



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Planning and  
Development  
**Department No.:** 053  
**For Agenda Of:** June 6, 2017  
**Placement:** Departmental  
**Estimated Time:** 1 hour  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn S. Russell, Ph.D., Director, Planning and Development  
Director(s) (805) 568-2085  
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning  
(805) 568-2072

**SUBJECT:** Options for the Hoop Structures Ordinance Amendment Project

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: No

**Other Concurrence:** N/A

As to form: No

**Recommended Actions:**

Staff recommends that the Board of Supervisors:

- a) Receive and file this report on options for proceeding with the Hoop Structures Ordinance Amendment project;
- b) Provide direction to staff as appropriate; and
- c) Determine pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5) that this report and direction to staff do not constitute a project because they are administrative activities that will not result in direct or indirect physical changes to the environment.

**Summary Text:**

On April 19, 2017, during the Fiscal Year (FY) 2017-18 budget workshops, the Board of Supervisors directed the Planning and Development Department (P&D) to return on June 6, 2017, for a briefing regarding options for proceeding with the Hoop Structures Ordinance Amendment project. As discussed in detail below, P&D staff has identified five options to address the zoning permit process for hoop structures, and requests that the Board of Supervisors provide direction on how to proceed with the

Hoop Structures Ordinance Amendment project. Of these options, staff recommends that the County pursue Option 4, as it would provide a comprehensive approach to resolve zoning code uncertainties and inconsistencies.

## **Background:**

### **1.0 Hoop Structures Issue Overview**

Hoop structures are removable agricultural plant protection structures that shelter crops from the elements and enhance the growing environment. More specifically, they are defined in the County’s Land Use and Development Code (LUDC) and Coastal Zoning Ordinance (CZO) as “[a] structure consisting of a light-weight, frame with no permanent structural elements (e.g., footings, foundations, plumbing, electrical wiring) and an impermeable, removable covering used to protect plants grown in the soil or in containers upon the soil. Includes structures commonly known as berry hoops and hoop houses” (LUDC Subsection 35.110.020).<sup>1</sup> However, specific permit requirements for hoop structures are set forth only in the CZO regulations that apply to areas that are subject to the Carpinteria Agricultural (CA) Overlay zoning designation. Hoop structures are permitted as greenhouses in areas regulated by the LUDC and the CZO outside of the CA Overlay.

Hoop structures are widely used in the County to produce high value crops. Recent trends indicate that more farmers are using hoop structures and that they are using taller hoop structures. As agricultural practices evolve, these structures are being used for a wider variety of crops and varied farming methods. Hoop structures allow farmers flexibility with crop selection and rotation, as they can be (1) erected where needed to enhance production and to protect crops that are more sensitive to the elements, (2) moved to other parts of the farm when crops are rotated, and (3) removed entirely when crop selection indicates they are no longer needed.

For example, with the recent adoption of Proposition 64 (Adult Use of Marijuana Act), there has been increased interest in cultivating cannabis in hoop structures. P&D intends to process the Hoop Structures Ordinance Amendment project on a similar timeline as the cannabis ordinance project in order to ensure consistency between the two projects. Although it is an aggressive schedule, P&D anticipates the Hoop Structures Ordinance Amendment project would be presented to the Board of Supervisors for consideration in Spring 2018. Thus, it is an opportune time to clarify the permitting requirements for hoop structures, given the anticipated increase in use of hoop structures to cultivate cannabis.

### **2.0 County Building Code Amendment**

On February 9, 2016, the Board of Supervisors directed P&D to prepare recommendations for an amendment to the County Building Code to increase the maximum allowable height – from 12 feet to 20 feet – of readily removable plastic covered hoop structures, without the issuance of a building permit. On April 19, 2016, the Board of Supervisors adopted the amendment to the County Building Code. The Board Agenda Letters regarding each of these hearings are provided as Attachments A and B, respectively.

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<sup>1</sup> The definition of “hoop structure” in the CZO (Section 35-58) is the same as the definition set forth in the LUDC, with one exception regarding the shape of hoop structure frames: the definition of “hoop structure” in the CZO states that a “hoop structure” consists of “...a light-weight, *arched* frame...” (emphasis added).

### **3.0 LUDC Amendment Options**

In addition to amending the County Building Code, the Board of Supervisors directed P&D to return during the FY 2016-17 budget workshops with a proposed work plan to address related zoning ordinance amendments for hoop structures that would apply only to the inland areas of the County. The Board of Supervisors added the Hoop Structures Ordinance Amendment project to the Long Range Planning Division's work program for FY 2016-17.

A primary objective of the Hoop Structures Ordinance Amendment project is to revise the permit path for hoop structures from one of greater complexity and uncertainty to one that is clear and less complex. To meet this objective, P&D staff has identified five options to address the zoning permit process for hoop structures. Each option or approach would decrease the complexity of the permit path by varying degrees, especially for hoop structures that are not taller than 20 feet. Each option is summarized below including a brief discussion of potential limitations and accomplishments.

#### **3.1 Option 1: Interpret Hoop Structures as "Farm Equipment"**

Under the first option, the Director of P&D would issue a zoning code interpretation pursuant to LUDC Subsection 35.12.020 to interpret hoop structures that are no greater than 20 feet in height as "farm equipment," similar to a definition in the California Revenue and Taxation Code (Tax Code). As farm equipment, hoop structures that are no greater than 20 feet in height would be interpreted as exempt from zoning permits as they are partially exempt from certain sales and use taxes pursuant to the Tax Code.

Option 1 would (1) require the least amount of processing time and upfront costs when compared to the other options for hoop structures, and (2) allow farmers to install and use hoop structures that are no greater than 20 feet in height without requiring a zoning permit to do so.

However, Option 1 would be subject to several limitations and may not achieve other relevant goals, as follows:

- The LUDC provides that interpreting the Development Code is a Director-specific decision, which could be appealed to the Planning Commission and the Board of Supervisors. (LUDC Subsections 35.12.020 and 35.80.020.A.1)
- Interpreting hoop structures as "farm equipment" could lead to zoning code inconsistencies because Option 1 would not amend the LUDC. The LUDC would continue to define hoop structures as "a structure" and provide permit requirements that would apply to hoop structures. Hoop structures would still meet the general LUDC definition of "structure," which is "anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground" (LUDC Subsection 35.110.020).
- The P&D Director's zoning code interpretation could be appealed to the County Planning Commission pursuant to LUDC Subsection 35.80.020.A.1 and, by reference, Table 8-1. Any decision by the Planning Commission could then be appealed to the Board of Supervisors. Therefore, while upfront time and costs could be lower than what would occur with the other options, appeals could increase the overall time and costs to complete the project.
- Hoop structures taller than 20 feet would not be addressed and would continue to be permitted as greenhouses.

- Option 1 would not include standards to address adverse land use effects, such as adverse impacts related to visual resources and/or storm water runoff and drainage.

As stated in the LUDC, “whenever the Director determines that the meaning or applicability of any Development Code requirement is subject to interpretation, the Director may issue an official interpretation” (LUDC Subsection 35.12.020). Interpretations, which do not amend the zoning code, are not typically considered a project under the California Environmental Quality Act (CEQA).

### ***3.2 Option 2: Amend the LUDC to Redefine Hoop Structures that are No Greater than 20 Feet in Height as “Farm Equipment,” and Allow “Farm Equipment” Without a Zoning Permit***

Option 2 would involve a Board of Supervisors amendment to the LUDC (rather than a P&D Director interpretation of the LUDC, as is the case for Option 1) to create a new definition of “farm equipment” similar to the definition set forth in the Tax Code, redefine hoop structures that are no greater than 20 feet in height as “farm equipment,” and clarify that “farm equipment” does not require the issuance of a zoning permit. This option would also amend the agricultural zones allowable land uses table.

Option 2 would (1) amend the LUDC to provide clarity on the permitting requirements for hoop structures that are no greater than 20 feet in height, and (2) allow farmers to install and use hoop structures that are no greater than 20 feet in height without requiring a zoning permit to do so.

However, Option 2 would be subject to several limitations and may not achieve other relevant goals, as follows:

- Defining hoop structures as “farm equipment” would also require an amendment to the LUDC definition of “structure” to exclude hoop structures because hoop structures currently meet the definition. The LUDC defines a “structure” as “anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground” (LUDC Subsection 35.110.020).
- Hoop structures taller than 20 feet would not be addressed and would continue to be permitted as greenhouses.
- Option 2 would not include standards to address adverse land use effects, such as adverse impacts related to visual resources and/or storm water runoff and drainage.

Option 2 would be considered a “project” pursuant to CEQA and would likely require preparation of an Initial Study to determine whether the LUDC amendment could result in potentially significant impacts, or whether mitigation could be applied to reduce impacts to less than significant levels. If impacts can be mitigated to less than significant levels, a Mitigated Negative Declaration (ND) could be prepared; otherwise, an Environmental Impact Report (EIR) would be required.

### ***3.3 Option 3: Exempt Hoop Structures that are No Greater than 20 Feet in Height Using the Current LUDC Definition of “Hoop Structure”***

Option 3 would amend the LUDC while maintaining the current LUDC definition of “hoop structure,” rather than redefining hoop structures as “farm equipment” (as in the case of Option 2). Option 3 would also allow farmers to install and use hoop structures that are no greater than 20 feet in height, without requiring a zoning permit to do so. Unlike Option 2, Option 3 would include the development of

standards to address adverse impacts related to visual resources and/or storm water runoff and drainage to qualify for the exemption. If the hoop structures did not incorporate these standards, the structures would then require permits as greenhouses. This option would also add hoop structures to the agricultural zones allowable land uses table.

Option 3 would avoid potential zoning code inconsistencies that would likely occur with Options 1 and 2. Although Option 3 would be subject to fewer limitations than Options 1 and 2, hoop structures taller than 20 feet would not be addressed and would continue to be permitted as greenhouses.

As with Option 2, Option 3 would be considered a project pursuant to CEQA and would likely require preparation of an Initial Study to determine whether a Mitigated ND could be prepared or an EIR would be required.

### ***3.4 Option 4: Consider and Clarify Permit Requirements for All Hoop Structures Regardless of Size and Height for the Inland Areas Only***

Option 4 involves an amendment to the LUDC to allow hoop structures of all heights (both below and above 20 feet, up to a specified maximum height) and sizes, while maintaining the current definition of “hoop structure.” Whereas hoop structures below a specified size or height could be allowed without a permit, other hoop structures beyond a specified size or height – including those taller than 20 feet – could be allowed with the issuance of a Zoning Clearance, Land Use Permit, and/or Development Plan. As with Option 3, Option 4 would involve the development of operational standards to address adverse impacts related to visual resources and/or storm water runoff and drainage. The amendment would also add hoop structures to the agricultural zones allowable land uses table.

Option 4 would avoid potential zoning code inconsistencies that would likely occur with Options 1 and 2, and would clarify zoning regulations for all hoop structures. Unlike Options 1, 2, and 3, Option 4 would eliminate uncertainties regarding the permit requirements for hoop structures taller than 20 feet. Option 4 is the project scope under the current Long Range Planning Division work program.

As with Options 2 and 3, Option 4 would be considered a project pursuant to CEQA. Option 4 would likely require preparation of an Initial Study to determine whether a Mitigated ND or EIR would be required. The current work program includes funding that anticipates preparation of an EIR because under Option 4 the County would explore a variety of permit requirements for all hoop structures. An EIR can analyze the potentially significant impacts of a proposed project, along with several alternatives (permitting options), and provide the Board of Supervisors with a thorough environmental review for making a final decision on the ordinance amendment.

### ***3.5 Option 5: Consider and Clarify Permit Requirements Countywide for All Hoop Structures Regardless of Size and Height***

Option 5 is the same as Option 4, except that Option 5 would incorporate an ordinance amendment for the Coastal Zone, outside of the Carpinteria Agricultural (CA) Overlay. Based on Board of Supervisors direction on February 9, 2016, the approved work program limits the project to the inland area. The CA Overlay includes specific permit requirements for hoop structures. Elsewhere within the Coastal Zone, the CZO regulations require permits for hoops structures as plant protection structures (less than 20,000

square feet requires a Coastal Development Permit, 20,000 square feet or more requires a Development Plan) (CZO Article II Section 35-68.3.5 and Section 35-69.3.7).

The Board of Supervisors could revise the project scope to include amendments to the CZO regulations that apply to areas that are not subject to the CA Overlay. However, previous County efforts to expand permit exemptions in the Coastal Zone have not been successful. Exempt uses and structures in the Coastal Zone are controlled by the Coastal Act and are very limited (Coastal Act PRC Section 30610). A Coastal Development Permit is required for all other development, which is defined as (in relevant part) "... on land, in or under water, the placement or erection of any solid material or structure; ... As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, ..." (PRC Section 30106 and CZO Section 35-58). Staff would not recommend processing a CZO amendment as it would be unlikely to gain much benefit for the time and effort involved.

## **5.0 Staff Recommendation**

Of the five options discussed in this Board Letter, staff recommends proceeding with Option 4. This option would provide the best opportunity to resolve zoning code uncertainties and inconsistencies with a thorough environmental review. Whether to expand the scope of the project to amend the CZO outside the CA Overlay (Option 5) is a policy decision for your Board.

### **Fiscal and Facilities Impacts:**

Budgeted: Yes

The Hoop Structures Ordinance Amendment project is included in the Board of Supervisors-adopted Long Range Planning Division work program for FY 2016-17. Staff salaries and other costs are included in the County's budget under the Planning and Development Department, Long Range Planning Division's Operating Expenditures (General Fund Contribution). The Long Range Planning Division's budget, including the Hoop Structures Ordinance Amendment, is on page D-295 of the County of Santa Barbara's Operational Plan for FY 2016-17. Total project cost to date, including initial project and background research, and preparation of this Board Letter, is approximately \$20,000.

The Hoop Structures Ordinance Amendment project is proposed to continue in the Long Range Planning Division's proposed work program for FY 2017-18. Should the Board of Supervisors' direction change the scope of this project, Long Range Planning may need to revise the work program to account for changes in staffing and funding to complete this project.

### **Attachments:**

- A. Board Agenda Letter dated February 9, 2016 and Action Summary
- B. Board Agenda Letter dated April 5, 2016

### **Authored by:**

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