

Exhibit B

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**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No.

Outdoor Cannabis Cultivation Pilot Program and Indoor Cannabis Cultivation Renewable Energy Requirement Revisions

Resolution of the Monterey County Planning Commission recommending that the Monterey County Board of Supervisors:

- a) Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA the pursuant to Business and Professions Code section 26055(h).
- b) Adopt an ordinance (**Attachment 1**) amending Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify energy requirements for indoor cannabis cultivation and amending Chapter 21.69 of Title 21 (the Outdoor Cannabis Cultivation Pilot Program) to:
 - 1) Expand the outdoor cannabis cultivation pilot program to include the Central Salinas Valley Area
 - 2) Add grazing land zoning districts within the Central Salinas Valley and Cachagua Area Plans as locations where outdoor cannabis cultivation may be permitted
 - 3) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet
 - 4) Modify the criteria for granting and exception to the setback from the nearest off-site structure
 - 5) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet, and
 - 6) Extend the pilot program from 5 years to 8 years; and
- c) Adopt an ordinance (**Attachment 2**) amending Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify energy requirements for indoor cannabis cultivation and amending Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
 - 1) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet
 - 2) Modify the criteria for granting and exception to the setback from the nearest off-site structure
 - 3) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet, and
 - 4) Extend the pilot program from 5 years to 8 years.

The proposed ordinances amending regulations for commercial cannabis cultivation came before the Planning Commission at a duly noticed public hearing on March 31, 2020. Having considered all the written and documentary evidence, the administrative record, the staff

report, oral testimony and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

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. 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.

3. 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 states and local governments 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.

4. 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.

5. 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.

6. 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.

7. On July 12, 2016, the Monterey County Board of Supervisors (“Board of Supervisors”) adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance No. 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code (“MCC”)), and on July 19, 2016 the Board of Supervisors adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance No. 5272, codified at MCC Chapter 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to Section 15372 of the California Elections Code. On November 8, 2016, the voters approved the tax (Measure Y, codified at MCC Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code and Ordinance Nos. 5270 and 5272 became operative. Hence, Chapter 21.67 became operative in the inland

unincorporated area on December 13, 2016. Chapter 21.67 only allowed for medical commercial cannabis activities within greenhouses and indoor facilities legally established as of January 1, 2016.

8. Also on July 12, 2016, the Board of Supervisors adopted a resolution of intent (Resolution No. 16-210) to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. The County submitted the regulations to the California Coastal Commission for certification, but the County subsequently withdrew the proposed regulations because of discussions with Coastal Commission staff on revisions and changes to state law.

9. 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.

10. 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.

11. On December 5, 2017, the Board of Supervisors adopted Ordinance No. 5292 to amend Title 21 of the MCC to regulate both adult-use and medical commercial cannabis activities, and Resolution of Intent No. 17-015 to adopt an ordinance amending the Monterey County Coastal Implementation Plan (Title 20) of the MCC to regulate commercial cannabis activities in the coastal zone. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1. On March 20, 2018, the Board of Supervisors adopted the coastal zoning regulations, as certified by the Coastal Commission (Ordinance No. 5299). Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

12. On February 7, 2018, the California Coastal Commission certified the Monterey County Local Coastal Program Amendments (LCP-3-MCO-18-0004-1) 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 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 notwithstanding the coastal-dependent industrial land use designation at the site.

13. On March 20, 2018, the Monterey County Board of Supervisors adopted:

a. The California Coastal Commission certified ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code (Ordinance Number 5299);

b. A resolution amending the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site notwithstanding the coastal-dependent industrial land use designation at the site (Resolution 18-071);

c. An ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to remove the 600-foot setback from public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities (Ordinance Number 5300); and

d. Adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 600-foot setback from public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities (Resolution of Intent Number 18-070).

14. On November 6, 2018, the Board of Supervisors adopted Ordinance No. 5306 to amend Title 21 of the Monterey County Code to change commercial cannabis activities from a conditional use allowed subject to a Use Permit, to a principle use allowed subject to an Administrative Permit and to create an exception to 1,500 foot setback required between commercial cannabis retailers when special circumstances apply. On that same day, the Board of Supervisors adopted Resolution of Intent No. 18-413 to amend the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit, to a principle use allowed subject to a Coastal Administrative Permit and to create an exception to 1,500 foot setback required between commercial cannabis retailers when special circumstances apply. Resolution of Intent No. 18-413 incorporated changes intended for adoption as codified in Resolution of Intent No. 18-070 relating to setbacks required from schools, playgrounds, child care centers, and youth centers for all types of commercial cannabis activities. The Resolution of Intent (No. 18-413) was certified by the Coastal Commission on September 27, 2019. The ordinance must return to the Board of Supervisors for adoption.

15. On June 18, 2019, the Board of Supervisors adopted Ordinance Nos. 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code to establish a five year pilot program for outdoor commercial cultivation and related activities in certain coastal and inland unincorporated areas. Ordinance No. 5312 was certified by the Coastal Commission on September 27, 2019.

16. The purpose of these ordinances are to:

a. Modify the regulations (coastal and non-coastal) for indoor cultivation to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources; and

b. Modify the regulations for outdoor cannabis cultivation in the coastal and non-coastal unincorporated areas of Monterey County to remove some constraints to entry in the program.

17. It is the intent of Monterey County to establish regulations that reduce negative impacts on the community and environment from outdoor cannabis cultivation and outdoor cultivation ancillary uses and to provide for protection of public health, safety and welfare.

18. For the proposed amendments to the Coastal Implementation Plan, pursuant to the Coastal Act, 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 an ordinance, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending Part 1 of the Coastal Implementation Plan will not go into effect until after certification by the Coastal Commission and it will not become operative until the Coastal Commission's certification is final and effective.

19. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.

20. State law 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 draft ordinances require an Administrative Permit or Coastal Administrative Permit, for all commercial cannabis activities covered in the pilot program. Administrative Permits and Coastal Administrative Permits are individually subject to CEQA review. Therefore, the County's ordinances are statutorily exempt from CEQA review pursuant to Business and Professions Code section 26055(h).

21. State law requires the Planning Commission to hold a noticed public hearing on proposed amendments to zoning ordinances and to make a written recommendation to the Board of Supervisors.

22. On March 31, 2020, the Planning Commission held a duly noticed public hearing to consider making a recommendation to the Board of Supervisors on the proposed ordinances (Attachments 1 and 2). At least 10 days before the hearing date, notices of the hearing before the Planning Commission were published in The Monterey County Weekly.

II. DECISION

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors:

- a) Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA the pursuant to Business and Professions Code section 26055(h).
- b) Adopt an ordinance (**Attachment 1**) amending Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify energy requirements for indoor cannabis

cultivation and amending Chapter 21.69 of Title 21 (the Outdoor Cannabis Cultivation Pilot Program) to:

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 - b. Add grazing land zoning districts within the Central Salinas Valley and Cachagua Area Plans as locations where outdoor cannabis cultivation may be permitted
 - c. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet
 - d. Modify the criteria for granting and exception to the setback from the nearest off-site structure
 - e. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet, and
 - f. Extend the pilot program from 5 years to 8 years; and
- c) Adopt an ordinance (**Attachment 2**) amending Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify energy requirements for indoor cannabis cultivation and amending Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
- a. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet
 - b. Modify the criteria for granting and exception to the setback from the nearest off-site structure
 - c. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet, and
 - d. Extend the pilot program from 5 years to 8 years,

PASSED AND ADOPTED on this 31st day of March 2020, by the following vote:

AYES:

NOES:

ABSENT:

By: _____
Erik Lundquist, AICP, Planning Commission Secretary