

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. 18-071

Resolution of the Monterey County Board of)
 Supervisors to amend the text of the North)
 County Land Use Plan to allow permitting of)
 commercial cannabis activities at the former)
 Kaiser National Refractories site located at)
 7697 Highway 1, Moss Landing,)
 notwithstanding the coastal-dependent)
 industrial land use designation on the site.....)

An amendment to the North County Land Use Plan came on for public hearing before the Monterey County Board of Supervisors on March 20, 2018. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

I. RECITALS

1. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
2. Section 30500 of the Public Resources Code requires each county and city to prepare a Local Coastal Program (LCP) for that portion of the coastal zone within its jurisdiction.
3. On April 28, 1982, the Board of Supervisors adopted the North County Land Use Plan (LUP) as part of the LCP in the Coastal Zone pursuant to the California Coastal Act.
4. On June 4, 1982, the California Coastal Commission certified the North County LUP as part of Monterey County's LCP.
5. Pursuant to Public Resources Code sections 30000 *et seq.*, and Title 20 of the Monterey County Code, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: the County's Planning Commission hold a noticed public hearing and make a recommendation to the Board of Supervisors; the Board of Supervisors hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; the Board of Supervisors take subsequent final action on the ordinance and/or resolution after the Coastal Commission acts; and the Coastal Commission confirm the County's action. The procedures have been followed for the proposed amendment to the LUP and upon confirmation by the Coastal Commission the amendment will take effect.
6. The Controlled Substances Act (21 U.S.C. §§ 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is

no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

7. In recent years, the federal government has taken a hands-off approach with regard to states and local governments that have enacted laws authorizing cannabis related conduct, as long as the local agencies have established strong and effective regulatory and enforcement systems that address the threats that cannabis activity could pose to public safety, public health, and other law enforcement interests.
8. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.
9. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, “CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.
10. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.
11. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code §§ 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.
12. On July 12, 2016, the Monterey County Board of Supervisors adopted a resolution of intent to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. These regulations were sent to the California Coastal Commission for certification, but the County withdrew the request for certification of these regulations because of discussions with Coastal Commission staff on revisions to the regulation language and intent.
13. On November 8, 2016, by statewide initiative, the voters enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.
14. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code §§ 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single State licensing scheme for both medicinal and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities. The state will not issue a state license without first receiving authorization from the applicable local jurisdiction.
15. On November 15, 2017, the Monterey County Planning Commission held a duly noticed public hearing to consider and make a recommendation to the Board of Supervisors

regarding approving an amendment to the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site. At least 10 days before the first public hearing date, notices of the hearing before the Planning Commission were published in the Monterey County Herald and the Salinas Californian. The Planning Commission recommended that Board of Supervisors remove the required setbacks from public parks from the draft ordinances amending Part 1 of the Coastal Implementation Plan, adopt the ordinance establishing regulations for commercial cannabis activities with the suggested modification, and consider the text amendment to the LUP and the amendment to the Coastal Implementation Plan, Part 2 affecting the property located at 7697 Highway 1, Moss Landing (the Former Kaiser National Refractories site) separately from the ordinance amending the Coastal Implementation Plan, Part 1.

16. On December 5, 2017, the Monterey County Board of Supervisors held a duly noticed public hearing and adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Parts 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 MAUCRSA; and to amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site. At least 10 days before the public hearing date, notices of the hearing before the Board of Supervisors were published in the Monterey County Weekly. Following adoption by the Board of Supervisors, the Resolution of Intent was transmitted to the California Coastal Commission for certification.
17. On February 7, 2018, the California Coastal Commission approved Monterey County LCP Amendment number LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance) as submitted by the County.
18. Pursuant to state regulations and pursuant to Section 20.94.030.D.7 of the Monterey County Code, in order for the LCP amendments to take effect, the Board must acknowledge receipt of the Coastal Commission certification of the amendments, formally adopt the certified amendments, and transmit the amendments back to the California Coastal Commission for confirmation.
19. The proposed North County Land Use Plan text, as proposed to be amended, in a redline version and a clean version, are attached hereto as Exhibit 1 and Exhibit 2 respectively and are incorporated herein by reference. The Board of Supervisors is considering adoption of the proposed ordinance amending the Coastal Implementation Plan, Parts 1 and 2 by separate action concurrent herewith.
20. This amendment is intended to be carried out in a manner fully in conformity with the California Coastal Act.
21. State law (MAUCRSA) provides a statutory exemption from the California Environmental Quality Act (CEQA) for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits which are themselves subject to CEQA review (Business and Professions Code Section 26055(h)). The County's ordinance requires a Coastal Development Permit for all commercial cannabis activities in the

County. Coastal Development Permits are individually subject to CEQA review. Therefore, the County's updated regulations are statutorily exempt from CEQA review pursuant to Business and Professions Code Section 26055(h) and Section 15282 of the CEQA Guidelines.

22. On March 20, 2018, the Board of Supervisors held a duly noticed public hearing to consider the proposed amendments to the LUP. At least 10 days before the hearing date, a notice of the hearing before the Board of Supervisors was published in the Monterey County Weekly.

II. DECISION

NOW, THEREFORE, BASED ON ALL OF THE ABOVE FINDINGS, BE IT RESOLVED, That the Board of Supervisors does hereby:

- a. Acknowledge receipt of the California Coastal Commission resolution approving the Monterey County Local Coastal Program (LCP) Amendment No. LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance);
- b. Find the project is the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from the California Environmental Quality Act pursuant to Business and Professions Code Section 26055(h);
- c. Adopt a resolution to amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site;
- d. Certify that the amendments are intended to be carried out in a manner fully in conformity with the Coastal Act; and
- e. Direct staff to transmit the amendments to the California Coastal Commission for confirmation that the amendments are consistent with the February 7, 2018 action taken by the Coastal Commission approving Local Coastal Plan Amendment number LCP-3-MCO-18-0004-1.

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Phillips and carried this 20th day of March 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting on March 20, 2018.

Dated: May 21, 2018
File Number: RES 18-029

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

Amendments to North County Land Use Plan

1. Section 4.3.6.F.1 is amended to read as follows:

1. Lands designated for Heavy and Light industrial use in the North County Coastal Zone, shall be reserved for coastal dependent industry as defined in Sections 4.3.1.L and M., and in the glossary of this plan. New heavy or light Industrial manufacturing or energy related facilities shall be located only in areas designated for these uses in this plan. Notwithstanding the coastal dependent designation, limited agricultural uses, including commercial cannabis activities, may be permitted within existing industrial infrastructure at the former Kaiser National Refractories site [refer to the Moss Landing Community Plan for more details].

2. Paragraph 5 of Section 5.2.1.A.2 is amended to read as follows:

As with PG&E facility, major changes in the next twenty years at Kaiser can be accommodated on-site. An option available to Kaiser is the use of existing industrial infrastructure for limited agricultural uses including commercial cannabis activities. Such use shall be regulated by a Coastal Development permit. On-site circulation system and land use changes are planned, and primary access from Highway One will be closed and shifted to Dolan Road. Major changes in primary access to PG&E and Kaiser shall be approved only upon the condition that comprehensive landscaping programs are completed around the perimeter of all properties fronting on public roads. Policy recommendations for the modernization proposals are presented in Section 5.5.

Amendments to the Moss Landing Community Plan

3. Section 5.5.2.10 is amended to read as follows:

10. All new heavy industry shall be coastal dependent, except that limited agricultural uses, including commercial cannabis activities may be permitted within existing industrial infrastructure at the former Kaiser National Refractories site. Such use shall be regulated by permit.

DRAFT AMENDMENTS TO NORTH COUNTY LAND USE PLAN

(proposed amendments shown in strikethrough and underline)

Amendments to North County Land Use Plan

1. Section 4.3.6.F.1 is amended to read as follows:

1. Lands designated for Heavy and Light industrial use in the North County Coastal Zone, shall be reserved for coastal dependent industry as defined in Sections 4.3.1.L and M., and in the glossary of this plan. New heavy or light Industrial manufacturing or energy related facilities shall be located only in areas designated for these uses in this plan. Notwithstanding the coastal dependent designation, limited agricultural uses, including commercial cannabis activities, may be permitted within existing industrial infrastructure at the former Kaiser National Refractories site [refer to the Moss Landing Community Plan for more details].

2. Paragraph 5 of Section 5.2.1.A.2 is amended to read as follows:

As with PG&E facility, major changes in the next twenty years at Kaiser can be accommodated on-site. An ~~primary~~ option available to Kaiser is the use of existing industrial infrastructure for limited agricultural uses including commercial cannabis activities. Such use shall be regulated by a Coastal Development permit. ~~replacement of the present gas and fuel oil as furnace fuels by refinery coke. In addition, increased pressurized filtering of products before firing would remove further water and decrease the fuel requirement per pound of finished product.~~ On-site circulation system and land use changes are planned, and primary access from Highway One will be closed and shifted to Dolan Road. Major changes in primary access to PG&E and Kaiser shall be approved only upon the condition that comprehensive landscaping programs are completed around the perimeter of all properties fronting on public roads. Policy recommendations for the modernization proposals are presented in Section 5.75.

Amendments to the Moss Landing Community Plan

3. Section 5.5.2.10 is amended to read as follows:

10. All new heavy industry shall be coastal dependent, except that limited agricultural uses, including commercial cannabis activities may be permitted within existing industrial infrastructure at the former Kaiser National Refractories site. Such use shall be regulated by permit.