of any ownership so classified. Unless such petition is filed either by the owner or by the Planning Commission within 120 days preceding the date of termination and provided that notice of such

petition is delivered to the signatories within 120 days proceeding said termination date. Extension of the five-year exclusive use classification shall be automatic.

SECTION 14.1 TIMBERLAND PRODUCTION DISTRICT OR "TPZ" DISTRICT

- A. **GENERAL DESCRIPTION:** The Timberland Production Zone or TPZ is intended to provide for timberland zoning and restrictions for a minimum of a ten (10) year period. Such zoning allows land to be valued for property taxation, in general, on the basis of its use for growing and harvesting timber and compatible uses.
- B. **USES PERMITTED:** The following uses are permitted or deemed compatible to the growing and harvesting of timber:
- Growing and harvesting timber.
 - Watershed management.
 - Wildlife and fisheries habitat improvement.
 - Roads, landings, and log storage areas integral to the growing and harvesting of timber.
 - Portable sawmills, chippers, and similar equipment.
 - Grazing and other agricultural uses.
 - Recreation uses including walking, hiking, picnicking, swimming, boating, fishing, hunting and skiing.
- C. **USES PERMITTED SUBJECT TO FIRST SECURING A USE PERMIT:** Uses allowed under this section cannot be approved if such use will significantly detract from the use of the property for, or inhibit, growing and harvesting timber.
- A Single Family Dwelling and accessory structures.
 - Sawmill.
 - Lumber mill.
 - Plywood mill.
 - Trailer Camp.
 - Public Camp.
 - Public Stable.
 - Labor camps accessory to timber harvesting or planting operations which are less than one year in duration.
 - Mining operations whose purpose is to provide material for log hauling roads both on and off-site.
- D. **MINIMUM LOT AREA FOR DIVISION OF PARCELS ZONED TPZ:** The minimum lot area for division of parcels zoned TPZ shall be as designated in the Zoning District. In the event no minimum parcel size has been specified in the Zoning District, minimum lot area shall be 160 acres. The minimum acreage requirement may, at the discretion of the Planning Commission and Board of Supervisor's pursuant to Section 31 of the Zoning ordinance, be reduced when necessary to resolve adjacent land use conflicts through lot line adjustment.

- E. GENERAL REQUIREMENTS: A Timber Management Plan shall be prepared for all parcels to be rezoned pursuant to Section 51113 of the Government Code. The rezone application shall meet the requirements of Section 51113 as it now reads or may hereafter be amended, and shall meet the following requirements:
1. The minimum lot area for entry into TPZ for lots legally created prior to March 1, 1988 shall be no less than 40 acres for Site I-III timberlands and 160 acres for Site IV and V lands. In the event a parcel consists of a mix of Site I-III and IV-V, the parcel shall be eligible if fifty percent of the area is Site III or better timberland, but at no time shall parcels which contain less than 40 acres of Site I-III timberland be eligible. The minimum parcel size for entry into TPZ for parcels created after March 1, 1988 shall be no less than 160 acres, or a quarter of a Section.
 2. A Timber Management Plan for the property must be prepared, or the content approved, by a Registered Professional Forester. Such plan shall provide for the eventual harvest of timber, as determined by the preparer of the plan; specific information that must be included in the plan is as follows:
 - a. A map shall be prepared showing the legal description or the assessor's parcel number of the property desired to be zoned;
 - b. Topographic Map(s) (scale 4" - 1 mile) which includes:
 - (1) Existing and proposed roads (public and private)
 - (2) Watercourses, lakes ponds, domestic water systems, etc...
 - (3) Site Classification (minimum area breakout -10 acres). The State of California's Board of Equalization's Instruction's For Timberland Site Grading adopted July 26, 1976 shall be utilized for site determinations.
 - (4) Timber/vegetation classification and age distribution.
 - (5) Under stocked areas as defined in current Forest Practice Rules.
 - (6) Location of all existing and proposed permanent structures.
 - c. Management and Silviculture Objectives.
 1. History of management and existing volume, acreage and age.
 2. Future silviculture, inventory, stand improvement, harvesting operations planned (including cutting and thinning cycles, volumes and rotation ages), subdivisions and lot line adjustments.

- d. Stocking
 - 1. Average stocking within each sub-area
 - 2. Under stocked areas may be included in the TPZ District under the provisions of Section 51113 of the Government Code. (See "3" below).
- e. Forest Insects and Disease Protection Practices.
 - 3. The parcel shall currently meet the timber stocking standards as set forth in Section 4561 by the Public Resources Code and the Forest Practice rules adopted by the State Board of Forestry for the district in which the parcel is located, or the owner must sign an agreement with the Board of Supervisor's to meet such stocking standards and forest practice rules by the fifth anniversary of the signing of such agreement. Failure to meet such stocking standards and forest practice rules within this time period provides the Board with a ground for rezoning of the parcel pursuant to Section 51121 of the Government Code.
- F. MINIMUM LOT WIDTH: Each lot shall be not less than 400 feet wide.
- G. YARD SETBACKS: All yard setbacks shall be a minimum of 50 feet, except that 100 feet shall be maintained from other TPZ or federally managed lands.
- H. ADDITIONAL BUILDING SETBACKS: Buildings shall not be located on landings, roads, or storage areas as shown on the Timber Management Plan, or Timber Harvest Plan. The placement of the proposed structure shall be reviewed related to compatibility with the growing and harvesting of timber by Planning Staff after consultation with the State Department of Forestry.
- I. APPLICABLE PROVISIONS OF THE GOVERNMENT CODE: Provisions of Article 1 "General Provisions" (Section 51100), Article 2 "Establishment of Timberland Production" (Section 51110- 51119.5), Article 3 "Rezoning" (Sections 51120-51121), Article 4 "Immediate Rezoning" (Section 51130-51134) and a portion of Article 5 "Removal From Zone" (Sections 51140-51146) of the Government Code of the State of California as it now reads or may hereafter be amended shall apply.

Dear Commissioners,

January 5, 2017

Thank you for your continued efforts and input in helping along the regulation process for the cannabis industry here in Trinity. I am writing you today in regard to your consideration of nurseries as well as the zone Agricultural Forest (AF).

Recommendation for Nurseries:

Nurseries producing commercial cannabis nursery products for retail sale shall be a permitted use in zoning districts C-1, C-2, C-3, SUD, and I, subject to a Use Permit. Nurseries producing commercial cannabis nursery products for bulk wholesale sale or to supply retail nursery outlets held under the same license shall be a permitted use in the RR (parcels over 2 acres), U (parcels over 2 acres), A and AP zoning districts, subject to a Directors Permit. Zones AF and TPZ may also be considered for bulk wholesale sale or to supply retail nursery outlets with a Directors Permit if the applicant has also applied for a cultivation license for an existing garden and the nursery operation is conducted within an approved less than 3-acre conversion area.

Recommendations for AF:

Zone Agricultural Forest is a little more complicated. At this time, though zone AF is not named as a prohibited zone under the urgency ordinance, applicants wishing to come forward in voluntary compliance are being turned away while you review the zone. I have read the permitted use section of the AF zone, as well as the provisions of Section 30.A that it is subject to. While agriculture is not listed as a permitted use in this zone, there are many uses listed that are similar in nature and some that arguably create greater impacts and demands on the land than cannabis cultivation activities.

I urge you, under the provisions detailed in Section 30.A, to pass a resolution finding compliant cannabis cultivation is similar in nature to other uses permitted in this zone and that it will be done in a way that harmonizes and/or does not interfere with the other goals of the zone (ie. done in a way that protects from fire, insects, disease and other catastrophes). Under section 30.A, cannabis cultivation could further be characterized as similar in nature as these activities should not generate more traffic, parking, dust, or noise in comparison to logging and wood processing plants which are permitted uses of this zone.

There will be many more debates on this zone and all resource land use designated parcels as we go forward in contemplating a permanent ordinance. In Humboldt County, they have clear differences between what is allowed for New versus Existing farms. Under existing they are allowing cultivation operations in zones like TPZ but not allowing new grows in this zone.

Trinity is part of the world's most famous cannabis production region, we've got it all – the good, the bad and the ugly. If we really wish to rid ourselves of the bad and the ugly we should embrace the good and follow the lead of Humboldt by making it our priority to get our existing cultivators compliant. This means, allowing it in ways and places we may not allow for new grows. Last year, as we came before you asking to use the Humboldt ordinance as a framework the big question was whether or not their ordinance could stand up to a legal challenge under CEQA. Humboldt chose to use the existing baseline as a premise for their regulations. Their ordinance was passed almost 11 months ago and since then they have been challenged under CEQA twice. While they have made some settlement agreements resulting in minor changes, the ordinance still stands. We are lucky to be able learn from their mistakes. The North Coast Regional Water Quality Control Board also claims to be exempt from CEQA and they encourage those with existing farms to enroll.

We are currently under an Urgency Ordinance because cannabis cultivation and activity has created an emergent situation in our environment that cannot wait for our permanent ordinance process to finish. SECTION III Finding (24) of the Urgency Ordinance (315-816) states that: "This urgency ordinance is intended to promote voluntary compliance with environmental regulations..."

We talk a great deal of protecting and maintaining our resources in regard to Timber and Mining – but what about water usage and quality? Can we agree that water is a precious and environmentally sensitive resource in Trinity County? You cannot seek licensure with the County (or the state) without enrolling in the Water Board program to ensure the protection and quality of our water. The farmers in Ag Forest who are currently being denied the ability to get a permit

are trying to be in line with the intention of our urgency ordinance as well as the intentions of MCRSA. They are existing farms, most on large parcels, and they are protecting and maintaining Trinity's water resources by voluntarily coming in to compliance.

Under Ordinance 315 Section 30.A, you, as a Commission, are required to ascertain all pertinent facts if you should choose to go the route of resolution. I compiled some I thought might be of value:

Demographics for zone AF based on spreadsheet data from the Trinity County Resource Conservation District: There are 12,226 privately owned parcels in the County. Of those, 385 are zoned Ag Forest. Those 385 properties account for over 16,500 LOT acres. For the most part these are big. 233 of them are 20 acres and over; with just 25 of them under 5 acres. 353 of these properties carry a land use designation of Resource with the remainder properties carrying Rural Residential, Agricultural and Village land use designations.

This is principally a resource land use zone, and while there is much debate, I would assert that resource land is quite suitable for agricultural uses. Resources are not just limited to timber and mining – in many areas of the General Plan's land use sections "Resources" findings and goals are tied in directly with agricultural activities alongside Timber and Mining. Here are examples from the General Plan:

Hayfork Findings – Page 25

3. RESOURCES - Protect the resource production capabilities of the Hayfork Valley and encourage the utilization of those resources.

- a. Agricultural activities should be encouraged whenever possible. Prime agricultural lands should be preserved for agricultural production. Efforts to control brush and create new grazing lands should be supported.*

Items b. and c. of these findings for resources are timber and mining respectively.

Hyampom Findings - Page 26

3. RESOURCES - Encourage the use of the valley's agricultural land and the surrounding timber land for resource production.

North Lake Findings - Page 27

b. Existing agricultural activities should be encouraged to remain intact.

Letter a. in their RESOURCES section is timber, and it's clear by the wording that at the time the General Plan was written there was one property owner who controlled the majority of the timberlands. Regardless though, it is still followed by (b.) agriculture and (c.) mining.

Douglas City, Lewiston and Junction City - Pages 31, 32 and 34

Goal V.

To encourage the retention and utilization of resource land for timber production, agricultural uses, and mineral extraction.

Again, thank you for taking these things into consideration and for all the time and effort you volunteer for the betterment of our County.

Sincerely,

Liz McIntosh