



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: May 24, 2022
Placement: Departmental
Estimated Time: 1.5 hrs. on May 24, 2022
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review Division
(805) 568-2518
SUBJECT: **Singer and Concerned Carpenterians Appeal, Case No. 22APL-000000-00004, of the Planning Commission Approval of the 4701 Foothill Road Cannabis Cultivation Project, Case Nos. 19DVP-00000-00016 and 19CDP-00000-00017, First Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

Staff recommends that your Board take the following actions to deny the appeal and uphold the County Planning Commission's (Commission) approval of the Project:

- a) Deny the appeal, Case No. 22APL-00000-00004;
- b) Make the required findings for approval of the Project, Case Nos. 19DVP-00000-00016 and 19CDP-00000-00017, as specified in Attachment 1, including CEQA findings;
- c) Determine that the previously certified Program EIR (17EIR-00000-00003) constitutes adequate environmental review and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines Sections 15162 and 15168 (c)(2) (Attachments 3 and 4); and

- d) Grant *de novo* approval of the Project, Case Nos. 19DVP-00000-00016 and 19CDP-00000-00017, subject to the conditions of approval (Attachment 2).

Summary Text:

On February 22, 2019, the Applicant, Eduard Van Wingerden, submitted an application for a cannabis operation consisting of 10.74 acres of nursery and mixed-light cannabis cultivation. Cannabis is currently being cultivated onsite based on an affidavit of legal nonconforming use. On February 2, 2022, the County Planning Commission (Commission) granted approval of the Proposed Project. On February 11, 2022, Carla Singer, on her own behalf and on behalf of Concerned Carpinterians, filed a timely appeal of the Commission's approval of the Proposed Project. The Proposed Project meets all Article II Coastal Zoning Ordinance requirements as they relate to cannabis activities.

A. Proposed Project

The Proposed Project includes a request for a Development Plan for proposed structural changes to onsite development, and a Coastal Development Permit for structural changes as well as the proposed cannabis cultivation use. The complete project description is below. The project descriptions for each entitlement are included in the Conditions of Approval (Attachment 1).

The Proposed Project is a request to allow propagation of immature plants (nursery) and mixed-light cultivation of cannabis in 468,000 sq. ft. (10.74 acres) of space within a permitted 492,251-sq.-ft. (11.30-acre) greenhouse that has historically been used for growing cut flowers. Cultivation will utilize timed-drip irrigation and recycled water in an elevated pot system. No drying, trimming, curing, or processing of harvested cannabis will occur onsite. Harvested cannabis will be transported offsite by a licensed third party distributor and will be processed at an offsite location.

The Proposed Project site (containing cannabis activities) is located on APN 004-003-008 (Parcel -008); however, the Proposed Project includes the voluntary merger of Parcel -008 with an adjacent parcel containing no existing or proposed cannabis activities, APN 004-005-002 (Parcel -002). Prior to issuance of the Coastal Development Permit, Parcel's -008 and -002 will be voluntarily merged in order for the Proposed Project to comply with the 65% lot coverage requirement of the AG-I Zone.

The cannabis premises will be enclosed by 8-ft.-tall chain link and barbed wire fencing with locked gates. Exterior lighting will be downward facing, fully shielded, and mounted a maximum height of 8 ft. There will be up to 57 full-time line or contract employees for the cannabis operation. Planting and harvests will take place continually year round. Hours of operation will be from 6:30 a.m. to 3:30 p.m. Monday through Saturday. On the parcel containing cannabis activities, there will be 51 parking spaces for the cannabis operation. On the neighboring parcel containing no cannabis activities, there will be 10 spaces available to serve non-cannabis agricultural operations including but not limited to avocados and lettuce.

The cannabis operation will be equipped with the leading active odor control technology(s) currently available to prevent cannabis nuisance odors from drifting offsite and impacting protected receptors (i.e. residential zoning). These odor control systems are described in detail within the Proposed Project's certified Odor Abatement Plan. Changes to the Odor Abatement Plan will be processed in coordination with the County and may require changes to this permit or a new permit. In addition to the Odor Abatement Plan, the Applicant has voluntarily agreed to observe a set of Community Odor Guidelines that were developed through collaboration between Cannabis Association for Responsible Producers (CARP

Growers) and The Coalition for Responsible Cannabis (Coalition). These Guidelines are not part of the Project Description and not enforceable by the County, but reflect a collaborative effort to ensure that cannabis cultivation can be a sustainable element of Carpinteria's unique community, and are a foundation of the Coalition's decision to support this Project.

Existing permitted development includes one 492,251-sq.-ft. greenhouse on the parcel containing cannabis activities (Parcel -008) and a 74,052-sq.-ft. (1.7-acre) greenhouse on the parcel containing no existing or proposed cannabis activities (Parcel -002).

The Proposed Project includes the following new development on the parcel containing cannabis activities (Parcel -008):

- Two 35,663-gallon water tanks
- Three 13,208-gallon water tanks

The following development will be demolished located on the parcel containing cannabis activities (Parcel -008):

- 4,115-sq.-ft. portion of the permitted greenhouse used for cannabis
- One 523-sq.-ft. two-car garage
- One 321-sq.-ft. reverse osmosis room
- One 897-sq.-ft. storage room
- One 13,208-gallon waste water tank
- One 35,663-gallon water tank

The following as-built development associated with the cannabis operation on the parcel containing cannabis activities (Parcel -008) will be legalized:

- 4,299 sq. ft. of additions to the office
- 433 sq. ft. of additions to the boiler rooms
- One 335-sq.-ft. restroom facility
- One 821-sq.-ft. loading dock
- One 807-sq.-ft. utility/storage enclosure space
- Two 35,663-gallon water tanks
- Two 13,208-gallon water tanks
- One 145,295-gallon water tank
- 32,180 sq. ft. of greenhouse
- 1,412-sq.-ft. irrigation room
- 1,571 sq. ft. of covered storage racks

On the neighboring parcel containing no cannabis activities (Parcel -002), the following as-built development will be legalized as part of the Proposed Project:

- Two 16,134-gallon water tanks
- Two 1,165-gallon water tanks
- One 3,215-gallon water tank

- One 864-sq.-ft. accessory storage structure for fertigation and mechanical equipment
- One 1,020-sq.-ft. open lean-to storage shed used to store agricultural equipment and materials

The Proposed Project also includes a request for a setback modification to reduce the 20-ft. interior lot setback from the eastern property line to 18 ft. and the 100-ft. residential zone setback from the southern property line required by the Carpinteria Agricultural Overlay as outlined below in order to allow the following existing development located on the parcel containing cannabis activities (Parcel -008):

- One as-built 354-sq.-ft. utility shed located 18 ft. from the eastern property line
- One as-built 1,412-sq.-ft. irrigation room 68 ft. from the southern property line
- Three new 13,208-gallon water tanks located 19.5 ft., 19.5 ft., and 65 ft. from the southern property line
- Two new 35,663-gallon water tanks located 73 ft. and 85 ft. from the southern property line
- Two as-built 13,208-gallon water tanks located 20 ft. and 33 ft. from the southern property line
- Two as-built 35,663-gallon water tanks located 20 ft. and 36 ft. from the southern property line

The south and east sides of a permitted detention basin that is located on the parcel containing cannabis activities (Parcel -008) will be re-contoured requiring 1,300 cubic yards of cut and 300 cubic yards of fill. Additionally, the detention basin outlet and spillway will be replaced like-for-like consistent with current standards. No trees or vegetation will be removed. New landscaping will be planted on both parcels to further screen the Proposed Project and existing development from public viewing areas.

Access will be provided off Foothill Road via an existing 20-ft.-wide paved driveway across neighboring parcels to the north. Agricultural water will continue to be provided by an onsite agricultural well, and domestic water will continue to be provided by an existing Carpinteria Valley Water District connection. Wastewater treatment will be provided by the Carpinteria Sanitation District sewer service. Fire protection will be provided by the Carpinteria/Summerland Fire District, and law enforcement will be provided by the County Sheriff. Power will be provided by Southern California Edison and one back-up generator to be used only in emergencies. The two properties to be voluntarily merged are comprised of an 18.49-acre parcel zoned AG-I-10, containing cannabis activities, shown as APN 004-003-008 and addressed as 4701 Foothill Road and a 5.09-acre parcel zoned AG-I-10, containing non-cannabis agriculture such as lettuce and avocados, shown as APN 004-005-002 and addressed as 1495 Sterling Avenue in the Carpinteria area, First Supervisorial District.

B. Background:

On February 22, 2019, the Applicant submitted an application to Planning and Development to authorize the conversion of the onsite greenhouse on Parcel -008 from cut flower cultivation to cannabis cultivation. The Applicant also requested to voluntarily merge Parcel -008 (containing cannabis activities) and Parcel -002 (containing no existing or proposed cannabis activities) as part of the Proposed Project in order to meet the 65% lot coverage requirement of the AG-I Zone. After implementation of the Proposed Project and merging of the lots, 55.8% of the lot area will be developed. The voluntary merger is required to be completed prior to Coastal Development Permit issuance (Attachment 2-A, Condition No. 9 and Attachment 2-B, Condition No. 46).

Parcel -008 is currently developed with a permitted 492,251-sq.-ft. (11.30-acre) greenhouse that is used for 468,000 sq. ft. (10.74 acres) of cannabis cultivation and a permitted 23,860-sq.-ft. detention basin.

Parcel -002 is currently developed with a permitted greenhouse and will not be used for cannabis activities. These two parcels include as-built development that will be legalized through the approval of this DVP.

The Carpinteria Agricultural Overlay, in which the Proposed Project is located, was adopted in 2004 under Ordinance Amendment 4529 to the Article II Coastal Zoning Ordinance (Article II), and requires 20-ft. setbacks for interior lots and 100-ft. setbacks from residentially-zoned lots. The Proposed Project includes a request for a setback modification for a reduction of these 20-ft. setback from the eastern property line and 100-ft. setback from the southern property line. Section 35-174.8 of Article II states that at the time a Development Plan is approved, the decision-maker may modify the setback requirements when the decision-maker finds the project justifies such modifications. The Applicant requests a setback modification to reduce the eastern setback to 18 ft. to accommodate one as-built shed within the required 20-ft. setback and to reduce the 100-ft. southern setback to 19.5 ft. to accommodate as-built and new water tanks and an irrigation room, as detailed in the Project Description above. The as-built and new development in the setback area of the parcel containing cannabis activities is in conformance with and in support of the onsite agricultural operation. The subject parcel is largely built out with the permitted greenhouse, landscaping, orchard, and a detention basin, and as a result, there are limited areas to allow additional development needed for the cannabis operation. Additionally, the water tanks in the buffer area act as a physical buffer between the greenhouse operations and the residential development to the south, thereby buffering noise from the greenhouses. The development within the setback will be screened from public views by existing and proposed landscaping within five years. Further, moving the as-built structures would be disruptive to the operation and onsite infrastructure. With approval of the requested modifications, the Proposed Project will comply with the standards of the Carpinteria Overlay District.

The appeal issues and staff's responses are discussed in further detail under Section C of this Board Agenda Letter.

C. Appeal Issues and Staff Responses

The Appeal application (Attachment 5) contains a letter outlining 12 appeal issues. Staff reviewed the appeal issues and found they are without merit. Each appeal issue and staff's responses are discussed in detail below.

Appeal Issue No. 1: Violation of Federal Law (21 United States Code Section 860)

The Appellant alleges that the Proposed Project is in violation of 21 United States Code (USC) Section 860.

Staff Response:

The Proposed Project is consistent with all applicable Comprehensive Plan, Coastal Land Use Plan, Article II requirements, and Planning and Development does not review applications for cannabis cultivation for compliance with Federal law. The Federal law cited by the Appellant, 21 USC Section 860, is a sentencing enhancement for the following federal crimes: unlawfully manufacturing, distributing, or dispensing a controlled substance (21 USC Section 841(a)) and maintaining drug-involved premises (21 USC Section 856). The sentencing enhancement cited by the Appellant, 21 USC Section 860, provides for the following:

“Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary

school . . . or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is . . . subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense . . . ” (21 USC Section 860(a))

21 USC Section 860(a) does not pertain to setbacks or buffers and falls outside the purview of Planning and Development and this Board, which review projects for compliance with the County’s own ordinances/requirements.

Additionally, approval of the requested Development Plan and Coastal Development Permit will not protect the Applicant, or any party, from prosecution pursuant to Federal laws that may prohibit cannabis activities. Article II Section 35-144U.A.2.e, included below, provides the following with respect to Federal and State law:

“The provisions of this Section shall not be construed to protect any person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, use of and/or any other activity associated with controlled substances, or to authorize conduct that is unlawful under State or Federal law . . . this Section is not intended to, and does not authorize conduct or acts that violate Federal law and does not protect any person from arrest or prosecution under those Federal laws. Persons engaged in cannabis activities assume any and all risk and any and all liability that may arise or result under State and Federal laws from the cultivation, sale, possession, distribution, use of cannabis, and/or any other cannabis activity.” (Article II, Santa Barbara County Coastal Zoning Ordinance, Section 35-144U.A.2.e)

As such, Article II does not authorize conduct of acts that violate Federal law, and persons engaged in cannabis activities assume all risk and liability that may arise or result under State and Federal laws from cannabis activities.

Appeal Issue No. 2: Federal Law Protects Boys & Girls Clubs and County Cultivation Buffers Violate Federal Law (21 United States Code Section 860)

The Appellant states that 21 USC Section 860 applies to Boys and Girls Clubs within 1,000 ft. of the Proposed Project. The Appellant also alleges that the 600-ft.-buffer for nursery cultivation premises and 750-ft.-buffer for mature plant cultivation premises from a school providing instruction in kindergarten through grade 12, day care center, or youth center set forth in Article II are in violation of Federal law. Further, the Appellant assert that the buffers should be measured from property line to property line.

Staff Response:

Planning and Development does not review applications for cannabis cultivation for compliance with Federal law, and the Proposed Project complies with all buffer requirements as set forth in Article II. As discussed under Appeal Issue No. 1, approval of the requested Development Plan and Coastal Development Permit will not protect the Applicant, or any party, from prosecution pursuant to Federal laws that may prohibit cannabis activities. The Proposed Project is consistent with all Comprehensive Plan and Coastal Land Use Plan policies and Article II requirements, including standards for zoning, height, setbacks, and buffers. Article II defines how the 750-ft.-buffer from mature plant cultivation and 600-ft.-buffer from nurseries should be measured:

“The premises shall not be located within 750-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line the lot on which the sensitive receptor is located to the premise, without regard to intervening structures.” (Article II, Santa Barbara County Coastal Zoning Ordinance, Section 35-144U.B.4, Note (2))

“Nurseries shall not be located within 600-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center, as measured from (1) the premises of the nursery, to (2) the property line of the lot on which a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center, is located. (Article II, Santa Barbara County Coastal Zoning Ordinance, Section 35-144U.B.4, Note (9))

The buffers for the Proposed Project are measured in accordance with the above standards. The Proposed Project includes nursery cultivation and mature plant cultivation within portions of a permitted greenhouse. As demonstrated by the site plan (Attachment 6), the proposed nursery cultivation premise is at least 600-ft. from Carpinteria High School property line, and the proposed mature cultivation premise is at least 750-ft. from Carpinteria High School property line. As required by Article II, the proposed premise consists of the area specified in the cannabis operation’s state application. Consistency with the state application will be required for the life of the Proposed Project pursuant to CDP Condition No. 48 (Attachment 2-B). Portions of the greenhouse that are within the buffers will be used for storage of equipment or will remain vacant.

Appeal Issue No. 3: Support Letters from Carpinteria Unified School District School Board Members Violate CUSD Protocol

The Appellant alleges that Carpinteria Unified School District (CUSD) School Board members wrote letters in support of the Proposed Project without coming before the CUSD School Board for a vote, posing a conflict of interest, potentially disqualifying evidence, violating CUSD protocol and ethics, and misrepresenting CUSD policy in supporting the Proposed Project during the Planning Commission hearing.

Staff Response:

Neither Planning and Development nor the Planning Commission consider CUSD protocol when reviewing permit applications. On February 2, 2022, the Planning Commission approved the Proposed Project with vote of 5 to 0 at a hearing that was conducted in a fair and impartial manner. In accordance with the Santa Barbara County Planning Commission Procedures Manual, Section C, General Rules for Those Giving Testimony, any interested party may write a letter to the Commissioners indicating whether they are in favor or in opposition to the proposal and what their concerns are. Letters are included as part of the public record. All applicable letters submitted for the Proposed Project were included as part of the public record, as required, and are included as Attachment 14.

Appeal Issue No. 4: Violations of the Civil Rights Act

The Appellant states that the County of Santa Barbara is violating the Civil Rights Act and Fourteenth Amendment to the United States Constitution. Specifically, the Appellant alleges that the County of Santa Barbara adopted unprecedented and flawed zoning ordinances and is depriving schoolchildren of equal protection under Federal law by concentrating negative health and safety impacts of cannabis cultivation near schools in largely minority communities. The Appellant further alleges that marijuana use is deleterious to the brains of children and teenagers. The Appellant also claims that cannabis smoke, fumes,

VOCs, and odors can be harmful to the lungs, most seriously to the developing lungs of children. The Appellant alleges that many residents and workers in cannabis greenhouses have sought medical attention for an array of respiratory ills, previously unknown until cannabis cultivation and processing began in the County. Lastly, the Appellant alleges that Dr. Jeffrey Fried, a pulmonary and critical care specialist at Santa Barbara Cottage Hospital, has stated that residents could experience significant symptoms from the vapor and odors of nearby greenhouses, and the Appellant alleges that permits seem to have been given without regard to possible consequences and impacts on neighborhoods.

Staff Response:

The County of Santa Barbara is not violating the Civil Rights Act or the Fourteenth Amendment to the United States Constitution (Fourteenth Amendment). The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin. The Fourteenth Amendment provides that no State shall deprive any person of life, liberty, or property, nor shall any State deny to any person within its jurisdiction the equal protection of the laws. Article II Section 35-144U establishes standards that are designed to: protect the public health, safety, and welfare; enact strong and effective regulatory and enforcement controls; protect neighborhood character, and minimize potential for negative impacts on people, communities, and the environment by establishing minimum land use requirements for medicinal and adult use cannabis activities including cultivation, processing, distribution, manufacturing, testing, and sales (Article II Section 35-144U.A.1). The Proposed Project is consistent with all applicable Article II requirements.

The Proposed Project includes cannabis cultivation within portions of a permitted greenhouse. As demonstrated by the Fencing and Security Plan (Attachment 6), the property will be fenced and entry gates will be locked consistent with Article II standards and Sheriff Department requirements. The subject property is 375 ft. from Foothill Road and Carpinteria High School and is located behind properties developed with non-cannabis greenhouses. No children or teenagers will have access to the subject property. Harvested cannabis will be securely transported offsite by a licensed third party distributor. No cannabis smoke or cannabis fumes from heating cannabis will be produced onsite as part of the Proposed Project.

Further, there is no substantial evidence identifying potential chronic health risks associated with inhalation of cannabis biogenic VOCs. All living things emit biogenic VOCs, and therefore, biogenic VOCs are ubiquitous. Cannabis plants primarily produce a kind of biogenic VOC called monoterpenes, which are aromatic oils that provide cannabis varieties with distinctive flavors like citrus, berry, mint, and pine. These are the same kind of terpenes found in plants such as roses, orange trees, rosemary, and pine trees. Biogenic VOCs react in the atmosphere creating ozone, which can have associated health risks at significant concentrations. Significant concentrations of ground level ozone can damage plants and affect human health; however, cannabis does not produce extreme levels of biogenic VOCs and is not expected to contribute to the substantial formation of ozone.

In fact, evidence shows that cannabis plants produce lower levels of biogenic VOCs than common native and ornamental plants. The emission rate of biogenic VOCs varies between types and species of plants. Biogenic VOC production is also proportional to the leaf mass of a plant and is measured in micrograms of VOC produced per gram of leaf mass over one hour ($\mu\text{g}\cdot\text{g}^{-1}\cdot\text{hr}^{-1}$). Research by Wang et al. (Wang, Attachment 13) estimated an average plant mass of 3.77 kilograms per cannabis plant, with a maximum of 13.405 kilograms, and ozone formation potential (OFP) of cannabis VOC emission rate ranging from $22 \mu\text{g}\cdot\text{g}^{-1}\cdot\text{hr}^{-1}$ to $41 \mu\text{g}\cdot\text{g}^{-1}\cdot\text{hr}^{-1}$. Coast live oak trees (*Quercus Agrifolia*), a native tree in Santa Barbara

County, have an estimated OFP of greater than $200 \mu\text{g}\cdot\text{g}^{-1}\cdot\text{hr}^{-1}$ (EPA, Karlik, Wang, Attachment 13). Additionally, an individual coast live oak tree will have significantly more leaf mass than an individual cannabis plant, therefore producing substantially greater quantities of biogenic VOCs and ozone.

The proposed Odor Abatement Plan (Attachment 7) meets all odor control requirements of Article II. The Odor Abatement Plan includes the use of internal greenhouse odor scrubbers/filters such as regenerative carbon scrubbing system (RCSS) or equivalent internal greenhouse scrubbers/filters as the means of primary odor control technology. The Odor Abatement Plan, which is certified by a Certified Industrial Hygienist, explains that the primary odor-emitting activities that will occur onsite include indoor cultivation and harvesting of mature plants. As required by Article II, the Odor Abatement Plan includes floor plans specifying the location of odor emitting activities and emissions, and provides a description of the specific odor emitting activities and the operational phases in which odor emitting activities will occur. The Proposed Project will produce cannabis continuously year-round. As part of the Odor Abatement Plan, weather monitors are located on site and will monitor wind, temperature, and other parameters that may influence odor. The proposed Landscaping and Screening Plan will further assist in reducing odor by providing an additional barrier around the southern property line.

If the RCSS is sufficient to prevent offsite odor observations, the Applicant will permanently decommission the existing vapor-phase system. If offsite odor observations occur with RCSS, the Applicant will use RCSS and back-up vapor-phase system simultaneously with an emphasis on the RCSS as the primary odor mitigation system and minimization of vapor-phase neutralizer. According to the Odor Abatement Plan, the RCSS is intended to reduce odors within greenhouses prior to the fresh air exchange, which occurs when greenhouses are deliberately roof-vented, during opening and closing of access doors, or when fugitive air emissions occur if the greenhouse roof vents are closed with blackout curtains drawn. According to the Odor Abatement Plan, the RCSS actively treats the odiferous chemicals within the filters using titanium oxide impregnated carbon and ultra-violet light. Additionally, the RCSS pre-filters prevent ultra-fine and larger diameter particulate matter from reaching and compromising the scrubbing media. Further details on the efficacy of the RCSS are included in the Odor Abatement Plan (Attachment 7).

As part of the Odor Abatement Plan, the Applicant will provide owners and residents within 1,000 ft. of the property with contact information for a Primary Odor Contact. The Odor Abatement Plan also outlines best management practices for greenhouse and processing operations that are designed to reduce odor, including employee trainings and designation of an Odor Management Specialist. The odor abatement system is subject to monitoring and enforcement by Permit Compliance staff for the life of the Project in accordance with Condition No. 20 (Attachment 2-B). If odor from the Proposed Project is experienced in residential zones with implementation of the Odor Abatement Plan, the Applicant will be required to conduct a new odor control best-available control technology analysis to examine alternative odor mitigation technologies in compliance with Article II.

Finally, the Cannabis Program Environmental Impact Report (PEIR) concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to Air Quality and malodors. The PEIR anticipated potential impacts to a variety of land uses and anticipated that the implementation of the Cannabis Program would expand cannabis operations throughout the County and create the potential for nuisance odor impacts to neighboring receptors. The presence of sensitive receptors, including schools and residences, in the County were plainly known at the time the PEIR was certified. The PEIR acknowledged that odors may not be controlled in all instances and concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to air

quality and malodors. The PEIR anticipated potential impacts to sensitive receptors and expected that the implementation of the Cannabis Program would create the potential for nuisance odor impacts.

The Board adopted a Statement of Overriding Considerations for Class I impacts, and the 30-day statute of limitations to challenge the adequacy of the PEIR expired without legal challenge. Staff prepared a written checklist dated November 18, 2021, updated on May 11, 2022, and determined that no additional environmental review is needed. Air quality, odor, and safety impacts from the Cannabis Program were analyzed in the PEIR, and impacts from the Proposed Project will be less than significant with implementation of mitigation. The Proposed Project incorporates all required mitigation measures, including an Odor Abatement Plan and Fencing and Security Plan.

Appeal Issue No. 5: Unpermitted Greenhouses, Violation of County Codes, and Protection of Schoolchildren

The Appellant alleges that throughout the 1980s and 1990s, Everbloom and Eduard Van Wingerden were cited and fined for having constructed greenhouses without permits and for being in violation of County codes. Further, the Appellant claims that there is no reason anyone should have faith that the same company and owner will protect schoolchildren.

Staff Response:

With approval of the Development Plan, Minor Conditional Use Permit, and Coastal Development Permit and as conditioned, the Proposed Project will be in full compliance with all laws, rules, and regulations pertaining to zoning uses, setbacks, and all other applicable provisions of Article II for cannabis cultivation. Further, as discussed under Appeal Issue No. 4, schoolchildren will not have access to the subject property. Air quality, odor, and safety impacts from the Proposed Project will be less than significant with implementation of mitigation. The Proposed Project includes all applicable mitigation measures from the PEIR, including an Odor Abatement Plan and Fencing and Security Plan, and no additional environmental review is needed. Permit Compliance staff will monitor compliance with the Proposed Project plans, conditions of approval, and Article II throughout the life of the Proposed Project. Additionally, other departments and agencies will monitor compliance with the business license and state licenses throughout the life of the Proposed Project. Finally, consistent with standard enforcement procedures, any zoning violations associated with the Proposed Project are required to be abated, and failure to address violations can lead to fines and other actions by the Department.

Appeal Issue No. 6: Odor at Carpinteria High School is caused by Multiple Surrounding Cannabis Operators and School Staff Are Not Willing or Able to Complain about Odor

The Appellant states that there are currently five cannabis operators located around the high school. The Appellant further alleges that persistent daily odor and air quality issues exist at Carpinteria High School and that the County has no means of identifying the source of the odor and enforcing appropriate odor mitigation. The Appellant also claim that the Carpinteria Teacher Union president noted that, owing to intimidation, few teachers or staff are able or willing (for fear of losing their jobs) to complain about Carpinteria High School's cannabis issues. The Appellant goes on to request that an independent odor specialist monitor Carpinteria High School twice daily to make sure staff and students are not impacted by poor air quality and noxious odors, and that operations such as the Proposed Project should be shut down if they negatively impact the educational environment.

Staff Response:

The Proposed Project will not have air quality and odor impacts that were not analyzed in the PEIR as part of the Cannabis Program. As discussed under Appeal Issue Nos. 4 and 5, impacts from the Proposed Project will be less than significant with implementation of all applicable mitigation measures from the PEIR, including the Odor Abatement Plan prepared by a Certified Industrial Hygienist. The Odor Abatement Plan details a comprehensive tiered complaint response protocol, including tracking complaints, coordinating with County staff, diagnostic assessments, best-available-control-technology analyses, and implementing a series of corrective actions. Permit Compliance staff will monitor compliance with the Odor Abatement Plan throughout the life of the Proposed Project. Non-compliance with the Odor Abatement Plan or conditions of approval will result in revocation of the Development Plan and/or Coastal Development Permit, consistent with standard enforcement procedure.

There are four applications for cannabis cultivation within 1,000 feet of the Carpinteria High School property. All approved applications for cannabis cultivation are required to comply with applicable Article II development standards for cannabis cultivation, consistent with the PEIR mitigations, and will be monitored by Permit Compliance staff. Additionally, County staff will track and respond to all odor complaints. The identity of complaining parties remains confidential.

Appeal Issue No. 7: Students and Staff Report Ill Effects

The Appellant states that the Grand Jury Report of June 2020 states that air quality at Carpinteria High School was being compromised by strong cannabis odors and students and staff were reporting ill effects, such as headaches, from the nauseating odor. The Appellant also alleges that students' clothing smells of cannabis, and visiting sports teams have been told that potentially negative health odors are ongoing from the surrounding cannabis farms.

Staff Response:

The Proposed Project will not have air quality and odor impacts that were not analyzed in the PEIR as part of the Cannabis Program. As discussed under Appeal Issue Nos. 4, 5, and 6, impacts from the Proposed Project will be less than significant with implementation of all applicable mitigation measures from the PEIR, including the Odor Abatement Plan. The Odor Abatement Plan details a comprehensive tiered complaint response protocol, and Permit Compliance staff will monitor compliance with the Odor Abatement Plan throughout the life of the Proposed Project. Non-compliance with the Odor Abatement Plan or conditions of approval may result in revocation of the Development Plan and/or Coastal Development Permit, consistent with standard enforcement procedures. Additionally, County staff will track and respond to all odor complaints.

Appeal Issue No. 8: Proposed Odor Control Will not Eliminate Odors at Property Lines

The Appellant alleges that the conditions of approval need to be corrected to include the proposed Regenerative Carbon Scrubbers and to state that the cannabis operation needs to prevent cannabis nuisance odors from drifting offsite and impacting Carpinteria High School. The Appellant alleges that the proposed odor control system has not been proven to eliminate odors at the property line, nor has it been proven fully effective. The Appellant further claims that it is inappropriate and without conscience to make a community's children the guinea pigs in the County's cannabis licensing experiment. The Appellant states that the only solution is rigorous County enforcement of cannabis odors and amendments to the Ordinance.

Staff Response:

The Odor Abatement Plan is consistent with Article II requirements for odor control, which does not require odor to be limited to the property lines. Section 35-144U.C.6 of Article II requires that an Odor Abatement Plan must prevent odors from being experienced within residential zones. The nearest residential zone to the Proposed Project is located adjacent to the subject property to the south.

As discussed under Appeal Issue Nos. 4, 5, 6, and 7, air quality and odor impacts from the Proposed Project will be less than significant with implementation of all applicable mitigation measures from the PEIR, and County staff will record and respond to all odor complaints. Pursuant to CDP Condition No. 20 (Attachment 2-B), compliance with the Odor Abatement Plan will be required for the life of the Proposed Project. This condition refers to “best-available control technology”, and not an particular odor control system, in order to provide flexibility in the event that the Applicant is required to conduct a new best-available control technology analysis to examine alternative technologies if odor from the Proposed Project is experienced in residential zones. The proposed Odor Abatement Plan includes best-available control technology and is compliant with all Odor Abatement Plan requirements set forth in Article II. If odor from the Proposed Project is experienced in residential zones with implementation of the Odor Abatement Plan, the Applicant will be required to conduct a new odor control best-available control technology analysis to examine alternative odor mitigation technologies in compliance with Article II.

Appeal Issue No. 9: Cannot Make Development Plan Finding 2.2.5

The Appellant alleges that the County cannot make Development Plan finding 2.2.5, which requires that the Proposed Project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area, because Carpinteria High School is 400 ft. from the subject property and there are over 800 residents living within a 1,000-ft. radius of the Proposed Project. The Appellant claims that noxious odors and fumes are regularly experienced.

Staff Response:

Substantial evidence in the record supports the Development Plan and Coastal Development Plan findings for approval of the Proposed Project (Attachment 1 to this Board Agenda Letter), including that the Proposed Project complies with the Coastal Land Use Plan, Comprehensive Plan, and Article II. Consistent with the Development Plan finding shown as 2.2.5 in Attachment 1 to this Board Agenda Letter and set forth in Section 35-174.7.1.e of Article II, the Proposed Project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.

The Proposed Project includes a Landscaping and Screening Plan (Attachment 6) to screen the operation from public views, a Lighting Plan (Attachment 6) consisting of downward facing, fully shielded security lighting on motion sensors, and a Fencing and Security Plan (Attachment 6) that encloses the cannabis operation pursuant to Article II and the Sheriff’s Office requirements. The proposed Site Transportation Demand Management Plan (Attachment 6) requires ridesharing for employees to reduce trips to the site. The South Board of Architectural Review (SBAR) conceptually reviewed the Proposed Project on July 26, 2019, March 19, 2021, and June 4, 2021. During conceptual review at the June 4, 2021 hearing, the SBAR found the Proposed Project acceptable and requested that it return for Preliminary and Final Approval after decision-maker action. The Proposed Project is required to comply with all requirements from other departments and agencies, including the Carpinteria-Summerland Fire District, County Water

Agency, County Roads Division, County Environmental Health Services, and County Air Pollution Control District.

As discussed under Appeal Issue Nos. 4, 5, 6, 7, and 8, the Odor Abatement Plan (Attachment 7) includes best-available odor control technology to prevent odor from being experienced in residential zones. The Odor Abatement Plan is compliant with all requirements set forth in Article II. If odor from the Proposed Project is experienced in residential zones with implementation of the Odor Abatement Plan, the Applicant will be required to conduct a new odor control best-available control technology analysis to examine alternative odor mitigation technologies. Air quality and odor impacts from the Proposed Project will be less than significant with implementation of all applicable mitigation measures from the PEIR, and County staff will record and respond to all odor complaints. For these reasons, and as described in Attachment 1, the Proposed Project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.

Appeal Issue No. 10: Violation of Federal, State, and County Law

The Appellant claims that the Applicant is in violation of Federal, State, and County law, because one of the structures onsite is less than 600 ft. from the property line of Carpinteria High School. The Appellant further asserts that cannabis odor infiltrates buildings, and therefore designating parts of a building for nursery plants and mature plans is not allowed in Article II.

Staff Response:

The Proposed Project is consistent with all applicable Article II requirements related to buffers from schools and odor abatement. The Proposed Project will be required to comply with all State laws and maintain all applicable State licenses. As discussed under Appeal Issue Nos. 1 and 2, Planning and Development does not review applications for cannabis cultivation for compliance with Federal law. Approval of the requested Development Plan and Coastal Development Permit will not protect the Applicant, or any party, from prosecution pursuant to Federal laws that may prohibit cannabis activities. Article II does not authorize conduct of acts that violate Federal law, and persons engaged in cannabis activities assume all risk and liability that may arise or result under State and Federal laws from cannabis activities.

The Proposed Project is consistent with the sensitive receptor buffers required by Article II, and with all applicable Comprehensive Plan, Coastal Land Use Plan, and Article II requirements. The 750-ft.-buffer from mature plant cultivation and 600-ft.-buffer from nursery cultivation on the Proposed Project site are measured in accordance with Article II standards. Article II requires the setback be measured from the property line of a sensitive receptor to the edge of the cannabis premises that is specified and identified in the Applicant's state license application. (Section 35-144U(B)(4) & Section 35-58.) The Proposed Project includes nursery cultivation and mature plant cultivation within portions of a permitted greenhouse. As demonstrated by the site plan (Attachment 6), the proposed nursery cultivation premise is at least 600-ft. from Carpinteria High School property line, and the proposed mature plant cultivation premise is at least 750-ft. from Carpinteria High School property line. Portions of the greenhouse that are within the buffers will be used for storage of equipment or will remain vacant.

Appeal Issue No. 11: Public Has Not Been Able to Comment on Measurement of Buffers

The Appellant alleges that the June 2020 Grand Jury Report stated that the standard to measure buffers from property line to the cannabis premise instead of property line to property line was approved at the February 6, 2018, Board of Supervisors' hearing after a Supervisor received an email from a Carpinteria

cannabis grower. The Appellant further asserts that the public has never been able to comment on this change, and the Proposed Project is the first case in which these buffers are of urgent concern in light of the alleged risks to the health and safety of students and children in Carpinteria.

Staff Response:

The 750-ft.-buffer from mature plant cultivation and 600-ft.-buffer from nursery cultivation on the Proposed Project site are measured in accordance with Article II standards. As discussed under Appeal Issue Nos. 2 and 10, the proposed nursery cultivation premise is at least 600-ft. from the Carpinteria High School property line, and the proposed mature plant cultivation premise is at least 750-ft. from Carpinteria High School property line.

At the February 6, 2018, hearing, the Board of Supervisors reviewed and conceptually approved changes to Article II that allowed commercial cannabis cultivation under Ordinance No. 5027 and No. 5028 for the Land Use and Development Code in the inland area and Article II in the Coastal Zone, respectively. At the February 27, 2018, hearing, the Board of Supervisors approved and adopted Ordinance No. 5027 and No. 5028. At both hearings, the Board of Supervisors invited the public to give testimony. The California Coastal Commission reviewed the Ordinance No. 5028 and certified it on November 7, 2018. Each decision-making body fully reviewed and approved the Ordinances as consistent with the Coastal Act. Additionally, cannabis cultivation was made a principally permitted use by the suggested modifications provided by the California Coastal Commission during their review. The changes made to Article II by the Ordinance are not subject to this appeal, and the statute of limitations to submit a legal challenge of the Ordinance has concluded without challenge.

Appeal Issue No. 12: Cannot Make Development Plan Finding 2.2.2

The Appellant alleges the County cannot make Development Plan finding 2.2.2 that adverse impacts are mitigated to the extent feasible. The Appellant further alleges that this finding cannot reasonably be made unless the Applicant is required to mitigate and eliminate odor and air quality impacts.

Staff Response:

Substantial evidence in the record supports the Development Plan and Coastal Development Plan findings for approval of the Proposed Project (Attachment 1 to this Board Agenda Letter), including that the Proposed Project complies with the Coastal Land Use Plan, Comprehensive Plan, and Article II. Consistent with the Development Plan finding shown as 2.2.2 in Attachment 1 to this Board Agenda Letter and set forth in Section 35-174.7.1.b of Article II, adverse impacts are mitigated to the maximum extent feasible.

The Proposed Project is not required to eliminate odor and air quality impacts. As discussed under Appeal Issue Nos. 4, 5, 6, 7, 8, and 9, the Odor Abatement Plan (Attachment 7) includes best-available odor control technology to prevent odor from being experienced in residential zones, as required by Article II. If odor from the Proposed Project is experienced in residential zones with implementation of the Odor Abatement Plan, the Applicant will be required to conduct a new odor control best-available control technology analysis to examine alternative odor mitigation technologies. The Odor Abatement Plan is compliant with all requirements set forth in Article II. Air quality and odor impacts from the Proposed Project will be less than significant with implementation of all applicable mitigation measures from the PEIR. For these reasons, and as described in Attachment 1 to this Board Agenda Letter, adverse impacts are mitigated to the maximum extent feasible, and all findings can be made.

D. Conclusion:

For the reasons discussed above, staff recommends that the Board find that the appeal issues raised are without merit. Planning and Development staff further recommends that the Board deny the appeal and approve the Project *de novo* based on the findings provided as Attachment 1.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$19,000 (75 hours of staff time). There is no appeal fee collected for developments subject to the appeals jurisdiction to the Coastal Commission under Section 35-182.6. The costs for processing cannabis project appeals that are appealable to the Coastal Commission are completely offset by cannabis tax revenues. Funding for this project is budgeted in the Planning and Development Department's Permitting Budget Program on page D-301 of the County of Santa Barbara Fiscal Year (FY) 2021-22 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on May 24, 2022. The notice shall appear in the Santa Barbara News Press. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing to the attention of Gwen Beyeler and return one printed copy of the Cannabis Program PEIR to the Planning and Development Department Hearing Support.

Attachments:

1. Findings
- 2.A Development Plan Conditions of Approval with Departmental Condition Letters
- 2.B Coastal Development Permit
3. CEQA Checklist dated May 11, 2022
4. Link to Program EIR
5. Appeal Letter dated February 11, 2022
6. Project Plans dated December 10, 2021
7. Odor Abatement Plan dated January 14, 2022
8. Planning Commission Staff Report dated January 25, 2022 and associated Attachments
9. Traffic Study
10. South Board of Architectural Review (SBAR) Minutes
11. Central Coast Regional Water Quality Control Board Notice of Applicability, dated May 15, 2020
12. County Counsel Facilitation Report
13. Cannabis BVOC Citations
14. Public Comment Letters Submitted for the February 2, 2022 Planning Commission Hearing

Authored by:

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