

Attachment A

This page intentionally left blank.

EXHIBIT A DISCUSSION (Coastal Cannabis Regulations and Setback Amendments)

Overview

Items before the Board include two ordinances, a resolution amending the text of the North County Land Use Plan, and a resolution of intent to adopt an ordinance. The actions are recommended to occur in two parts.

First, staff is seeking Board action on:

- 1) An ordinance (as certified by the California Coastal Commission), establishing regulations for commercial cannabis activities in the coastal zone (hereafter “*Ordinance 1*”); and
- 2) A resolution amending the text of the North County Land Use Plan (“LUP”).

Both *Ordinance 1* and the text amendment to the North County LUP have been certified by the California Coastal Commission (“CCC”) and return to the Board for adoption. If adopted, *Ordinance 1* would establish coastal zoning regulations for commercial cannabis activities in Monterey County. The North County LUP text amendment would revise language to provide a policy basis for consideration of limited-term permits for commercial cannabis uses at the former Kaiser National Refractories site despite the site’s “coastal dependent” land use designation.

Second, the Board is asked to consider:

- 3) Adopting an ordinance amending the inland zoning regulations (“*Ordinance 2*”) modifying setback requirements applicable to commercial cannabis activities in the inland areas; and
- 4) A Resolution of Intent to adopt an ordinance amending the coastal zoning regulations modifying the setback requirements applicable to commercial cannabis activities in the coastal area.

With the exception of the Resolution of Intent, the other actions before the Board (*Ordinance 1*, the Resolution amending North County LUP, and *Ordinance 2*) represent the final local step in the process of adopting regulations. The Resolution of Intent to adopt an ordinance amending the setback requirements cannot be considered until and unless the Board first adopts *Ordinance 1*. This is because the draft ordinance attached to the Resolution of Intent modifies the regulations being adopted in *Ordinance 1*. Simply put, *Ordinance 1* cannot be modified until it is first adopted. Procedurally, the ordinance attached to the Resolution of Intent amending the setback requirements in the coastal zone must first be certified by the CCC before the Board can adopt these changes.

These two separate yet related actions converge because the County has had commercial cannabis regulations in effect in the inland areas for over a year now. During this same time, the ordinances establishing regulations in the coastal zone have been working their way through the CCC certification process. Over this period of time, the Board and Planning Commission have identified some challenges in the inland area due to the adopted setback requirements. At the direction of the Board and Planning Commission, staff evaluated potential changes to the setback requirements for both the inland and coastal areas. On February 7, 2018, the CCC certified the County’s *Ordinance 1* and North County LUP amendment and those regulations are now

returning to the Board for adoption. On the heels of adoption of the now certified regulations, staff brings forward ordinances amending the setback requirements for the inland and coastal areas. The inland ordinance has been reviewed by the Planning Commission and can be adopted at the Board hearing. In contrast, the Resolution of Intent to adopt an ordinance amending the setback requirements in the coastal zone must follow the required CCC certification process before returning to the Board for adoption.

Background

The process of adopting cannabis regulations originally began in July 2015 following adoption on an interim ordinance establishing a temporary ban on new medical cannabis cooperatives or collectives within Monterey County. After a year of public meetings, and consultation with the Board's cannabis ad hoc committee, on July 12, 2016 the Board adopted a Resolution of Intent to adopt an ordinance establishing regulations for commercial medical cannabis activities in the coastal areas of Monterey County. At that same hearing, the Board adopted an ordinance establishing regulations for commercial medical cannabis activities in the inland areas contingent upon the passing of a commercial cannabis tax measure (Ordinance No.5270). The tax measure (Measure Y) was approved by the voters in November 2016 and the inland regulations became effective in December 2016. The Resolution of Intent to adopt the coastal regulations were transmitted to the CCC for certification.

During CCC staff's review of the proposed medical cannabis regulations, several edits were suggested to the County's ordinance including edits that would prohibit cannabis activities on industrial zoned properties that are designated in the North County LUP for "coastal dependent industry." County staff withdrew the request for certification of the ordinance to allow more time to work with CCC staff to find mutually agreeable solutions to the concerns identified during review of the request.

While County staff negotiated with CCC staff, state law changed several times. A state-wide initiative legalizing adult use cannabis (the Adult Use of Marijuana Act) was passed in November 2016, and the legislature made modifications to combine the adult-use initiative with the medical cannabis legislation in June 2017 (the Medicinal and Adult Use of Cannabis Regulatory and Safety Act or "MACURSA"). The County responded by preparing updated ordinances that addressed both medicinal and adult-use cannabis activities in Monterey County. In the same effort, the draft coastal regulations were updated to reflect revisions to the ordinance agreed upon by County staff and CCC staff addressing the issues raised during review of the County's draft medical regulations. One of the main changes included the addition of a proposed text amendment to the North County LUP to allow consideration of a Coastal Development Permit to allow commercial cannabis activities at the former Kaiser National Refractories site. On December 5, 2017, the Board adopted a new Resolution of Intent to adopt *Ordinance 1* and a text amendment to the North County LUP to establish regulations for medicinal and adult-use commercial cannabis activities in the coastal zone and incorporating revisions suggested by the CCC staff.

On February 7, 2018, the CCC certified the County's proposed regulations as submitted. Those regulations now return to the Board for final action.

As described in the overview section above, at the same time the regulations establishing commercial cannabis regulations in the coastal zone were in the process, staff explored options for amending the setback requirements applicable to commercial cannabis activities. The ordinances amending the setback regulations were reviewed by the Planning Commission. The Planning Commission has adopted a resolution recommending that the Board adopt of the inland ordinance (*Ordinance 2*) and adopt a Resolution of Intent to adopt the coastal ordinance modifying the setback requirements.

Coastal Zoning Ordinance (*Ordinance 1*)

If adopted, *Ordinance 1* (**Attachments B** (clean version) **and C** (redline version)), would establish zoning regulations for commercial cannabis activities applicable in the coastal zone. The County currently does not have regulations applicable to commercial cannabis activities formally adopted within the coastal zone. The proposed regulations within *Ordinance 1* are nearly identical to the adopted inland zoning regulations (Title 21), but are tailored to fit within the adopted coastal zoning ordinance (Title 20). Requirements for conditional planning permits, location of certain operations within specific zoning designations, and cultivation within legally established greenhouses or industrial buildings are contained in the proposed ordinance in the same manner as they exist within the adopted inland zoning regulations.

This ordinance was reviewed by the Board on December 5, 2017 together with other ordinances intended to update regulations by removing the term medical, making the regulations applicable to both adult-use and medicinal use cannabis activities, and making other changes in terms and definitions consistent with MAUCRSA. At the hearing, the Board adopted the inland ordinance, and a Resolution of Intent to adopt the coastal ordinance. Staff was directed to transmit the Resolution of Intent to the CCC for certification. The CCC has certified the *Ordinance 1* and *Ordinance 1* now returns to the Board for final action.

North County Land Use Plan Text Amendment

An LCP amendment is necessary in order for cannabis uses to be permitted at the former Kaiser Refractories site in Moss Landing due to the “*coastal dependent industrial*” designation and CCC staff’s determination that cannabis is not a coastal dependent use. This is the only site with the “coastal-dependent” overlay (due to the seawater intake system) where cannabis uses were contemplated and CCC staff agreed the former Refractories site is an appropriate location for cannabis uses.

In coordination with the CCC staff, county staff prepared a text amendment to the North County LUP and Coastal Implementation Plan Part 2 (Regulations for Development in the North County Land Use Plan Area) that would authorize review and permitting of commercial cannabis activities at the former Refractories site despite the “*coastal-dependent*” land use overlay. 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.

In review and recommendation of the coastal regulations prior to the Board hearing on December 5, 2017, the Planning Commission voted to defer action the LCP amendments. However, the cannabis ad hoc committee recommended that the Board approve the amendments in order to

proceed with permitting cannabis uses at the Refractories site that were established prior to county regulations.

The Board's Resolution of Intent included proposed revisions to the North County LUP text, the text revision was certified by the CCC, and the Board is considering final action (adoption of a resolution) to amend the text of the North County LUP (See **Attachment D** to this report).

Setback Amendments

At the direction of the Planning Commission and Board of Supervisors, staff has prepared ordinances that amend setback requirements applicable to commercial cannabis activities in the unincorporated areas of Monterey County. The draft ordinances include an ordinance amending the inland zoning regulations (*Ordinance 2*) and an ordinance that would amend the coastal zoning regulations (Resolution of Intent).

The County's current regulations, both inland and coastal, require that commercial cannabis retailers be located at least 1,500 feet from another cannabis retailer and be setback at least 600 feet from a school, public park, or drug recovery facility. These setbacks were established to distribute the density of retailers and in anticipation of what staff believed at the time would be in the state's regulations. However, the setbacks have created challenges processing applications and are not aligned with recent changes to state law.

State law requires a setback of 600 feet between commercial cannabis operations and schools, day care centers, and youth centers. Definitions for each of these uses are provided in state law. There is no required setback between cannabis retailers, or between retailers and drug recovery facilities, but there is a density component in state regulations. The regulations require the state licensing agencies to determine if there is an "excessive concentration" of retailers in a census tract based on a ratio of retailers to population, similar to the process for obtaining a liquor license from the Bureau of Alcohol, Tobacco, and Firearms ("ABC").

In addressing these setback issues, County staff considered and analyzed several options for promoting healthy business competition, while still being sensitive to health, safety, and social issues that may arise from commercial cannabis activities. Analysis included discussions with representatives from State Parks, Monterey County Public Health, Monterey County Sheriff's Office, and research of relevant crime and health data from other jurisdictions that currently permit cannabis business. Additional details on the results of research, consultation with other departments, and Planning Commission recommendations are described in more detail below.

Based on staff research, consultation with Health, the Sheriff's Office, and State Parks, and with feedback from the Planning Commission, staff recommends amending the current required setbacks. As drafted, the proposed ordinances (inland and coastal) would:

- Delete the setback required between retailers, and instead establish a required finding of *public convenience or necessity* for all cannabis Use Permits and/or Coastal Development Permits;
- Replace "public parks" with "playgrounds";
 - o "Public parks" is defined as "an area created, established, designated, or maintained by a special district, a County, the State, or the Federal government"

for public play, recreation, or enjoyment or for the protection of natural resources and features at the site.”

- “Playground” will be defined as “any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.” (same as the definition located in Health & Safety Code Section 11353.1(e)(1)).
- Update setbacks for all commercial cannabis activities consistent with state law including deleting the setback from drug recovery facilities and adding setbacks from day care centers (also referred to a “child care centers”) and youth centers.

These proposed revisions would align the County’s requirements with current state law and avoid impacts to youth oriented uses and facilities. A summary of the proposed setbacks in the draft ordinances are as follows:

600-foot from all of the following:

1. A school providing instruction in kindergarten or any grades 1 through 12
2. Child care centers (aka: day care centers)
3. Youth Centers
4. Playgrounds

All setbacks apply only to operations in existence at the time the permit is being considered and are measured from property line to property line, except for playgrounds which would be measured from the boundary of the playground facilities. In making a recommendation to the Board, the Planning Commission recommended changing the state defined term “day care center” to “child care center” and including within the definition of “child care center” “transitional kindergartens.” The change was made at the request of representatives from the County’s Public Health Department and a representative from First 5 California. The term “child care center” was considered preferable to “day care center” as child care center is a more widely used and understood term. Transitional kindergartens are youth oriented facilities that were not covered in the state’s definition of “child care center” or “school.”

Setbacks from schools, public parks, playgrounds, day care centers, and youth centers

For all cannabis licenses types, state law provides: *“A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius.”*

(Business and Professions Code Section 26054(b)).

County cannabis regulations currently require a 600-foot setback between schools, public parks, and drug recovery facilities. “Public Park” is defined as *“an area created, established, designated, or maintained by a special district, a County, the State, or the Federal government for public play, recreation, or enjoyment or the protection of natural resources and features at the site.”* No definition of “school” or “drug recovery facility” is provided in the County Code; however, definitions of these uses can be found in state law.

To align with state law and based on recommendation of the Planning Commission, staff has drafted ordinances that would amend the public park setback for cannabis activities. Rationale for this amendment is explained below:

Setbacks from Playground versus Public Parks

Staff recommends removing the “public park” setback requirement and instead requiring a setback from a “playground” as defined above. The rationale for this revision is that the term “public parks” is too broad a term that includes areas of passive recreation or natural resource protection. Playgrounds are youth oriented facilities where children congregate on a regular basis and thus may be incompatible with commercial cannabis uses, as opposed to location of retailers in existing retail areas near larger passive use park boundaries.

Planning Commission suggestions:

Staff recommend that the Planning Commission update the setback requirements for all commercial cannabis activities to mirror state law, including adding the definitions of schools, day care centers, and youth centers, but to maintain setbacks from “public parks” for commercial cannabis activities other than retailers. The recommendation stemmed from conversation with State Parks representatives. Concerns raised by State Parks staff on this topic include the potential need for fire clearance/breaks, erosion and runoff, use of pesticides and fertilizers, and other agricultural and development-related impacts that might arise from operations near park lands. State Parks staff recommended additional dialogue and analysis of the potential impacts before removing or amending the park setback requirements for cultivation, manufacturing, or other uses involving new development. The same concerns were not applicable to consideration of dispensaries in commercially zoned areas. For these reasons, the 600-foot setback from “public parks” was proposed to be remain to protect encroachment on protected natural resources. The Planning Commission noted that this type of setback is a broader policy consideration applicable not only to cannabis activities. Other agricultural uses and development are not required to be setback from public park boundaries and cannabis should not have a unique setback requirement; however, it may be worth exploring policies generally applicable to protecting public park lands for all uses and development projects.

Consistent with the Planning Commission’s recommendations, the proposed ordinance would delete the setback requirement from “public parks” and instead require a 600-foot setback from playgrounds.

Setbacks between Retailers (Dispensaries)

The State did not have regulations limiting the concentration of cannabis retail facilities when the County initially adopted its medical cannabis regulations. To provide limitations on the potential density of cannabis retailers, the County adopted regulations requiring a 1,500-foot setback between operations. In practice, there have been several occasions where dispensary uses are proposed within 1,500 feet of one another due to the limited areas zoned for commercial use, and limited availability of tenant space in these commercial zones. With updates to state law, new information and standards for retailer concentrations are now available.

Section 5019 of the Bureau of Cannabis Control's regulations establish an "excessive concentration" standard for licensing of commercial cannabis retailers, which is similar to the standards used for alcohol licensing. Concentrations would be determined by comparing the ratio of licenses to population within the census tract to the ratio of licenses to population within the County. If the ratio of retailers to population in the census tract exceeds the ratio of retailers to population within the whole County, there would be an excessive concentration of retailers in that census tract.

Staff researched health and safety information as a means of determining appropriate setback or density limits. Staff reviewed several studies from other jurisdictions and consulted with the Monterey County Sheriff's Office and Monterey County Public Health. These findings are summarized below:

Criminal Activity:

In most cases, studies have shown that due to security measures imposed on cannabis operations, dispensaries have the same or fewer number of crimes than uses such as banks, pharmacies, and liquor stores. There are no local County requirements for maximum density or setbacks from these other types of uses other than concentration ratios established by the State for liquor licenses. In the case of liquor licenses, the Board of Supervisors must make a finding of *public convenience or necessity* when a license would exceed the concentration ratios within the census tract.

In discussions with the representatives from the Monterey County Sheriff's Office, there have been two incidents of crime at an existing retail facility in Castroville. The first, an attempted robbery involving the use of a stolen vehicle to run through the building wall. The second, a gang-related shooting outside the dispensary. In the case of the attempted robbery, locked safes within the dispensary prevented significant loss of cash or product. In the case of the shooting, the incident occurred outside the dispensary due to the presence of security within the dispensary. To date, these are the only reported incidents at dispensaries in the County. While the incidents in Castroville do raise concerns, attempted robberies and gang-related shootings are not unique to dispensary uses. Robbery is often a crime of opportunity. Well secured facilities help to minimize opportunities for theft and conflict within the dispensary. Research conducted on this subject found, in the case of Los Angeles, that criminal activity rose in areas where medical cannabis dispensaries had been closed. In all, staff, including the Sheriff's Office, could not make a definitive tie between density or proximity of dispensaries and a potential increase in crime rates. Based on research, there is little evidence to suggest that additional restrictions, beyond those imposed by the state for cannabis retailers, are warranted to deter criminal activity.

Public Health:

Research on health impacts of cannabis were also evaluated. Many of the potential health impacts appear to be more closely aligned with the general legalization of cannabis or associated with operational requirements of dispensaries, rather than the density or location of the dispensaries. Cannabis-related health concerns include preventing access

to youth, outreach and education about potential health impacts for pregnant women, restrictions on the transport or possession of cannabis on federal properties (such as Fort Ord), and the consequences of drugged driving. The County's Health Department expressed concerns about disproportionate impacts to vulnerable populations due to overconcentration of cannabis retail facilities. Health has observed that alcohol and tobacco use, along with corresponding health impacts, are disproportionately high in disadvantaged communities. Health suggested monitoring and evaluating cannabis dispensary impacts before changing the setback or density requirements. In contrast to the Health concerns, some jurisdictions are adopting equity policies that provide a preference for cannabis operations within disadvantaged communities as a means of providing economic benefits to areas most impacted by the "War on Drugs."

In considering options for amending the setback required between dispensaries, if the setbacks were removed, the potential number or concentration of retailers would default to the State's "excessive concentration" determination. The excessive concentration amounts would be based on population within the census tract. As is the case with alcohol licenses, there is still a path to obtaining state licenses should the proposed retailer exceed the concentration requirements. State regulations allow approval of cannabis retailer licenses in excess of the concentration ratios if: "denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for cannabis or cannabis products." The processes and exact requirements for the excessive concentration determination are still being developed by the Bureau. Staff anticipates that the Bureau will establish a process similar to ABC licensing for a determination of concentration, and if applicable, a *public convenience or necessity* process for retailers in excess of the permissible concentration limits. Bureau representatives conveyed to County staff that this process is expected be refined in 2018. State cannabis regulations currently do not have an exact process for cannabis concentration that can be addressed by the County prior to action on its Use Permits. That means an applicant would have to go through the County process without knowing if the State would allow it. To address this issue, as well as public health concerns, staff is recommending that retailer Use Permits and Coastal Development Permits include a finding of *public convenience or necessity* (Sections 21.64.040.C.6 and 20.64.040.C.6 of the proposed ordinances).

Next Steps

If the Board adopts *Ordinance 1* and/or the North County LUP text amendment, staff will forward the Board adopted regulations to the CCC for concurrence. After CCC concurs with the Board action, the ordinance and text amendment will be effective.

If the Board adopts *Ordinance 2*, the inland zoning setback modifications would become effective on April 19, 2018 (the 31st day following adoption). If the Board adopts the Resolution of Intent to amend the coastal setback requirements (contained in *Ordinance 1*), staff will forward the Resolution of Intent to the CCC and request certification of the proposed amendments. Following certification of the coastal setback amendment ordinance, the ordinance would return to the Board for final action.

Lastly, and at the direction of the Board and/or Cannabis Standing Committee, staff could begin exploring potential additional policy changes with respect to commercial cannabis activities including items such as outdoor cultivation, zoning district limitations, firearm policies for security personnel, and other regulatory changes and clarifications as warranted.

This page intentionally left blank