



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 4, 2021
Placement: Departmental
Estimated Time: 3 hours on May 4, 2021
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: (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review Division
(805) 568-2518
SUBJECT: **Santa Barbara County Coalition for Responsible Cannabis Appeal of the Planning Commission Approval of the Central Coast Agriculture, Inc., Cannabis Cultivation Project, Case No. 21APL-000000-00003, Third 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 Planning Commission's approval of the Project:

- a) Deny the appeal, Case No. 21APL-00000-00003;
- b) Make the required findings for approval of the Project, Case Nos. 19CUP-00000-00005 and 19DVP-00000-00010, 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. 19CUP-00000-00005 and 19DVP-00000-00010 subject to the conditions of approval (included as Attachment 2).

Summary Text:

On February 6, 2019, the Applicant submitted an application for a Conditional Use Permit and Development Plan for a cannabis operation consisting of 29.78 acres of cultivation and processing of immature and mature plants. Cannabis is currently being cultivated and processed on site based on an affidavit of legal nonconforming use. A detailed Project Description is provided below.

A. Proposed Project

The Proposed Project is a request for a Conditional Use Permit, Case No. 19CUP-00000-00005, and Development Plan, Case No. 19DVP-00000-00010, to allow a 29.78-acre cannabis cultivation operation on a 68.18-acre parcel. The Proposed Project includes growing cannabis on 29.45 acres, with 22 of those acres under existing 12-ft.-tall hoop structures. Approximately 1.85 acres of nursery cultivation will take place outdoors, and four acres will take place under existing 12-ft.-tall hoop structures. There will be mixed-light nursery cultivation in an existing, permitted 12-ft.-tall 6,594 square foot (sq. ft.) greenhouse and existing permitted 7,000 sq. ft. agricultural building. A new 3,900 sq. ft. storage addition to the greenhouse will replace an as-built hoop structure that is currently being used for storage in the same location. There is an existing 230 sq. ft. shade structure used to protect an irrigation water recycling system for the nursery hoop structures. There will be a new 10-ft.-tall 480 sq. ft. shade structure constructed to replace the five hoop structures that are currently being used for equipment storage. A 1.78 acre composting area, which includes two mobile dumpsters, is located between the northern and southern cultivation areas.

Processing will occur inside an existing, permitted 3,100 sq. ft. agricultural building. All cannabis will be unloaded from harvest trucks outside of the processing building and transported into the building with a forklift prior to being frozen. Up to 80% of the material processed as part of the Proposed Project will be grown off site. All processed cannabis will be transported to an off-site manufacturing facility. Transport-only distribution and Nursery Research and Development, which includes internal quality assurance testing, will occur within an existing, permitted 4,200 sq. ft. commercial building. Pesticides and nutrient storage will be stored in two as-built 160 sq. ft. storage containers, one of which is refrigerated. Seed and pollen storage will take place in three as-built 320 sq. ft. refrigerated storage containers. Harvested product will be stored in 52 as-built 320 sq. ft. refrigerated storage containers. 42 of these harvest storage containers will be removed from the subject parcel within three years. Storage of harvested seed and frozen product will take place in the remaining 10 refrigerated storage containers between June and November.

The cultivation area is enclosed by a 6-ft.-tall chain link fence that exists around the southern, eastern, northern, and northwestern property boundaries and 6-ft.-tall no climb fence along the western property boundary. A new 6-ft.-tall no climb fence will be erected around the two existing agricultural employee duplexes, and will connect to an existing 6-ft.-tall no climb fence that runs along the cement lined drainage channel and the western property boundary. Existing windscreen material will be removed from the fencing as part of the Proposed Project. Mobile 12-ft.-tall windscreens will be installed temporarily along the hoop structures throughout the growing season and will be moved around depending on wind conditions.

Exterior light fixtures will be fully cut-off, downward facing, and on a motion sensor that would remain illuminated for two minutes after activation. Fixtures will be installed at the entrances to the processing, distribution, and nursery buildings. There will be fixtures installed on two poles near the harvest storage

area to provide security lighting for the storage containers. One fixture will be located at the entrance to the parcel. Security cameras will be installed throughout the growing and operation areas. No perimeter security lighting is proposed as cameras have night vision capability. A 200 sq. ft. security building with a maximum height of 11 ft. will be located near the parcel entrance. Security guards will be provided 24 hours per day, seven days per week.

Hours of operation will be 7:00 a.m. to 7:00 p.m. every day. The operation includes up to 20 full-time employees and up to 20 additional employees during harvest season. Harvests will last up to three weeks and occur twice per year. 30 on-site parking stalls are located between the nursery building and greenhouse, five of which are ADA compliant spaces. Twenty-four overflow spaces will be located in the area outside the Distribution Building, south of the outdoor cultivation area, for use during the harvests for visitors and contractors. The Proposed Project includes preferred parking spaces for employees that carpool.

A vapor-phase odor control system will be installed around the north and east perimeter of project site. Screening of the operation will be provided by 24,725 sq. ft. of landscaping planted along portions of the western, eastern and southern property lines. Grading will consist of over-excavation and re-compaction for the new security building, shade structure, and trenching for utilities.

Sewage disposal is provided by an existing onsite wastewater treatment system that serves the restroom facilities in the distribution building. Chemical portable toilets will support temporary staff during limited peak harvest time only. Some employees will live on site in the two existing employee dwelling duplexes which are served by a separate onsite wastewater treatment system. Water for irrigation will be provided by one on-site agricultural well. Water for the buildings and dwellings will continue to be provided by one on-site well that is under a single parcel water system permit. There are two existing, permitted 24-ft.-tall 20,000 gallon water tanks and associated pump house and one existing, permitted 5,000 gallon water tank that serve water to the two permitted agricultural employee duplexes and distribution building fire sprinkler system. One existing 1,000 gallon water tank is located near the nursery building and one existing 2,000 gallon water tank is located near the nursery hoop structures.

Access is provided by an existing 30-ft.-wide paved driveway off of Santa Rosa Road. Access to the agricultural employee duplexes is also provided by a separate existing gated driveway. Power will be provided by PG&E and one emergency generator in the event of an emergency. Law enforcement will be provided by the County Sheriff, and fire protection will be provided by the County Fire Department.

B. Background:

On February 6, 2019, the Applicant submitted Conditional Use Permit (CUP) and Development Plan (DVP) applications for the Central Coast Agriculture, Inc., Cannabis Cultivation Project (herein after Proposed Project), Case Nos. 19CUP-00000-00005, and 19DVP-00000-00010. The subject property is an AG-II zoned, 68.18-acre parcel. Cannabis is currently grown on site outdoors under hoop structures, in one greenhouse, and in a portion of an agricultural building. Processing as well as research and development is taking place on site in an agricultural building and commercial building. Cannabis grown off-site is also being processed on site. There are 57 as-built storage containers used for seed and harvested product storage, and as proposed, 42 of these containers will be removed after 3 years.

Staff reviewed the CUP and DVP applications for compliance with the applicable policies of the County Comprehensive Plan and development standards set forth in Section 35.42.075 (Cannabis Regulations) of

the County Land Use and Development Code (LUDC). On October 28, 2020, staff recommended that the County Planning Commission (Commission) approve the Proposed Project. After hearing staff presentation, public comment and considering the evidence presented as part of the record, the Commission continued the Proposed Project to December 2, 2020 and directed to staff to work with the Applicant to further develop the proposed Odor Abatement Plan (OAP), and to research additional information regarding the undergrounding of existing utilities along Santa Rosa Road.

On December 2, 2020, Staff presented to the Commission an updated OAP and information regarding the undergoing of utilities along Santa Rosa Road. The Commission continued the Proposed Project to January 13, 2021 and asked the Applicant to continue refining their OAP to further address the application of best available control technology and further refine the public complaint response process. Staff reviewed the updated OAP (Attachment 8) and found it consistent with Section 35.042.075.C.6 of the LUDC and on January 13, 2021, the Commission considered the evidence in the record, statements given by the Applicant, and public testimony, and granted approval of the Proposed Project.

On January 25, 2021, the Santa Barbara County Coalition for Responsible Cannabis (SBCRC) filed a timely appeal (Case No. 21APL-00000-00003) of the Commission's approval of the Proposed Project. The Board of Supervisor's (Board) Appeal Application is included as Attachment 4. The Appellant's 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 SBCRC filed a timely appeal of the Planning Commission's approval of the Proposed Project. The Appeal application (Attachment 4) contains a letter outlining the issues on appeal. The appeal issues allege a deficient OAP, non-compliance with CEQA and Uniform Rules, expansion beyond the non-conforming footprint, inadequate Site Transportation Demand Management Plan, inconsistency with the Comprehensive Plan, and lack of evidence to support the Conditional Use Permit and Development Plan Findings. Staff reviewed the appeal issues and found they are without merit. The appeal issues and staff's responses are discussed below.

Appeal Issue No. 1: Deficient Odor Abatement Plan (OAP):

The Appellant states that the CUP and DVP Conditions of Approval (Attachment 2) and proposed OAP (Attachment 8) are inadequate to ensure that odor will not travel beyond the property line. The Appellant also asserts that the Proposed Project lacks basic odor monitoring equipment to demonstrate they are not responsible for an odor episode in the vicinity. Lastly, the Appellant states that the Proposed Project is inconsistent with the Santa Barbara County Air Pollution Control District (SBCAPCD) condition letter.

Staff Response:

As proposed, the OAP is consistent with both the LUDC and Santa Ynez Valley Community Plan (SYVCP) requirements for odor control, neither of which require odor to be limited to the property lines. The Proposed Project is adjacent to an Existing Developed Rural Neighborhood, and per LUDC Section 35.42.075.B.4, a Conditional Use Permit is required. Since a Conditional Use Permit is required, per LUDC Section 35.42.075.C.6 "Odor Abatement Plan", an OAP is required. Furthermore, the Proposed Project is located within the SYVCP area, which has additional OAP requirements for projects that will generate odor.

Section 35.42.075 of the LUDC requires that an OAP must prevent odors from being experienced within residential zones. The nearest residential zone to the Proposed Project is located in the City of Buellton approximately 0.45 miles northeast of the cultivation area. As described in the OAP documents (Attachment 8), results of the odor study conducted on the Project site by Borsage Environmental in 2019 conclude that no discernible cannabis odor was detected outside the property lines during harvest and cultivation.

The proposed OAP is compliant with all OAP requirements set forth in the LUDC. As required by the LUDC, the OAP 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's primary odor emitting activity is cultivation and harvesting of mature plants. The Proposed Project will produce two crops annually. Product that is grown on-site and off-site will be flash frozen within approximately 20 minutes from harvest or arrival to the site, placed into 6mm plastic bags and vacuum sealed. All vacuum sealed bags are then packaged into boxes on a pallet and stored in the refrigerated containers until transporting offsite for manufacturing. No odor is emitted from the stored frozen cannabis.

As part of the OAP, weather monitors are located on site and will monitor wind, temperature, and other parameters that may influence odor. Although odor is not anticipated to be detected outside the property lines, the Proposed Project will utilize a carbon filtration system in the processing building and a Byers Vapor Phase System along the southern, eastern, and northern portion of the property. The vapor phase piping will be located in these areas in order to prevent odors from traveling northeast with the prevailing winds toward Buellton and residential neighborhoods as well as prevent odors from traveling south toward vehicles and travelers along Santa Rosa Road. The vapor phase system will be placed on the ground within the existing and proposed landscaping so that it will not be visible to passersby. The proposed landscaping and screening plan will further assist in reducing odor by providing a barrier around the southwestern, southern, and southeastern property lines. The OAP is certified by a Certified Industrial Hygienist and designates an individual who is responsible for responding to odor complaints.

The proposed OAP is also compliant with all requirements set forth in the SYVCP for odor control. The OAP includes the contact information of a person responsible for logging and responding to odor complaints, contains a procedure describing the actions to be taken when an odor complaint is received, and includes contingency measures to curtail emissions in the event of a continuous public nuisance. In addition to all components required by the LUDC and SYVCP, the proposed OAP includes adaptive management strategies that includes best-available-control-technology analyses in the event that corrective actions are required to ensure compliance with the odor abatement requirements of LUDC Section 35.42.075.C.6.

Finally, the Proposed Project will be consistent with APCD regulations. On November 20, 2020, the APCD provided a revised condition letter (Attachment 2, Condition No. 39) superseding the letter the Appellant references in their appeal (Attachment 5). The revised condition letter, which outlines applicable requirements, is incorporated into the conditions of approval for the Proposed Project (Attachment 2 Condition Nos. 27 and 39).

Appeal Issue No. 2: Non-compliance with CEQA

The Appellant identifies four specific issues related to the Proposed Project's non-compliance with CEQA and the inadequacy of the PEIR, including: reliance on the CEQA Checklist, Subsequent Amendments to

the Uniform Rules, Cumulative Impacts, and Terpene Taint and Odor. These appeal issues are further outlined in Staff's responses below.

2.A Compliance with CEQA – CEQA Checklist

The Appellant states approval of the Proposed Project would violate CEQA. The Appellant also states that the County is relying on a defective and inadequate CEQA Checklist. The Appellant further states that the record does not support staff's determination that all of the environmental impacts of the Proposed Project are within the scope of the PEIR.

Staff Response:

Approval of the Proposed Project complies with CEQA, and the Proposed Project will not have impacts that were not reviewed in the PEIR. The previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed. Additionally, environmental conditions unique to this parcel were analyzed through the review of the Conditional Use Permit, Development Plan, and CEQA Checklist that was prepared pursuant to CEQA Guidelines Section 15168 (c)(4). The findings and analyses presented to the Commission and to the Board (Attachments 1, 3 and 4), discuss that the PEIR provides adequate environmental review, and no subsequent environmental review is needed.

On February 6, 2018, the Board certified the PEIR that analyzed the environmental impacts of the Cannabis Program. The PEIR was prepared in accordance with the State CEQA Guidelines Section 15168 and evaluated the Cannabis Program's impacts with regard to the following environmental resources and subjects:

- Aesthetics and Visual Resources
- Agricultural Resources
- Air Quality and Greenhouse Gas Emissions
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Noise Transportation and Traffic
- Utilities and Energy Conservation
- Population, Employment, and Housing

The PEIR evaluated the direct and indirect impacts, as well as the project-specific and cumulative impacts, that would result from the implementation of the Cannabis Program. The PEIR identified a number of significant impacts and set forth feasible mitigation measures that were included as development standards and requirements in the land use and licensing ordinances, which are applied to site-specific land use entitlement and business licensing applications for commercial cannabis operations authorized under the Cannabis Program. The PEIR concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to the following environmental resources or issues:

- Aesthetics and visual resources
- Agricultural resources

- Air quality (including odor impacts)
- Noise
- Transportation and traffic

The Board adopted a Statement of Overriding Considerations concluding that the benefits of the Program outweigh the unavoidable adverse environmental effects identified above. Under State CEQA Guidelines Sections 15162 and 15168, following certification of a PEIR, later activities within the Program that will not result in environmental effects not examined in the PEIR may be approved under the PEIR unless a subsequent environmental document is required under Section 15162. Pursuant to Section 15162, a subsequent environmental document shall not be prepared unless there are: 1) substantial changes to the project; 2) substantial changes to the circumstances under which the project will be undertaken; and/or 3) new information of substantial importance, which was not and could not have been known at the time the previous environmental document was completed, regarding new or substantially more severe significant impacts, or new or newly feasible mitigation measures or project alternatives. The Proposed Project does not meet any of these criteria, and therefore no subsequent environmental document is needed for this Project.

On October 1, 2020, pursuant to the State CEQA Guidelines Section 15168(c)(4), staff completed the Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications (Attachment 3) and determined that all of the environmental impacts of the Project were within the scope of the project covered by the PEIR for the Cannabis Program. Staff updated the checklist on April 12, 2021 to include a reduced total cultivation area that does not include the onsite compost area as well as attach the Statement of Overriding Consideration regarding the PEIR. The Proposed Project will not create any new significant effects or a substantial increase in the severity of previously identified significant effects on the environment, and there is no new information of substantial importance under State CEQA Guidelines Section 15162, warranting the preparation of a new environmental document for the Proposed Project. The PEIR (Attachment 4) considered together with the CEQA Checklist (Attachment 3) is adequate, and subsequent analysis of the environmental impacts of the Proposed Project is not required pursuant to CEQA Guidelines Sections 15162 and 15168(c)(2).

2.B Compliance with CEQA - Uniform Rules Amendment

The Appellant states that the Board's decision to amend the Uniform Rules was inconsistent with the Agricultural Preserve Advisory Committee's (APAC's) compatibility review for projects that are subject to Williamson Act contracts. The Appellant also asserts that the Uniform Rules amendment defining cannabis cultivation as an agricultural use undermines the PEIR's adequacy and triggers further CEQA review. Additionally, the Appellant states that increased land use incompatibility and agricultural impact of pesticide migration trigger further CEQA review.

Staff Response:

The Board's decision to amend the Uniform Rules was not inconsistent with APAC's compatibility review and does not undermine the adequacy of the environment analysis completed in the PEIR. At the time the PEIR was certified, if a cannabis project were proposed on a parcel under agricultural preserve contract, APAC would have evaluated compatibility of the cannabis project with the subject contracted parcel and other contracted lands in the vicinity that are under agricultural preserve contracts. However, proposed cannabis projects were not and are not limited to contracted parcels. It is clear the PEIR did not rely on APAC review under the Uniform Rules to ensure compatibility with existing agricultural uses, because not all proposed cannabis projects would have been subject to APAC review.

The Proposed Project was reviewed by APAC and on April 5, 2019, APAC found the Proposed Project consistent with the Uniform Rules of Agricultural Preserves and Farmland Security Zones (Uniform Rules). Since the Proposed Project is consistent with the Uniform Rules, it is fully compliant with the Williamson Act, and no additional environmental review is needed for the Proposed Project. The Uniform Rules are used to implement the Williamson Act and administer the Agricultural Preserve program in Santa Barbara County. The APAC is only responsible for reviewing a land use application for consistency with the Uniform Rules and the Williamson Act. APAC does not make decisions on land use permits or consider consistency with the Comprehensive Plan. A project-specific evaluation was prepared for the Proposed Project and is included as Attachment 10 to this Board Agenda Letter. The Proposed Project was determined to be compatible with the applicable Comprehensive Plan policies and LUDC, moreover the Planning Commission was also able to make the Condition Use Permit findings which require Project compatibility. The proposed cannabis cultivation is an agricultural use that will be located on an agriculturally zoned property.

Furthermore, Section 3.9 (Land Use Section) of the PEIR anticipated that amendments to the Uniform Rules based on adoption of the Cannabis Program would take place. The Board-adopted amendment to the Uniform Rules to classify cannabis as a principle use rather than a compatible use does not constitute a substantial unanticipated change to the circumstances under which the Project will be undertaken or new information requiring further environmental review. Additionally, the subject property has historically been farmed with irrigated crops such as alfalfa, squash, and stone fruits and is subject to a Williamson Act Agricultural Preserve Contract (No. 03-AP-030).

The methods and techniques for odor abatement including carbon filtration and vapor phase systems were available and feasible at the time the PEIR was prepared and changes in the Right to Farm Ordinance did not introduce new or previously infeasible mitigation techniques that were not available and considered under the PEIR. As noted in the previous section, the PEIR concluded that significant and unavoidable (Class I) impacts would result from the Program and identified the generation of objectionable odors and associated impacts to surrounding receptors as potentially significant. The PEIR 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 on a variety of land uses. Additionally, the PEIR acknowledged that odors may not be controlled in all instances due to the range of potential cultivation locations, types of cultivation operations, surrounding land uses, wind patterns, and other variables. The PEIR considered odor impacts from cannabis cultivation and concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to air quality and malodors. 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.

The use of pesticides and insecticides by non-cannabis conventional agriculture and the accompanying regulatory framework as analyzed in the PEIR is the same now as when the PEIR was certified. The California Department of Pesticide Regulation does not allow substantial pesticide drift onto non-target areas (Food and Agriculture Code 12972). The Proposed Project should not affect pesticide applications on surrounding properties, provided that the pesticides are being applied in compliance with State regulations. Regardless of the crop or commodity being grown, County Agricultural Commissioner offices investigate all complaints of pesticide drift and have the option of taking enforcement actions when

violations occur. The Santa Barbara County Agricultural Commissioner's office also provides education and outreach to help prevent pesticide drift from occurring.

State law deems cannabis an "agricultural product" only for the purposes of the Business and Professions Code (Bus. & Prof. Code § 26069(a).) For all other purposes, cannabis is considered a controlled substance. Cannabis cultivation is considered an agricultural use pursuant to the Uniform Rules, but is specifically excluded from the County's Right to Farm Ordinance. There is no new regulatory information that would trigger the need for additional environmental review regarding pesticides and insecticides. The Proposed Project does not conflict with adjacent farmed agriculture in the vicinity and does not preclude the production of agricultural products, including wine grapes, in the vicinity of the Proposed Project. Therefore, no additional environmental review is needed.

2.C Compliance with CEQA - Cumulative Impacts of Project Clusters

The Appellant states that the PEIR did not anticipate the number or size or the potential cultivation operations between Buellton and Lompoc along Santa Rosa Road and that these new and substantially increased cumulative impacts of project clusters trigger additional CEQA review. The Appellant also states that the concentration of projects within the Santa Rita Hills American Viticultural Area (AVA) threatens the economic viability of vineyards, wineries, and tasting facilities in the area.

Staff Response:

The Proposed Project was adequately analyzed for cumulative impacts in the PEIR. CEQA Guidelines Section 15168(c)(2) allows the County to approve an activity as being within the scope of the project covered by a Program EIR, if the County finds pursuant to Section 15162 that no new environmental document is required. Staff completed a written checklist pursuant to State CEQA Guidelines 15168(c)(4) and determined that all of the environmental impacts of the Proposed Project would be within the scope of the PEIR. No additional cumulative impacts were identified, and no additional environmental review is needed for the Proposed Project.

The PEIR assumed and analyzed concentrations of cannabis activities throughout five regions within the County. These regions were specifically identified in the PEIR for organizing the data and analyzing the impacts of the Cannabis Program, and was assumed to experience a concentration of cannabis activities under the Cannabis Program (Ibid, pages 2-5, 2-22 through 2-24, and 3-6). One of these regions of concentration was the Santa Ynez Valley, which includes portions of the Santa Ynez and Santa Rita Hills AVAs. There were no caps or other limitations on the allowable number of projects assumed in the PEIR. The proximity of the Proposed Project to other cannabis projects in the Santa Ynez Valley is therefore not new information and was considered in the PEIR.

On September 26, 2019, the Board adopted a cap of 1,575 acres on the total allowed cannabis cultivation acreage that can be approved in the inland areas of the County. However, this cap does not limit the number or acreage of cultivation sites within a particular area or region of the inland portions of the County. The Class I impacts associated with cumulative effects were identified within the PEIR, and either mitigated or overridden. The Proposed Project consists of cannabis activities and development that were studied within the PEIR, and therefore the project has no effects including cumulative effects that were not examined in the PEIR (Attachment 4).

2.D Compliance with CEQA - Terpene Taint and Odor

The Appellant states that a new potentially significant impact associated with terpenes from cannabis grown in close proximity to wine grapes has been identified and may primarily implicate cumulative impacts of the Proposed Project. Additionally, the Appellant asserts that air quality, including odor impacts, was not adequately addressed in the PEIR and that secondary toxins from cannabis terpene reactions in the atmosphere pose potential human health risks, particularly to sensitive receptors.

Staff Response:

As discussed under Appeal Issue 2.a, the 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 the wine industry and other agriculture in the County were plainly known at the time the PEIR was certified. As discussed under Appeal issue 2.b, 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 the wine industry and other agricultural activities 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.

There continues to be a lack of evidence that terpenes from cannabis cultivation result in impacts to the quality or marketability of surrounding agricultural crops. Terpenes are considered to be biogenic volatile organic compounds (VOCs). As explained by William Vizuite, professor of environmental sciences and engineering at the University of North Carolina, during the Board hearing of August 20, 2019 and incorporated by reference, all living things emit BVOCs. Therefore, BVOCs are ubiquitous. BVOCs produced by plants are involved in plant growth development, reproduction, and defense. 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 that are found in other plants such as roses, orange trees, rosemary, and pine trees. BVOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of air quality impacts and their existence and alleged impacts are not new information (PEIR page 3.3-7). The PEIR states that terpenes are found in varying concentrations in different cannabis varieties and that type and potency of cannabis odors range widely from variety to variety. Under CEQA Guidelines Sections 15162 and 15168, following certification of a PEIR, later activities within the Program that will not result in environmental effects not examined in the PEIR may be approved under the PEIR unless a subsequent environmental document is required under Section 15162. None of the criteria requiring additional environmental review are present in relation to this Project.

According to the OAP (Attachment 8), the Applicant will primarily grow varieties of cannabis with sweet and floral terpene profiles. No flower drying or curing will occur onsite, which will significantly reduce the potential for odor emissions. Instead, cannabis product will be frozen inside an existing warehouse within approximately 20 minutes to two hours of harvest, trapping terpenes and odor within vacuum-sealed bags. With implementation of the OAP, which includes a Byers vapor phase system around the cultivation area, negative pressure carbon filtration in the processing building, and weather monitoring

onsite, the previously identified potential odor and other air quality impacts will be reduced to the extent feasible, as set forth in the PEIR.

Appeal Issue No. 3: Expansion Beyond Legal Non-Conforming Status

The Appellant asserts that the Applicant illegally installed containers and expanded the Proposed Project beyond the legal non-conforming cannabis cultivation area in violation of Article X and the LUDC. The Appellant also states that the Board cannot make Findings 2.1.5, 2.1.6, 2.1.7, 2.2.5, 2.2.6, and 2.2.7.

Staff Response:

With approval of the Conditional Use Permit and Development Plan 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 the LUDC for cannabis cultivation within the AG-II zone district. Cannabis is currently being grown and processed on site. An affidavit was submitted on December 18, 2017, stating that the operation located at 8701 Santa Rosa Road was in compliance with Santa Barbara County Code Section 35-1003.A.2. On February 6, 2019, Central Coast Agriculture, Inc., submitted applications (19CUP-00000-00005 and 19DVP-00000-00010) to permit an existing cannabis cultivation operation to the Planning & Development Department.

Shortly thereafter on May 6, 2019, a complaint was submitted to the Department alleging that cannabis was not cultivated on the property prior to January 19, 2016, and that the site was therefore not eligible to be considered a nonconforming operation. The Department initiated an investigation into the complaint and researched information regarding the status of the operation that existed prior to January 19, 2016. On July 16, 2019, Code Compliance staff conducted an inspection of the site and observed that cannabis cultivation was occurring at that time. It was also determined that there had been cultivation on-site prior to January 19, 2016. Since the applicant was actively working with the Department to comply with the Land Use and Development Code and obtain the necessary permits for cannabis cultivation to abate any zoning violations, no further action was pursued.

Consistent with standard enforcement procedure, any zoning violations associated with the Proposed Project will be abated with the approval of a land use entitlement. With approval of the Conditional Use Permit and Development Plan 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 the LUDC for cannabis cultivation within the AG-II zone district. As discussed in Attachment 1 to this Board Letter, all findings can be made.

Appeal Issue No. 4: Inadequate Site Transportation Demand Management Plan

The Appellant states that the Site Transportation Demand Management Plan (STDMP) lacks specificity, an internal review process, and performance standards.

Staff Response:

The STDMP (Attachment 6 Sheets T1.1 and T1.2, and Attachment 7), is consistent with LUDC Section 35.42.075.D.6, Site Transportation Demand Management Plan. The STDMP includes specific details regarding the number of estimated trips from deliveries, employee commutes, and transport of cannabis for offsite processing. The STDMP also details how employee traffic will be reduced by utilizing the onsite employee dwellings for staff housing, staggering work shifts, and rewarding employees who frequently carpool with incentives like gift cards provided at end-of-year parties. The STDMP outlines an internal review process that will be monitored by P&D Permit Compliance staff, which includes a sign-in

sheet that will be filled out by onsite security staff when employees arrive. The LUDC does not identify performance standards for STDMPs. Permit Compliance staff will monitor compliance with the STDMP to ensure that trips are being reduced accordingly.

Appeal Issue No. 5: Comprehensive Plan and Ordinance Inconsistency

The Appellant identifies four specific issues related to the Proposed Project's inconsistency with the Comprehensive Plan, including inconsistency with the Santa Ynez Valley Community Plan, Scenic Highways Element, Open Space Element, and Agricultural Element. These appeal issues are further outlined in Staff's responses below.

5.A Comprehensive Plan and Ordinance Inconsistency - Santa Ynez Valley Community Plan (SYVCP)

The Appellant states that the Proposed Project is inconsistent with the goals, policies, and development standards contained within the SYVCP with respect to protection of visual resources. Specifically, the Appellant states that the Proposed Project does not protect prominent view sheds and it is inconsistent with the SYVCP Design Control Overlay, due to its landscaping plan, storage containers, and hoop structures. Further, the Appellant states that the Central Board of Architecture's (CBAR) review of the Proposed Project was inadequate.

Staff Response:

The Proposed Project is consistent with the Comprehensive Plan and SYVCP, and CBAR's review of the Proposed Project was adequate. Since Proposed Project includes an application for a Conditional Use Permit (LUDC Section 35.82.060.D.4) the Proposed Project is required to be reviewed by CBAR. The subject parcel is not located within the Design Control Overlay, and therefore, the Design Control Overlay requirements do not apply to the Proposed Project. The Proposed Project is located off of Santa Rosa Road, which is considered a scenic rural road in the SYVCP. The Proposed Project is located immediately off of Santa Rosa Road, and the southern portion of site is visible to westbound and eastbound travelers.

Since the northern portion of the property is located over 2,200 feet from Santa Rosa Road and is 30 feet lower in elevation, the storage shade structure and nine acres of outdoor cultivation under hoop structures located on the northern portion of the parcel are less visible to those traveling along Santa Rosa Road. The remaining hoop structures, 57 unpermitted refrigerated storage containers, new 3,900 sq. ft. greenhouse addition, and 200 sq. ft. security building on the southern portion of the parcel will be screened to the extent feasible with the 24,725 sq. ft. of proposed landscaping. 42 of the 57 storage containers will be removed within three years of Zoning Clearance issuance. The trellised landscaping will continue to screen the remaining 10 refrigerated containers.

CBAR conceptually reviewed the Proposed Project on June 12, 2020, July 17, 2020, and August 21, 2020 and directed the Applicant to revise the Proposed Project. The revisions included adding green screen trellises around the containers, incorporating a natural paint color for the containers, providing additional landscaping around the property lines nearest to Santa Rosa Road, and crafting a more robust and native plant palette. As proposed, the Project includes 24,725 sq. ft. of landscaping comprised of trees and shrubs to be planted along the southern, southwestern, and southeastern portions of the parcel to provide screening of the existing buildings and cultivation from travelers on Santa Rosa Road. On August 21, 2020, the CBAR determined that they were able to make the findings that the development is in proportion to and in scale with structures in the vicinity, there is a harmonious palette of colors, and adequate landscaping is provided and requested that the Proposed Project return for preliminary and final approval following the Planning Commission's action. As conditioned, the Proposed Project will be subject to final

design review and approval prior to Zoning Clearance issuance (Attachment 2, Condition No. 26). The CBAR minutes are included as Attachment 13 to this staff report.

As detailed on the Landscape Plan and Screening Plan (Attachment 9), the storage containers will be painted a natural color, such as “Great Barrington Green” or “Alligator Alley”. Additionally, there will be trellised landscaping that surrounds 52 of the containers in order to buffer views along Santa Rosa Road. Three containers used for seed storage will be located between two existing buildings, which will obscure them from view of Santa Rosa Road, and they will also be further screened by a fence covered with a climbing vine. Pursuant to Condition No. 25 (Attachment 2), 42 storage containers will be removed within three years of Zoning Clearance issuance. The trellised landscaping and perimeter landscaping will continue to screen the remaining 10 refrigerated containers.

The Applicant provided a Lighting Plan (Attachment 6, Sheet L1.1 and L1.2), which shows that lighting for the Proposed Project will be downward facing and full cut-off, limiting any potential lighting spillover onto adjacent properties. The Applicant will underground all new utility lines. The Proposed Project includes 24,725 sq. ft. of landscaping comprised of trees and shrubs to be planted along the southern, southwestern, and southeastern portions of the parcel to provide screening of the existing buildings and cultivation from travelers on Santa Rosa Road. The landscape palette includes native species which, within five years, will provide screening of the Proposed Project.

5.B Comprehensive Plan and Ordinance Inconsistency - Scenic Highways Element

The Appellant states that the Proposed Project is inconsistent with Comprehensive Plan goals and policies in the Scenic Highways Element, which contains preservation measures for eligible scenic routes such as application of the Design Control Overlay. The Appellant maintains that, therefore, the project area should be considered scenic.

Staff Response: The Proposed Project is located off of Santa Rosa Road, which is not an eligible or designated scenic route according to the Scenic Highways Element. Highway 101, located 1.5 miles east of the subject parcel, is eligible for scenic designation, however, the Proposed Project is not visible from this highway. Highway 246, located over 2,600 feet north of the cultivation area, is not eligible for scenic highway designation, and the Proposed Project is not visible from or this highway. Therefore, the goals and policies of the Scenic Highway Element do not apply to the Proposed Project. Additionally, the Proposed Project is within the SYVCP, which includes a Design Control Overlay. However, the subject parcel is not located within the Design Control Overlay, and therefore, those requirements do not apply to the Proposed Project. As discussed under Appeal Issue 5.a, the CBAR reviewed the Proposed Project for size, bulk, and scale on three occasions. Per the CBAR’s feedback, the Applicant added green screen trellises around the containers, incorporated a natural paint color for the containers, provided additional landscaping around the property lines nearest to Santa Rosa Road, and crafted a more robust and native plant palette. After making revisions as directed by the CBAR, the Applicant was requested to return to CBAR for Preliminary Approval following approval by the decision-maker.

5.C Comprehensive Plan and Ordinance Inconsistency - Open Space Element

The Appellant states that the Proposed Project is inconsistent with Comprehensive Plan goals and policies in the Open Space Element. The Appellant states that the County’s assessment of scenic value for the Open Space Element determined that a distance of 2,000 feet on either side of a road or urban area is “the most important in the view of a person traveling through the area, or of a resident, because it usually is

the portion of the vista most easily seen and remembered”. The Appellant also states that, according to the Open Space Element, the project area is an urban perimeter that is visually important.

Staff Response:

The Proposed Project is consistent with the Open Space Element. The Proposed Project is located within 2,000 feet of Santa Rosa Road. The subject AG-II-40 zoned parcel is located in the Rural Area and has historically been used for cultivating irrigated crops such as alfalfa, squash, and stone fruits. The subject parcel has a history of development permits for processing buildings and employee dwellings that support the agricultural use of the property. The Proposed Project is a cannabis cultivation operation, and therefore, the subject parcel will continue to contain agricultural uses.

The northern portion of the parcel is adjacent to the Santa Ynez River and contains riparian vegetation, which will be over 750 feet away from the Proposed Project. This riparian area on the property will not be used for the Proposed Project, and previously disturbed portions of this area may be used to grow non-cannabis crops.

As discussed under Appeal Issue 5.a, because the northern portion of the property is 30 feet lower in elevation, the storage shade structure, nine acres of outdoor cultivation, and associated hoop structures located on the northern portion of the parcel are less visible to those traveling along Santa Rosa Road. Proposed Project activities and development on the southern portion of the parcel will be screened to the extent feasible with the proposed landscaping.

5.D Comprehensive Plan and Ordinance Inconsistency - Agricultural Element

The Appellant states that the Proposed Project is inconsistent with goals and policies in the Comprehensive Plan regarding agriculture.

Staff Response:

In Section 6.2, Policy Consistency, of the Planning Commission staff report, dated October 20, 2020 and included herein as Attachment 10, staff concluded that the Proposed Project is consistent with the Agricultural Element, including policies I.A, I.F, and II.D. The Proposed Project will continue the long-time agricultural use of the property and will not convert any agricultural lands to non-agricultural development. The Proposed Project is consistent with goals and policies to assure viable agricultural production as the project consists of a change of crop, and therefore agricultural activities will continue on the subject property.

Consistent with Agricultural Element Policy I.E, the Proposed Project is conditioned to minimize noise, dust, and odors (Attachment 2). Existing and proposed structures will be used as part of the cannabis operation, continuing the agricultural use and agricultural supportive use of the structures. Prime soils are located on the areas proposed to be used for cannabis cultivation, and these highly productive agricultural lands will continue to be used for agriculture. The ongoing agricultural use of the 68.18-acre property will not be hindered or diminished as this Project is for irrigated crop cultivation. There will be no reduction in the total cultivated agricultural acreage as a result of the Proposed Project.

The Proposed Project does not propose new noise generating activities, and noise associated with the operation will be similar to noise generated by other agricultural uses in the vicinity. The quality and availability of water, air, and soil resources will continue to be protected after implementation of the Proposed Project. The Proposed Project’s sound agricultural practices include utilizing water conservation

measures for irrigation including time drip irrigation. Cultivation is setback at least 50 feet from the west and east property lines, over 200 feet from the front property line, and over 700 feet from the rear property line. Therefore, as proposed, the Project will continue the agricultural use of the site and conform to the goals and policies in the Comprehensive Plan and Agricultural Element.

As discussed under Appeal Issue 2.b, the subject parcel is under Agricultural Preserve Contract No. 03-AP-030 pursuant to the Williamson Act and was determined to be consistent with the Uniform Rules on April 5, 2019. The APAC minutes are included (Attachment 12).

Appeal Issue No. 6 Conditional Use Permit and Development Plan Findings:

The Appellant asserts that there is a lack of sufficient evidence to make the required Conditional Use Permit and Development Plan Findings for the following reasons:

- a. Evidence of odor drift into the City of Buellton, to Highway 101 and Highway 246, along Santa Rosa Road, and into the West Buellton Existing Developed Rural Neighborhood (EDRN);
- b. Parcel shape precludes adequate buffers;
- c. Visibility of hoop structures, storage containers, security lighting, fencing and processing building along Santa Rosa Road and Highway 246;
- d. Non-compliance with CEQA;
- e. Conflicts with nearby agriculture; and,
- f. Expansion of an un-permitted non-conforming use and un-permitted installation of utility connections to storage containers.

Staff Response:

There is sufficient evidence to make and support the required Conditional Use Permit and Development Plan findings for the Proposed Project. As discussed in detail under Staff's response to Appeal Issue No. 1, the Applicant's OAP complies with the LUDC and the SYVCP and will prevent odors from being experienced in residential zones. Consistent with Section 35.42.075.D.1.n, the Proposed Project includes 50-foot cannabis cultivation minimum setbacks from all lot lines. No additional setbacks or buffers are required by the Comprehensive Plan, including the LUDC and SYVCP.

As discussed under Appeal Issue No. 5, the Proposed Project was reviewed by CBAR for compatibility with the surrounding area, size, bulk and scale and will be required to receive Final Approval prior to Zoning Clearance issuance. Furthermore, implementation of the proposed Landscape and Screening Plan, will screen the Proposed Project to the maximum extent feasible and buffer views of the Proposed Project along Santa Rosa Road.

The PEIR evaluated the direct and indirect impacts, as well as the project-specific and cumulative impacts, that would result from the implementation of the Cannabis Program. The Board adopted a Statement of Overriding Considerations concluding that the benefits of the Program outweigh the unavoidable adverse environmental effects identified above, and the 30-day statute of limitations to challenge the adequacy of the PEIR expired without legal challenge. As discussed under Appeal Issue No. 2, the Proposed Project complies with CEQA. Staff prepared a written checklist dated October 1, 2020, and updated it on April 12, 2021 with a reduced total cultivation area that does not include the onsite compost area and to attach the Statement of Overriding Consideration regarding the PEIR, and determined that no additional environmental review is needed.

Staff's response under Appeal Issue No. 5 as well as the Policy Consistency analysis included in the Planning Commission staff report, dated October 20, 2020 and included as Attachment 10, detail how the Proposed Project will continue the agricultural use of the site and conform to the goals and policies in the Agricultural Element. The Proposed Project will continue the long-time agricultural use of the property and will not convert any agricultural lands to non-agricultural development. The Proposed Project will not conflict with surrounding agriculture, and the ongoing agricultural use of the 68.18-acre property will not be hindered or diminished.

Staff's response to Appeal Issue No. 3 addresses the Appellant's concern over expansion of un-permitted and non-conforming uses and structures. Consistent with standard enforcement procedure, zoning violations on the parcel will be corrected with a land use entitlement. Lastly, as discussed in Attachment 1 to this Board Letter, all required Findings can be made, and the Proposed Project will not result in detrimental impacts to the health, safety, comfort, convenience and general welfare of the neighborhood.

Conclusion: For the reasons discussed above, staff finds that the appeal issues raised are without merit. Planning and Development staff recommends that the Board 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). The costs for processing cannabis project appeals are partially offset by a fixed appeal fee and cannabis tax revenues. The fixed appeal fee was paid by the Appellant in the amount of \$701.06. Funding for processing this appeal is budgeted in the Planning and Development Department's Permitting Budget Program as shown on page D-294 of the County of Santa Barbara Fiscal Year (FY) 2020-21 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on May 4, 2021. The notice shall appear in the *Santa Ynez Valley News*. 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. Conditions of Approval with Departmental Condition Letters
 - a. Conditional Use Permit
 - b. Development Plan
3. CEQA Checklist dated March 1, 2020
4. Link to Program EIR
5. Appeal Letter dated January 25, 2021
6. Project Plans dated August 2020
7. Site Transportation Demand Management Plan
8. Odor Abatement Plan dated October 8, 2020
9. Landscaping and Screening Plan dated August 13, 2020
10. Planning Commission Staff Report dated October 20, 2020 and associated Attachments

11. Planning Commission Memorandum dated December 2, 2020 and associated Attachments
12. Planning Commission Memorandum dated January 12, 2021 and associated Attachments
13. Biological Resources Assessment and Wildlife Movement Plan dated October 2020
14. APAC Minutes
15. CBAR Minutes

Authored by:

Gwen Beyeler, Planner, (805) 934-6269

Development Review Division, Planning and Development Department