



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 18, 2019
Placement: Set Hearing for
July 9, 2019
Estimated Time: 2 hours on July 9, 2019
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director (805) 568-2085
Contact Info: Dan Klemann, Deputy Director, Long Range Planning Division
(805) 568-2072
SUBJECT: Cannabis Ordinance Amendments

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

On June 18, 2019, set a hearing for July 9, 2019, to consider County Planning Commission recommended ordinances amending the County Land Use and Development Code (LUDC), the Coastal Zoning Ordinance (Article II), to: (1) provide additional noticing requirements for certain commercial cannabis activities within the unincorporated inland areas and Coastal Zone of Santa Barbara County; and (2) further regulate commercial cannabis activities in the Agriculture I (AG-I) zone in the unincorporated inland areas of Santa Barbara County.

Pursuant to the Planning Commission’s recommendation, on July 9, 2019, the Board’s action should include the following:

- a) LUDC Amendment (Case No. 19ORD-00000-00001):
 - i) Make the required findings for approval, including California Environmental Quality Act (CEQA) findings (Attachment 1);
 - ii) After considering the Final Program Environmental Impact Report (EIR) adopted for the Cannabis Land Use Ordinance and Licensing Program (17EIR-00000-00003) (Attachment 2), determine that as reflected in the CEQA findings (Attachment 1), no subsequent environmental document shall be prepared for this project pursuant to CEQA Guidelines Section 15162); and adoption of the LUDC Amendment (Case No. 19ORD-00000-00001) is within the scope of the program approved earlier, and the Final Program EIR adopted for the

Cannabis Land Use Ordinance and Licensing Program (17EIR-00000-00003) (Attachment 2) adequately describes the activity for the purposes of CEQA pursuant to CEQA Guidelines Section 15168(c)(2); and

- iii) Adopt the ordinance (Case No. 19ORD-00000-00001) to amend the LUDC, which is included as Attachment 3 to this Board letter.

b) Article II Amendment (Case No. 19ORD-00000-00002):

- i) Make the required findings for approval, including CEQA findings (Attachment 1);
- ii) Find, pursuant to CEQA Guidelines Section 15265 the preparation, approval, and certification of a LCP Amendment is exempt from the requirements of CEQA because the California Coastal Commission's review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code;
- iii) Adopt the ordinance (Case No. 19ORD-00000-00002) to amend Article II, which is included as Attachment 4 to this Board letter;
- iv) Adopt a resolution authorizing submittal of the Cannabis Ordinance Amendment to the California Coastal Commission (Coastal Commission) for certification as an amendment to the Santa Barbara County Local Coastal Program (Attachment 5); and
- v) Direct the Planning and Development Department to transmit the adopted resolution to the Executive Director of the Coastal Commission.

Summary Text:

Pursuant to the Board's direction, Planning and Development (P&D) staff presented options to the Planning Commission for amending the LUDC to: (1) prohibit commercial cannabis operations within the AG-I (Agriculture I) zone; and (2) expand the noticing requirements for proposed commercial cannabis activities for projects that would occur within an EDRN or RN, or would require the use of a public roadway within an EDRN or RN. After considering the options, the Planning Commission recommended that the Board adopt the proposed LUDC and Article II amendments (Attachments 3 and 4) that will require the following:

- LUDC and Article II: Expanded noticing requirements for proposed commercial cannabis activities for projects that would occur within an EDRN or RN, or would require the use of a public roadway within an EDRN or RN; and
- LUDC: A Conditional Use Permit (CUP) for all commercial cannabis activities on AG-I lots in the inland area that currently require a Land Use Permit (LUP).

Background:

1.0 Board Direction

The Board approved ordinances for land use permitting and licensing of commercial cannabis activities on February 27th and May 1st 2018, respectively, and cannabis regulations in the Coastal Zone under Article II went into effect upon Coastal Commission certification on November 7, 2018. As of the publication date of this Board Letter, P&D has received 143 applications for commercial cannabis activities on 109 parcels throughout the County since the land use ordinances went into effect due, in part, to provisions of the State temporary and provisional licensing requirements. State temporary licenses are expiring and operators must submit an application for a County-issued land use permit in order to be eligible for a State provisional license that would allow operators the ability to continue operating, if they meet all necessary requirements. At the same time, new operators are seeking the necessary permits and licenses (i.e., a land use permit, County-issued cannabis business license, and State Annual license) to begin operating. As of the publication date of this Board letter, only one applicant in the County has obtained a land use permit, County-issued cannabis business license, and State Annual License and, consequently, is operating under the County land use and business license cannabis regulations.

When the Board adopted the commercial cannabis licensing and permitting regulations, the Board requested that after the cannabis regulatory system was operational, staff return with a report on the efficacy of the regulations. The Board would then consider possible revisions to improve the efficacy and address any unforeseen issues associated with the commercial cannabis regulations, as needed. On January 29, 2019, County Executive Office staff presented possible amendments and options for the Board to consider, including several options to revise land use permitting requirements for commercial cannabis activities. After considering these options, the Board directed P&D staff to prepare two focused amendments to the LUDC and Article II, as follows.

First, the Board directed P&D staff to present amendments to the Planning Commission which would require noticing to all owners of properties within an EDRN or RN of any commercial cannabis activity application that is proposed within an EDRN or RN, or that requires the use of a public roadway within an EDRN or RN. These noticing revisions would apply within the unincorporated Coastal Zone and inland areas of Santa Barbara County.

Second, the Board directed P&D staff to present options to the Planning Commission for LUDC amendments to prohibit commercial cannabis activities on certain AG-I zoned lands within inland areas of the county. More specifically, the Board directed P&D staff to present the following three options to prohibit commercial cannabis activities, which are discussed in detail in Attachment 8:

- Prohibition on commercial cannabis activities on AG-I-5, AG-I-10, and AG-I-20 zoned lots
- Prohibition on commercial cannabis activities on AG-I-5 and AG-I-10 zoned lots
- Prohibition on commercial cannabis activities on AG-I zoned lots that are 20 acres or less in size

The Board directed the Planning Commission to consider prohibitions in AG-I zones in order to further preserve the health, safety, and general welfare of County residents, minimize conflicts with, or adverse impacts on, adjacent properties, and to re-examine whether commercial cannabis activities are an appropriate use on relatively small AG-I lots.

2.0 Planning Commission Recommendation

Pursuant to the Board's direction, on April 3, 2019, staff presented the three options to the Planning Commission that would restrict commercial cannabis activities in the AG-I zone in the inland areas, and would increase noticing requirements in EDRNs and RNs in inland and coastal areas. After receiving public comment on these options, the Planning Commission directed P&D staff to return with draft amendments that would increase noticing requirements and either (1) prohibit commercial cannabis activities on all inland area lots zoned AG-I-5, AG-I-10, AG-I-20, and on AG-I-40 lots less than or equal to 20 acres in size (Alternative A); or (2) require a CUP for all commercial cannabis activities on AG-I lots that currently require a LUP (Alternative B). [See the Planning Commission Staff Report (Attachment 7) for additional information regarding Alternatives A and B.]

On May 1, 2019, the Planning Commission voted 3-2 to recommend the Board adopt LUDC ordinance amendments (discussed further in this Board letter below) that would increase noticing requirements and require a CUP for all commercial cannabis activities on AG-I lots (Alternative B, Attachment 3). The Planning Commission also voted 5-0 to recommend that the Board adopt LUDC and Article II amendments that would increase noticing requirements in EDRNs and RNs (Attachment 4).

Additionally, the Planning Commission voted 5-0 to make an advisory recommendation that the Board, as part of future cannabis ordinance amendments, consider adopting the amendments associated with Alternative B, which would require a CUP for all commercial cannabis activities on all AG-I lots in the Coastal Zone, in order to have uniformity in zoning regulations.

2.1 Proposed Amendments

2.1.1 Expanded Noticing Requirements

Currently, an application for commercial cannabis activities is subject to: (1) the applicable standard noticing requirements set forth in Chapter 35.106 of the LUDC and Section 35-181 of Article II; and (2) a mailed notice regarding a pending action or hearing regarding a commercial cannabis entitlement to be provided to all owners of property located within a 1,000-foot radius. The standard noticing requirements in the LUDC and Article II require notification of adjacent landowners within a specified buffer distance and posting a notice of development at the location of the intended use at least 10 days prior to a hearing.

The proposed LUDC and Article II ordinance amendments will require noticing of all property owners in an EDRN or RN for commercial cannabis permit applications in an EDRN or RN, or that require the use of a roadway in an EDRN or RN as the sole means of access to the lot on which commercial cannabis activities will occur (Attachments 3 and 4).

2.1.2 Limitations on AG-I

The Planning Commission-recommended LUDC amendment would require approval of a CUP for commercial cannabis activities which currently require a LUP in the AG-I zone (Attachment 3). These uses include cultivation (outdoor, mixed-light, and indoor), nursery, distribution, and non-volatile manufacturing. When combined with the existing LUDC regulations that require a CUP for commercial cannabis activities located within an EDRN or commercial cannabis activities that require the use of a roadway located within an EDRN to access the site of the cannabis operation, the effect of the proposed

amendments would be that all commercial cannabis activities that are currently allowed on AG-I lots located within the inland area would require a CUP regardless of their location in relation to an EDRN.

The Planning Commission is the review authority and final decision maker for a CUP (unless appealed to the Board), while the P&D Director is the final decision maker for LUPs (unless appealed to the Planning Commission). The Planning Commission must conduct a public hearing prior to making a decision on a proposed project that is subject to a CUP; in contrast, the P&D Director does not conduct a public hearing prior to making a decision on a proposed project that is subject to a LUP. Additional findings are also required to approve a CUP (LUDC Section 35.82.060.E) in comparison to the LUP findings for approval (LUDC Section 35.82.110.E). Both LUPs and CUPs can be revoked in compliance with LUDC Section 35.84.060 (Revocations). Finally, the expanded process associated with a CUP (including the public hearing) would result in an increase in time and cost associated with processing CUPs, as compared to LUPs, for commercial cannabis activities; but would also increase the opportunity for public participation.

The proposed LUDC amendments on AG-I will primarily affect commercial cannabis activities on lots located outside of an EDRN, since existing regulations require a CUP for cannabis activities on AG-I lots located within an EDRN (44% of all AG-I lots). The majority of AG-I lots located outside of an EDRN are in the Santa Ynez Valley Inner-Rural Area (90% of non-EDRN AG-I lots). Several AG-I lot clusters also exist within the areas that are subject to the Eastern Goleta Valley Community Plan, Mission Canyon Community Plan, and Toro Canyon Plan. Currently, there are two LUP applications for commercial cannabis activities on land zoned AG-I in the Santa Ynez Inner Rural Area which would require a CUP pursuant to the Planning Commission-recommended LUDC amendments.

3.0 Minor Local Coastal Program Amendment

Attachment 5 is a Board resolution authorizing submittal of the amendment to Article II to expand the noticing requirements for certain commercial cannabis operations, to the Coastal Commission for certification as an amendment to the Santa Barbara County Local Coastal Program. The resolution requests: (1) that the amendment be processed as a minor amendment in compliance with Public Resources Code Section 30514(c), and Title 14 of the California Code of Regulations Section 13554, and (2) that the amendment will take effect automatically upon approval by the Coastal Commission without further action by the Board of Supervisors, in compliance with Title 14 of the California Code of Regulations Section 13551(b)(1). In this instance, the amendment would become effective on the tenth working day following the Executive Director of the Coastal Commission's designation of the amendment as a minor amendment in compliance with Public Resources Code Section 30514(c), unless one-third of the appointed members of the Coastal Commission object to that designation.

4.0 Environmental Review

On February 6, 2018, the Board certified the Final Program Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (17EIR-00000-00003). The EIR considered cannabis uses throughout the county on lots zoned for agriculture, including AG-I zoned lots, and did not establish limits on the number of commercial cannabis activities that are allowed under the Cannabis Land Use Ordinance and Licensing Program. Therefore, the proposed amendments to require a CUP for

commercial cannabis activities on AG-I zoned lots will not expand the project description previously considered in the EIR. As discussed in the Findings for Approval (Attachment 1), the Final Program EIR adopted for the Cannabis Land Use Ordinance and Licensing Program fulfills the environmental review requirements for the proposed LUDC amendments in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15162. This section provides (in pertinent part) that the lead agency shall not prepare a subsequent EIR for a project when the lead agency or another entity has already adopted an EIR for that project, unless one or more of the following have occurred: (1) substantial changes are proposed which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance which was not known and could not have been known at the time the previous EIR was adopted has become available.

The proposed amendments are within the scope of the program approved earlier, and the program EIR adequately describes the activity for the purposes of CEQA, pursuant to CEQA Guidelines Section 15168(e). The proposed LUDC amendments will not allow new land uses, increase permitted densities, or otherwise alter the purpose or intent of the LUDC cannabis regulations. The proposed amendments will require a CUP for certain commercial cannabis activities, and would increase the notification requirements for certain commercial cannabis activities. Furthermore, the proposed amendments will not have new significant effects or increase the severity of effects discussed in the EIR.

Therefore, the Board should find that no new environmental document is required and that the proposed LUDC amendments do not require subsequent environmental review pursuant to CEQA Guidelines Section 15162 and 15168(c)(2) (Attachment 1).

Additionally, pursuant to CEQA Guidelines Section 15265, the preparation, approval, and certification of a LCP Amendment is exempt from the requirements of CEQA because the California Coastal Commission's review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code.

5.0 Comprehensive Plan Consistency

The Board of Supervisors adopted the Cannabis Land Use Ordinances and Licensing Program after making a finding that it was in conformity with other mandatory and optional elements of the Comprehensive Plan. The LUDC and Article II cannabis regulations set forth 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 protect neighborhood character, and minimize potential for negative impacts on people, communities, and the environment, given the findings that the Planning Commission would be required to make in order to approve a CUP for a proposed commercial cannabis activity. Thus, the proposed LUDC and Article II amendments implement, and are in conformity with, the Comprehensive Plan, including the Coastal Land Use Plan.

Furthermore, the proposed amendments limit commercial cannabis uses by requiring a CUP instead of a LUP for a proposed use and do not allow new land uses, 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 land use entitlement based on the proposed amendments, the decision-makers would need to determine that the project is consistent with the policies and development standards of the Comprehensive Plan. As part of this process, Planning and Development Department 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. Therefore, the proposed LUDC and Article II amendments are consistent with the policies of the Comprehensive Plan, including the Coastal Land Use Plan.

6.0 Board Changes to the Commission Recommendation

Staff prepared this Board letter and attachments pursuant to the Planning Commission's recommendation to your Board to require a CUP for all commercial cannabis activities on AG-I zoned lots. However, the Board may adopt one of the different options that the Planning Commission considered (Attachment 8). Staff developed an interactive map depicting parcel and zoning information for AG-I zoned lots in the inland area which is available to examine these different options. The map can be found here:

<https://arcg.is/1W5CXq0>

If your Board would like to adopt a different option or otherwise take an action that differs from the Planning Commission's recommendation, please refer the matter to staff for the development of appropriate materials (e.g., findings for approval and ordinance).

Fiscal Analysis:

Funding for the project is included in the Board of Supervisors-adopted Planning and Development Department budget in the Long Range Planning Budget Program on page D-272 of the adopted Fiscal Year 2018-2019 budget, and has been included in the Long Range Planning Annual Work Program for 2019-2020. To date, staff has expended approximately 430 hours/\$37,000 preparing and processing the proposed cannabis ordinance amendments. There are no facilities impacts.

Special Instructions:

The Planning and Development Department will fulfill noticing requirements.

The Clerk of the Board shall provide a copy of the signed ordinances and resolution, and minute order, to Planning and Development, attention: Whitney Wilkinson.

Attachments:

1. Findings for Approval (Case Nos. 19ORD-00000-00001 and 19ORD-00000-00002)
2. Program Final EIR adopted for the Cannabis Land Use Ordinances and Licensing Program (17EIR-00000-00003) <http://cannabis.countyofsb.org/zones.sbc>
3. LUDC Amendment (Case No. 19ORD-00000-00001)

4. Article II Amendment (Case No. 19ORD-0000-00002)
5. Resolution of the Board of Supervisors for Local Coastal Program Amendment Submittal
6. Planning Commission Action Letter, dated May 1, 2019
7. Planning Commission Staff Report, dated April 23, 2019
8. Planning Commission Briefing Memo, dated March 26, 2019
9. Comment letters to the Planning Commission

Authored by:

Whitney Wilkinson, Planner, Long Range Planning Division (805) 568-2067