

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



Agenda of: September 8, 2022

Staff: Aaron Mount

COMMERCIAL CANNABIS USE PERMIT

FILE NUMBER: CCUP19-0008/Eldo Lake Investment, LLC

APPLICANT: Eldo Lake Investment, LLC

AGENT: Chris Hester

PROPERTY OWNER: David Stalls

REQUEST: Commercial Cannabis Use Permit for a retail storefront for the sale of cannabis goods for medicinal and adult-use recreational in an existing building.

LOCATION: On the west side of US 50, approximately 430 feet southwest of the intersection with Jewell Road, in the South Lake Tahoe area, Supervisorial District V. (Exhibit A, B, C).

APN: 033-050-023(Exhibit D).

ACREAGE: 1.18 acres (Exhibit D)

GENERAL PLAN

LAND USE DESIGNATION: Adopted Plan (AP)/TRPA 116 Airport Plan Area (Exhibit F)

ZONING DESIGNATION: Industrial-Light (IL) (Exhibit G)

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

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

1. Find the project Exempt under Section 15301 of the CEQA Guidelines; and
2. Approve Commercial Cannabis Use Permit CCUP19-0008, based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

The applicant seeks a Commercial Cannabis Use Permit for a storefront cannabis retail sales business in a repurposed existing commercial building located at 2140 US-50 in South Lake Tahoe.

The proposed project includes a Commercial Cannabis Use Permit (CCUP) to conduct retail sales of cannabis products in an existing building consisting of 1,600 square feet of active use area in a building that totals 7,360 square feet in size. Operation of a commercial cannabis retail storefront is an "Allowed Use" on this property within the Industrial-Light zone district and with the General Plan land use designation of Adopted Plan (AP)/TRPA 116 Airport Plan Area with approval of a CCUP.

With the exception of a non-storefront retail facility providing only delivery service, no more than seven cannabis retail storefront facilities that are open to the public shall be permitted at any one time. One additional cannabis retail storefront facility may be permitted in the Meyers Community Center (MAP-1) zoning district for a total of eight potential cannabis retail storefront facilities in the County. The County is currently processing a total of eight applications for retail storefronts.

The Zoning Ordinance states the following about processing Commercial Cannabis Use Permits, "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 Commercial Cannabis Use Permit, a person may only conduct a commercial cannabis activity if the person obtains a Commercial Cannabis Annual Operating Permit. When a Commercial Cannabis Use Permit is first issued, the Planning and Building Department shall also issue a Commercial Cannabis Annual Operating Permit, subject to annual renewals. A Commercial Cannabis Annual Operating Permit is valid for one 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 Commercial Cannabis Annual Operating Permits 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

TRPA: The project parcel is mapped within the jurisdiction of the Tahoe Regional Planning Agency (TRPA). The TRPA submitted comments for the project and stated that it will a Change in Operation permit and a sign permit both of which can be processed by El Dorado County pursuant to the TRPA/El Dorado County MOU. The proposed use is consistent with the allowable retail uses in the TRPA 116 Airport Plan Area Statement.

BACKGROUND / HISTORY

The application is for a newly proposed commercial cannabis retail storefront. No commercial cannabis uses have previously been allowed at this site. The existing structure that the retail store front will occupy was built in 1968 and is currently used for auto repair.

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 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 non-medical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations.

On June 27, 2017, the Governor signed into law, Senate Bill (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 no-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retained 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 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 Medical Cannabis Regulation and Safety Act (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 commercial 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 including 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 placed five 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 ballot measures that, if approved by the voters, enacted 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 Sheriff's Office in reviewing the criminal history of applicants and making recommendations on applications based on that criminal history. This process was included in the ballot measures and is now codified in County Code section 130.41.100(4)(G). Consistent with state and federal law, the Sheriff's Office sought to obtain approval from the California Department of Justice and the Federal Bureau of Investigation to utilize Live Scan criminal history access for this licensing purpose. The Sheriff's Office initiated that process in December 2019, however, has experienced significant delays in the approvals due to Covid 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 authorizing Live Scan access, but recognizes that this change in circumstance would take six 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, Sheriff's Office, 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 the Sheriff's Office receives the approvals necessary to utilize Live Scan.

EXISTING CONDITIONS

The project site consists of one parcel totaling 1.18 acres and is located within the South Lake Tahoe area. The site is sloped except for the developed areas and is located at an elevation of approximately 6,319 feet above mean sea level and is directly adjacent to US Highway 50. The project site is fully developed with 7,360 square foot commercial/industrial building and parking. The majority of the neighboring properties are zoned Forest Resources (FR) with residential zoning approximately 864 feet to the south (Exhibit C). A large undeveloped parcel to the west is owned by the US Forest Service and to the east is an undeveloped parcel owned by the Tahoe Conservancy. Much of the surrounding area is undeveloped except for adjacent industrial parcels to the north.

PROJECT DESCRIPTION

The proposed project includes a request for a Commercial Cannabis Use Permit for a retail sale storefront facility open to the public for the sale, including delivery, of commercial cannabis for medicinal or adult-use recreational. The retail facility will be within a repurposed existing commercial/industrial building which currently houses an auto repair business in the suite that would be converted to the retail store front. Hours of operation for retail sale and delivery are limited to commencing at 8:00 a.m. and ending at 8:00 p.m. The retail facility will provide security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft. During operation employees would consist of a security guard, a manager, and sales floor employees. Operation of a commercial cannabis retail storefront is an allowed use in the Industrial-Light zone district with the issuance of a CCUP. No expansion of the building is proposed as part of this project. No new signs are proposed as existing signage will be replaced at the building permit stage.

STAFF ANALYSIS

General Plan Consistency: The project is consistent with all applicable General Plan policies including Policy 2.2.1.2. (Adopted Plan 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. The use is allowed in the TRPA Airport Area Plan and is consistent with the County’s Commercial Cannabis ordinance’s development standards.

The Sheriff’s office has completed the background check process and has recommended that the application can proceed to a Planning Commission hearing.

AGENCY COMMENTS:

The project was distributed to all applicable local and state agencies for review and comment. Comments were received from the El Dorado County Sheriff’s Office. 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 Commercial Cannabis Use Permit.

ENVIRONMENTAL REVIEW:

Commercial Cannabis Use Permit (CCUP) CCUP19-0008 is Categorically Exempt pursuant to Section 15301, Existing Facilities, of the California Environmental Quality Act (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 significant alterations to the existing

structure and the only change of use is to include sale of cannabis goods for medicinal and adult-use recreational uses. No exterior alterations to the structure are required to issue the Commercial Cannabis Use Permit. This CEQA finding is also based on the cannabis retail sales 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 commercial uses. The 1.18 acre site also meets all the development standards for the Industrial-Light 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 Commercial Cannabis Use Permit findings below.

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

Exhibits

Exhibit A.....	Vicinity Map
Exhibit B.....	Location Map
Exhibit C.....	Aerial Map
Exhibit D.....	Assessor's Parcel Map
Exhibit E.....	USGS Topographic Map
Exhibit F.....	General Plan Land Use Map
Exhibit G.....	Zone District Map
Exhibit H1-2.....	Site Plan/Floor Plan
Exhibit I.....	Letter from EDSO dated March 21, 2022
Exhibit J.....	Security Plan
Exhibit K.....	Traffic Waiver
Exhibit L.....	TRPA 116 Airport Plan Area Statement