



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

*Coast Guard City, USA*

## Planning and Community Development Department

Date: May 5, 2016

To: Planning Commission

From: Michael Scarcelli, Senior Planner

Re: CU 16-12 Marijuana Cultivation at 1321 Sawmill Creek Road, Units O & P

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### **GENERAL INFORMATION**

Applicant: Northern Lights Indoor Gardens, LLC

Mike Daly/Joann Daly

Property Address: 1321 Sawmill Creek Road, Unit O&P

Property Owner: Eagle Bay Inn, LLC

Legal Description: U.S. Survey 2729

Parcel ID Number: 30450000

Size of Existing Lot: 69,300 sq. feet

Zoning: General Commercial Mobile Home (C-2)

Existing Land Use: Commercial and Residential

Utilities: Full city services

Access: Off of SMC

Surrounding Land Use: Residential, Commercial, & Industrial

### **ATTACHMENTS**

Attachment A: Application

Attachment B: Vicinity Map

Attachment C: Aerial Vicinity Map

Attachment D: Pictures

Attachment E: Zoning Map

Attachment F: Subdivision Plat

Attachment G: Site Plan

Attachment H: Floor Plan

Attachment I: Narrative

Attachment J: AMCO Application

### **MEETING FLOW**

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- Findings
- Motion of Recommendation

Attachment K: Emails and other Supporting Documents  
Attachment L: Buffer Map – 500 feet  
Attachment M: Mailing List – 300 feet

## **BACKGROUND/PROJECT DESCRIPTION**

The proposal is for a marijuana cultivation facility<sup>1</sup> in a General Commercial Mobile Home zoning district (C-2) located at 1321 Sawmill Creek Road, Units O & P. Therefore, the proposed use is subject to receiving a conditional use permit to be able to operate subject to section 22.24.026.

The cultivation operation is located throughout two units, O & P. The grow rooms are on the ground floor of O & P, which includes two grow rooms, a storage room, and a secure room; on the upper floor, there is another grow room, storage, office, and work rooms for cultivation processes. There are also waste and storage areas, clone and seedling rooms, and other accessory uses (such as the related retail use). The focus of these review is the cultivation use. On the upper floor, there is a drying room and trim area, as well as storage and a designated smoking area. However, due to the intertwined organization of the two uses, those are both described to understand how units O & P will operate holistically. Each ground floor is approximately 1250 gross square feet (minus build out that reduces that) for total of 2500 gross square feet. The upper floors are approximately 1010 square feet.

## **ANALYSIS**

### **1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.<sup>2</sup>**

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

First, our Department does not have traffic engineering software to calculate traffic impacts, nor does it have the equipment to conduct or own objective traffic studies. However, I was able to glean information from other objective traffic studies. Using a study from Boulder, Colorado, marijuana retail was studied with actual traffic and parking observations and also compared and contrasted to similar businesses to calculate a range of traffic and parking impacts. Using observation and modeling, the average trips to a specific retail location per day ranged from 100 to 321; during the highest am hour, the range was .4 to 14.33, and in the highest pm hour the range was 14 to 48. Using observation and modeling, the average trip rate was about 6.97 trips per 1,000 square feet per day for cultivation. Average peak parking was about 6 spaces in the highest hour and day. Note: There was correlation between square footage and trip rates for cultivation. However, there was less of a correlation between retail size and traffic impacts, instead that seemed to be determined more by market variables (such as supply, demand, density of similar uses in area).

So what does this mean? It means that these uses will produce similar parking and traffic demand as any other retail use would see in a given market; and that cultivation would produce less than typical parking and traffic demand than other types of industrial and manufacturing use. Northern Lights would need to provide 9 spaces for all of its uses, and one loading space.<sup>3</sup> CUPs can address parking impacts by creating specific additional

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<sup>1</sup> § 22.08.587 C

<sup>2</sup> § 22.24.010.E

<sup>3</sup> Parking was calculated based upon applying 2 spaces for up to 6 employees for cultivation under manufacturing use and

conditions to address parking, such as the condition recommending a parking plan with striped parking stalls to be completed and submitted (this is currently a code requirement anyway). Staff has conditioned a parking condition to bring the entire site into conformity with code (if not now, when?).

**b. Amount of noise to be generated and its impacts on surrounding land use:**

There is no objective analysis regarding noise. Subjectively, cultivation use would not appear to create any noise impacts to a General Commercial Area any more so than other commercial uses. In reviewing other planning analysis of such marijuana cultivation uses, I found no concerns about noise impacts in commercial zones.

**c. Odors to be generated by the use and their impacts: Odors are a concern.**

There is difficulty ascertaining the quantitative, objective impact of marijuana odor. Subjectively, some may like the odor – whether as an odor alone or compared to other noxious odors that may be found in commercial and industrial areas. State regulations identify under section 3 AAC 306.420 (F) Odor Control under the operating plan that each applicant must submit to the state Alcohol and Marijuana Control Office (AMCO). In addition, Section 3 AAC 306.430 (C)(2) states, “Does not emit an odor that is detectable by the public from outside the marijuana cultivation facility **except as allowed by a local government conditional use permit process**.”[Staff has highlighted for emphasis].

Therefore, odor is a concern, and while it may appear, from code, that no odor can be detected, it also reads that a local government can address odor as it sees fit for the location for cultivation use. Taking both of these into account, it appears prudent to condition a high level of odor control, but recognize absolute elimination may not be feasible, practical, or necessary depending upon surrounding land use.

While retail has no specific state regulation regarding odor in 3 AAC 306, staff believes it is prudent to address odor concerns due to the mixed-use of both units and presence of smoking room with retail use. Staff suggests at a minimum, numerous charcoal air filters and hepa filters. In addition, some use ozone or masking agents. Please be aware about the potential harms of ozone for human health.

**d. Hours of operation:** The business hours as provided indicate 8 am to 10 pm year-round except for holidays. However, staff views a grow operation as a 24 hour non-stop operation. Plants and their respective grow systems do not stop operating when people leave the building. Monitoring systems continue to run, plants grow, pumps and fans operate, etc. State regulations do not allow operation prior to 8 am. (5-8 am to be exact)

**e. Location along a major or collector street:** Located along a state highway, Sawmill Creek Road, which is adequate for the proposed use.

**f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario:** Proposed use is in an existing building. The use itself will not create or alter any access.

**g. Effects on vehicular and pedestrian safety:** None anticipated or identified.

**h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site:** Part of the operating plan will include emergency access. Due to operating plan and regulations, emergency access may be better than average use. Positive impact only.

**i. Logic of the internal traffic layout:** Property has proper layout; however, there is concern about parking. To do proper parking analysis, staff needs a parking plan showing all uses and square footages of existing uses, proposed uses, parking, access driveways, and loading zones. (Site and floor plan with dimensions).

**j. Effects of signage on nearby uses:** None anticipated.

**k. Presence of existing or proposed buffers on the site or immediately adjacent the site:** Existing lot orientation is proper. In terms of state buffer, there is residential use on site and within the vicinity that could be impacted by odor or other impacts of commercial cultivation.

**l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan:** There are many goals, policies, and objectives that this proposal could fall under, these include but are not limited to: 2.1.2 economic growth, 2.1.3 foster quality family life (condition to protect these), 2.1.10 diverse and vital local job base, 2.1.13 diversified industry and utilizing Sitka's resources for best return on investment (renewable electricity), 2.2.1 economic base, 2.2.3 produce high quality goods, 2.2.5 protect health and welfare of community (through conditions), 2.2.10 respect social and community values (70% support recreational marijuana), 2.3.6 focus on waste water and watershed protection (through conditions and operating plan), 2.4.1 orderly use, 2.4.4 resolve conflicts of use through public process, and 2.6.2 commercial development without substantial negative impacts (through conditions and regulations). Overall, the conditional approval with appropriate conditions and default state regulations appears to offer the best economic development by providing jobs, tax revenue, and utilization of electricity that has extra supply, comports with existing community values, and creates harmony of use for the area.

Some of the positive impacts include increasing jobs directly and indirectly through on-site employees, contractors for building and business design, sales tax revenue, tourism incentives, and sale of electricity. Potential negative impacts are adequately mitigated through stringent state regulations incorporated into the municipal conditional use permit via security protocols, waste disposal plan (benefit to local food growers), tracking system, diversion protocols, camera and security features, odor control, and other means.

m. Other criteria that surface through public comments or planning commission review

**1. Any impact or criteria that surfaces through public comment, planning staff review, or planning commission review.<sup>4</sup>**

**Safety:** Building Safety is being reviewed by the Building Department and shall be governed by Conditions of Approval:

1. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.

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<sup>4</sup> §22.24.026(D)(2)

2. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.

In addition, all public, health and safety has been adequately addressed with the operating plan and proposed conditions regarding parking compliance and odor control. Emergency access, security, and diversion programs have all addressed any other potential safety concerns.

**Parking:** See discussion in traffic discussion. Per analysis, 9 parking spaces will be required, and one loading zone, plus all parking on site (total site) must be striped where feasible.

### **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 within the 500 foot buffers. However, there are residential uses and commercial uses that would bring children within the area, so harmony of use is a concern.

### **C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:**<sup>5</sup>

1. The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:
  - a. Be detrimental to the public health, safety, and general welfare;
  - b. Adversely affect the established character of the surrounding 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.
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.
3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
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.
5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.
6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.

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<sup>5</sup> § 22.30.160.C – Required Findings for Conditional Use Permits

The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

### **Specific Guidance from 22.24 on Findings for Marijuana Uses<sup>6</sup>**

Findings of Fact: Upon review and considerations of the required criteria, the Planning Commission shall determine whether the proposed use(s) at the proposed project location are found to not present a negative impact to the public's health, safety, and welfare.

1. If such a finding can be made, then the proposed use shall be approved with standard regulations, dimensions, and setbacks.
2. In the alternative, where the Planning Commission finds negative impacts are present, the Planning Commission shall only approve conditional use permits where the negative impacts can be adequately mitigated by conditions of approval that preserve the public's health, safety, and welfare. ***These conditions of approval shall be case by case specific and in addition to the standard regulations.***
3. If negative impacts to the public's health, safety, and welfare cannot be mitigated through conditions of approval then the Planning Commission shall so find and deny the proposed conditional use permit.

### **RECOMMENDATION**

It is recommended that the Planning Commission adopt the Senior Planner's analysis and required findings as found in the staff report.

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<sup>6</sup> §22.24.026(E)

**Recommended Motions:** (two motions - read and voted upon separately)

- 1) I move to find (two options):
  - a. That there are no negative impacts present that have not been adequately mitigated by the attached conditions of approval (supports approval)
  - b. That there are negative impacts, such as \_\_\_\_\_, that cannot be adequately mitigated and therefore poses a substantial negative impacts to the public's health, safety, and welfare. (supports denial)
- 2) I move to approve the conditional use permit request filed by Mike Daly (and Northern Lights, LLC) for marijuana cultivation at 1321 Sawmill Creek Road, Units O & P, in the C-2 General Commercial and mobile home zone subject to the attached 11 conditions of approval. The property is also known as U.S. Survey 2729. The owner of record is Eagle Bay Inn, LLC.

**Required Standard Conditions of Approval:**<sup>7</sup>

1. Owners, operators, and staff of conditional uses shall comply with all state and municipal licensing regulations.
2. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.
3. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.
4. All licensed facilities and/or uses shall provide screening from public view of any marijuana related commercial, retail, cultivation, or manufacturing use.
5. All licensed facilities and/or uses shall establish an active sales account and business registration with the Municipality and shall comply with all standard & required accounting practices.
6. 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 and associated municipal license or conditional use permit.
7. All approved conditional use permits shall comply with all Sitka General Code or shall be deemed to abandon and extinguish any associated municipal license or conditional use permit

**Additional Recommended Conditions**

8. Applicant shall provide a Parking Plan that complies with Section 22.20.100 for all uses present and proposed at the current property including striped parking spaces where feasible (i.e. concrete or asphalt areas).
9. Odor Control shall include charcoal filters and other best means to limit and mitigate odor impacts to surrounding uses. Should a meritorious odor complaint be received the Planning Commission may require additional odor control measures to mitigate any actual negative impacts.
10. The proposed cultivation site shall not be located within 500 feet of any school grounds, recreation or youth center, religious service building, or correctional facility that was legally established prior to approval of this conditional use permit as intended by licensing restriction and regulations of the state in 3 AAC Chapter 306.
11. This permit only conditionally approved the use of cultivation; however, at the same time, all legally vested uses operating within Units O and P must comply with all pertinent state and local regulations, licenses, and permits to remain valid.

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<sup>7</sup> §22.24.026(C)