

PC 6/8/2023
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1981 Country Lane
Placerville, CA 95667
June 5, 2023

Planning Commission
El Dorado County

Commissioners,

As your policies state, every ten or twenty acre parcel is not suitable for commercial cannabis cultivation. Land use in El Dorado County has changed over the years, and parcels once zoned as AG can now be better described as R. Commercial cannabis cultivation is incompatible with residential areas so I suggest that current policies in no way be relaxed for an applicant if an adjacent parcel has a residence located on it. Requirements for setbacks, road access, odor mitigation, water supply, proper protection of the premises are important and should not be altered if doing so will negatively impact neighbors.

Secondly, given the havoc caused by recent wildfires in the county, any commercial cannabis grow should meet fire safety requirements. An applicant may believe thick vegetation may disperse odor coming from a grow, but, in reality, it constitutes a dangerous fire threat. Fire safety should be added to the conditions that any cannabis applicant should meet.

Sincerely,



Clare Dusek

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PLANNING DEPARTMENT

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Planning Commission Meeting June 8, 2023 Public Comments- Public Study Session

Christine Schaufelberger <cschaufel@gmail.com>

Mon 6/5/2023 4:11 PM

To: Planning Department <planning@edcgov.us>

 1 attachments (104 KB)

Memorandum to Board of Supervisor March 28, 2023 (1) (2) (1).pdf;

You don't often get email from cschaufel@gmail.com. [Learn why this is important](#)

Please add the attached "March 28, 2023, Memorandum to the Board of Supervisors and the Planning Commission", to the Public Comments for June 8 meeting. Thank you, and please let me know that you received this email.

March 28, 2023

MEMORANDUM

To: El Dorado County Board Of Supervisors, El Dorado County Planning Commissioners, and El Dorado County Counsel

From: Christine Schaufelberger and Bert Mason, Residents Adjacent To Proposed Commercial Cannabis Cultivation In Somerset, Ca

Subject: Conflicting Regulatory Information in the Processing of Commercial Cannabis Permits in El Dorado County

INTRODUCTION

The purpose of this memorandum is to highlight the El Dorado County Planning Department's use of conflicting regulatory information in the processing of Commercial Cannabis Permits and to argue that the stricter, mandatory sections should take precedence over discretionary sections in determining how or which County ordinances and State regulations are applied. This lack of consideration of mandatory language can result in permits being given to operations that do not meet all applicable laws or the intent of the voters. The memorandum specifically addresses issues related to the definitions of "shall" and "may" used in the 2018 Ballot Measures P, Q, and N, and explains how the Planning Department is using the less stringent standard of "may" in Section 100 of the EDC Code Chapter 130.41 Commercial Cannabis, Permitting, and Enforcement, instead of the more strict standard of "shall" in Section 200. The memorandum provides regulatory history and cites specific examples of how the El Dorado County Planning Department is not complying with the ordinances adopted by the El Dorado County Board of Supervisors.

El Dorado County Ordinance Title 1 - General Provisions, Chapter 1.04 - General Provisions Sec. 1.04.040. - Definitions

The following words and phrases, whenever used in the ordinances of the County, shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases: ...

California State Government Code § 6806.

Law. The term "law" denotes applicable Federal law, the Constitution and statutes of the State of California, the ordinances of the County and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

May. The term "may" is permissive.

California State Government Code § 6804.

Must and shall. The terms "**must**" and "**shall**" are each mandatory.

California Government Code 14 - General Provisions

"**Shall**" is mandatory and "**may**" is permissive.

BACKGROUND

The 2018 Ballot Measures P, medicinal use, and Ballot Measure Q, recreational use, were probably the most read of all the measures related to commercial cannabis operations as opposed to Measure N, which was 11 pages long and primarily set out rules related to taxation levels and collection of taxes. However, Measure N also included conflicting language, on page eight, that gave the authority for permitting and enforcement to the Planning and Building Department.

EDC Code Chapter 130.41 Commercial Cannabis. Section 200 Outdoor and Mixed-Light Cultivation of Commercial Cannabis, 5.C Setbacks - Measures P and Q

"Outdoor and mixed-light commercial cannabis **shall** be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse."

EDC Code Chapter 130.41 Commercial Cannabis. Section 100 Commercial Cannabis Activities, Permitting and Enforcement. - Measure N

"No Commercial Cannabis Use Permit **may** be granted unless the applicant demonstrates compliance with all standards in the County Code and state law and regulations for the particular commercial cannabis activity. Any setback for a commercial cannabis activity **may** be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of this ordinance on November 6, 2018."

The Planning Department is using the less stringent standard of "**may**" in Section 100 instead of the more strict standard of "**shall**" in Section 200.

REGULATORY HISTORY

Measures P and Q - An Ordinance Providing for The Authorization and Regulation of Commercial Outdoor and Mixd-Light Cultivation for Medicinal (P) and Recreational Adult Use (Q). Both measures had mandatory language requiring that cultivation of commercial cannabis **shall** be setback a minimum of 800 feet from the property line of the site.

The measures were codified, and approved by the Board of Supervisors, on September 10, 2019, into County Ordinance No. 5110 and subsequently became Article 4 - Special Use Regulations, Chapter 130.41.200 - Outdoor and Mixed-Light Cultivation of Commercial Cannabis. Both Ordinance 5110 and Article 4, 130.41.200 require that outdoor and mixed-light commercial cannabis operations **shall** be setback a minimum of 800 feet from the property line of the site.....

Measure N - An Ordinance Providing for The Taxation, Permitting and Enforcement of Independently Authorized Commercial Cannabis Activities. This measure states that no use permits **may** be granted unless the applicant demonstrates compliance with all standards in the County Code and state law and regulations for the particular commercial cannabis activity. Any setback for a commercial cannabis activity **may** be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before the enactment of this ordinance.

Measure N was codified and approved by the Board of Supervisors, on September 10, 2019, into County Ordinance No. 5109 and subsequently became Article 4 - Special Use Regulations, Chapter 130.41.100 - Commercial Cannabis Activities and Enforcement.

There is no mention of the possible conflicts in the Impartial Analysis of Measures P, Q, and N done by the County Counsel.

CONCLUSION

I believe that by arbitrarily using “**may**” in place of the mandatory language “**shall**,” permit applications that contain setbacks that are less than the mandatory 800 feet, do not comply with **all** standards in the County Code and State law.

In the case of the Rosewood Lane Commercial Cannabis Cultivation CCUP21-0007, setbacks are proposed for all 4 sides of the parcel that are less than 800 feet from the property lines of adjacent parcels. The proposed setbacks are 150 feet from the processing building to the SE parcel, 500 feet to the N, 600 feet to the S, 600 feet to the E, and 350 feet to the S. Also, the Agricultural Department staff reports of January 5, 2023, and January 12, 2023, are misleading in their proposed setbacks because they did not identify the processing building as part of the site. At the January 11th, 2023, Agricultural Commission Hearing, the Planning Department staff also implied that the site did not include the processing building. This needs clarification by the Planning Department.

We are attempting to contact the appropriate Planning Department staff to secure the current application information and required compliance documents, including CEQA and other State requirements so that they can be shared with our neighbors.

We welcome and encourage input from all sources regarding this proposed Rosewood Lane Commercial Cannabis Permit Application. Contact Information: Christine Schaufelberger cschaufel@gmail.com
Memorandum - Conflicting Regulatory Information in the Processing of Commercial Cannabis Permits in El Dorado County
March 28, 2023