

**LAKE COUNTY PLANNING COMMISSION**

**MINUTES**

**REGULAR MEETING**

**February 25, 2021**

**Commission Members**

**P John Hess, District I  
P Everardo Chavez, District II  
P Batsulwin Brown, District III  
P Christina Price, District IV  
P Lance Williams, District V**

**Staff Members**

**A Scott DeLeon, CDD Director  
P Tocarra Thomas, Deputy Director  
P Sateur Ham, Assistant Planner  
P Eric Porter, Associate Planner  
P Victor Fernandez, Assistant Planner  
P Nicole Johnson, Deputy Cty Counsel  
P Trish Turner, Office Assistant  
P Kerrian Marriott, Office Assistant III**

---

**REGULAR MEETING**

**9:00 a.m. CALL TO ORDER**

Pledge of Allegiance lead by Comm. Brown

**9:01 a.m. ACTION ON MINUTES**

Comm. Price motioned to approve the minutes from the February 11, 2021 PC Hearing.

**5 Ayes, 0 Nays, - Motion Carried**

**9: 02 a.m. CITIZEN'S INPUT - None**

**Any person may speak for three minutes about any subject of concern, provided that it is within the jurisdiction of the Planning Commission, and is not already on today's agenda or scheduled for a future public hearing. Total time allotted for Citizen's Input shall be fifteen minutes. Speakers are requested to complete a simple form (giving name, address and subject) available in the Community Development Department office, prior to 9:00.**

**Agendas of public meetings and supporting documents are available for public inspection in the Lake County Courthouse, Community Development Department, Third Floor, 255 North Forbes Street, Lakeport, California**

**Request for Disability-Related Modification or Accommodation: A request for a disability-related modification or accommodation necessary to participate in the Planning Commission meetings should be made in writing to the Planning Commission Assistant at least 48 hours prior to the meeting.**

**9:05 a.m. Public Hearing to Consider Major Use Permit (UP 20-18) and a Mitigated Negative Declaration based on Initial Study (IS 20-21) The Project Applicant is Incline Power LLC., Owner, Patsy Thorburn, is proposing a new 150' tall cell tower and appurtenant equipment within an 80' by 80' fenced enclosure on 26.55+ acre property. Location: 16355 Highway 20, Clearlake Oaks, CA; and further described as APN: 010-055-31.**

Tocarra Nicole Thomas, Community Development Deputy Director shared that Community Development Director Scott DeLeon recused himself from meeting and all further meetings on this matter due to a personal interest in the project.

Eric Porter, Associate Planner, gave a verbal presentation, which included the staff report, site plans, location, and requirements. No adverse comments were received.

Deputy Director Thomas shared that there were no "ecomments" received for this project.

Comm. Brown inquired if the tower would create impacts on the migration of raptors, and wanted to know if those impacts were addressed in the biological resource conditions.

Mr. Porter stated that the applicant has to pay CDFW fees, and maintain trees for 3 years to help mitigate the potential impacts on the migratory patterns on birds. Discussion then shifted to the potential inclusion of a condition in the conditions of approval as D4.

Comm. Brown encouraged that addition to the conditions of approval as well as the completion of a biological survey to determine if nesting sites of the raptors near Cache Creek would be impacted.

Mr. Porter recommended a 100 ft. buffer zone, and that if there are any raptor nesting sites found to make provisions to relocate, providing suitable habitat within the vicinity.

John Petersen, applicant, gave a presentation. He spoke on the company history, location, and various site locations. Mr. Petersen also spoke on the steps they took to get the process started for this tower. Developing towers like this in rural areas, need high mountain tops to cover larger areas. Many carriers have shown interest in being on this tower.

**9:29 a.m. Public Comment –**

Robert Geary, Tribal Historic Preservation Officer, would like to know who can be contacted regarding CEQA in regards to project employee culture sensitivity training. With the 100ft buffer does that affect any grubbing, tree removal or ground disturbance, what happens?

Mr. Porter shared that condition #E2 requires all employees to be trained in recognizing potential artifacts. If artifacts are found the local overseeing tribe, a licensed archeologist and the LCCDD are notified immediately. If remains are found the Sheriff's dept. needs to be notified.

**Comm Hess moved to make a motion, seconded by Comm. Price that the Planning Commission find that the Initial Study (IS 20-21) applied for by Incline Power, LLC on property located at 16355 S. Highway 20, Clearlake Oaks, and further described as APN: 010-055-31 will not have a significant effect on the environment and therefore a mitigated negative declaration shall be approved with the findings listed in the staff report dated February 25, 2021 and as amended today.**

**5 Ayes, 0 Nays, - Motion Carried**

**Comm. Hess moved to make a motion seconded by Comm. Chavez that the Planning Commission find that the Use Permit (UP 20-18) applied for by Incline Power, LLC on property located at 16355 S. Highway 20, Clearlake Oaks, and further described as APN: 010-055-31 does meet the requirements of Section 51.4 of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report and as amended dated February 25, 2021.**

**5 Ayes, 0 Nays, - Motion Carried**

**Comm. Hess moved to make a motion seconded by Comm. Price that the Planning Commission find that the wireless communication facility**

applied for by Incline Power, LLC on property located at 16355 S. Highway 20, Clearlake Oaks, and further described as APN: 010-055-31 does meet the requirements of Section 71.13 of the Lake County Zoning Ordinance and that the Planning Commission has reviewed and considered the Mitigated Negative Declaration which was adopted for this project and the Wireless Communication Facility be granted subject to the conditions and with the findings listed in the staff report and as amended dated February 25, 2021 and as amended today.

**5 Ayes, 0 Nays, - Motion Carried**

*NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*

**9:38 a.m. Public Hearing to Consider Major Use Permit (UP 20-27) and a Mitigated Negative Declaration based on Initial Study (IS 20-32). The project applicant is LC2400, owner SHANA SCHUETTE, proposing (5) A Type 3 (outdoor) Commercial Cannabis Cultivation license consisting of 217,800 square feet of canopy area located within 252,960 square feet of cultivation area. Location: 2400, 2405, and 2215 Clover Valley Road, Upper Lake, and further described as APNs: 004-007-12, 004-007-13, 004-007-23.**

Victor Fernandez, Assistant Planner II gave a power point presentation that included the staff report, site plans, project description, zoning, license types, location, water sources and usage. Mr. Fernandez also read for the record a comment letter received from California Native Plant Society, opposing the project. Mr. Fernandez addressed the concerns of the California Native Plant Society that the initial study for this project was inadequate as it did not indicate the presence of a walnut orchard. Mr. Fernandez responded to this comment sharing that the Walnut orchard was removed, and this information was not shared in the Initial Study as it is confidential, however staff did review and consider the information as part of the Initial Study. One sensitive Bio Community existed in the wet land area which only consist of 5% of the project area, a 100 ft. buffer required (owner has agreed to buffer). No additional species discovered.

Comm. Hess, inquired about the omission of the number of employees in the staff report, and wonder why it was omitted as this number was typically stated in the past.

Mr. Fernandez stated there will be seasonal employees, which is why this number was not stated in the staff report.

Comm. Brown was concerned about the staff report specifically regarding biological resources and studies sections. He shared his concerns about the potential of 25 native species of plants being impacted by the project. Specifically tribal plant species. Comm. Brown continued on to share that the provided cultural resource study does not address the greater impact on the whole parcel rather than just the footprint of the project and that the study should have been broader in scope.

Mr. Fernandez addressed Comm. Brown's questions. The provided biological resource assessment stated that there was the potential for 25 sensitive species to be on site, and the biologist recommended an additional two biological assessments to be concluded during the floristic seasons of the plants. The biological assessments were completed after the project was brought forth to the Planning Commission and the last biological assessment was provided to staff the morning of 2/25/2021. Staff read into the record that the additional biological assessment conducted during season concluded that the previously suspected sensitive species were not found. However, staff did include conditions of approval to have the applicant culturally train any staff on site to identify any resources that might be onsite, and currently a Tribal Cultural Adviser or Project manager has not been identified. The initial study was conducted for the identified project site, if the applicant wanted to expand the project site, a modification of use permit would be required for expansion, and that MMU would include an environmental analysis which would include a cultural and Biological assessment of new footprint.

Comm. Price shared that she conducted a site visit to the site on Feb. 24, it is a small portion being utilized in scope of the entirety of the parcel and very well located and put together.

Comm. Williams also shared that he conducted a site visit on Tuesday, Feb 23. Talk of expansion which he referred back to Mr. Fernandez statement of submitting a new MOD. Comm. Williams also agreed that project is well located and he feels very good about it.

Shana Schuette "applicant" had very poor connection and was unable to comment during the project.

**10:20a.m. Public Comment –**

Tocarra Nicole Thomas, CDD Deputy Director read an “ecomment” in support of the project from Bobby Dutcher.

Robert Geary, Tribal Historic Preservation Officer, wanted to respond the archeologic resource report. He also went by to check out the cultural resources, and found medicinal species on his visit to the site. What is the buffer zone if there are cultural items found? Is the tribe going to be able to assign a resource person for mitigation measures? Construction of structures, what are the project details? His tribe would like to do the Cultural Sensitivity training. Would like the Heritage Committee to be contacted if remains are found.

Mr. Fernandez responded to Robert Geary’s questions Yes construction of a few structures are planned, and no grading anticipated. He also shared that the mitigations could be amendment to include Pomo Tribe to be included on several different conditions.

Comm. Brown stated very in depth concerns of the mitigation measures for not only this process, but the AB52 process in general and he wanted ultimately to see more protections of the Tribal Cultural Resources.

An extensive conversation continued regarding the tribal cultural resources, the County’s process, and the AB52 in general and in specific.

Comm. Hess responded to the conversation and shared that the County does not have the legal capacity as a board to force an applicant to hire a tribe for these measures, rather, these measures can only be strongly encouraged.

Tocarra Nicole Thomas, CDD Deputy Director, agreed with Comm. Hess. And continued on to share the County’s process for the AB52 process in general and specifically for this project and confirmed that the County made contact with the tribes to request tribal consultations. Ms. Thomas also recommended that the tribe updates their contact information with the County. Ms. Thomas also reiterated the AB52 consultation process and shared that CDD has to stay within certain guidelines when making certain requests of applicants specifically that the CDD cannot compel applicants to engage 3<sup>rd</sup> party contracts.

Comm. Williams responded that boundaries would not be crossed if certain mitigation items brought up would be put in the county ordinance.

Nicole Johnson, County Council, shared that the AB 52 is for California standards, and it cannot be changed via a county ordinance. AB52 gives the agency and the tribe requirements to work together, however the county cannot mandate a 3<sup>rd</sup> party contract with the applicant and the tribe.

Comm. Brown, clarified that he can express his concerns with the documents by his vote.

Public comment was then opened on this agenda item, and there were extensive public comments received:

Bobby Dutcher stated he has history writing CEQA documents, he is stating his experience and support for this project. Believes the applicants have done their due diligence and should not be held to a higher standard.

Dino Beltran, Vice Chairman Koi Nation, Comments not specific to this particular project. We have memorandum of agreements with the city of Clearlake, Lake County and California State Parks. Wants to touch on the already disturbed projects. Gave an example of a similar concern he found in the city of Clearlake over the weekend. Archeologist found several new sites in a previously developed site. He would like for us to consider that although a site might have been previously disturbed new sites might be found and proper protocol should set in place and adhered to.

Laythen Martinez, Environmental Engineer, what everyone is trying to do is important. All of these things are very important especially with anything cultural, biological. I am not speaking about the applicant because I do not know them. However most people would not mind having people from the tribe be there when they are doing the ground work to make sure that the cultural resources are protected.

Quirina Luna Geary, Resident of Lake County, shared that she has an extensive background in Cultural Site protection for 30 years and shared that there is always the potential to still find new cultural resources with previously disturbed projects. Ms. Geary also shared that tribes do not always have the capacity to respond to the AB52 consultation process and asked for the CDD assistance with capacity building. She reiterated that the tribes are not attempting to stop projects, rather they wanted to be involved in the process and projects in order to protect their cultural resources as once they are destroyed they are lost forever.

**11:03 a.m. Public Comment – Closed**

**Comm. Price moved to make a motion, seconded by Comm. Williams that the Planning Commission find that the Major Use**

**Permit (UP 20-27) applied for by LC2400 on property located at 2400, 2405, and 2215 Clover Valley Road, Upper Lake, further described as APNs: 004-007-12, 007-004-13, and 004-007-23 will not have a significant effect on the environment and therefore a mitigated declaration shall be approved with the findings listed in the staff report dated January 14, 2021**

**4 Ayes, 1 Nays by Comm. Brown – Motion Carried**

**Comm. Price moved to make a motion, seconded by Comm. Chavez that the Planning Commission find that the Major Use Permit (UP 20-27) applied for by LC2400 on property located at 2400, 2405, and 2215 Clover Valley Road, Upper Lake, further described as APNs: 004-007-12, 007-004-13, and 004-007-23 does meet the requirements of Section 51.4 and Article 27, Section 1 [i,ii(g),i(ii)] of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated January 14, 2021**

**4 Ayes, 1 Nays by Comm. Brown – Motion Carried**

*NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*

**11:07 a.m. Public Hearing to Consider Major Use Permit (UP 20-09) and a Mitigated Negative Declaration based on Initial Study (IS 20-08). The project applicant/ owner is Kimberly Kent and Robert Nothnagle, proposing one-acre outdoor cannabis cultivation to allow 49, 160 square feet area, ancillary structures includes storage sheds, water tanks, and processing facility. Location: 23095 Jerusalem Grade, Middletown, and further describes as APN(s): 013-015-44, 013-015-46, 013-015-47, & 013-015-48.**

Sateur Ham, Assistant Planner, gave a power point presentation that included the project description, site plans, project location, property



management plan, water source, and water usage. Applicant meets all zoning ordinance findings and all major use permit findings.

Comm. Williams asked if the applicant had an early activation permit.

Ms. Ham replied that they do have early activation and received a provisional license.

Kimberly Kent, the applicant, wanted to thank everyone that has worked on the project and committed to working with the tribe to make sure all of the cultural resources are protected.

**11:22 a.m. Public Comment – None**

**Comm. Chavez moved to make a motion seconded by Comm. Price that the Planning Commission find that the Major Use Permit (UP 20-09) applied for by Robert Nothnagle and Kimberly Kent on property located at 23095 Jerusalem Grade Road, Middletown, CA, further described as APNs: 013-015-44, 013-015-46, 013-015-47, and 013-015-48 also known as “Lot K” will not have a significant effect on the environment and therefore a mitigated negative declaration shall be approved with the findings listed in the staff report dated January 14, 2021.**

**5 Ayes, 0 Nays, - Motion Carried**

**Comm. Chavez moved to make a motion, seconded by Comm. Hess that the Planning Commission find that the Major Use Permit (UP 20-09) applied for by Robert Nothnagle and Kimberly Kent on property located at 23095 Jerusalem Grade Road, Middletown, CA, further described as APNs: 013-015-44, 013-015-46, 013-015-47, and 013-015-48 also known as “Lot K” does meet the requirements of Section 51.4 and Article 27, Section 1(at) [i, ii(g), I (ii)] of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated January 14, 2021.**

**5 Ayes, 0 Nays, - Motion Carried**

*NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is*

*a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*

**11:33 a.m. Public Hearing to Discuss and Consider Zoning Text Amendment (AM 21-01) to Article 27 of the Lake County Zoning Ordinance pertaining to the Cultivation of Commercial Cannabis. The applicant is the COUNTY OF LAKE.**

Tocarra Nicole Thomas, CDD Deputy Director, gave a verbal presentation on the zoning text amendments for Article 27 guidelines. Ms. Thomas shared the background of the ZTA and that several amendments were previously approved by the Board of Supervisors, and some of the amendments were discussed by the Planning Commission. Items were brought to planning commission on May 28 for general consideration and no action taken as of that day. The purpose of today's discussion was to consider and make an action the ZTA that were previously discussed before the Planning Commission for discussion on May 28. Those items were: increasing fines in violation of the zoning ordinance per plant per day of \$1,000, change of acreage for certain license types to be consistent with State regulations which would make it easier for applicants to apply for State Licensing, and include formal requirements for Site Plan submission.

Comm. Hess questioned the lot size reduction.

Tocarra Nicole Thomas, CDD Deputy Director, Is recommending the adoption of all lot size changes in order to be consistent with State Regulations.

Comm. Hess referred to a question asked by Bobby Dutcher via ecomment regarding using percentages of lot sizes instead of a strict number

Tocarra Nicole Thomas, CDD Deputy Director in response to Comm. Hess, staff did not consider using a percent; staff recommended the direct language from the State Regulation to make it consistent.

Comm. Williams mentioned he supports percentages based on parcel sizes as well as the removal of plant limits. Comm. Williams wanted to discuss land reduction through license type and a correlation between indoor and green houses. Would vote on 3B, farm land protection zones unintended consequence someone being told they cannot plant on 5 acres, does not believe that this is ok.

Tocarra Nicole Thomas, CDD Deputy Director, Suggested to bring points made in regards to 3B back again for item number 5 and confirmed that the plant limit verbiage was directly lifted from the state regulations.

Comm. Williams, we cannot be less restrictive than the state.

**11:57 a.m. Public Comment –**

Bobby Dutcher, submitted through the “ecomment” portal, and commented orally that the recommended revisions to the ordinance here look good. Mr. Dutcher suggested changing the language of 1(d) though. As written, it allows up to 8 acres of cultivation if a parcel is 20 acres or larger. If 8 acres is acceptable for 20 acres, surely more could be acceptable if the premises is 50 acres. Why not use a size percentage instead? Revise the sentence to read "For Commercial Cannabis Uses, up to 40% of the premises may be used for License Type 1A/1B, 2A/2B, 3A/3B and/or 4 if the subject premises is 20 acres or larger."

Michael Green, submitted through the “ecomment” portal, and his comment was read for the record. The proposal to create draconian per-plant fines for unlicensed cultivation is not new -- see Fresno and Kern counties, among other early adopters -- but any claim of deterrence is unproven. Quite the contrary, in fact. Lake can impose millions of dollars in fines, as other counties have for years now, but it will be very hard-pressed to collect them. In most cases, tenant growers will scurry off scot-free while non-resident property owners get slapped with massive liens -- whether or not they were aware any illicit cultivation was occurring. This proposed "administrative" fine is far steeper than a grower would face if charged criminally with a misdemeanor or felony, with a far lesser standard of proof. If this does pass, enjoy the landowner appeals and lawsuits sure to come.

<https://www.capradio.org/articles/2019/12/18/sacramento-serves-as-guide-cautionary-tale-as-more-california-governments-use-steep-fines-against-illegal-pot-grows/>

Dino Beltran, submitted through the “ecomment” portal, and the comment was read for the record. It is the understanding that a full CAT EX blanket policy across the board is being considered in this Zoning Change. To not allow an ethical and professional archeologist to do the basic study and procedures that Native American Sacred Sites would be highly impacted as they have in the wine industry during the ripping of vines that need replacement. There are 2,600 known pre-historic sites in Lake County and new ones being discovered often, recorded and submitted to the Northwest Information Center. I request a full discussion roundtable with

the tribes, professional archeologists and other interested parties be held before a consideration or change is made. I plan to attend this meeting on 2/25 but have a previous engagement that I could not change but will hopefully be in attendance before this agenda item is called. If not could I request it be recalled when I arrive. Thank you, Dino Beltran-Vice Chairman/Koi Nation of Northern California

Sean Connell, submitted through the “ecomment” portal, and the comment was read into the record. I support many of these amendments and feel moving closer to State alignment is the safest practice. I have noticed the requirement for section 3. Site Plans will be required to be submitted by a design professional. This requirement would effectively limit all development submissions to the Community Development Department, as Architects and Engineers are limited in availability locally, and many do not do Site Plans as there is no financial benefit. I think the requirement for a DESIGN PROFESSIONAL should be removed from the language, and require all site plans to be drafted to scale. Scale and North arrows should be annotated on the plan set and verified for compliance. Also, in aligning with the State, the State requires a 600' setback from sensitive sites. Such a requirement will cost local community members a cost that currently could be unbearable for many community members

John Fluque, we are concerned about the vineyard and grapes being tainted by the release of the terpenes. State should be the minimum requirement. It is great to bring in new Ag industry but it shouldn't be in at the expense of the existing Ag industries.

Laythen Martinez, I have 2 comments about the CEQA, having the 10% grow area per acre, I think the state has a 20% grow area per acre. The other things that came up to me is with the licensing streamlining with the state regulations will benefit everyone in the long run.

Robert Geary, Tribal Historic Preservation Officer, how is that going to affect the tribes when it comes to the CEQA. Will that affect any of that process?

Tocarra Nicole Thomas, CDD Deputy Director responded to Mr. Geary's questions, and reiterated the categorical exemption is only for this zoning text amendment. Each project brought to the planning commission and staff if discretionary still goes to CEQA for review.

Alex Paul, submitted by “ecomment” portal, Can you do the percentages now? This seems unfair to outdoor cultivations (for example, a 20 acre outdoor grow).

Comm. Hess, Finds a percentage base very appealing.

Tocarra Nicole Thomas, CDD Deputy Director, shared her recommendation again for using the direct language from the state versus implementing a percentage system.

Comm. Hess, Understands the logic behind harmonizing to the State Language but is still curious about a percentage base.

Conversation from the Planning Commission then turned towards discussing percentage bases system versus using the language directly pulled from the State Regulation. The Planning Commission arrived at a consensus to remove item 1 adopting the changes for License Types 1A, 2A, and 3A to directly match the State Regulation for consistency from consideration from this meeting and directed staff to bring Item 1 Back for consideration at a later date with additional information and recommendations for consideration.

**12:11 p.m. Public Comment - Closed**

**Comm. Price moved to make a motion seconded by Comm. Hess that the Planning Commission find this Zoning Ordinance Text Amendment, AM 20-02, is Categorically Exempt (CE 20-15) from the California Environmental Quality Act (CEQA) Guidelines pursuant to §15061(b)(3).**

**5 Ayes, 0 Nays, - Motion Carried**

**Comm. Price moved to make a motion seconded by Comm. Hess that the Planning Commission recommend approval of the proposed Zoning Ordinance Text Amendment, AM 20-02 applied for by the County of Lake for the reasons listed in the staff report dated February 25, 2021 with the removal of item 1 adopting the changes for License Types 1A, 2A, and 3A to directly match the State Regulation for consistency from consideration.**

**5 Ayes, 0 Nays, - Motion Carried**

**Comm. Price moved to make a motion seconded by Comm. Hess that the Planning Commission render its final decision on the proposed Ordinance text amendments within ten (10) days of said final decision, in the form of a Resolution of Intention to the Board of Supervisors recommending the formal adoption and approval of these Zoning Ordinance Text Amendments number 2- 4, AM 20-02 as**

**outlined in the staff report dated February 25, 2021 with removal of item 1 adopting the changes for License Types 1A, 2A, and 3A to directly match the State Regulation for consistency.**

**5 Ayes, 0 Nays, - Motion Carried**

*NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*

**12:21 p.m. Public Hearing to Discuss and Consider Approval of Text Amendments to Article 27SEC. 21-27 USES GENERALLY PERMITTED Commercial Cannabis Cultivation with a Resolution of Intention submitted to the Board of Supervisors: Proposed Amendments to Zoning Ordinance (AM 21-01) Categorical Exemption (CE 20-16)**

Tocarra Nicole Thomas, CDD Deputy Director, gave a verbal and power point presentation of the staff report for proposed amendments to zoning ordinance. This report concerned the Farmland Protection Zones, and the inclusion of clarifying language for the ordinance. That language included grandfather, sunset, and additional strength to the vegetative screening.

**12:30 p.m. Public Comment –**

Michael Colbruno, “ecomment” read into the record, **OPPOSE, UNLESS AMENDED.** We are writing about the proposed increase to existing setbacks to ostensibly protect existing farmland. Setting aside our belief that different agricultural and farmland uses can coexist together, the proposal as written is discriminatory and unfair. We borrowed money and spent our life savings to purchase property and invest in Lake County. We moved our home to the county to fulfill this dream and now have two applications at the Planning Department. This proposal has created uncertainty for us and the future of our personal investment. For others who may be looking at investing in Lake County, it creates enormous

regulatory unpredictability. At the very least, you should exempt anyone who has an existing application at Planning. Thank you, Michael Colbruno, Lower Lake

Erin McCarrick, “ecomment” read into the record, Thank you for the opportunity to provide comments and feedback on the items coming before the Commission.

Our membership would like to encourage the Planning Commission to amend Ordinance 3101. We have listed some of our concerns with the Ordinance and would love to work with the Commission, the Community Development Department and the community to find a working solution. The LCCA appreciates our working relationship with the Planning Commission and the Community Development Department. We look forward to further growth and discussion.

Please don't hesitate to reach out with any questions or to discuss any item in further detail.

Sincerely,

***The Lake County Cannabis Alliance***

*Farmers, producers, distributors, manufacturers, and cannabis industry allies*

**Section 27.13 of Chapter 21 of the Lake County Code is hereby amended as to the section (at), 1, vi with the following:**

***LCCA notes in bold and italics.***

Farming and agriculture is Lake County is important to our economy. Cannabis may present certain conflicts with more traditional farming. In order to ensure the protection of all agricultural industries within the county, the following rules will apply when cannabis cultivation interfaces with Farmland Protection Zones. If an applicant finds that their project is in an area where they shall not be allowed to cultivate outdoors, then their cannabis cultivation shall be limited to indoor, mixed light, and greenhouses that equipped with filtrations systems that prevents the movement of odors, pesticides, and other air borne contaminates out of or into the structure.

Outdoor cultivation of cannabis shall not be allowed within any Farmland Protection Zone. ***a. We believe that cannabis is an essential crop and beneficial to a diverse agricultural economy and the economy of Lake County.***

Outdoor cultivation of cannabis shall not be allowed within 1000 feet of any Farmland Protection Zone. *a. We believe that there can be a smaller set back.*

If outdoor cultivation of cannabis is less than one (1) mile from Farmland Protection Zone, vegetation screening is required.

- I. Vegetation screening shall consist of woody vegetation or trees that grow to no less than 20 feet tall.
- II. Vegetation screening shall be between Farmland Protection Zone and the permitted cannabis canopy area.
- III. The species of woody vegetation or trees to be used may be chosen by the permit applicant but should be suited to localized soil and site conditions. Native plant species are encouraged as are plantings which will benefit local fauna. Plantings must be perennial and hardy in the local climate zone as specified in scientific literature or garden catalogs.
- IV. Vegetation screen shall be effective in preventing substantial drift and approved by the Agricultural Commissioner.
- V. Vegetation screen shall be maintained through the life of the cultivation use permit.

***We believe this is excessive screening and may have an adverse effect on the natural environment and on surrounding agricultural land.***

**Other points of concern**

We are curious what the “conflicts with more traditional farming” may be and if we can talk about how all agriculture can work together.

We are concerned for members in the agricultural community that if they have property in a Farmland Protection Zone that they may be limited in the free market to sell their property if a cannabis farmer had interest in purchasing that property

Sean Connell, submitted through the “ecomment” portal, I am responding to the agenda item 5 before you today. The subject is the newly created Farmland Protective Zones and the required setback from them. It is unreal to me that we are yet again, placing restrictions on an industry that is legal, approved by the voters, and executed by the State of California. Not only, but since 1992, this State has granted the ability for the cultivation of cannabis for use by this very State population. Yet we find ourselves picking apart an industry that is sustaining commerce throughout the pandemic. Cannabis cultivation laws have created a safer, regulated market place the goal should be to increase the amount of participants not exclude those from coming into the fold.

**Section1: Setbacks from Neighboring Parcel with Farming practices**

The standard setback from a neighboring parcel for cultivation is set to 200', yet in this new zone we are requiring an additional setback that is more restrictive. Which in turn effects standard planning practices.

Projects are to be treated fair and equal across the board, yet here we are, looking at one potential crop, and restricting it further then we would if it were wine, walnut, or pear. The proposed 500 foot setback from an active farm is impossible to impose, and should be removed and aligned with the setback established in the zoning code.

**Section 2: Vegetation screening in less than 1 mile**



This is in hopes to prevent “pollination drift” from traditional agriculture to cannabis agriculture. I would like to point out, I do not see a requirement for an organic farm to screen, increase setback from traditional farms, or any such requirement that would be imposed on a more traditional agriculture basis. There are 35 States with approved cannabis legislation, and half have approved recreational use. It is the responsibility of this commission to help protect and prepare our land use for future development. As we all see the trend to legalization nationally, will this Department and Commission address this all over again to align the agriculture community into one? Think of the ramification of the 2018 Farm bill, and the Right to Farm Industrial HEMP and the issues that created in the county.

### **Section 3: Farmland of Statewide Importance**

With the creation of the new Farmland Protective zones, I am asking for the commission to provide clarity to the department and request the Board of Supervisors to finalize the designation of these zones. As the current Article 27 allows for the Director to approve outdoor cultivation if the areas “are isolated areas that are not connected to a large system of such lands”. Is this to mean, that soils outside of these Protective Zones can be cultivated outdoors? Is there a reason why we are adding a setback, to an exclusion zone? Is this amendment really providing County staff with the ability to move these project forward in a pathway that is consistent with local and state laws?

The additional requirements, or protections, are reinforcing the idea that cannabis cultivation is a nuisance and causes more issues to farm then it prevents. However, in the review of this county Crop Report, we are seeing drastic decline in all forms of agriculture except Wine. As wine is up 30%, and according to Chair Sabatier, they were compensated less for their product because of the County’s cannabis. Planning is about commonality, government is about fair and impartial in all actions. Yet this amendment seems to be targeted exclusively at cannabis cultivation, and not at a large integration of agriculture across the board.

Alex Paul, “ecomment” read into the record, Can someone fully explain why this is being introduced now? Also, what happens if there is a cannabis cultivation (outdoor) and then someone starts a farm next door? Can this be more fully explored?

Bobby Dutcher, “ecomment” read into the record, I'm glad to see the requirement that cultivation within 500 feet of our Highways be screened with vegetation. Our Highways are used heavily by visitors here, providing this visual buffer does not burden farmers excessively and will maintain the beauty along the routes. It does seem like the protection from fugitive spray goes too far though. Under 2d. "Vegetation screen shall be effective in preventing substantial drift..". Since the cannabis operator is already

being burdened with the cost of a vegetative buffer, why are they also being punished by providing a 500 foot clearance from a neighboring crop? The protection for a neighboring residence is 200 feet, this seems like an adequate distance crop-to-crop if an effective vegetative buffer is also used. I recommend reducing the 500 foot barrier to 200 feet.

Laythen Martinez, provided an oral comment, and commented setback of 500 ft. and vegetation screening language. Mr. Martinez shared that 250 ft is a more adequate setback for highway screening.

Michael Colbruno, prior planning commission from Oakland, these uses can co-exist if you ask the community. The truth there is a way to handle this without having to go to such an extreme like this is suggested. The main issue I have with this is just as my "ecomment" states. Is the county willing to give people back their money if this ordinance passes? There should be days when the spraying should be allowed and not allowed.

Alicia Russell, Director of Operations for Nor Cal Profarms, our farms in Santa Barbara County is surrounded by vineyards. We have never had an issue with the vineyards, they have never had an issue with our cannabis cultivation sites and vice versa.

Sufyan Hamouda, I would like to make changes to the farmland protection zone. Pre apps help guide people with what is necessary/required during the process. Once time and money is spend, the applicant is then informed that the ordinance has changed, would not be beneficial to the county.

Christina Torres, Stella green farms we have a project in Lakeport, we submitted our application on January 1, 2020. We should be allowed to continue to proceed this year. These new ordinances should have been put into place before December 15. Would like to be an exception from this ordinance. We have paid all of our fees. We would like some resolution to this.

Comm. Williams, in response to Christina Torres call.

Tocarra Nicole Thomas, CDD Deputy Director, response Ordinance proposal was approved Dec 15 Effective Jan. Grandfather language will help address those who have submitted their completed application without being given a use permit, the other thee sunset language used for those applicant that did not fully complete their application.

Comm. Williams, spoke on letter from the AG Dept. and Farm Bureau, should be added to the grandfather language as they were before the farmland land protection zone.

Tocarra Nicole Thomas, CDD Deputy Director, unable to provide specific details as Christina's file is not with her, the application process is then explained.

Steven Hajik, Ag Commissioner, 100 percent supports this. Spoke on pesticide use and effect.

Ted Fox, yes this is true our vegetation screening does in fact we are the police for the pesticide police. Pesticide drift is against the law, 100%.The cannabis growers should not be penalized for pesticide drift.

Michael Rodriguez, he is the partner of Christina Torres, we are at 99% percent done with the Use permit process, and already is State Licensed. We just want some reassurance that we are on the complete side for this.

Sufyan Hamouda, Asked a second question about how these changes for the processing of licenses will occur. Will any of the permits that are to be grandfathered expedited?

**1:16 p.m. Public Comments- Closed**

Comm. Hess I would hate to have people who already are growing, who Are waiting for approval, or who have submitted an application. What are the refund processes going to look like?

Comm. Williams stated that some of these applicants should already have all of their plants in a greenhouse due to the current standards. However we have to look at the ones that will be grandfathered in and CEQA requirements.

Comm. Brown Agrees there is allot to review. Consider those impacted that have gone through the process and completed their due diligence. Open to gathering more info and what's impacting our decision making, had a question relating to buffers or vegetation between buffers, what time of vegetation is recommended.

Comm. Hess what if there is a cannabis grow that is active and established and a farm comes along, what is the county take on this flip situation.

Comm. Williams, has seen it happen before, and stated that he has seen established sites affected by State changes i.e. a 600' buffer from schools,

which led to a site he was familiar with having to close. Comm. Williams requested CDD to add verbiage that would allow an established site to not be affected by county changes.

Conversation then turned towards fines, and the license types clarification.

Tocarra Nicole Thomas, CDD Deputy Director, requested a point of clarification on item # 4, and the conversation then turned towards the item 1 being removed from consideration under agenda item #4 (license type).

After clarification Comm. Hess, Williams, and Price requested for staff to bring item #1 (license types) under Agenda item #4 referenced minimum acres and a setback to property lines. Addition of type 3B to be reflective of green houses, back to the planning commission on March 11 for further discussion

**Comm. Hess Moved to make a motion, seconded by Comm. Price to continue this item to March 11, 2021.**

#### **Untimed Staff Updates-**

Tocarra Nicole Thomas, CDD Deputy Director gave a verbal report to the Planning Commission about the Community Development Department's effort to continue to provide customer service in a virtual environment per the Board of Supervisor's decision to close the courthouse to the public on January 9, 2021 but to continue providing customer service. Ms. Thomas discussed some of the actions taken including a phone tree (which was reversed). Ms. Thomas also reviewed updated CDD web portal (Special mention to Katherine and Jeri heading the web project), and gave a brief report of the current number of permits open. Ms. Thomas introduced the new Office Assistant, Kerrian Marriott and publicly thanked Trish Turner for her great work as the interim Office Assistant III. Finally, Ms. Thomas reiterated that the ecomment portal is the official manner to submit written comment and shared that there is an ability to attach letters to an ecomment.

**1:45 p.m. Adjourned**