SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for Cannabis Land Use Ordinance Amendments

Hearing Date: May 11, 2022
Staff Report Date: May 3, 2022
Case Nos.: 22ORD-00000-00001
Environmental Document: Cannabis Land Use Ordinance and Licensing Program Programmatic Environmental Impact Report (PEIR) (17EIR-00000-00003 & SCH No. 2017071016) [California Environmental Quality Act (CEQA) Guidelines Sections 15162(a) and 15168(c)(2)]

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1.0 REQUEST

Hearing on the request of the County of Santa Barbara Planning and Development Department (P&D) for the County Planning Commission (CPC) to consider the following:

1. Recommend that the Board of Supervisors (Board) adopt an ordinance (Case No. 22ORD-00000-00001) amending the Santa Barbara County Land Use and Development Code (LUDC), of Chapter 35, Zoning, of the County Code, as set forth in Attachment C.

2. Pursuant to CEQA Guidelines Sections 15162(a) and 15168(c)(2), after considering the PEIR that the Board certified on February 6, 2018, a subsequent environmental impact report or negative declaration is not required because no:

   (a) Substantial changes are proposed which require major revisions of the PEIR due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified significant effects;

   (b) Substantial changes have occurred with respect to the circumstances under which the ordinance is undertaken which require major revisions of the PEIR due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified significant effects; and

   (c) New information of substantial importance concerning the ordinance's significant effects or mitigation measures, which was not known and could not have been known with the exercise of reasonable diligence at the time that the PEIR was certified, has been received which shows that any of the results described in CEQA Guidelines Section 15162(a)(3)(A) through (C) would occur.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and recommend that the Board approve the LUDC amendments (Case No. 22ORD-00000-00001) based on the project's consistency with the Comprehensive Plan and the Community Plans, and based on the ability to make the required

findings, including CEQA findings. The CPC's motion should include the following:

1. Make the required findings for approval (Attachment A), including CEQA findings, and recommend that the Board make the required findings for approval of the proposed amendments to the LUDC for the Cannabis Land Use Ordinance;

2. Recommend that the Board determine that the previously certified PEIR (17EIR-00000-00003) constitutes adequate environmental review and no subsequent environmental impact report or negative declaration is required pursuant to CEQA Guidelines Sections 15162(a) and 15168(c)(2); and

3. Adopt a resolution (Attachment C) recommending that the Board adopt an ordinance amending the LUDC (Case No. 22ORD-00000-00001), of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C, Exhibit C-2).

Please refer the matter to staff if the CPC takes other than the recommended actions for the development of appropriate materials.

3.0 JURISDICTION

Government Code Sections 65854 to 65857 and Chapter 35.104 of the LUDC require that the CPC, as the designated "planning agency" for the unincorporated area of the County located outside of the Inland Area of the Montecito Community Plan Area, review and consider proposed amendments to the LUDC and provide a recommendation to the Board.

Government Code Section 65854 states: "The planning commission shall hold a public hearing on the proposed … amendment to a zoning ordinance." Furthermore, Government Code Section 65855 states: "After the hearing, the planning commission shall render its decision in the form of a written recommendation to the legislative body…"

Section 2-25.2(b) of Chapter 2 – Administration of the Santa Barbara County Code, states in part: "… Recommendations regarding proposed amendments to articles I, II, III, V and VII of Chapter 35 of the County Code … shall remain within the jurisdiction of the County Planning Commission."

4.0 PROJECT INFORMATION

On September 14, 2021, the Board directed P&D to amend the permitting requirements for commercial cannabis cultivation. Currently, a Land Use Permit (LUP) is the required use permit for commercial cannabis cultivation in Agricultural and Industrial zones. These Inland Area zones include:

- Agricultural II (AG-II)

- Industrial Research Park (M-RP)
- Light Industry (M-1)
- General Industry (M-2)

The proposed amendments will change the use permit requirement for commercial cannabis cultivation from an LUP to a Conditional Use Permit (CUP). As described further below, the purpose of this change in the permitting requirement is to afford County decision-makers greater discretion when considering proposed, new commercial cannabis operations that involve cultivation. Also for the reasons described below (subsection 4.1.2), the proposed ordinance amendments include a provision that would limit the applicability of the CUP requirement only to (1) new operations (applications that have not received final approval prior to the effective date of the ordinance) and (2) existing operations that propose changes that do not qualify as minor changes under the LUDC, such as changes that result in a new, adverse environmental effect or the need for additional mitigation measures, or changes that substantially deviate from an approved plan or issued permit.

The Board requested staff to prioritize these amendments by processing them separately from, and prior to, other ordinance amendments that the Board included in the annual ordinance amendments package that staff intends to present to the CPC and the Board in late summer/fall 2022.

4.1 Proposed Amendments

4.1.1 Change in Permit Type Required for Cultivation

The proposed ordinance amendments would amend the LUDC to require approval of a CUP, instead of an LUP, for commercial cannabis cultivation in the AG-II, M-RP, M-1, and M-2 zones, and make related amendments necessary to effectuate that change. The amendments would apply to all types of cultivation (e.g., outdoor, mixed-light, indoor, and nursery). Whereas the P&D Director is the decision-maker for LUPs (unless appealed to the CPC and, ultimately, the Board), the CPC is the review authority and final decision maker for CUPs (unless appealed to the Board).

The proposed change would require the CPC to make additional findings that are required to approve a CUP (LUDC Section 35.85.060.F) that are not required in order to approve an LUP (LUDC Section 35.82.110.F). The additional CUP findings set forth additional discretionary standards (e.g., that the project will be compatible with surrounding uses and will not be detrimental to neighborhood comfort, convenience, general welfare, health, and safety) with which proposed projects must comply and, therefore, would afford decision-makers greater discretion than currently afforded to them when considering to allow new commercial cannabis cultivation.

Furthermore, the proposed permit type change would aid in reducing the potential for negative impacts on people, communities, and the environment. Proposed commercial cannabis cultivation projects would remain subject to applicable standards in Section 35.42.075, for example, and would be required to prepare and submit an Odor Abatement Plan (OAP) if a project is adjacent to an Existing Developed Rural Neighborhood (EDRN) or Urban Rural boundary.

4.1.2 Existing Uses and Amendments to Regulations for Nonconforming Uses

The LUDC (Article 35.11, Glossary, definition of "nonconforming use") states that if the LUDC changes with regard to the type of permit that is required for a use, then existing uses that do not conform to the LUDC's regulations on use become "nonconforming uses." Nonconforming uses are subject to significant restrictions set forth in the LUDC (Chapter 35.101) before they lose their legal nonconforming status. Therefore, if the Board changes the type of permit that is required for commercial cannabis cultivation from an LUP to a CUP, an argument could be made that existing commercial cannabis cultivation operations permitted with LUPs would become "nonconforming uses" that could be changed only to the limited extent that the LUDC allows, without losing their legal nonconforming status and requiring a CUP.

The process for obtaining a CUP is expensive and time-consuming, presents business risks to operators, and may result in more conditions (i.e., restrictions) on operations. As a result, the new CUP requirement could disincentivize current operators from making minor changes to their operations and certain beneficial changes that the Board has been encouraging operators to implement (e.g., changes to improve the efficacy of odor control systems).

The proposed amendments clarify that commercial cannabis cultivation operations permitted with an LUP do not qualify as "nonconforming uses" because they are lawfully existing with the approval of a discretionary permit that was required by the LUDC and remain allowed by the LUDC in their current location.

The ordinance also includes amendments that would limit the applicability of the CUP requirement only to (1) new operations (applications that have not received final approval prior to the effective date of the ordinances) and (2) existing operations that propose changes that do not qualify as minor changes under the LUDC, such as changes that result in a new, adverse environmental effect, the need for additional mitigation measures, or changes that substantially deviate from an approved plan or issued permit.

Proposed new operations that have not yet received final approval would need to apply for CUPs (or their existing LUP applications, if complete, would be converted to CUP applications) and proceed through the CUP approval process, which includes a public hearing (LUDC Section 35.82.060). Existing operations could propose minor changes, similar to other LUPs, so long as those minor changes do not substantially deviate from their approved plans, do not change the use or scope of development, and do not result in a new adverse environmental effect or the need

for additional mitigation measures. Cannabis operations would be required to prepare and submit an Odor Abatement Plan (OAP) if adjacent to an Existing Developed Rural Neighborhood (EDRN) or Urban Rural boundary, or if cannabis cultivation areas cumulatively exceed 51% of the subject lot area (gross) on lots zoned AG-II.

The proposed draft amendments to implement these changes are shown in strikethrough-underline text, and are included in Attachment C, Exhibit C-1, and the final text of the proposed ordinance amendments is included in Attachment C, Exhibit C-2 (County LUDC).

5.0 PROJECT ANALYSIS

5.1 Environmental Review

On February 6, 2018, the Board certified a PEIR (Case No. 17EIR-00000-00003) for the County's Cannabis Land Use Ordinance and Licensing Program (Program). The PEIR was prepared in accordance with the State CEQA Guidelines Section 15168 and evaluated the Program's direct, indirect, and cumulative impacts based on Appendix G of the 2017 State CEQA Guidelines and thresholds in the County's Environmental Thresholds and Guidelines Manual (County of Santa Barbara 2008, revised July 2015). The PEIR identified a number of significant impacts and set forth feasible mitigation measures that were included as development standards and requirements in the land use and licensing ordinances, which are applied to site-specific land use entitlement and business licensing applications for commercial cannabis operations authorized under the Program. The PEIR concluded that significant and unavoidable impacts will result from the Program. The Board adopted a Statement of Overriding Considerations for the significant and unavoidable impacts.

Section 15168(c)(2) of the State CEQA Guidelines allows the County to approve an activity as being within the scope of the project covered by a PEIR if the County finds pursuant to Section 15162(a) that no new environmental document is required. This ordinance is within the scope of the project covered by the PEIR for the Cannabis Land Use Ordinance and changing the required permit for commercial cannabis cultivation from an LUP to a CUP will not have any environmental impacts, consequently, a new environmental document is not required pursuant to CEQA Guidelines Section 15162(a). Changing the permit requirement from an LUP to a CUP provides County decision-makers with additional discretion over proposed projects, and existing operations that propose major changes. Commercial cannabis cultivation projects continue to be required to submit landscape and screening plans, and this ordinance would not implicate the PEIR's analysis and mitigation of aesthetic impacts. These changes are within the scope of the project evaluated in the PEIR and do not have the potential to create a significant adverse impact to the environment.

5.2 Comprehensive Plan Consistency

The Board adopted the Program after making a finding that it conformed with other mandatory and optional elements of the Comprehensive Plan and Community Plans. The LUDC cannabis

regulations adopted by the Board establish standards that are designed to protect the public health, safety, and welfare, and enact strong and effective regulatory and enforcement controls.

The proposed ordinance amendments will further protect neighborhood character, and reduce the potential for negative impacts on people, communities, and the environment. A CUP, as compared to an LUP, affords decision-makers additional discretion and requires decision-makers to consider additional findings when determining whether to approve a proposed project. Decision-makers may impose conditions on a proposed project in order to make the requisite findings for approval.

The proposed ordinance amendments would not allow new land uses, development, or alter the purpose and intent of any policies or development standards of the Comprehensive Plan. In order for County decision-makers to approve a CUP for new cannabis cultivation, the decision-makers would need to determine that the project is consistent with the policies and development standards of the Comprehensive Plan (LUDC Section 35.82.060.E.1.f). As part of this process, P&D staff would perform a policy consistency analysis during the review of the application, and County decision-makers would not approve the project unless they can determine it is consistent with applicable policies and the findings required for approval.

The policy consistency analysis table presented below describes how the proposed amendments are consistent with certain, key policies and standards of the Comprehensive Plan and Santa Ynez Community Plan that are relevant to these ordinance amendments.

POLICY / DEVELOPMENT STANDARD	ANALYSIS
Santa Barbara County Comprehensive Plan - Land Use Element	
Land Use Development Policy 4: Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan. Affordable housing projects proposed pursuant to the Affordable Housing Overlay regulations, special needs housing projects or other affordable housing projects which include at least 50% of	**Consistent**. The proposed amendments would not conflict with this policy because a CUP application would be subject to County environmental, site development, and landscape and screening standards prior to approval. The additional discretion and case-by-case review process would ensure the proposed commercial cannabis activities can be connected to adequate public or private public services and utilities—if not, proposed projects would not be consistent with this Land Use Development Policy and could not be approved (LUDC Section 35.82.060.E.1.f). As a result, the proposed amendments would be consistent with this policy.

the total number of units for affordable housing or 30% of the total number of units affordable at the very low income level shall be presumed to be consistent with this policy if the project has, or is conditioned to obtain all necessary can and will serve letters at the time of final map recordation, or if no map, prior to issuance of land use permits.	
Santa Ynez Valley Community Plan (SYV)	
Policy LUG-SYV-8: The public shall be protected from air emissions and odors that could jeopardize health and welfare. **DevSTD LUG-SYV-8.11:** Future applicants for wineries or other odor generators, based on the nature of the operations (Scope and Content of Air Quality Sections in Environmental Documents, July 2007) shall develop and implement an Odor Abatement Plan (OAP). The OAP shall include the following: • Name and telephone number of contact person(s) responsible for logging and responding to winery odor complaints; • Policy and procedure describing the actions to be taken when an odor complaint is received, including the training provided to the responsible party on how to respond to an odor complaint; • Description of potential odor sources (i.e. fermentation and aging processes and the resultant ethanol emissions; odors associated with a fast food restaurant may include cooking and grease aromas); • Description of potential methods for reducing odors, including minimizing potential add-on air pollution control equipment; and • Contingency measures to curtail emissions in the event of a continuous public nuisance. The plan shall be prepared prior to issuance of grading permits. Planning and Development shall review the OAP prior to issuance of grading permits.	**Consistent:** The proposed ordinance would provide additional discretion to decision-makers to place conditions on cannabis cultivation projects to address adverse impacts associated with air emissions and odors—including, but not limited to, additional requirements on OAPs for cultivation within the Santa Ynez Valley. Therefore, the ordinance amendments would be consistent with this policy.

5.3 Zoning Ordinance Compliance

The proposed amendments are consistent with the remaining portions of the LUDC. In order to approve a development project based on the proposed amendments, County decision-makers would need to determine that the project is consistent with all applicable requirements of the LUDC. As discussed in Section 5.2 above, the proposed amendments do not allow new land uses or alter the purpose or intent of the LUDC. Rather, the proposed amendments would require a CUP rather than an LUP for commercial cannabis cultivation in specific Agricultural and Industrial zones, in order to afford decision-makers with greater discretion when determining the conditions under which commercial cannabis cultivation may occur. Furthermore, the ordinance amendments would revise certain regulations involving nonconforming uses and minor changes to existing permits to (1) ensure that there is internal consistency among these regulations; (2) allow limited and beneficial changes (e.g., changes to improve the efficacy of odor control systems) to existing and approved operations; and (3) continue to require design review for projects that are located within the Critical Viewshed Corridor (CVC) or Design Control (D) Overlay Zones. Therefore, the proposed amendments are consistent with the LUDC.

6.0 APPEALS PROCEDURE

Ordinance amendments recommended for approval or denial are legislative acts that are automatically forwarded to the Board for final action. Therefore, the ordinance amendments are not subject to appeal.

ATTACHMENTS

A. Findings for Approval
B. Final Program Environmental Impact Report and Board's PEIR Statements of Overriding Consideration (links)
C. Resolution of the County Planning Commission
   C-1. LUDC Amendments with Changes Shown
   C-2. LUDC Amendments for Adoption (Case No. 22ORD-00000-00001)