




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: February 15, 2022
Placement: Departmental
Estimated Time: 1.5 hours on February 15,
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: (805) 568-2086 
Contact Info: Travis Seawards, Deputy Director, Development Review Division
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SUBJECT: **Santa Barbara Coalition for Responsible Cannabis Appeal, Case No. 21APL-000000-00028, of the Planning Commission Approval of the Cadwell Cannabis Cultivation Project, Case No. 19LUP-00000-00480, 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-00000-00028;
- b) Make the required findings for approval of the Project, Case No. 19LUP-00000-00480, 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 No. 19LUP-00000-00480, subject to the conditions of approval (included as Attachment 2).

Summary Text:

On November 7, 2019, the Applicant submitted an application for a Land Use Permit for a cannabis operation consisting of 24.45 acres of cultivation on a 100.92-acre property located at 5645 Santa Rosa Road in the Lompoc area. Cannabis is currently being cultivated onsite based on an affidavit of legal nonconforming use. On February 9, 2021, the Planning and Development Department Director (hereinafter Director) approved the Proposed Project, and on February 19, 2021, the Appellant filed a timely appeal of the Director's approval. On May 12, 2021, the Planning Commission (hereinafter Commission) granted *de novo* approval of the Proposed Project. On May 24, 2021, the Santa Barbara Coalition for Responsible Cannabis filed a timely appeal of the Commission's approval.

Following the Commission's May 12, 2021, approval of the Proposed Project, the project description, project plans (Attachment 6), Biological Resources Assessment (Attachment 11), and Site Transportation Demand Plan (Attachment 7) were revised to include the following changes:

- Increased number of employees from 30 to 55 per day during harvest periods
- Increased number of onsite parking spots from 22 to 35
- Improved Site Transportation Demand Plan to reflect increased employees and parking and include further details regarding enforcement
- Use of an existing onsite back-up agricultural well located in the southwestern portion of the parcel
- Reduced landscaped area and height of proposed landscape screening to comply with the Commission's request to ensure that landscape screening along Santa Rosa Road will not block views of the surrounding mountains
- As-built accessory dwelling unit (ADU) will be legalized with building permits or converted back to a permitted agricultural accessory structure within 90 days of Land Use Permit issuance
- Increased proposed grading from 600 cubic yards to 1,000 cubic yards
- Increased the total number of water tanks onsite from nine to 14 including seven existing water tanks

The revised project description is provided below (deleted text shown in strikethrough font and new text shown in underlined font). Additionally, the Findings, Conditions of Approval, and CEQA Guidelines § 15168(c)(4) Environmental Checklist were updated to align with the revised project description. The revised Findings, Conditions of Approval, and CEQA Guidelines § 15168(c)(4) Environmental Checklist are provided in Attachments 1, 2, and 3, respectively. As revised, the Proposed Project meets all Land Use and Development Code requirements.

A. Proposed Project

The Proposed Project is a request for a Land Use Permit to allow 24.45 acres of cannabis cultivation, including 20 acres of outdoor cultivation in existing 12-ft.-tall hoop structures, four acres of outdoor cultivation without hoop structures, and 19,440 sq. ft. of indoor nursery cultivation within an existing permitted 14-ft.-tall greenhouse with blackout screening. Plants will be grown in the ground and in pots, and plant waste will be hailed off or composted onsite in a fenced area.

During harvest periods, cannabis will be weighed and staged in a ~~new~~ 2,500-sq.-ft. temporary shade staging structure that will be used only during harvest periods and taken down immediately after harvest open on three sides. Within 24 hours of harvesting, ~~the~~ harvested material will be loaded onto trucks and transported offsite for processing. No cannabis will be stored in the 2,500-sq.-ft. shade staging structure. No equipment or materials storage will be allowed under hoop structures or in the Santa Ynez

River buffer area. A new ~~400-sq.-ft~~ 384-sq.-ft. security building with two restrooms will be located near the nursery area.

Landscaping includes ~~12,813 sq. ft.~~ 34,784 sq. ft. of trees, shrubs, and grasses that will be planted along Santa Rosa Road. No vegetation is proposed to be removed. The Proposed Project includes approximately ~~1,000~~ 600 cubic yards of grading for over-excavation and re-compaction of proposed development as well as to modify the access road. The cannabis cultivation area is enclosed by an existing 6-ft.-tall no-climb wire fence. The Proposed Project includes fully-shielded, downward-facing lights at the parcel entrance gate, an entrance gate to the cultivation area, a ~~restroom security building~~, and on a camera pole near the temporary shade staging structure. The lights will be a maximum of 8-ft.-tall and will be on motion sensors to remain illuminated for five minutes after movement.

The Project site has seven existing 5,000-gallon water tanks, ~~three~~ four of which will not be used for the cannabis operation and serve an existing 1,900-sq.-ft. single family dwelling built in 1920 that will not be used for the cannabis operation. One new 5,000-gallon tank will be installed for landscape irrigation. ~~Three and one new~~ 10,000-gallon 5,000-gallon water tanks will be installed for fire suppression. ~~Three new~~ 5,000-gallon water tanks will be installed for cannabis crop irrigation. In total, the subject parcel will have ~~fourteen~~ nine water tanks, and ~~eleven~~ five of those tanks will be used for the cannabis operation.

The Project site also has one ~~permitted~~ 867 sq. ft. accessory agricultural structure that was later converted to an accessory dwelling unit (ADU) without permits. The ADU will be converted back to an agricultural accessory structure as part of the Proposed Project. The Project site also has ~~and one~~ as-built 120-sq.-ft. agricultural accessory structure used as ~~equipment storage~~ a pump house. ~~Five~~ Four existing as-built storage containers not affiliated with the cannabis operation, two of which are 160 sq. ft. and ~~three~~ two of which are 320 sq. ft., will be permitted as part of this Land Use Permit.

The hours of operation will be 7:00 a.m. to 7:00 p.m. daily. There will be up to 10 employees full-time. Work shifts will be staggered throughout the day and employees will be provided with incentives to carpool in order to reduce peak hour trips. Additionally, ~~one~~ two employees of the operation may live in the ~~existing single family dwelling~~ ADU. The cannabis operation will involve up to ~~55~~ 30 employees during harvests which will occur twice per year and last up to 3 weeks each time. There will be ~~35~~ 22 parking spaces including one ADA compliant space and five carpool spaces.

Access will continue to be provided via an existing ~~20-ft.-wide~~ 15-ft.-wide driveway off of Santa Rosa Road, portions of which will be re-surfaced and widened as part of the Proposed Project. The Project site will have a total of four wells to serve different components of the site. An existing agricultural well located in the northeastern portion of the parcel will provide water for the cannabis activities. A new well located in the northeastern portion of the parcel will serve the new ~~restroom security building~~, and single family dwelling, ~~and ADU~~. An existing well located in the northeastern portion of the parcel that currently serves the dwellings and small orchard will no longer be used for the dwelling and will continue to be transitioned to be used for irrigating the small orchard crops. An existing well located in the southwestern portion of the parcel will provide back-up water for the cannabis operation. Wastewater treatment for the ~~existing single family dwelling ADU~~ and new restroom security building will be provided by two proposed septic systems. Portable chemical toilets will be provided for employees during harvest periods. Power will be provided by PG&E and one mobile generator for use only in emergencies. Fire protection will be provided by the County Fire Department and law enforcement will be provided by the County Sheriff's Department. The Proposed Project is located on a 100.92-acre parcel zoned Agriculture II (AG-

II-100) and located at 5645 Santa Rosa Road, shown as Assessor's Parcel Number 083-150-013 in the Lompoc area, ~~Third~~^{Fourth} Supervisorial District.

B. Background:

On November 7, 2019, the Applicant submitted a Land Use Permit (LUP) application for the Proposed Project, Case No. 19LUP-00000-00480. Staff reviewed the LUP application 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 February 9, 2021, the Director granted approval of the Proposed Project. On February 19, 2021, the Santa Barbara Coalition for Responsible Cannabis filed a timely appeal of the Director's approval.

On May 12, 2021, the Commission reviewed the Proposed Project and requested changes to the Landscaping and Screening Plan in order for the proposed landscaping to not block the view shed of the surrounding mountains from Santa Rosa Road. During the May 12, 2021 Commission hearing, staff updated the Landscaping and Screening Plan Condition of Approval No. 14 to reflect this request, and the Commission granted *de novo* approval of the Proposed Project. On May 24, 2021, the Santa Barbara Coalition for Responsible Cannabis filed a timely appeal of the Commission's approval. The Board of Supervisors (Board) Appeal Application is included as Attachment 5. 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 Appeal application (Attachment 5) contains a letter outlining the issues on appeal. The appeal issues allege inadequate evidence in the record to support approval findings and that substantial evidence does not support the required CEQA findings. Staff reviewed the appeal issues and found they are without merit. The appeal issues and staff's responses are discussed in detail below.

Appeal Issue No. 1: Inadequate Evidence in the Record to Support Approval Findings

The Appellant alleges that the Board lacks evidence to make the findings required for approval of the Proposed Project. The Appellant identifies three specific sub-issues related to the alleged lack of evidence, including: illegal expansion of nonconforming cannabis operation, failure to demonstrate adequate water supply, and the Proposed Project fails to comply with the comprehensive plan. The appeal sub-issues are further outlined in staff's responses below.

1.A Illegal Expansion of Nonconforming Cannabis Operation

The Appellant argues that that the Board cannot find that the Proposed Project is in compliance with the Land Use Permit finding outlined in Section 35.82.110.E.1.c of the Land Use and Development Code (LUDC), because the Applicant has exceeded its legal nonconforming status. The Appellant further argues that this site was not used for cultivation of cannabis in January 2016 and that this operation is not in compliance with Article X due to unpermitted expansion of operations. The Appellant further states that zoning enforcement should apply to as-built generators onsite.

Staff Response:

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. Consistent with standard enforcement procedure, any zoning violations on the subject parcel will be corrected with approval of this Land Use Permit.

Cannabis is currently being grown onsite. An affidavit was submitted to the County Executive Office on December 20, 2017, stating that the operation located at 5645 Santa Rosa Road was in compliance with Santa Barbara County Code Section 35-1003.A.2. On August 12, 2019, a complaint was submitted to P&D alleging that cannabis cultivation was expanded beyond the legal nonconforming location that was cultivated prior to January 19, 2016. P&D initiated an investigation into the complaint and opened a Zoning Violation (Case No. 19ZEV-00000-00311) on August 21, 2019. On September 18, 2019, Code Compliance staff conducted an inspection of the site and observed that cannabis cultivation was occurring on the site at that time. On November 7, 2019, the Applicant submitted an application (Case No. 19LUP-00000-00480) to permit the existing cannabis cultivation operation.

On May 25, 2020, another complaint alleging expansion of legal nonconforming uses was submitted to P&D and Code Compliance staff conducted an inspection of the site on June 12, 2020. Since the Applicant was actively working with P&D to comply with the LUDC and obtain the necessary permits for cannabis cultivation, no new enforcement case was created. Lastly, there are no generators onsite, and no generators are included in the Proposed Project.

1.B Failure to Demonstrate Adequate Water Supply

The Appellant argues that the Proposed Project has not demonstrated adequate water supply and that the LUP finding requiring adequate public and private services and resources cannot be made. The Appellant states that the Proposed Project is located within the Santa Ynez River Water Conservation District (SYRWCD) Groundwater Sustainability Agency's (GSA) Western Management Area (WMA), which defines the Santa Ynez River alluvium as surface water. The Appellant argues the conversion of a domestic well onsite to be used for cannabis cultivation represents significantly changed circumstances from the time the Project was approved by the State Water Resources Control Board (SWRCB). The Appellant further states that the SWRCB has requirements for surface water diverters, including forbearance limitations based on riparian water flow and associated water storage capacity, and argues that water diversion is not authorized for the Proposed Project according to the SWRCB website. Lastly, the Appellant argues that because the Applicant cancelled their Statement of Diversion and Use, their riparian rights to use the agricultural well for cannabis cultivation are cancelled.

Staff Response:

The Proposed Project has demonstrated adequate water supply for the cannabis operation and domestic uses onsite, and the LUP finding requiring adequate public or private services and resources can be made as detailed in Attachment 1 to this Board Agenda Letter. Domestic uses will be served by an existing domestic well located in the northeastern portion of the parcel that has been reviewed by County Environment Health Services (EHS). Irrigation for the cannabis operation is proposed to be served by an existing 90-ft.-deep agricultural well located in the northeastern portion of the parcel, and this well has provided irrigation for the cannabis irrigation onsite since the SWRCB first reviewed the Proposed Project in 2018. Removing the domestic use from this well does not represent significantly changed circumstances.

According to the Hydrologic Overview and Potential Impact Assessment (Assessment) dated January 21, 2020 (Attachment 10), the existing agricultural well produces groundwater from the Santa Ynez River Alluvial Corridor/Sub-Basin (SYRAB). The Assessment estimates total annual extraction of 1,000 acre-feet of groundwater from the SYRAB with around 90,000 acre-feet usable groundwater in storage (1.11% of total storage extracted annually). The Assessment notes that the "shallow well produces groundwater from unconsolidated sand and gravel alluvial aquifers that are, at least in part, in hydraulic connection

with the Santa Ynez River flow system.” However, the Assessment concludes that the Proposed Project is unlikely to “substantially affect instream flows” because: 1) the surface flow regime of the Santa Ynez River in this location is overwhelmingly controlled by the SWRCB’s Water Rights Decision 89-18; 2) groundwater levels in the SYRAB have been historically stable, with only 1.11% extracted of the total usable groundwater; and 3) the Proposed Project covers about 1% of the total surface area of the sub-basin. Projected water usage for the Proposed Project will be 15 acre-feet per year (AFY) compared to 36 AFY used for the previous non-cannabis agricultural operation onsite according to the water memorandum dated January 14, 2022 (Attachment 9). The Santa Barbara County Environmental Thresholds and Guidelines Manual does not include a threshold of significance for the Santa Ynez River Alluvial Corridor/Sub-Basin. Accordingly, there is substantial evidence that the Proposed Project’s use of groundwater from the SYRAB provides an adequate water supply for the Proposed Project.

Groundwater that constitutes a subterranean stream flowing in a known and definite channel falls within the SWRCB’s permitting authority. Cannabis projects subject to the SWRCB’s permitting authority must establish a water right to divert water, typically through the SWRCB’s Small Irrigation Use Registration (SIUR) program. Additionally, the SWRCB has authority to require forbearance periods on groundwater extractions that are not subject to the SWRCB’s permitting authority “where such restrictions are necessary to protect instream flows.” The Proposed Project was reviewed by the SWRCB and was determined not to be subject to the SIUR program and its associated forbearance period. Instead, the Notice of Receipt informs the Applicant: “You may use your existing water source for cannabis cultivation”, subject to the requirements of the SWRCB’s Cannabis Cultivation Policy. As the SWRCB explained in an email to P&D staff, dated May 18, 2021, the SWRCB treats wells “outside the bed and bank of a river/stream as a groundwater source”. The SWRCB has not indicated that this groundwater source is subject to groundwater forbearance requirements, and the Hydrologic Assessment concluded that the project is unlikely to substantially affect instream flows. Regardless, there is an existing 670-ft.-deep groundwater agricultural well located in the southwestern portion of the subject parcel that draws from the Santa Ynez River Valley Groundwater Basin and not the Santa Ynez River Alluvial Corridor/Sub-Basin. This well is available to serve the Proposed Project in the event that the SWRCB determines at a later date that the well currently used for irrigation is subject to a forbearance period under the SWRCB’s Cannabis Cultivation Policy.

With regard to water used for irrigating cannabis cultivation, the Proposed Project is required to comply with SWRCB regulations in compliance with the Land Use Permit (Attachment 2, Condition No. 10), County Business License, and State licenses. As noted above, the SWRCB reviewed the Proposed Project, including the proposed agricultural well to be used for cannabis cultivation. The SWRCB does not consider the Proposed Project to be a diverter of surface water, and therefore the Proposed Project is not subject to the applicable SIUR requirements for a surface water diverter such as riparian water rights or forbearance limitations on pumping from the well (Attachment 14). As a result of the SWRCB most recent determination, the Applicant cancelled the aforementioned Statement of Diversion. The Proposed Project complies with all SWRCB requirements as evidenced by the Notice of Applicability dated November 13, 2018 (Attachment 13) and the Notice of Receipt for Cannabis Small Irrigation Use Registration dated 2019 (Attachment 14) provided by the SWRCB for the Proposed Project. If at a future date the SWRCB determines that the Proposed Project is subject to the SWRCB’s permitting authority, or otherwise required to comply with a groundwater forbearance period, the Proposed Project is required to comply with all applicable regulations (Attachment 2, Condition No. 10).

The Proposed Project is located within the SYRWCD jurisdiction. All well users in this jurisdiction, regardless of whether water is used for agricultural or domestic purposes, are required to report pumping records to the SYRWCD. The Proposed Project is in compliance with all SYRWCD reporting requirements, as confirmed by SYRWCD staff.

As stated above, the projected water use for the Proposed Project is 15 AFY. This is below the 61 AFY threshold of significance for the Santa Ynez River Valley Groundwater Basin described in the Santa Barbara County Environmental Thresholds and Guidelines Manual. The Santa Ynez River Valley Groundwater Basin is considered over-drafted and is defined by the California Department of Water Resources (DWR) as a high priority basin. The Sustainable Groundwater Management Act (SGMA) requires Groundwater Sustainability Agencies (GSAs) to be formed to develop and implement Groundwater Sustainability Plans (GSPs) in medium- and high-priority basins. GSPs are intended to provide a roadmap for how groundwater basins will reach long-term sustainability and reviewed by DWR to ensure compliance with SGMA. The WMA GSA includes the subject parcel and Proposed Project, and development of a GSP at a future date is required. The Proposed Project will be subject to applicable requirements outlined in the GSP.

1.C The Project Fails to Comply with the Comprehensive Plan

The Appellant argues that there has been no demonstration of adequate water to serve the proposed development and that the Proposed Project is inconsistent with Comprehensive Plan Land Use Development Policy 4 requiring adequate public or private services and resources are available to serve the proposed development. The Appellant argues that Comprehensive Plan Conservation Element Groundwater Policies have not been analyzed in the record, and that the Proposed Project's water source remains unclear and uncertain. The Appellant also argues that the Proposed Project entails substantial visual changes that conflict with Comprehensive Plan Visual Resources Policy 2 requiring that the Proposed Project shall be compatible with the character of the surrounding environment and shall be sited so as to not protrude into the skyline as seen from public viewing places. Lastly, the Appellant argues that the Proposed Project conflicts with the Comprehensive Plan Agricultural Element Goal I and Policy I.E, because the Proposed Project jeopardizes the continuation of traditional agriculture in the vicinity and does not minimize the effects of odor.

Staff Response:

The Proposed Project complies with all applicable policies within the Comprehensive Plan. As discussed under Staff's Response to Appeal Issue 1.B, there is adequate water to serve the Proposed Project in compliance with Comprehensive Plan Land Use Development Policy 4. In compliance with Groundwater Policy 3.5, Action 3.5.1, Action 3.5.2, and Policy 3.6, the Proposed Project will not lead any basin to become seriously over-drafted or substantially overcommitted. According to the Hydrologic Overview and Potential Impact Assessment dated January 21, 2020 (Attachment 10), the Proposed Project will not substantially affect instream flows from the shallow alluvial aquifer. Projected water usage for the Proposed Project will be 15 acre-feet per year (AFY) compared to 36 AFY used from the same well for the previous non-cannabis agricultural operation onsite according to the water memorandum dated January 14, 2022 (Attachment 9). The Proposed Project will not exceed the 61 AFY threshold of significance for the Santa Ynez River Groundwater Basin. Further, as discussed under Staff's Response to Appeal Issue 1.B, the Proposed Project will be subject to all applicable regulations set forth by the Groundwater Sustainability Agency's Western Management Area in the GSP to be developed at a future date.

The Proposed Project complies with Comprehensive Plan Visual Resources Policy 2. Existing development onsite includes 20 acres of outdoor cultivation in existing hoop structures and indoor mixed-light nursery cultivation within a greenhouse equipped with blackout screening to prevent light trespass. The Project site has a single family dwelling, a barn, seven water tanks, a pump house, storage containers, and a wire fence surrounding the cultivation area. New development includes a staging structure, security building, seven water tanks, and fully shielded motion-activated security lighting. The Proposed Project will be compatible with the character of the surrounding area and will not intrude into the skyline. The subject parcel is in a rural area and is only partially visible to travelers on portions of Santa Rosa Road due to topography and existing vegetation. The subject parcel is surrounded by hills to the south, Santa Ynez riparian vegetation to the north, and agricultural crop lands to the west and east. According to the Landscaping and Screening Plan (Attachment 6), the Proposed Project will be screened from public view to the maximum extent feasible within five years in compliance with the LUDC. The Proposed Project includes approximately 12,813 sq. ft. of new trees, shrubs, and grasses planted along Santa Rosa Road. During the May 12, 2021, Commission hearing, the Commission requested that the Landscaping and Screening Plan be updated to include shorter species along Santa Rosa Road so as to not block view sheds of the surrounding mountains for travelers along Santa Rosa Road. During the hearing, staff updated the Landscaping and Screening Plan Condition of Approval (Attachment 2, Condition of Approval No. 14) to require this change. In response, the Applicant updated the Landscaping and Screening Plan to include applicable trees, shrubs, and grasses along Santa Rosa Road that, at maturity, will not block views of the surrounding mountains for travelers. As such, the Proposed Project will be subordinate to natural contours of the landscape and the Santa Ynez River, which is located over 50 ft. from the cultivation area.

The Proposed Project complies with the Comprehensive Plan Agricultural Element Goal I and Policy I.E. 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 assures viable agricultural production as the Proposed Project consists of a change of crop and will continue an agricultural use. 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 Proposed Project exercises reasonable measures to minimize noise, smoke, dust, and odors. Noise associated with the operation will be similar to noise generated by other agricultural uses in the vicinity as demonstrated by the Noise Plan (Attachment 6), which states that all noise-generating equipment will be less than 65 dBA at property lines. Smoke will not be generated as part of the Proposed Project. The Proposed Project includes 1,000 cubic yards of grading for over-excavation and re-compaction and modifying the access road. Dust control measures will be applied to the Proposed Project (Attachment 2, Condition No. 4).

The odor impacts generated by the Proposed Project were reviewed and considered under the Cannabis Land Use and Licensing Program Environmental Impact Report (PEIR). The PEIR evaluated the Cannabis Program's impacts on air quality based on Appendix G of the 2017 State CEQA Guidelines and thresholds in the County's Environmental Thresholds and Guidelines Manual (County of Santa Barbara 2008, revised July 2015). The PEIR anticipated that implementation of the Program would create the potential for nuisance odor impacts to neighboring receptors. The PEIR identified the generation of objectionable odors and associated impacts to surrounding receptors as potentially significant and unavoidable. 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 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. Further,

the Proposed Project is located in the AG-II Zone District, and does not require approval of a Conditional Use Permit. According to the LUDC, an Odor Abatement Plan is not required.

Appeal Issue No. 2: Substantial Evidence Does Not Support Required CEQA Findings

The Appellant alleges that substantial evidence does not support required CEQA findings. The Appellant identifies two specific sub-issues related to the unsupported CEQA findings, including: substantially increased agricultural land conflicts following Uniform Rules change and changed circumstances regarding water use. These appeal sub-issues are further outlined in staff's responses below.

2.A Substantially Increased Agricultural Land Use Conflicts Following Uniform Rules Change

The Appellant argues that the Proposed Project results in conflicts with adjacent agricultural operations including those under Williamson Act contract, leading to new and/or substantially increased significant impacts that were not evaluated in the PEIR. The Appellant states that the PEIR anticipated that conflicts between agricultural users would be evaluated by the Agricultural Preserve Advisory Committee (APAC) on a case-by-case basis, but this compatibility review did not occur for the Proposed Project. The Appellant further alleges that outdoor cannabis cultivation substantially disrupts surrounding agricultural operations. Lastly, the Appellant argues that the Board is without legal authority to approve the Proposed Project, because the PEIR nor APAC analyzed whether cannabis will significantly displace or impair current or reasonably foreseeable agricultural operations.

Staff Response:

The Proposed Project does not conflict with the Williamson Act nor will it have substantially increased significant impacts that were not evaluated in the PEIR. The PEIR did not rely on APAC review under the Uniform Rules to ensure compatibility with agricultural uses. 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 agricultural preserves. 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 and not all agricultural cultivation is subject to APAC review. Additionally, Section 3.9 (Land Use) of the PEIR anticipated that amendments to the Uniform Rules based on adoption of the 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.

The Proposed Project is subject to a Williamson Act contract and was therefore reviewed by APAC on April 5, 2019. APAC found the Proposed Project consistent with the Uniform Rules of Agricultural Preserves and Farmland Security Zones (Uniform Rules). The Proposed Project 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. Project-specific evaluation of Comprehensive Plan consistency is the means by which proposed projects are analyzed for compatibility with surrounding land uses in the zone in which they are proposed. The proposed cannabis cultivation is an agricultural activity that will be located on an agriculturally zoned property. The Proposed Project will

also continue the agricultural use of the site and conform to the Comprehensive Plan and Agricultural Element, as discussed under Staff's Response to Appeal Issue 1.C and described in the Planning Commission Staff Report dated May 4, 2021 (Attachment 8).

2.B Changed Circumstances Regarding Project Water Use

The Appellant argues that the Proposed Project has not fulfilled its burden of demonstration of water supply in compliance with local and State regulations. The Appellant alleges that the Applicant's cancellation of their riparian water rights claim changed circumstances surrounding water supply, necessitating revisions to the Proposed Project to comply with State laws and regulations. The Appellant argues that the PEIR oversimplified water issues surrounding the Santa Ynez River and erroneously identifies this basin as groundwater when the alluvial plain surrounding the Santa Ynez River is considered subterranean surface water and is subject to SWRCB regulations. The Appellant alleges that this caused confusion and has allowed the Proposed Project's water use to be unregulated by any controlling agency and that the Proposed Project's use of water conflicts with SWRCB policies. The Appellant further argues that the Proposed Project description, Planning Commission Staff Report, and attendant documents are inadequate in addressing complexities surrounding water supply, diversion, and use in the Santa Ynez River Alluvial Corridor/Sub-Basin. The Appellant argues that the CEQA Checklist does not consider the source of water or its jurisdiction and ignores SWRCB regulations regarding the diversion and use of surface water for cannabis cultivation. The Appellant argues that SWRCB regulations of surface water diverters should apply to the Proposed Project and thus the Proposed Project relies on water that is unavailable for cannabis cultivation for approximately seven months of the year due to forbearance limitations on pumping. Lastly, the Appellant alleges that additional review of the cancellation of the Applicant's riparian claim and the proposed change of the dual-use well to irrigation is necessary to properly evaluate the Proposed Project's compliance with local and State laws and regulations.

Staff Response:

The Proposed Project fulfilled its burden of demonstration of water supply in compliance with local and State regulations. As discussed under Staff's Response to Appeal Issue 1.B, adequate water is available to serve the Proposed Project. Water for irrigating cannabis cultivation will be provided by the onsite agricultural well drawing from the Santa Ynez River Alluvial Corridor/Sub-Basin in compliance with SWRCB and SYRWCD regulations. Domestic water will be provided by the onsite domestic well in compliance with EHS, which also draws from the Santa Ynez Alluvial Corridor/Sub-Basin. The SWRCB does not consider the Proposed Project to be a diverter of surface water, and therefore the Proposed Project is not subject to the applicable requirements for a surface water diverter such as riparian water rights or forbearance limitations on pumping from the well (Attachment 14). Additionally, the 670-ft.-deep groundwater agricultural well onsite is also available to serve the Proposed Project as a back-up in the event that SWRCB determines at a later date that the well is subject to forbearance limitations on pumping. It should also be noted that any future regulations on water use set forth by the Groundwater Sustainability Agency's Western Management Area GSP will apply to the Proposed Project.

The previously certified PEIR provides adequate environmental review of Hydrology and Water Quality. 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 environmental resources and subjects, including Hydrology and Water Quality.

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. These mitigations include compliance with SWRCB regulations and use of water efficiency measures for irrigating cannabis cultivation. The PEIR concluded that unavoidable and significant 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

With respect to potential impacts to Hydrology and Water Resources, the PEIR identified the Santa Ynez River as a source for major surface water and also identified the Santa Ynez River Alluvial Corridor/Sub-Basin and the Santa Ynez Uplands Sub-Basin as sources for groundwater, which are the groundwater sub-basin from which the Proposed Project will draw water. The PEIR identified that groundwater within the Alluvial Corridor is influenced directly from the surface flow of the river, and that recharge of the alluvial basin is subject to SWRCB requirements (i.e., Water Rights Decision 89-18). The PEIR also identified that the SWRCB is responsible for statewide regulation of water resources, and that the SWRCB has adopted a Cannabis Policy and Cannabis General Order, which among other things “requires that cannabis cultivators provide evidence of compliance with the Water Boards’ Requirements (or certification by the appropriate Water Board stating that a permit is not necessary).”

The Santa Ynez River Alluvial Corridor was correctly identified as a groundwater sub-basin in the PEIR, as it was identified in the County’s 2014 Groundwater Basin Status Report. Groundwater that constitutes a subterranean stream flowing in a known and definite channel was subject to the SWRCB’s permitting authority at the time of the certification of the PEIR, as it is now. However, the SWRCB has concluded that the Proposed Project is not subject to its permitting authority, and the Notice of Receipt confirms that the Proposed Project does not require a permit from the SWRCB. As demonstrated by the CEQA Checklist (Attachment 3), the Applicant submitted documentation from the SWRCB demonstrating compliance with the comprehensive Cannabis Cultivation Policy. The information in the CEQA Checklist related to water use adequately describes how the Proposed Project is covered under the scope of the PEIR.

In sum, the groundwater source of the proposed project, and its hydrological connection to the surface flow of the Santa Ynez River was identified in the PEIR, as was the SWRCB’s regulatory authority over the State’s water resources. The PEIR concluded that through the imposition of mitigation measures, including compliance with the SWRCB’s permitting requirements, Cannabis Policy, and Cannabis General Order, impacts to water resources would be less than significant. This conclusion was not challenged. Nothing in the information presented by the Appellant insisting that the SWRCB must exercise its permitting authority over the Proposed Project constitutes new information of substantial importance that was not available at the time of the PEIR’s certification requiring further environmental review.

The Board adopted a Statement of Overriding Considerations concluding that the benefits of the Program outweigh the unavoidable adverse environmental effects identified above. Additionally, environmental conditions unique to this parcel were analyzed through the review of the Land Use Permit and CEQA Checklist (Attachment 3) that was prepared pursuant to CEQA Guidelines Section 15168(c)(4). The CEQA Checklist was updated on January 5, 2022, to include the updated project description and further details regarding the source of water for the Proposed Project.

The project description, Planning Commission Staff Report, and attendant documents adequately address complexities surrounding the Proposed Project's water use and the source of water. As discussed under Staff's Response to Appeal Issue 1.B, irrigation for the cannabis operation is proposed to be served by an existing agricultural well that draws from a shallow alluvial aquifer part of the subterranean stream of the Santa Ynez River flow system, and the Proposed Project will not substantially affect instream flows. Water sources for the Proposed Project are clearly described under "Section A. Proposed Project" of this Board Agenda Letter. The Planning Commission Staff Report (Attachment 8) describes the water source for the Proposed Project as well. Attendant documents, including the Hydrologic Overview and Potential Impact Assessment (Attachment 10), Water Use Memorandum (Attachment 9), Notice of Applicability (Attachment 13), and Notice of Receipt (Attachment 14) make clear that the proposed water source and Proposed Project are compliant with applicable regulations.

As discussed under Staff's Response to Appeal Issue 1.B, the Applicant cancelled their riparian water rights claim because the SWRCB does not consider the Proposed Project to be a surface water diverter. As such, no SWRCB regulations pertaining to surface water diversion apply to the Proposed Project. The agricultural well drawing from the alluvial aquifer has provided irrigation for the cannabis irrigation onsite since the SWRCB first reviewed the Proposed Project in 2018, and the conversion of the dual-use nature of this well to only agricultural purposes does not represent a significant change. The Proposed Project is compliant with SWRCB regulations, and compliance with the SWRCB will be required for the life of the Proposed Project consistent with the Land Use Permit (Attachment 2, Condition No. 10), County Business License, and State licenses.

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-301 of the County of Santa Barbara Fiscal Year (FY) 2021-2022 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on February 15, 2022. 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. Land Use Permit and Conditions of Approval
3. CEQA Checklist dated January 5, 2022
4. Link to Program EIR
5. Appeal Letter dated May 24, 2021
6. Project Plans dated December 2021
7. Site Transportation Demand Management Plan
8. Planning Commission Staff Report dated May 4, 2021 and Attachments
9. Water Use Memorandum dated January 24, 2022
10. Hydrologic Overview and Potential Impact Assessment dated January 21, 2020
11. Biological Resources Assessment and Wildlife Movement Plan dated January 2022
12. APAC Minutes dated April 5, 2019
13. State Water Resource Control Board Notice of Applicability dated November 30, 2018
14. State Water Resource Control Board Notice of Receipt

Authored by:

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Development Review Division, Planning and Development Department