



# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## Planning and Community Development Department

### **AGENDA ITEM**

Case No: CUP 25-09  
Proposal: Onsite Marijuana Consumption  
Applicant: High Tide Cannabis (Elizabeth and Marty Martin, AKO Farms, LLC)  
Owner: Richard Burgess Bauder  
Location: 4509 Halibut Point Road  
Legal: Lot Fifty (50), U.S. Survey 3475  
Zone: C-2 General Commercial Mobile Home District  
Size: 29,737 square feet  
Parcel ID: 2-5845-000  
Existing Use: Residential  
Adjacent Use: Residential, Commercial  
Utilities: Existing private utilities  
Access: Halibut Point Road

### **KEY POINTS AND CONCERNS**

- Proposed onsite marijuana consumption in concurrence with marijuana retail facility
- Located in the C-2 commercial district
- AMCO permit pending

### **ATTACHMENTS**

Attachment A: Aerial  
Attachment B: US Survey 3475  
Attachment C: Site/Floor/Parking Plan  
Attachment D: Photos  
Attachment E: AMCO Application  
Attachment F: State of Alaska AAC 306 Regulations  
Attachment G: Applicant Materials

## **BACKGROUND/PROJECT DESCRIPTION**

The applicant has proposed onsite marijuana consumption in concurrence with a marijuana retail facility located at 4509 Halibut Point Road in the C-2 general commercial mobile home district. The proposed onsite consumption area would be outdoors and enclosed by a 6' high fence and includes two 120 square foot (SF) gazebos. Access to the consumption area is only allowed through the retail store. Only twelve people at a time will be allowed in the consumption area per the AMCO application materials.

The retail proposal is for a 676 SF facility with an entrance area, a sales counter, display cabinet, office space, bathroom (see CUP 25-08). The parcel is 29,737 SF, existing uses include a single-family home (referred to as lighthouse - 2,595 SF), mobile home, and accessory building (shed/shop) the property owner plans to demolish in the future. The applicant is leasing a 120' by 44' (5,280 SF) area of the parcel for the marijuana retail facility.

In May 2019, Alaska became the first state to allow marijuana retail businesses to apply for a special onsite use endorsement under AAC 306.370. Endorsed stores may permit onsite consumption of marijuana flower, up to 1 gram per person per day, edible marijuana products up to 25 milligrams of THC per person per day and vaping devices containing no more than 0.3 grams of marijuana per day. The consumption area must meet the following requirements:

- isolated from the other areas of the retail marijuana store
- be separated by walls and secure door
- only have access only from the retail marijuana store
- must provide a smoke-free area for employees to monitor the marijuana consumption area
- a marijuana consumption area that is indoors and in which smoking is permitted must have a ventilation system that is:
  - that is separate from the ventilation system of the other areas of the licensed retail marijuana store or other licensed marijuana establishments in a freestanding building
  - that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line
- if outdoors, the marijuana consumption area must be found by the AMCO board to be compatible with uses in the surrounding area through evaluation of:
  - neighboring uses
  - the location of air intake vents on neighboring buildings, if consumption by smoking is permitted
  - a sight-obscuring wall or fence around the outdoor marijuana consumption area
  - objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater

This use was approved by the Assembly and added to Sitka General Code Title 22 Zoning on May 29, 2025. Local approval through such processes as conditional use permits is a prerequisite for AMCO licensing/endorsements.

## **ANALYSIS**

### **1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.<sup>1</sup>**

**a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses:**

An increase in traffic is to be expected by adding onsite marijuana consumption operations on the property. However, given that the lot is located in a commercial district, moderate traffic is expected. Most customers are expected to be pedestrians from the cruise dock.

**b. Amount of noise to be generated and its impacts on surrounding land use:** Outdoor businesses have the potential of creating noise impacts on surrounding land uses – given the small size of the area and gazebos, the applicant included a maximum occupancy of twelve patrons in the consumption area in their AMCO application. There is significant outdoor activity (and associated noise impacts) on the neighboring property (cruise dock) during the visitor season – the increase in noise from this proposal is anticipated to be negligible during the anticipated busy season. The adjacent residential uses to the proposed consumption area are on the same property as the proposal/under control of the property owner. Hours of operation ending at 7pm daily will curtail late night disturbances.

**c. Odors to be generated by the use and their impacts:** Odor is a concern with marijuana uses. Onsite marijuana consumption, while not as impactful as cultivations, can still have odors associated with them. The applicant expects odors to be low and regularly experienced wind direction around the site will help to dissipate odors. Since marijuana can have strong odors, this could be mitigated by additional conditions of approval if the Planning Commission felt it was warranted.

**d. Hours of operation:** Proposed hours of operation are 8am-7pm, seven days a week.

**e. Location along a major or collector street:** Access from Halibut Point Road through Old Halibut Point Road also called Old Barge Road.

**f. Potential for users or clients to access the site through residential areas or substandard street creating a cut-through traffic scenario:** Access is off Halibut Point Road through Old Halibut Point Road using existing driveways located through 4513 Halibut Point Road. Administrative authority over Old Halibut Point Road has been transferred to the Alaska Department of Natural Resources and the area continues to be reserved for right-of-way purposes. If

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<sup>1</sup> § 22.25.010.E

the permit is granted, staff will work with the applicants and the cruise dock to determine which driveway should be signed with directions to the retail/onsite consumption facility.

**g. Effects on vehicular and pedestrian safety:** Minimal/marginal impact to vehicle or pedestrian traffic – area is commercial in nature, traffic is expected. There is a pedestrian sidewalk on the adjacent property (4513 Halibut Point Road) from the cruise dock by the north property line. Staff has also added a condition of approval that the applicant must make available to its clients an up-to-date listing of taxi and other transportation providers.

**h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site:** Site is accessible for police, fire, and EMS response. Security system will be installed as required by AMCO.

**i. Logic of the internal traffic layout:** Internal layout conducive to serving customers while providing adequate security and monitoring of product and restricted areas. There are two parking spaces for the retail business (1 space per 300 square feet).

**j. Effects of signage on nearby uses:** Signage is subject to AMCO limitations. The applicant has proposed exterior signage with the business name/logo and required AMCO regulatory signage. Per item f above, appropriate directional signage from Halibut Point Road will be installed.

**k. Presence of existing or proposed buffers on the site or immediately adjacent the site:** Site has large trees and rear of property consists of tidelands. The applicant has proposed (and partially constructed) a 6' tall fence around the perimeter of the consumption area. However, due to the significant grade change between the front and rear of the lot, staff observed some vantage points from which people standing in the gazebos would be visible from outside the consumption area. Staff has added a condition of approval requiring the applicant to raise the fence height in certain sections and/or install screening in certain gazebo openings between the top of the rails and the header to block consumption visibility subject to Planning Department inspection and approval prior to operation. This condition of approval also serves as a modification of use design standards to lessen impacts in accordance with SGC 22.10.160(C) if sections of the fence need to exceed the 8' height maximum for the C-2 zone.

**l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan:** This proposal conforms to the chapter of Economic Development that supports local businesses, attracts new sustainable businesses, supports tourism, and supports effort and enterprises that keep residents' money "local". It also supports Economic Development Action ED 6.7: *Support growth of manufacturing businesses that add value to sustainably developed natural resources*; by providing a retail outlet for locally manufactured (or those produced within the State), and ED 6.5 to: *support growth of Sitka's independent, cruise-related, and heritage tourism work and enterprises*; by providing visitors with a legal venue to use marijuana products that is immediately adjacent to the cruise dock. However, there is some potential conflict with Land Use Action LU 6.2 (see next section).

**m. Other criteria that surface through public comments or planning commission review:** One public comment has been received in opposition to this request from a property owner in the vicinity. The objection is based on negative impacts to the character of the surrounding vicinity; while this area is zoned as C-2 general commercial, the subject property and properties to the south of it along Old Halibut Point Road have been developed/used as residential. The commenter also cited concerns regarding the impacts to their property value.

The allowance of low-density residential in general commercial zones has, in previous cases, resulted in conflict between residential and commercial property owners (including marijuana establishments). This was recognized in the Comprehensive Plan under Land Use Action LU 6.2 “Prevent future incompatible land use between residential, light commercial, heavy commercial, and industrial uses.” While there is (valid) subjectivity regarding “incompatibility” of land uses, there are mitigating factors regarding this proposal in terms of its impact on the character of the surrounding vicinity. The property is immediately adjacent to a large-scale commercial development; it’s arguable that the proposed use is consistent with this character. And, being immediately adjacent to this development, the perceived boundary between commercial uses and the beginning of the residential-use neighborhood is maintained. The proposed property is large, and the residential uses on the lot (which would be most impacted) remain under the control of the single property owner.

The potential impact on adjacent property values is more difficult to quantify and therefore adjudicate, but it is certainly plausible that the marketability of homes in the area could be impacted by potential buyers’ preferences regarding proximity to a marijuana establishment. With the confluence of factors that go into purchasing property in Sitka’s challenging real estate market, and the mixed-use nature of this neighborhood, staff does not find that there is an absolute or reasonably quantifiable impact on property values/marketability to warrant denial.

### **Marijuana 500 Foot Buffers**

The state requires a 500-foot buffer from sensitive uses that include educational facilities, recreational centers, youth centers, churches, or correctional facilities. This is measured in different ways. Educational, recreation center, and youth center type uses are measured from the public entrance of the marijuana establishment to the outer boundary of the sensitive use by the shortest pedestrian route (determined by State AMCO Board); or 2) from the public entrance of the marijuana establishment to the main public entrance of the religious or correctional facility measured by the shortest pedestrian route (determined by State AMCO Board). There are no state regulated sensitive uses that staff is aware of per site visit. However, this is conditioned to comply with state buffers and burden is upon applicant.

### **RECOMMENDATION**

Staff recommends approval of the conditional use permit request for a marijuana retail facility at 4509 Halibut Point Road subject to conditions of approval.

## **CONDITIONS OF APPROVAL**

1. Installation of a privacy fence will be required around the perimeter of the consumption area. The applicant shall provide for additional screening to the 6' tall proposed fence which may include raising the fence height in certain sections and/or providing screening in gazebo openings between the top of the rail and the bottom of the header such that individuals occupying the gazebos will not be viewable from outside the consumption area subject to Planning Department inspection and approval prior to operation. Fence height may exceed the 8' height maximum for the C-2 zone in order to lessen impacts in accordance with SGC 22.10.160(C).
2. Placement of directional signage on Halibut Point Road will be determined in conjunction with Planning Department staff and the adjacent property owner (4513 HPR), and will be installed prior to operation.
3. At all times of operation under this permit, the applicant shall make available to its clients an up-to-date listing of taxi and other transportation providers.
4. Owners, operators, and staff of conditional uses shall comply with all state and municipal licensing regulations.
5. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal building official.
6. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfy the fire marshal or their designee and the building official.
7. All licensed facilities and/or uses shall provide screening from public view of any marijuana related commercial, retail, cultivation, onsite consumption, or manufacturing use.
8. All licensed facilities and/or uses shall establish an active sales account and business registration with the municipality and shall comply with all standard and required accounting practices.
9. It shall be a standard regulation that all conditional uses comply with all applicable state regulations and licensing laws, or it shall be deemed to abandon and extinguish any associated municipal license or conditional use permit.
10. All approved conditional use permits shall comply with all of the Sitka General Code or shall be deemed to abandon and extinguish any associated municipal license or conditional use permit.
11. The Planning Commission or Planning Department shall be able to schedule a hearing to resolve issues, impacts, or review conditions of approval related to meritorious issues connected to the public's health, safety, and welfare.

## **Motions in favor of approval**

1. **"I move to approve the conditional use permit for onsite marijuana consumption at 4509 Halibut Point Road in the C-2 general commercial and mobile home district subject to the attached conditions of approval. The property is also known as Lot Fifty (50), U.S. Survey 3475. The request is filed by High Tide Cannabis (Elizabeth and Marty Martin, AKO Farms, LLC). The owner of record is Richard Burgess Bauder."**

**2. “I move to adopt and approve the required findings for conditional use permits as listed in the staff report.”**

1. The granting of the proposed conditional use permit will not:
  - a. Be detrimental to the public health, safety, and general welfare *because the application is compliant with local and state regulations regarding the protection of public health, safety, and welfare including restriction of minors from entering the site, installation/operation of a security system, appropriate signage on/in the building and on product packaging, adherence to AMCO daily serving limits, staff supervision of the consumption area at all times, appropriate distance of the outdoor consumption area from other retail and habitable structures, and conditions of approval that enhance visual screening of the consumption area and ensure clients are provided with transportation information;*
  - b. Adversely affect the established character of the surrounding vicinity *because the proposed use is consistent with the use and character of the immediate neighboring property, and its location maintains the perceptible boundary between commercial and residential uses in the vicinity ; nor*
  - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located; *because the property will be heavily monitored and regulated to ensure that the use does not negatively impact surrounding properties. The expansion of commercial use in this mixed-use area is relatively and proportionally minor to the scale of existing commercial development and therefore does not injure the use, property, or improvements in the vicinity. The proposed hours of operation are reasonable to prevent late evening and early morning disturbances in the surrounding vicinity.*
2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives, and policies of the comprehensive plan and any implementing regulation *specifically, this proposal supports ED 6.5 and ED 6.7 by supporting sustainable local manufacturing and supporting tourism enterprises due to its proximity to a major cruise tourism development and its marketability to visitors. Implications regarding LU 6.2 are mitigated by the location of the proposal relative to residential use in the area and its proximity to large-scale commercial development.*
3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced *because the property will be monitored to ensure that there are no resulting negative impacts, especially through required state licensing and reporting, and through opportunities for redress to the Planning Department and/or Planning Commission if reports of negative impacts arise.*
4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard *due to the intensive local and state regulatory requirements related to marijuana establishments that allow for strict application and enforcement of mitigations.*
5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services as the property is adequately served by a serviceable right-of-way, is accessible by emergency services, and utility infrastructure in the area can support the conditional use as determined through applicable municipal permitting.

6. The applicant has met their burden of proof that the use meets all of the evaluation criteria for conditional uses *through submission of their conditional use permit application, AMCO license applications, and additional supporting documentation.*