



Monterey County Planning Commission

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agenda Item No. 2

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REF150048 - CANNABIS REGULATION UPDATES

Public hearing to consider amendments to Monterey County's land use and permitting regulations for commercial medicinal and adult-use cannabis activities including:

- a. An ordinance amending Title 21 (non-coastal zoning ordinance);
- b. An ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance); and
- c. A text amendment to the North County Land Use Plan.

Proposed CEQA Action: Statutorily Exempt pursuant to Section 15282 of CEQA Guidelines

PROJECT INFORMATION:

Planning File Number: REF150048 (Cannabis Regulations)

Project Location: County-wide

Plan Area: County-wide

RECOMMENDATION:

It is recommended that the Planning Commission recommend that the Board of Supervisors:

- a. Find that ordinances regulating commercial cannabis activities, which require subsequent permitting that is individually subject to environmental review, qualifies for a statutory exemption from the California Environmental Quality Act pursuant to Section 15282 of the CEQA Guidelines. The Statutory exemption is provided for in Section 26055(h) of the Business and Professions Code;
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate medicinal and adult-use commercial cannabis activities in the inland unincorporated area of Monterey County consistent with state law (**Attachment 1 to Exhibit B**);
- c. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with state law (**Attachment 2 to Exhibit B**); and
- d. Adopt text amendments to the North County Land Use Plan allowing cannabis uses at the Moss Landing Business Park (a.k.a; former Kaiser Refractory site) subject to a Coastal Development Permit (**Attachment 3 to Exhibit B**).

Although staff is recommending that the Planning Commission recommend adoption of all of the proposed actions, staff has prepared a resolution for the Planning Commission that finds the proposed actions statutorily exempt from CEQA, recommends that the Board of Supervisors adopt the ordinances amending Title 20 and 21, and recommends postponing consideration of the text amendments to the North County Land Use Plan. Staff believes these actions reflect Planning Commission direction at the public workshop. Monterey County Sheriff requests that amendments that would allow security to carry firearms be deferred for further consideration.

SUMMARY:

The Planning Commission must make a recommendation to the Board of Supervisors on zoning ordinances and land use plan amendments. Staff has prepared draft amendments to regulations for permitting both adult-use and medicinal use commercial cannabis activities in the unincorporated areas of Monterey County.

The amendments were presented to the Planning Commission at a public workshop on September 27, 2017. At the workshop, changes to state law for cannabis licensing, and the effect of those changes on the County's current regulations were reviewed and discussed. Draft ordinances for Title 7 relative to cannabis were also provided to the Planning Commission for informational purposes. The purpose of the currently proposed regulatory changes is a first phase to align the County's cannabis regulations with recent changes to state law, including permitting for adult-use commercial cannabis activities. Staff has been asked to bring these initial amendments to the Board of Supervisors so that they may be enacted before the state begins issuing licenses in January 2018.

The ordinances attached to this report include edits made in response to comments received by the public and provided by the Planning Commission at the workshop. Most notably, the ordinances have been revised to permit self-distribution/transportation for cultivators, nurseries, and manufacturers transporting only their own products. Items not addressed in the revised draft ordinances include allowing security staff to carry firearms at cannabis sites, outdoor cultivation, zoning district limitations, development standards (e.g., setbacks), and tax rates. These items have been excluded from this focused effort, which is primarily to establish commercial adult-use regulations and clean up a few minor items prior to January 1, 2018. These other items will be considered early next year.

At the workshop, the Commission expressed a preference to postpone the North County Land Use Plan amendment for the former Kaiser National Refractories site. A significant reason seemed to be that this was a site-specific change that needed further consideration regarding how it may affect the bigger picture. This amendment was initiated by Coastal Commission (CCC) staff following discussions about where cannabis uses may be appropriate in the coastal zone. CCC staff holds that cannabis is not coastal dependent and Moss Landing Business Park has a coastal dependent land use overlay, which was the intent of the County in the initial draft in the Title 20 amendments. The Board's intent with Title 20 was for cannabis activities to be allowed at the former refractory site, as part of the deliberation where these types of operations should be allowed. CCC staff agreed that Moss Landing Business Park is an appropriate location for cannabis operations, and they preferred this approach in conjunction with a General Development Plan that will require full review subsequent to the LUP amendment. As such, staff recommends that the Planning Commission support moving the proposed LUP amendment to the Board with a recommendation of approval, rather than to postpone the matter.

Should the Planning Commission decide to recommend postponing the LUP amendment, communication with Coastal Commission staff indicates that the Title 20 changes could go forward without the LCP amendments. However, cannabis operation will not be allowed at this site until/unless the text amendments are approved.

More information is provided in the discussion below.

DISCUSSION:

Pursuant to Government Code Sections 65854 and 65855, the Planning Commission must hold a public hearing and make a written recommendation to the Board of Supervisors concerning amendments to land use policies and regulations (zoning ordinances). This project involves two zoning ordinances (one coastal and one inland), and a proposed text amendment to the North County Land Use Plan that would allow consideration of permits for commercial cannabis activities at the former National Refractories site in Moss Landing. The Planning Commission is asked to consider the proposed amendments and make a written recommendation to the Board on the two land use ordinances (Attachments 1 and 2 to the draft resolution, Exhibit B) and the North County Land Use Plan text amendment (Attachment 3 to the draft resolution, Exhibit B).

The ordinances amending Chapters 7.02 and 7.90 of the Monterey County Code were included as attachments at the workshop for informational purposes only. These ordinances are related to the cannabis permitting structure within the County, but are not zoning ordinances within the Planning Commission purview. As such, they are not included as part of the recommended actions and are not attached to this report.

Planning Commission Workshop

At the September workshop, the Planning Commission was generally understanding of the need to establish regulations for commercial adult-use cannabis activities before state licensing begins in January 2018 and the need to limit the amount of amendments to accomplish this goal. A general desire was expressed to revisit the cannabis regulations in a comprehensive manner post January 2018 to consider amendments that may require more detailed analysis of potential impacts. For the pre-January 2018 efforts, the Planning Commission provided the following feedback to staff as additions or alteration to the draft package that was presented:

- Explore options to incorporate edits in the draft ordinances that allow self-distribution for cultivation permittees and incorporate if timing allows;
- Review the ban on firearms for security purposes with County law enforcement and members of the ad hoc committee to determine if that ban should be lifted in draft ordinance revisions; and
- Provide separate review, analysis and processing of the LCP amendment for the former Kaiser Refractories site apart from the rest of the ordinance amendment package.

The staff report prepared for that hearing is attached to this staff report for reference and is available online at: <http://www.co.monterey.ca.us/home/showdocument?id=48076>.

The video recording of that workshop is also available online at:

http://monterey.granicus.com/ViewPublisher.php?view_id=14

The above information contains relevant background, analysis, history, and testimony that are incorporated herein by reference rather than repeated.

Draft Revisions

Since the Planning Commission workshop, staff has:

- Amended the draft cannabis ordinances to permit self-distribution/transportation with certain limitations; and
- Drafted the attached resolution (**Exhibit B**) in a manner that provides the Board of Supervisors with a recommendation from the Planning Commission that the Land Use Plan and Implementation Plan amendments for the former Kaiser Refractories site be considered separately from the ordinance amendment package.

Self-Distribution/Transportation

Current state law provides that only a Type 11 (Distributor licensee), a Type 12 (Microbusiness licensee), or licensed non-profit can transport cannabis commercially. The County ordinances do not address Microbusiness or licensed non-profits, and restrict the potential for obtaining a Distributor license type to Industrial or Heavy Commercial zoning districts within the County. Many of the cannabis cultivation and nursery operations exist, or are proposed to exist, in the Farmland zoning district where a Distributor license type would not be permitted. This could potentially create logistical challenges for cultivators and nurseries to get their products to the next step in the supply chain because they would need to rely on an unknown and still forming third-party distribution industry. In response to public testimony and Planning Commission direction to consider allowing cultivators and nurseries in the Farmland zoning district to self-distribute, staff revised the draft ordinances to allow for self-distribution.

By allowing self-distribution, additional criteria becomes applicable that would not otherwise be imposed on those cultivators who will not be self-distributing. State law contains restrictions and criteria for the transportation and distribution of commercial cannabis including but not limited to:

- Providing transportation security meeting state standards;
- Arranging for testing of products and storing the products while testing occurs;
- Following the required chain of custody protocol;
- Creating and maintaining shipping manifests along with other required documentation; and
- Packaging and labeling products appropriately before they are transported to a retailer.

Sections 20/21.67.050.B.12 and 20/21.67.060.B.7 of the proposed ordinance would allow cultivators, nurseries, and manufacturers to self-distribute/transport without a separate use permit provided that the following criteria are met:

- The permittee holds the appropriate state license type (once applicable);
- Only products produced onsite are distributed/transported (as opposed to a third-party distributor serving other permittees); and

- Self-distribution/transportation is not restricted under the terms or conditions of an approved Use Permit/Coastal Development Permit. Permit restrictions for self-distribution/transportation may be applied in certain cases because some sites have significant limitations that would preclude them from meeting the additionally applicable criteria described above.

For specific language see the Sections 20/21.67.050.B.12 and 20/21.67.060.B.7 in Attachments 1 (Title 21) and 2 (Title 20) of Exhibit B to this report.

Firearms

Staff analyzed lifting the prohibition on security carrying firearms for protection of cannabis business sites with County law enforcement (Sheriff and District Attorney Offices) at the October 16th and November 2nd cannabis ad hoc committee meetings. This topic was revisited based on testimony presented by members of the public at the September 27th Planning Commission workshop. At the November 2nd ad hoc meeting, County Sheriff expressed concern over the risks involved with permitting firearms to be carried on cannabis business sites as well as conformance to Federal Enforcement priorities described in the Cole Memo. County law enforcement's position is that strong security measures such as cameras and fences are ultimately a safer deterrent to theft than armed security personnel. The ad hoc committee directed County law enforcement and the Office of the County Counsel to conduct further research on allowing armed security and return to the committee after January 1st. The research will be presented so that the issue can be considered as part of the more comprehensive ordinance update in 2018. Therefore, the draft ordinances before the Commission have not been updated to remove the ban on security carrying firearms on cannabis sites at this time.

Former Kaiser National Refractories site in Moss Landing

The Planning Commission recommended separating consideration of the North County Local Coastal Program (LCP) amendment for the former Kaiser Refractories site ("Site") from the County's cannabis ordinance updates. The Commission expressed concern that this amendment applied only to one property, whereas the rest of the amendments applied County-wide. The Commission requested a site-specific analysis of the LCP amendment through a separate hearing.

This Site (aka; Moss Landing Business Park) is the only property in Monterey County where a coastal dependent overlay was applied other than the Light Industrial land uses on the Moss Landing island. Staff finds that the reason for this designation was due to a pre-existing seawater intake/outflow system that was part of the former Kaiser Refractory operations. CCC staff determined that cannabis is an agricultural crop, but it is not coastal dependent. However, they have also stated that the Site is in a place where they find cannabis uses are appropriate. As such, CCC and County staff worked on how we could retain the coastal dependent restriction generally while allowing cannabis uses at this Site.

The proposed LCP amendment for the Site was the result of negotiations with California Coastal Commission (CCC) staff on the certification of our coastal zoning ordinance amendments (Title 20). In November 2016, the coastal ordinance was transmitted to the CCC staff for certification. During CCC staff review of the ordinance, modifications were suggested that would prohibit commercial

cannabis activities on properties having a “coastal-dependent industrial” land use designation. Most significantly, this includes the former Kaiser Refractories site in Moss Landing. This area is zoned Heavy Industrial, and was intended by both the Board of Supervisors and the ad hoc committee to be a property eligible for permitting commercial cannabis uses under the proposed County regulations. It is also a site where cannabis operations are already occurring and are in the permitting process to obtain approvals for this use.

Staff withdrew the draft ordinance until we could reach agreement with CCC staff on changes that would allow operations at the former refractory site. After discussions between County staff and CCC staff, it was agreed that commercial cannabis activities would represent an appropriate reuse for the Site. With the CCC staff’s recommended changes incorporated in the coastal zoning ordinance, a LCP amendment is necessary to clarify that cannabis uses may be permitted (with a comprehensive General Development Plan) at the Site despite the “coastal dependent industrial” designation. This means that the property would remain Heavy Industrial with a “coastal dependent” land use designation, but that commercial cannabis uses could be considered through a comprehensive permitting process requiring a Coastal Development Permit.

Title 20 amendments could move forward without changes to the North County Land Use Plan. However, cannabis activities would not be allowed at the Site without the LCP amendment because CCC staff interprets commercial cannabis to not be a “coastal-dependent industrial use.” If the LCP amendment *is not* approved as part of the current efforts to update the cannabis regulations, any permit request for cannabis uses would need to include a request for an LCP amendment as part of their permit. If the LCP amendment *is* approved, then a General Development Plan must be processed and approved before cannabis operations can be permitted at this Site.

Per the Commission’s direction at the workshop, staff drafted the attached resolution (Exhibit B) to include a recommendation to the Board of Supervisors that the site-specific amendment be considered separately from the County-wide cannabis regulatory updates.

California Environmental Quality Act (CEQA)

Section 15282 of the CEQA Guidelines provides an exemption for projects that are specifically covered in California Code (by Statute). In the recent changes to state law concerning commercial cannabis operations, the state legislature provided a statutory exemption from CEQA for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review (*See* Business and Professions Code Section 26055(h)). The County’s draft ordinances require a Use Permit or Coastal Development Permit for all commercial cannabis activities, and the Use/Coastal Development Permits are individually subject to CEQA review. Therefore, these ordinances and LUP amendment are statutorily exempt from CEQA review pursuant to Section 15282 of the CEQA Guidelines.

Next Steps

The Planning Commission’s recommendation will be transmitted to the Board of Supervisors for consideration. Updates to the ordinances codified in Title 7 of the Monterey County Code will need to be introduced before they return to the Board for a public hearing and final decision. The zoning ordinances (Title 20 and 21) and the LCP amendment can be heard at the Board without introduction,

but must be accompanied by the Planning Commission's recommendation. Board hearings on all of the relevant regulatory updates are anticipated to occur in November/December 2017.

Following Board action on the applicable LCP amendment(s), the ordinances applicable in the coastal zone will be transmitted to the Coastal Commission for certification. Staff and the Board ad hoc committee anticipate revisiting the cannabis regulations to analyze other potential amendments in early 2018, including: set back of retail/dispensary operations, firearms, and State regulations (due out in November to become effective January). These issues may be addressed through one or more ordinance(s). Staff will return to the Planning Commission for workshops and hearings as those efforts progress.

OTHER AGENCY INVOLVEMENT:

The following agencies and departments have been involved in preparation of the draft ordinances:

- Resource Management Agency
- CAO's Office
- Health Department/Environmental Health Bureau
- Economic Development Department
- Sheriff's Office
- Treasure/Tax Collector
- Agricultural Commissioner's Office
- District Attorney's Office
- County Counsel's Office

FINANCING:

Funding for staff time associated with this ordinance development is included in the FY17-18 adopted Budget for RMA-Planning.

Prepared by: Craig W. Spencer, Senior Planner, x5233
Reviewed by: Brandon Swanson, RMA Planning Services Manager
Approved by: Carl P. Holm, AICP, RMA Director

Attachments:

- Exhibit A - September 27, 2017 Planning Commission Workshop staff report
- Exhibit B - Resolution recommending adoption of:
 - o Attachment 1 - Draft Ordinance amending Title 21 (inland zoning)
 - o Attachment 2 - Draft Ordinance amending Title 20 (coastal zoning)
 - o Attachment 3 - Draft text amendment to North County Land Use Plan

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael

Groves; Todd Bessire; Michael Bitar; Aaron Johnson; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Farmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Planning File REF150048