

CALIFORNIA COASTAL COMMISSION

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January 16, 2018

Th17i**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
ALEX LLERANDI, COASTAL PLANNER, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP AMENDMENT
No. LCP-6-SAN-17-0081-5 (Marijuana Testing Facilities and Production) for
Commission Meeting of February 7-9, 2018**

SYNOPSIS

On December 15, 2017, the City of San Diego (City) Local Coastal Program (LCP) Amendment Nos. LCP-6-SAN-17-0078-3 (Accessory Dwelling Units), LCP-6-SAN-17-0080-4 (Affordable, Infill, & Sustainable Development), and LCP-6-SAN-17-0081-5 (Marijuana Testing Facilities and Production) were filed in the San Diego District office as a batched submittal. The submittal represents the City's third, final major amendment submittal for the 2017 calendar year. The three amendments modify the certified Implementation Plan (IP) to streamline and incentivize processing of accessory dwelling units, streamline the processing of affordable, infill, and sustainable development, and create two new uses – marijuana testing facilities and marijuana production facilities – in certain industrial and commercial zones, respectively. At this time, the three amendments are being presented to the Coastal Commission at the February 2018 hearing. The date by which the Commission must take action is the February 2018 hearing.

SUMMARY OF AMENDMENT REQUEST

The City amendment would create two new separately regulated uses: marijuana testing facilities and marijuana production facilities. Marijuana testing facilities would commercially test marijuana products for health and safety regulations and would be permitted ministerially in industrial zones and commercial zones that prohibit residential use. Marijuana production facilities could be permitted with a Conditional Use Permit (CUP) in the light and heavy industrial zones. A maximum of 40 marijuana production facilities would be permitted within the City of San Diego.

SUMMARY OF STAFF RECOMMENDATION

For the City of San Diego's Local Coastal Program, the Land Development Code (LDC) constitutes the primary element of the City's certified implementation plan and it represents an integrating feature for the multiple community plan/land use planning areas.

The proposed code amendments will introduce the permitting of marijuana testing facilities in limited industrial and commercial zones and marijuana production facilities in certain industrial zones.

As with past City actions regarding the introduction of commercial marijuana activities, communities in the coastal zone with industrial and commercial zoning that could possibly house marijuana testing facilities or marijuana production facilities under the City's proposed amendment include Barrio Logan, Carmel Valley, Mira Mesa, North City, Otay Mesa/Nestor, Pacific Beach, San Ysidro, Sorrento Valley, and Torrey Pines. In past Commission actions regarding LCP amendments addressing marijuana, the Commission has consistently found that the subject of marijuana and its availability to the public was not a Coastal Act issue. The proposed code amendments do not modify any of the otherwise required development standards, such as resource protection measures, parking, or landscaping for other commercial uses. According to the City's mapping analysis of potential sites for marijuana testing or production facilities, all of the potential sites for this use are located outside the Beach Impact Area that includes the two to three blocks along the coast where parking demand is the highest. Furthermore, unlike marijuana outlets that sell to the general consumer public, the marijuana testing facilities and marijuana production facilities serve as back-end organizations that do not directly interact with the general consumer public, so there is a low likelihood of substantial parking demand arising from these facilities that could adversely impact adjacent traffic and parking. Therefore, the proposed amendment can be found consistent with the City's certified land use plans and no adverse impacts to any coastal resources, including public access, are anticipated. Staff therefore recommends the Commission approve the proposed LCP amendment as submitted.

The appropriate resolution and motion may be found on Page 4. The findings for approval of the Implementation Plan Amendment as submitted also begin on Page 4.

BACKGROUND

The City's first Implementation Plan (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) that includes, among other components, Chapters 11 through 14 of the municipal code. It replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000. For the subject amendment, Commission staff was briefed by City staff on its drafting and consultation between the respective offices continued through its adoption.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-17-0081-5 may be obtained from **Alexander Llerandi**, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC) and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January, 2000.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-SAN-17-0081-5 for the City of San Diego as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program, as amended.

PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**A. AMENDMENT DESCRIPTION**

In June 2014, the Commission approved LCP Amendment No. LCP-6-SAN-14-0605-1 creating a new separately regulated commercial use in the City of San Diego: medical marijuana consumer cooperatives. On November 8, 2016, California voters approved Proposition 64 – the Adult Use of Marijuana Act – legalizing recreational use of marijuana by people 21 years of age or older and allowing local governments to adopt local ordinances that regulate local zoning and land use requirements, business license requirements, and other requirements it deems necessary in order to reduce potential impacts associated with retail marijuana activities. Subsequently, in October of 2017, the Commission approved LCP Amendment No. LCP-6-SAN-17-0050-2 to modify the certified LCP so as to convert the medical marijuana consumer cooperatives into a new

separately regulated commercial service – marijuana outlets – in a limited number of industrial and commercial zones that avoid visitor-serving areas (i.e. regional commercial, office commercial, community commercial and light industrial).

The current amendment creates two new uses: marijuana testing facilities and marijuana production facilities. Testing facilities would allow the commercial testing of marijuana products for health and safety purposes and be ministerially approved in industrial zones and commercial zones that prohibit residential use. Marijuana production facilities are individual or combined facilities engaged in the agricultural raising, harvesting, and processing of marijuana, wholesale distribution and storage of marijuana products, and production of marijuana goods consistent with state health regulations. Marijuana production facilities would be limited to industrial zones – with a maximum 40 in the City – with the same 1,000-foot separation requirements from sensitive receptors (i.e. parks, churches, schools, libraries, etc.) as marijuana retail outlets.

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The City of San Diego’s LCP consists of several community plans for the various communities within the City’s Coastal Zone. For local governments, a key concern with the regulation of marijuana sales is the associated demand for the product and resulting traffic generation in and out of a community and parking needs for such uses. Relative to circulation and coastal access, many of the certified community plans contain provisions that address energy consumption and vehicle miles traveled within the coastal zone. For example, Goal 7.5 G-1 in Section 7.5 of the Centre City/Downtown Community Plan – Transportation Demand Management – echoes Section 30253 of the Coastal Act when it calls for development to:

Encourage transportation demand management strategies to minimize energy consumption, vehicle miles traveled, and traffic contributions from new and existing development.

The Coastal Element of the Naval Training Center/Precise Plan states, in part:

F. Program For Development

[...]

2. Policies

New development shall be located within, contiguous with, or in close proximity to existing developed areas. New development shall be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Boards as to each particular development, and shall minimize energy consumption and vehicle miles traveled.

The proposed amendment would introduce the permitting of marijuana testing facilities and marijuana production facilities within certain industrial and commercial zones in the City of San Diego. The request relates to a broader effort by the City of San Diego to manage and regulate the changing legal and cultural landscape related to recreational marijuana and its availability to the public. The proposed changes to the use regulations are applicable only to certain industrial and commercial zones and would permit these marijuana facilities, with the marijuana production facilities subject to restrictions on siting, signage, hours of operation, and security, among other factors. No other changes to the development regulations, such as landscaping or parking standards, of the industrial or commercial zones are being made.

Within the Coastal Zone, there are industrially and commercially zoned properties within the Barrio Logan, Carmel Valley, Mira Mesa, North City, Otay Mesa/Nestor, Pacific Beach, San Ysidro, Sorrento Valley, and Torrey Pines communities that could potentially meet the siting criteria for housing a marijuana production facility. The City expects most, if not all, of the potential business operators to utilize existing structures.

In past Commission actions regarding LCP amendments addressing marijuana distribution, the Commission has consistently found that the subject of marijuana use and its availability to the public is not a Coastal Act issue. Nevertheless, under the proposed LCP amendment, only 40 marijuana production facilities would be permitted in the city. Only a very small fraction of the area within the City's coastal zone has the requisite industrial or commercial zoning, in conjunction with meeting the siting criteria, eligible for housing a marijuana testing or production facility. None of the potential zones for possible marijuana facilities are in the Beach Impact Overlay Zone, the area of the coastal zone identified by the LCP as most sensitive to public parking impacts and thus requiring more stringent parking requirements to protect coastal access. Furthermore, as these facilities serve back-end roles in the supply chain – interacting mostly with the commercial storefronts rather than the general public – these new facilities are not expected to engender substantial parking demand and related potential traffic and parking impacts.

With regard to a LCP containing use-specific location criteria in general, there are numerous other specially regulated uses, such as educational facilities or hospitals, where such siting and distance factors are normally found in zoning codes. These elements reflect local concerns; and, where local governments have imposed such locational criteria and use limitations, the Commission has not found there to be a Coastal Act issue. Thus, adverse impacts to coastal resources, conflicts with priority uses, or impacts to public access are not anticipated. Therefore, the proposed amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans and may be approved as submitted.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in

connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP as amended, does conform to CEQA provisions. At the local level, the City found that the environmental review completed at the time of the original adoption of the Land Development Code remained valid and sufficient. The City concluded that the proposed amendment would not result in a substantially changed project, would not result in new impacts or changed circumstances that would require a new environmental document. In the case of the subject LCP amendment request, the Commission also finds that approval of the LCP amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for any impacts which have not been explored and the LCP amendment, as submitted, can be supported.