



**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT**

**Planning Commission**

Promoting the wise use of land  
Helping build great communities

MEETING DATE July 9, 2015	CONTACT/PHONE Airlin M. Singewald (805) 781-5198 asingewald@co.slo.ca.us	APPLICANT Ethnobotanica	FILE NO. DRC2014-00070
EFFECTIVE DATE July 23, 2015			
SUBJECT Hearing to consider a request by <b>ETHNOBOTANICA</b> for a Minor Use Permit to establish a medical marijuana dispensary and construct related tenant improvements in an existing 2,636 square-foot commercial/office suite, which is part of an existing 11,675 square-foot building. The 2.72-acre parcel is in the Commercial Service land use category and is located at 2122 Hutton Road, approximately 450 feet north of the Highway 101/Highway 166 off-ramp, approximately 3 miles south of the community of Nipomo. The site is in the South County planning area.			
RECOMMENDED ACTION Approve Minor Use Permit DRC2014-00070 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION A Class 3 categorical exemption was issued on June 2, 2015 (ED14-252).			
LAND USE CATEGORY Commercial Service	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 090-301-064	SUPERVISOR DISTRICT(S) 4
PLANNING AREA STANDARDS: Limitation on Use for Commercial Service (CS) Land Use Category Does the project meet applicable Planning Area Standards: Yes – see discussion			
LAND USE ORDINANCE STANDARDS: Medical Marijuana Dispensaries Does the project conform to the Land Use Ordinance Standards: Yes – see discussion			
EXISTING USES: Metal building with tenants including a sanitation company and security contractor			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial Service / vacant <i>South:</i> Commercial Service / RV storage		<i>East:</i> Agriculture / Highway 101 <i>West:</i> Residential Suburban / residence, Nipomo Creek	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Building Division, Sheriff, Cal Fire, Santa Barbara County, City of Santa Maria, and South County Advisory Council			
TOPOGRAPHY: Gently sloping to moderately sloping		VEGETATION: Ornamental trees and turf grass	
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic Fire Protection: Cal Fire		ACCEPTANCE DATE: March 7, 2015	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

## DISCUSSION

The proposed project is a request to establish a medical marijuana dispensary in an existing commercial building. According to Land Use Ordinance Section 22.30.225, minor use permit approval is required to establish a medical marijuana dispensary. Minor use permits are normally reviewed by a Planning Department Hearing Officer; however, the Planning Director may elevate minor use permits to the Planning Commission for projects that may generate substantial public controversy or involve significant land use policy decisions. The Planning Director has elevated this project to the Planning Commission based on the controversial nature of medical marijuana and concerns raised by the community, the South County Advisory Council, and the Sheriff's Department.

### Background

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA) exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Inland Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications.

Past proposals are summarized below:

- **Connella Minor Use Permit DRC2006-00159.** This project was proposed on Ramada Drive in Templeton and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a playground. The dispensary was located between 925 and 1,004 feet from the playground depending on the measurement technique and was separated from the playground by Highway 101. It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on April 8, 2008.
- **Gross/Brody Minor Use Permit DRC2009-00044.** This project was proposed on North Frontage Road in Nipomo. Although the proposed dispensary met the 1,000 foot separation requirement for the uses described in the ordinance (schools, libraries, parks, playgrounds, and recreation or youth centers), it was located within 94 feet of a private gymnastics studio that primarily served children. It was denied by the Planning Commission and the denial was upheld by the Board of Supervisors on appeal on August 24, 2010.
- **Murray Minor Use Permit DRC2010-00070.** This project was proposed on South 4<sup>th</sup> Street in Oceano and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a park (the dispensary was proposed within 922 feet of Oceano Park). It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on March 12, 2012.

## **Updated California Case Law, and State Attorney General and Federal Government Involvement**

The California Supreme Court recently confirmed that local jurisdictions may regulate medical marijuana dispensaries pursuant to their inherent police powers and land use authority. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.) In its opinion, the Court concluded:

“We thus conclude that neither the CUA nor the MMP expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions.”

In 2008, the California Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use,” which are attached to this staff report as Attachment 9. Those Guidelines are intended, in part, to “help patients and primary caregivers understand how they may cultivate, transport, possess and use medical marijuana under California law.”

For its part, the federal government has continued to list marijuana as a Schedule 1 controlled substance under the Federal Controlled Substances Act, meaning that it is still a crime to manufacture, distribute, or possess marijuana pursuant to federal law. However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department’s ability to take criminal action against state-licensed individuals or operations that are acting in full compliance with the medical marijuana laws of their states. Specifically, the bill states, “None of the funds made available in this act to the Department of Justice may be used...to prevent...states...from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

## LAND USE ORDINANCE STANDARDS

### **Section 22.30.225 – General Retail**

Land Use Ordinance Section 22.30.225 (attached) establishes special use standards for medical marijuana dispensaries. The project’s compliance with these standards is described below.

#### Location

*Medical Marijuana Dispensaries shall be located outside of the CBD, a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Distance shall be measured from the building which contains the Medical Marijuana Dispensary to the property line of the enumerated use using a direct straight line measurement.*

This section uses similar criteria as the California Attorney General’s August 2008 guidelines<sup>1</sup> which prohibit the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center; however, it applies to the location of dispensaries (not just smoking marijuana) and adds libraries, parks, and playgrounds to the list.

Staff has measured the 1,000 foot distance requirement using GeoView, an up-to-date software application used to obtain accurate measurements of distance. This software allows staff to apply a specific radius around a property. Using this software application, staff has determined that the building where the dispensary is proposed is not located within 1,000 feet of any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker

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<sup>1</sup> See Attachment 9 to this staff report, page 6; B. Enforcement Guidelines (1.) Location of Use

Park located about 4,300 feet to the south in the City of Santa Maria. The proposed project therefore complies with the location requirement of the ordinance.

**Table 1: Distance to Sensitive Uses**

Sensitive Use	Address	Distance from Dispensary
Preisker Park	330 Hidden Pines Way, Santa Maria	4,300 feet to the south
Tommie Kunst Junior High School	930 Hidden Pines Way, Santa Maria	5,300 feet to the southwest
All About Kids Preschool	613 N. Elizabeth Street, Santa Maria	14,400 feet to the south
Santa Maria Public Library	421 S. McClelland Street, Santa Maria	18,000 feet to the south
Nipomo Public Library	918 W. Tefft Street, Nipomo	21,000 feet to the northwest
Boys and Girls Club	901 N. Railroad Avenue, Santa Maria	13,000 feet to the southwest

Limitation on use

*The following use limitations apply to proposed medical marijuana dispensaries:*

- a. *Hours of operation are limited to 11:00 a.m. to 6 p.m. seven days per week.*
- b. *No person under age of 18 shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian.*
- c. *No retail sales of paraphernalia as defined in Health and Safety Code section 11364.5 are permitted at the dispensary.*
- d. *No cultivation of medical marijuana is permitted at the dispensary or on dispensary property.*

The proposed project complies with these use limitations.

Employees

*All staff/employees employed by the Medical Marijuana Dispensary must be 21 years of age or older.*

The applicant's proposal meets this requirement.

Security Plan

*A security plan shall be submitted with the Minor Use Permit Application that includes lighting, security video cameras, alarm systems, and secure area for medical marijuana storage. The security plan shall include a requirement that there by at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The video system for the security cameras must be located in a locked, tamper-proof compartment.*

In addition to this ordinance standard, the Attorney General’s guidelines also require that, “Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime.”

The applicant has provided a detailed operations plan, floor plan, and security plan (see Attachment 6), which meet the criteria of the ordinance. The security plan includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. Security will assist in opening and closing of the facility, including escorting employees

to their vehicles after closing. Security will also be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person.

The proposed project was referred to the Sheriff’s Office for review and comment. In a response, dated January 20, 2014, Chief Deputy Rob Reid stated “Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project is approved.” This response concludes that the Sheriff’s Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.

The purpose of the security plan is to minimize demands on law enforcement resources.

Displayed notice

*Each dispensary, inside of the dispensary itself, shall display in a manner legible and visible to its clientele:*

- a. *Notice that persons under the age of 18 are not allowed in the dispensary except in the presence of his/her parent or guardian;*
- b. *Notice that there is no consumption of medical marijuana in the vicinity of the dispensary.*

The proposed project is conditioned to comply with this requirement.

Sheriff notification

*A condition to establishment of a Medical Marijuana Dispensary shall be notification to the Sheriff’s Department informing it of the name, location, and contact information for the owner/operator of the dispensary.*

The proposed project is conditioned to comply with this requirement.

**Section 22.18.050 – Required Number of Parking Spaces**

The parking requirement for retail uses is 1 space for every 300 square feet of sales area plus 1 space per 600 square feet of storage area. Based on the site plan and space usage of the tenant space, approximately 50 percent of the 2,136 square-foot space is dedicated to sales uses with the remainder dedicated to storage or non-sales areas. Based on these use areas and the corresponding parking requirements, the project is required to provide six on-site parking spaces. With 11 dedicated on-site parking spaces, the project meets this requirement.

Use Area	Square Footage	Requirement	Spaces Required
Sales Area	1,068	1 space / 300 SF	4
Storage Area	1,068	1 space / 600 SF	2
<b>Total Area</b>	<b>2,136</b>		<b>6</b>

PLANNING AREA STANDARDS

**Section 22.98.072(C)(1) – Commercial Service (CS) Land Use Category Limitation on Use**

This standard prohibits certain allowable CS uses (e.g. agricultural processing, broadcasting studios, etc.) in the South County planning area. The list of prohibited uses does not include Medical Marijuana

Dispensaries or General Retail establishments. Therefore, dispensaries are allowable on the project site per Section 22.30.030.

#### COMMUNITY ADVISORY GROUP COMMENTS

The proposed project was reviewed by the South County Advisory Council (SCAC) on February 23, 2015. On an 8-2 vote, SCAC recommended denial of the proposed dispensary based on public safety concerns due to "...very limited availability of Sheriff's deputies deployed in the South County, and potential crime problems associated with medical marijuana dispensaries."

#### AGENCY REVIEW

County Sheriff	In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.
Public Works	In a response, dated April 22, 2015, Glenn Marshall indicated that based on review of the project's traffic study (see Attachment 8), Public Works has no traffic concerns. Road improvement fees would be required. Most northerly driveway to be limited to egress only.
Cal Trans	Reviewed the traffic study and has no concerns regarding impacts to Highway 101 / Highway 166 interchange.

#### ATTACHMENTS

1. Exhibit A – Findings
2. Exhibit B – Conditions of Approval
3. CEQA Notice of Exemption
4. Referral Responses
5. Graphics – Vicinity map, land use category map, and floor plans
6. Ethnobotanica Security and Operations Plan
7. Applicable Land Use Ordinance Section – 22.30.225
8. Traffic Study (Orosz Engineering Group; April 13, 2015)
9. Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (State of California Attorney General; August 2008)

Staff report prepared by Airlin M. Singewald, Senior Planner, and reviewed by Bill Robeson, Deputy Director – Permitting.