

**COUNTY OF EL DORADO
PLANNING AND BUILDING DEPARTMENT
PLANNING COMMISSION
STAFF REPORT**



Agenda of: April 13, 2023

Staff: Aaron Mount

COMMERCIAL CANNABIS USE PERMIT

FILE NUMBER: CCUP21-0005/Norcanna Distribution and Delivery

APPLICANT: Norcanna

PROPERTY OWNER: Mathews Parkway Development, LLC.

REQUEST: Commercial Cannabis Use Permit for a distribution and non-storefront retail (delivery only) operation of medicinal and adult-use recreational cannabis in an existing building.

LOCATION: At the intersection of Robert J Mathews Parkway and Hillsdale Circle, in the El Dorado Hills Business Park, in the El Dorado Hills Community Region, Supervisorial District 2 (Exhibits A, B, C).

APN: 117-071-007 (Exhibit D)

ACREAGE: 0.26 acre

GENERAL PLAN: Research and Development (R&D) (Exhibit F)

ZONING: Research and Development-Planned Development (R&D-PD) (Exhibit G)

ENVIRONMENTAL DOCUMENT: Categorically Exempt pursuant to Section 15301. Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Find Commercial Cannabis Use Permit CCUP21-0005 to be Categorically Exempt pursuant to Section 15301, Existing Facilities, of the CEQA Guidelines; and

2. Approve Commercial Cannabis Use Permit CCUP21-0005, based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

The applicant seeks a Commercial Cannabis Use Permit (CCUP) for a distribution and non-storefront retail (delivery only) operation. Distribution means the procurement, sale, and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale or transport to the general public. Delivery means the commercial transfer of cannabis or cannabis products to a customer and includes the use by a retailer of any technology platform. Retail sale, sell, and to sell means any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.

Operation of a commercial cannabis distribution and delivery operation is an "Allowed Use" on this property within the Research and Development (R&D) zone district and with the General Plan land use designation of Research and Development (R&D) with approval of a CCUP.

The Zoning Ordinance states the following about processing CCUPs, "A Commercial Cannabis Use Permit shall be subject to Article 5 of Title 130 of the County Code (Application Forms, Submittal Process, and Fees), unless provided otherwise herein. It shall be treated as a Conditional Use Permit under Section 130.52.021 (Conditional Use Permits), subject to the public hearing procedures and recommendation from the Planning and Building Director and decision by the Planning Commission."

In addition to a discretionary CCUP, a person may only conduct a commercial cannabis activity if the person obtains a Commercial Cannabis Annual Operating Permit (CCAOP). When a CCUP is first issued, the Building and Planning Department shall also issue a CCAOP, subject to annual renewals. A CCAOP is valid for one (1) year from the date of issuance and may be renewed after staff-level review with public notice as provided for in Chapter 130.50 (Application Filing and Processing) of this Title.

All CCAOPs shall require the applicant's participation in a County-run monitoring program. The monitoring program shall be funded by applicants and will be used to conduct site visits and inspections of all commercial cannabis activities and verify compliance, including but not limited to, all requirements of County Code and any site-specific permit conditions and State regulations, including the State track-and-trace requirements.

OTHER PROJECT CONSIDERATIONS

Planned Development Zoning Overlay (-PD): The project parcel is mapped within a Planned Development (-PD) combining zone district. The PD combining zone district was previously requested in order to pursue a commercial condominium plan for the existing development. The requested parcel map was recorded in 1989. The PD overlay has no effect on this requested CCUP.

BACKGROUND / HISTORY

The project parcel is located within the El Dorado Hills Business Park, an industrial park located in El Dorado Hills. The business, Norcanna, is proposed and the building would require internal modifications only.

State Background History:

The State of California has been regulating cannabis since 1996 with the passage of Proposition 215 the "Compassionate Use Act," the first medical cannabis regulation in the United States. In 2003, Senate Bill 420, developed the medical marijuana identification cards. The next significant change in regulation came twelve years later in 2015.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, was signed by the Governor on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also establishes a dual licensing scheme under which anyone who engages in commercial cannabis activity must first obtain a local permit, and then a state license. The state law defers to local land use authority and local jurisdiction may ban cannabis uses altogether or further limit the allowances under state law.

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Adult Use of Marijuana Act ("AUMA"). AUMA would allow local jurisdictions to decide whether to allow nonmedical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations. The proposed Ordinance only pertains to medical cannabis, consistent with current state law under MCRSA.

On June 27, 2017, the Governor signed into law, SB 94, which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provision of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retain the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Provisions Code Section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely

prohibit the establishment or operation of one (1) or more businesses licensed under the State, within that local jurisdiction.

Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provision of any local ordinance or regulation. The MAUCRSA required that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018.

State Law and Licensing Requirements:

Legislation under the MCRSA protects local control via dual licensing: all marijuana businesses must have both a State license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban. Local governments may enforce State law in addition to local ordinances if they request that authority and if it is granted by the relevant State agency. The types of permits allowed under the MCRSA include commercial cultivation, retail storefronts (dispensaries), manufacturing, testing labs, transporters, and distributors. Delivery services may occur if permitted by the local agency (or if the local jurisdiction does not explicitly prohibit delivery services) and must be associated to a storefront or non-storefront retail location.

El Dorado County Cannabis Ordinances:

On July 17, 2018, the El Dorado County Board of Supervisors (BOS) placed five (5) ballot measures on the ballot for the November 2018 election, which enabled voters to decide whether to allow different aspects of commercial cannabis and its taxation. The ballot measures named Measure N (taxation, permitting and enforcement of commercial cannabis), Measure P (commercial outdoor and mixed-light cultivation of cannabis for medicinal use), Measure Q (commercial outdoor and mixed-light cultivation of cannabis for recreational adult use), Measure R (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for medicinal use), and Measure S (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use). In November 2018, the voters of El Dorado County passed the ballot measures creating a commercial cannabis program in the County that was developed after numerous meetings with stakeholders. These efforts resulted in draft ordinances that sought to balance the desire for a commercial cannabis program with concerns raised in the community about impacts to communities from such a program.

A critical piece of this program was the involvement of the El Dorado County Sheriff's Office (EDSO) in reviewing the criminal history of applicants and making recommendations on applications based on that criminal history. This process is now codified in County Code section 130.41.100(4)(G). Consistent with state and federal law, EDSO sought to obtain approval from the California Department of Justice and the Federal Bureau of Investigation (FBI) to utilize Live Scan criminal history access for this licensing purpose. EDSO initiated that process in December 2019, however, has experienced significant delays in the approvals due to COVID-19 and changes in the form of resolution the FBI is now requesting for such approvals. Up until February 19, 2021, the Sheriff's Office anticipated receipt of the approval, however, was informed on that date that a new application would be required. The County has acted swiftly to pursue a new resolution, but recognizes that this change in circumstance would take six (6) months or longer.

In light of the anticipated delay with a new application for Live Scan access for this licensing purpose, the El Dorado County Planning and Building Department, EDSO, and County Counsel's Office collaborated to implement a procedure that complies with section 130.41.100(4)(G) and allows applications to continue in the permitting process. Generally, section 130.41.100(4)(G) will be implemented through an interim process until EDSO receives the approvals necessary to utilize Live Scan.

EXISTING CONDITIONS

The project site consists of 0.78 acre and is located within the El Dorado Hills Business Park, in the El Dorado Hills Community Region. The site is relatively flat and is located at an elevation of approximately 540 feet above mean sea level. The project site is fully developed with research and development uses. All adjacent parcels within the business park are similarly zoned and designated as R&D with residential uses approximately greater than 800 feet to the west and east (Exhibit C). Much of the surrounding area has been developed.

PROJECT DESCRIPTION

The proposed project is a request for a CCUP for a distribution operation and non-storefront retail (delivery only) operation. Distribution means the procurement, sale, and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale or transport to the general public. Delivery means the commercial transfer of cannabis or cannabis products to a customer and includes the use by a retailer of any technology platform. Retail sale, sell, and to sell means any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.

The business would consist of a secured warehouse for storage and vehicles to distribute cannabis products from licensed cultivators and manufacturers to licensed retailers. The business would occupy a 2,060 square foot suite within an existing 11,056 commercial building within the El Dorado Hills Business Park. There will be a maximum of eight (8) employees. Through the delivery arm, the applicant expects to have five (5) drivers scheduled per day and each driver to take a route of packages about four (4) times per day, or one (1) route every 1.5-2 hours, not to exceed 10 deliveries per day. Each driver will use their personally owned vehicle (POV) or one (1) of four (4) fleet vehicles. Cannabis may only be transported within the unincorporated areas of the County inside a commercial vehicle or trailer with sufficient security features and Global Positioning System (GPS) tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. State law allows cannabis deliveries to adjacent cities and counties that do not have commercial cannabis retailers. Operation of a commercial cannabis distribution operation is an allowed use in the R&D zone district with

the issuance of a CCUP. No expansion of the building is proposed as part of this project. Furthermore, no new signs other than what is permitted for the site are being proposed as part of this project.

STAFF ANALYSIS

General Plan Consistency: The project is consistent with all applicable General Plan policies including Policy 2.2.1.2. (Industrial Land Use Designation), Policy 2.2.5.2 (General Plan Consistency), Policy 2.2.5.21 (compatibility with adjoining land uses), Policy 5.1.2.1 (adequacy of public services and utilities), Policy 5.2.1.2 (adequate quantity and quality of water for all uses, including fire protection), Policy 5.7.1.1 (fire protection in Community Regions), Policy 6.2.3.2 (adequate access for emergencies), and Transportation Policies TC-Xa through TC-Xi. Further details are discussed in the Findings section below.

Zoning Ordinance Consistency: Staff has determined that the proposed project, as conditioned, is consistent with all applicable standards and requirements of Title 130 of the County Ordinance Code (Zoning Ordinance).

The project is consistent with all applicable policies within Chapter 130.41 Commercial Cannabis. A commercial cannabis distribution operation is an allowed use with approval of a CCUP.

The project parcel is within the R&D zone district and the project has been analyzed in accordance with all applicable development standards for this zone district. The site was developed consistent with the R&D zone district.

AGENCY COMMENTS

The project was distributed to all applicable local and state agencies for review and comment. Comments were received from EDSO. The County's Department of Transportation (DOT) did not require a traffic study and or other study as traffic generated by this proposed project would be less than significant. No agencies expressed any issues or concerns regarding this project.

PUBLIC OUTREACH

No formal public outreach was conducted by the County, and a public outreach plan was not required for this project pursuant to the County Zoning Ordinance. However, the project was duly noticed for a Planning Commission public hearing with a public notification range of 1,000 feet and a legal advertisement was published in applicable local newspapers. In addition, project notification was also posted on the Planning Services Planning Commission webpage. No physical sign posting is required for a CCUP.

ENVIRONMENTAL REVIEW

CCUP19-0004 is Categorically Exempt pursuant to Section 15301, Existing Facilities, of the CEQA Guidelines. Section 15301 Categorically Exempts the "permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or

topographical features, involving negligible or no expansion of existing or former use.” As an example, section 15301 includes “[a]dditions to existing structures provided that the addition will not result in an increase of more than: (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or (2) 10,000 square feet if: (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and (B) The area in which the project is located is not environmentally sensitive.” Here, the Project proposes no alterations to the exterior of the existing structure and the only expansion of use is to include distribution of medical and adult-use recreational cannabis, which requires minor interior modifications. No alterations to the project parcel are required to issue the CCUP. This CEQA finding is also based on the cannabis distribution use proposed as being in compliance with the El Dorado County’s General Plan and Zoning Ordinance, including the County’s Commercial Cannabis Regulatory Program. The property is zoned, planned, and developed for R&D uses. The 0.26 acre site also meets all the development standards for the R&D zone district. The subject property is served by public water and wastewater facilities. No environmentally sensitive habitat areas are located onsite or within the immediate vicinity. The proposed exemptions are not affected by the Public Resource Code section §15300.2 limitations to Categorical Exemptions, including limitations related to location, cumulative impact, significant effect due to unusual circumstances, scenic highway, hazardous waste site, or historical resources as discussed in the CCUP findings.

Filing of a Notice of Exemption is required in accordance with CEQA Guidelines Section 15062 to initiate a 35-day statute of limitations on legal challenges to the County’s decision that the project is exempt from CEQA. The applicant shall submit a \$50.00 recording fee to Planning Services in order for the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments to Staff Report:

Findings
Conditions of Approval

- Exhibit A.....Vicinity Map
- Exhibit B.....Location Map
- Exhibit C.....Aerial Map
- Exhibit D.....Assessor’s Parcel Map
- Exhibit E.....Topography Map
- Exhibit F.....General Plan Land Use Designation Map
- Exhibit G.....Zoning Designation Map
- Exhibit H1-H2.....Site Plan/Floor Plan
- Exhibit I.....Parcel Map G 148 C
- Exhibit J..... Letter from EDSO Date August 25, 2022
- Exhibit K.....Security Plan