

Tribe's request for pot-farm buffer sparks disagreement among supervisors

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WOODLAND — A request by the Yocha Dehe Wintun Nation for a ban on outdoor commercial medical marijuana cultivation within 1,000 feet of tribal lands sparked disagreement among Yolo County supervisors Tuesday, with Supervisor Don Saylor of Davis calling the proposed setback a “taking” and Supervisor Matt Rexroad of Woodland asking why the tribe needed protection “from a plant.”

Also speaking out against the request were several landowners, including one whose property borders tribal land and who believes the setback will cause her property value to drop.

Despite that opposition, the 1,000-foot setback was added to the county's interim ordinance on medical marijuana cultivation after a 3-2 vote of the board, with Supervisors Jim Provenza of Davis, Oscar Villegas of West Sacramento and Duane Chamberlain of the rural 5th District voting in favor.

Provenza, Villegas and Chamberlain have all voiced concern in recent months about commercial marijuana cultivation in Yolo County, with Provenza saying he does not want Yolo County to become California's marijuana capital and Villegas suggesting a total ban on cultivation should be on the table.

But those sentiments are not shared by the full board, and commercial marijuana cultivation has proved to be one of the more contentious issues discussed by supervisors over the past year.

That's not likely to change anytime soon, either. Supervisors will vote at their next meeting on whether to add a ban on commercial recreational marijuana cultivation to Yolo County's interim ordinance.

Tuesday's action followed a request by the tribe in the fall for a buffer “to ensure (that) the continued use and enjoyment of tribal lands is not impaired by nearby outdoor medical cannabis cultivation,” according to the staff report.

The request, staff said, is neither arbitrary nor unreasonable.

“State law provides some examples of similar efforts to protect tribal interests, including laws that require state agencies and local governments to consider impacts to tribal lands...

“Further,” staff said, “in a similar government-to-government context, the county has adopted many ordinances and policies that afford special treatment to lands near city boundaries and spheres of influence. Taking a comparable approach to lands owned by a quasi-sovereign entity such as Yocha Dehe in the very limited context of outdoor cultivation of medical cannabis is thus legally appropriate and supported by ample precedent.”

Provenza noted that if the request for a setback had come from a neighboring county like Solano or Colusa, “I think I would honor that, too.”

But critics questioned why the tribe deserved more consideration than any other county residents.

Pam Welch, representing the Capay Valley Coalition, suggested that all landowners be afforded a similar setback, while Helen McCloskey, whose property abuts tribal land and thus would fall within the setback, said, "what you're doing here is granting a special privilege."

"My right to farm includes my right to pick what crops I grow," McCloskey said. "I consider this a taking.

"If I were to grow pot there, there's no way it impacts the enjoyment of that property by the tribe," she said, adding that in her 35 years living there, she's seen little to no activity on the neighboring tribal land.

Capay Valley resident Michael McDonald agreed, saying, "I question what this enjoyment (of land) is. I don't know what enjoyment is being impaired."

Their concerns were echoed by Saylor, who said, "The 1,000-foot setback is a taking. It does damage the property rights of others."

He also questioned the rationale for a 1,000-foot buffer, saying, "I have no rational anchor for what that means. ... I'm concerned that if we establish that kind of measure, even in an interim ordinance, it sets some bar."

Rexroad, too, questioned the size of the setback, saying "1,000 feet ... is incredibly large."

"It hasn't been clear to me what they need to be protected from," Rexroad added. "It's a plant."

Chamberlain disagreed, however, arguing, "it's not just a plant ... it's against federal law."

Provenza, meanwhile, suggested the need for more setbacks, particularly from occupied residences.

"Maybe everybody gets a 1,000-foot setback and that nullifies the need for an ordinance because there's no marijuana," Villegas quipped.

The topic will return to the board Jan. 24 in the form of an ordinance banning non-medical marijuana commercial activities. While such activities, including cultivation, are not legal under current state law, the passage of Proposition 64 in November will make them legal effective January 2018 absent local regulations prohibiting them.