



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: March 17, 2020
Placement: March 17, 2020
Estimated Time: 3 hours
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: Daniel Klemann, Deputy Director, Long Range Planning Division
(805) 568-2072
SUBJECT: **Busy Bee's Organics Cannabis Cultivation Appeal,
Case Nos. 19APL-00000-00030 & 19APL-00000-00031, Third Supervisorial
District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On March 17, 2020, staff recommends that your Board take the following actions to approve the Project as approved by the Planning Commission:

- a) Deny the appeals, Case Nos. 19APL-00000-00030 and 19APL-00000-00031;
- b) Make the required findings for approval of the Proposed Project including California Environmental Quality Act (CEQA) findings (included as Attachment 1);
- 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) (included as Attachments 3 and 11); and
- d) Grant *de novo* approval of the Project, affirming the decision of the Planning Commission, Case No. 18LUP-00000-00496 subject to the conditions of approval (included as Attachment 2A).

Alternatively, if your Board wishes to uphold the Busy Bee Organics, Inc. appeal (Case No. 19APL-00000-00030) and deny the SB County Coalition for Responsible Cannabis (Case No. 19APL-00000-

00031), staff recommends that your Board take the following actions to approve the project as proposed by the Applicant:

- a) Uphold the appeal by Busy Bee Organics, Inc. (Case No. 19APL-00000-00030);
- b) Deny the appeal by SB County Coalition for Responsible Cannabis (Case No. 19APL-00000-00031);
- c) Make the required findings for approval of the Proposed Project including California Environmental Quality Act (CEQA) findings (included as Attachment 1);
- d) 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) (included as Attachments 3 and 11); and
- e) Grant *de novo* approval of the Project, modifying the decision of the Planning Commission, Case No. 18LUP-00000-00496 subject to the conditions of approval (See Attachment 2B).

Summary Text:

A. Proposed Project

Busy Bee's Organics, the Applicant, requested a Land Use Permit (Case No. 18LUP-00000-00496) to allow for 22 acres of outdoor cannabis cultivation under 12 foot (ft.) tall hoop structures, 11,200 square feet (sq. ft.) of outdoor cultivation within five existing 12 ft. tall hoop structures, and 2,700 sq. ft. of mixed-light and nursery cultivation within an existing greenhouse. Cultivation would be irrigated by a timed-drip system. The Project included: (1) two new 3,000 sq. ft. buildings located in the northeast portion of the parcel to be used for processing; and (2) one new 1,080 sq. ft. three-sided shade structure to be used as a protective cover for a new well pump and fertilization system to be located near an existing on-site agricultural well located in the northeast portion of the parcel (Attachment 13).

There are several existing structures on the site that are not related to the cannabis operation, including: a 2,960 sq. ft. single family dwelling, a 1,008 sq. ft. agricultural employee dwelling, a 1,344 sq. ft. garage, a 768 sq. ft. garage, and a 3,000 sq. ft. agricultural storage building. The applicant also requested permitting of an existing, as-built 2,700 sq. ft. greenhouse, a 240 sq. ft. as-built agricultural storage building (not cannabis related), two as-built 320 sq. ft. connex storage buildings, and 11,200 sq. ft. of five existing hoop structures. Fifteen new parking spaces would be installed, of which three would be designated for ridesharing. The operation employs eight full-time workers. There would be a maximum of 20-24 employees during peak harvest time. Harvests would occur up to three times per year and would last up to approximately two weeks, depending on weather conditions. Hours of operation would be from 7:00 AM to 4:30 PM, Monday through Saturday. Two existing on-site water wells would provide water for the cultivation and employees, one of which is a domestic water well. An existing on-site septic system and portable toilets would provide wastewater treatment for the employees. The property is a 62.45 acre parcel zoned Ag-II-40 and shown as APN 099-240-072 located at 1180 West Highway 246 in the Buellton area, Third Supervisorial District.

B. Background:

The Applicant submitted a Land Use Permit (LUP) application for cannabis cultivation to the Santa Barbara County Planning and Development Department on November 21, 2018. Staff reviewed the Cannabis LUP application for compliance with Section 35.42.075 of the LUDC, and the Director approved the application on May 7, 2019, with an appeal deadline of May 17, 2019. The LUP was approved based upon the proposed cannabis operation complying with the applicable policies and standards contained in the LUDC. On May 8, 2019, the Applicant submitted an application for a new and separate LUP (19LUP-00000-00188) to place 22 acres of hoop structures over the approved cultivation area, as well as to add two new 3,000 sq. ft. agricultural buildings to be used for processing and one new 1,080 sq. ft. three-sided shade structure for sheltering the fertilization equipment. The second LUP was submitted at a later date due in part to the date when the Hoops Ordinance was effectuated. The Appellant, Sharyne Merritt, filed a timely appeal of 18LUP-00000-00496 on May 17, 2019. P&D determined that as the Planning Commission appeal would be a *de novo* hearing of the entirety of both proposed LUP's, so the Applicant withdrew the second LUP, Case No. 19LUP-00000-00188, and the Applicant incorporated its elements into the project description of 18LUP-00000-00496 for *de novo* review by the PC as part of the appeal.

The Planning Commission considered the proposed project on October 30, 2019, at which time the Planning Commission continued the item to November 7, 2019, with direction to staff to return with additional conditions of approval. These proposed conditions included increasing the buffer on the north, east and west sides of the property, decreasing the total acreage of hoops, decreasing the acreage of total cultivation, prohibiting drying on site, and to have the Director review the efficacy of the Conditions of Approval and report back to the Planning Commission regarding any needed adjustments to the Conditions of Approval after 2 years. At the November 7, 2019, hearing, the Planning Commission denied the appeal, and granted *de novo* approval of the Proposed Project, subject to additional conditions of approval. During the hearings on October 30, 2019, and November 7, 2019, the Planning Commission considered evidence in the record, statements given by the Appellant and the Applicant, and public testimony with regard to the Proposed Project. The Planning Commission Staff Report dated October 10, 2019, and subsequent memorandums dated October 29, 2019, and November 5, 2019, are included as Attachments 4, 5, and 6, respectively, and provided an analysis of the Proposed Project's consistency with the LUDC, Comprehensive Plan and Santa Ynez Valley Community Plan (SYVCP).

On November 18, 2019, the Applicant and Appellant, Ms. Sharyne Merritt in conjunction with the Santa Barbara Coalition for Responsible Cannabis, filed separate timely appeals (Case Nos. 19APL-00000-000030 and 19APL-00000-00031, respectively), of the Planning Commission's *de novo* approval of the project to the Board of Supervisors. The appeal letters are included as Attachments 8 and 9, respectively. On February 17, 2020, Ms. Sharyne Merritt requested to withdraw as the Appellant and the Santa Barbara Coalition for Responsible Cannabis will continue as the Appellant regarding this appeal (Attachment 15). The Applicant's appeal issues and staff's responses are discussed in further detail under Section C of this Board Agenda Letter. The Appellant's appeal issues and staff's responses are discussed in further detail under Section D of the Board Agenda Letter.

C. Applicant Appeal Issues and Staff Responses

As noted above, the Applicant filed a timely appeal of the Planning Commission's *de novo* approval of the Proposed Project, Case No. 18LUP-00000-00496. Their appeal application (Attachment 9) contains a letter detailing why the Applicant believes four of the conditions that were incorporated by the Planning Commission conflict with County and State requirements regarding cannabis activities and impair agricultural productivity on the site. These four conditions: 1) reduce the allowable area of hoop structures

and dictate where they shall be located, 2) reduce the allowable area of planted cannabis, 3) prohibit onsite drying and staggered harvests while requiring flash-freezing of product to reduce odor impacts and 4) require Director and Planning Commission review of the project after two years focused on efficacy of odor control conditions and any pesticide drift conflicts. These appeal issues and staff's responses are summarized below.

Applicant Appeal Issue 1—Condition No. 3 Reduction and Location of Hoop Structures: The Planning Commission added the following condition as Condition No. 3 to the LUP (Attachment 2A): “The total amount of hoop structures shall be reduced to five acres. Hoop structures shall cover the planted cannabis areas along the eastern and western edge of the cannabis cultivation. Additional hoop structures may be allowed within the interior planted cannabis areas so long as the total acreage of five acres of hoop structures is not exceeded.”

The Applicant asserts that to line the eastern and western property lines with hoops would require 9-10 acres of hoops, far exceeding the desired five-acre maximum. Additionally, in Condition No. 5 the Planning Commission required non-planted buffer areas of 100 feet along the eastern and western property lines to ensure compatibility with neighboring agricultural properties. The Applicant argues that both non-planted buffer areas and hoop covered planting areas along property lines is redundant and does not align with their proposed cultivation practices. The Applicant requests that the condition be revised to limit hoop structures to Fields A, D, E, and F (as labeled on sheet A103 of the project plans (included as Attachment 13) with a maximum allowable area of hoop structures of 14 acres.

Staff Response: In crafting the condition on reduction and location of hoop structures the Planning Commission had two goals: 1) that the visual impacts of hoops would be reduced by limiting overall project hoop acreage and 2) to ensure that cannabis grown along the eastern and western property lines would be protected from potential pesticide overspray from neighboring agricultural properties by being covered with hoop houses.

The Planning Commission wanted to limit the visual impacts of the hoop structures from public viewing along Highway 246, so reduced hoop coverage to 5 acres. However, requiring hoops along the East and West property lines for pesticide drift protection purposes may have placed them in one of the more highly visible locations on the property. Hoop structures would not be visible from Highway 246 if they were located in the other proposed cultivation areas (areas A1, B, C, D, and E) as depicted on Sheet A103 of Attachment 13. Areas A1, B, C, D, and E are screened by the existing olive trees, the single family dwelling and/or the dwelling landscaping, as well as by the natural topography of the site where the parcel drops down in elevation towards its south end going into the Santa Ynez River corridor.

As for issues of pesticide drift, drift is not allowed under rules set forth by the California Department of Pesticide Regulation. Statewide, County Agricultural Commissioner offices are tasked with investigating pesticide complaints and have the option of taking enforcement actions when violations occur. However, the Santa Barbara County Agricultural Commissioner's office focuses on education and outreach to prevent any problems from pesticide drift from occurring. Recently the Agricultural Commissioner convened a working group comprised of conventional crop growers, cannabis growers, vintners, pest control businesses, aerial pesticide applicators and pest control advisors. The working group collaboratively developed a reference document to guide farmers and applicators in considerations and assessments they can make before and during pesticide application to avoid any problems with drift or overspray (included as Attachment 12). One of the key recommendations is to communicate with neighboring agricultural operators.

Applicant Appeal Issue 2—Condition No. 4 Reduction in Planted Cannabis is Infeasible: The Applicant asserts that the 18-acre maximum of planted cannabis would render the project parcel ineligible under the California Land Conservation Act (Williamson Act) and prevent it from being under contract, because of the minimum 22 acre commercial agricultural production requirement. The Applicant asserts that the additional four acres of production of a non-cannabis product would be infeasible to commercially farm something other than cannabis for those 4-acres and continue to remain in conformance with the Uniform Rules. Furthermore, non-cannabis agricultural employees on the premises may raise conflicts or issues with the Cannabis Business License regulations that require detailed information regarding all cannabis employees associated with the operation.

Staff Response: The original Proposed Project included a request for 18 acres of outdoor cannabis cultivation. Section 1-2.3.A.1 of the Agricultural Preserve Uniform Rules (Uniform Rules) requires that the property owner maintain either 50% of the premises or 50 acres (whichever is less), fully planted in commercial agricultural production (with certain exceptions)—“unless it can be demonstrated to the APAC that the standard is unreasonable due to terrain, sensitive resources, or other similar constraints.” The subject property is 62.45 acres in size and, pursuant to Uniform Rules, 50% of the parcel should be fully planted without taking into consideration features of the premises which could limit production. However, the Santa Ynez River riparian corridor is located within the southerly portion of the subject property, which limits the area on the subject property that can be cultivated. At their January 11, 2019 meeting APAC took this fact into consideration when assessing the original proposed project’s consistency with Uniform Rules, and determined that 22 acres of the subject property are suitable for, and should be placed in, agricultural cultivation (Attachment 14). The APAC did not specify what type of crop should be cultivated and the 22 acres of cultivation could be achieved with a variety of different crops, not necessarily all cannabis. Therefore, the Applicant revised the original proposed project to include 22 acres, instead of 18 acres, of cannabis cultivation.

The Planning Commission added a Condition of Approval limiting cannabis cultivation on the site to 18 acres and implying that the additional 4 acres of cultivation (to reach 22 total) could be another non-cannabis crop. (See Condition #4, Attachment 2A) The 18 acres limit for cannabis was consistent with the Applicant’s original proposal, and was intended to address visual impact issues and potential compatibility concerns with surrounding agriculture.

As noted above, the APAC determined that 22 acres of agricultural cultivation is required to be consistent with the Uniform Rules for this property due to constraints. The appeal issue is whether 22 acres of cannabis cultivation is appropriate for this site or whether a reduced acreage of cannabis cultivation supplemented with another crop to equal 22 acres is more appropriate.

Applicant Appeal Issue 3—Condition No. 15 Odor Abatement Plan is Impractical: The Applicant asserts that the Odor Abatement Plan, as conditioned by the Planning Commission, is impractical and would significantly impair the proposed cannabis activities. The Applicant requests the following changes be made to Condition No.15 (Attachment 2A) that were imposed by the Planning Commission (deletions shown in strikethrough font and insertions shown in underlined font):

- 15. Odor Abatement Plan.** The Applicant shall update the the Odor Abatement Plan stamped “Zoning Approved” (Attachment K to the Staff Report dated October 10, 2019) to incorporate the following methods for reducing odors:

1. The applicant ~~shall not dry cannabis onsite~~ may dry cannabis onsite if the drying operations occur within a sealed building with appropriate filtering on any vents to prevent the escape of odors.
2. ~~The Applicant shall harvest fresh plants and immediately flash freeze them in temporary freezers on wheels or to box and ship them as fresh cut flowers upon harvest.~~
3. ~~All plant material shall either be vacuum sealed and flash frozen or shipped offsite within two hours of harvest. The Applicant shall have a variety of options upon harvesting the crop, either (a) flash freezing it in temporary freezers; or (b) sealing it in containers and shipping them as fresh cut flowers upon harvest; or (c) placing in a sealed building with odor control for drying; or, (d) any combination of the foregoing methods. Regardless of the harvest method used, the crop shall be weighed within two hours of cutting in order to comply with State regulations.~~
4. The Applicant shall ~~not stagger harvest periods throughout the property.~~ conduct no more than three (3) harvests per year, each for an approximate 2-week period.
5. The Applicant shall grow genetics that feature citrus, pine and floral flavor profiles, reducing the potential for the ‘skunk’ odor anecdotally associated with cannabis cultivation.
6. The only indoor cultivation onsite shall occur within the one existing greenhouse and is for plants in vegetative state only. These plants shall not be scheduled to mature to the flower stage and therefore shall not emit any odor.

If a substantially continuous public nuisance is verified as emanating from this property, Busy Bee’s Organics will take the following tiered approach to curtail the nuisance:

1. Install wind screens that direct ground-level air upward thereby increasing dispersion through turbulence and elevating the most odorous air to heights above that of an individual’s nose.
2. Install and/or operate fans normally used to protect orchards from frost to increase dispersion and direct ground-level air to heights above that of an individual’s nose.
3. In the event that Tiers 1 and 2 above are insufficient to abate a continuous public nuisance, then the Applicant shall install and/or operate the best available vapor-phase odor control system along the length of property boundary or another more beneficial location between the cultivation activities and the individual receptor(s) that have lodged the complaint. All installation shall comply with County requirements.

Staff Response: The Planning Commission modified Condition No. 15 to enhance the efficacy of the Odor Abatement Plan and reduce the potential for odor impacts from processing activities. Since harvest and drying are often acknowledged as the most odor producing stages of the cannabis cultivation process, the Planning Commission restricted any drying on-site and attempted to limit the frequency and duration of harvests to reduce potential project odor impacts as required by the SYVCP. Condition No. 15 as revised by the Planning Commission is included in Attachment 2A.

Section 35.42.075.C.6 (Cannabis Regulations; General Commercial Cannabis Activities Development Standards; Odor Abatement Plan) of the LUDC states: “No odor abatement plan shall be required in AG-II zoning, unless a Conditional Use Permit is required.” The subject parcel is zoned AG-II, and because a Conditional Use Permit is not required for the Proposed Project, an odor abatement plan is not required

for the Busy Bee’s Organics Land Use Permit in order to comply with the LUDC Development Standards for cannabis activities. However, the subject parcel is located within the boundaries of the SYVCP area and, therefore, is subject to the SYVCP goals and policies. Policy LUG-SYV-8 of the SYVCP states: “The public shall be protected from air emissions and odors that could jeopardize health and welfare.” In order to comply with this policy, an applicant must satisfy SYVCP Development Standard DevStd LUG-SYV-8.11, which states:

Future Applicants for wineries or other odor generators, based on the nature of the operations, shall develop and implement an Odor Abatement Plan (OAP). The OAP shall include the following:

- *Name and telephone number of contact person(s) responsible for logging and responding to odor complaints;*
- *Policy and procedure describing the actions to be taken when an odor complaint is received, including the training provided to the responsible party on how to respond to an odor complaint;*
- *Description of potential odor sources;*
- *Description of potential methods for reducing odors, including minimizing potential add-on air pollution control equipment; and*
- *Contingency measures to curtail emissions in the event of a continuous public nuisance.*

Lastly, as proposed, the Odor Abatement Plan Condition as modified by the Applicant refers to State regulations which not enforceable by the County. Condition No.15 of Attachment 2B, Applicant proposed conditions, has been revised to omit reference to State requirements.

Applicant Appeal Issue 4—Condition No. 25 Director Review is Unnecessary: Condition No. 25 of the LUP that the Planning Commission incorporated states:

The Director shall review the Proposed Project two years after issuance of the Land Use Permit Case No. 18LUP-00000-00496. The purpose of this review is to assess the effectiveness of the project conditions that address odor control and potential pesticide related conflicts with adjacent agricultural operations. The Director may make modifications to the conditions as deemed necessary. The Director shall report back to the Planning Commission on the efficacy of these conditions and any required modifications to the conditions of approval.

The Applicant asserts that this condition is redundant and unnecessary because Chapter 50 of the County Code, “Licensing of Cannabis Operations,” already requires yearly renewal of an operator’s business license. The Applicant argues that this yearly business license renewal process which requires review by Planning and Development, Environmental Health, Fire, Sheriff and the Agricultural Commissioner and is sufficient to allow for the denial of a business license renewal if the CEO’s office or other departments determine that the standards imposed on the Proposed Project are “insufficient to maintain the health, safety, and general welfare of employees or the public.” Therefore, the Applicant requests that Condition No. 25 be removed from the LUP. Furthermore, Section 50-26 of Chapter 50 allows for suspension or revocation of a business license if the land use entitlement is suspended or revoked, or if the operator is engaging in conduct that constitutes a nuisance, where the licensee has failed to abate the nuisance.

Staff Response: The Applicant’s characterization of the Business License renewal process and the avenues it provides for suspension or revocation of those licenses is accurate. The Planning Commission applied this condition to the LUP because it wanted to provide an avenue for the conditions of approval to be re-evaluated, modified if deemed necessary by the Director, as well as reported back to the Planning Commission. Chapter 50 requires a licensee to maintain a valid land use entitlement for a licensed cannabis activity pursuant to the requirements of the LUDC (i.e., the applicable zoning ordinance set forth in Chapter 35 of the County Code). However, the provisions in Chapter 50 do not afford the Director the authority to modify the conditions of approval of the LUP; the provisions for doing so are set forth in the LUDC (§ 35.84.060). Therefore, the Planning Commission imposed the condition on the LUP, rather than rely on the business license renewal procedures, to require the Director to review and report back to the Planning Commission on the efficacy of the conditions of approval.

In addition to the land use process the regulations contained in Chapter 50, Licensing of Cannabis Operations, provide a process for annual review of existing operations. As written, Chapter 50 requires that an operator renew their business license every year. Under the annual renewal, the operation is reviewed to ensure that it complies with the standards detailed Chapter 50, Chapter 35, as well as the approved project conditions. The renewal of a license can be denied pursuant to Section 50.20 – Denial of renewal licenses and Section 50-17 – Grounds for denial of a business license; excerpts are shown below.

Sec. 50-20. - Denial of renewal licenses.

(a) An application for renewal of a cannabis business license shall be denied if:

- (1) The application is filed fewer than sixty calendar days before the cannabis business license expiration;*
- (2) The licensee fails to conform to and comply with the criteria set forth in this chapter, including possession of all required and valid state licenses;*
- (3) The licensee is delinquent in payment of county taxes on commercial cannabis activity;*
- (4) The cannabis business license is suspended or revoked at the time of the application or at any time before issuing the renewal license;*
- (5) The land use entitlement/permit for the commercial cannabis operation is suspended or revoked at the time of the application or at any time before issuing the renewal license;*
or
- (6) Any of the grounds for denial listed in section 50-17 are present.*

Sec. 50-17, Grounds for Denial of a License, includes the following criteria:

(d) The applicant's operations, energy conservation, equipment, inventory control, quality control, security waste management or cultivation plans, or other information in the application are determined to be insufficient to maintain the health, safety and general welfare of employees or the public or fail to comply state law or the County Code by staff from the agricultural commissioner, fire, planning and development, community services, public health or sheriff's departments;

Through the Business License review as codified in Chapter 50, a business license renewal may be denied if the CEO’s office, with conjunction with departments (e.g., Sheriff, Ag Commission and Planning and Development), determine that the standards imposed upon the operation are “insufficient to maintain the health, safety, and general welfare of employees or the public”.

Furthermore, Sec. 50-26 *Suspension Or Revocation Of A Cannabis Business License*, allows the CEO's office to suspend or revoke a business license, based on substantial evidence, if the land use entitlement is suspended or revoked, or if the operator is "engaging in conduct that constitutes a nuisance, where the licensee has failed to abate the nuisance." The business license renewal process was specifically designed to continuously monitor operations and to ensure that operators conform to the project's required conditions and ordinance standards and that impacts to the surrounding community and uses are avoided or minimized.

D. Appellant Appeal Issues and Staff Responses

As noted above, the Appellant, the Santa Barbara Coalition for Responsible Cannabis, filed a timely appeal of the Planning Commission's *de novo* approval of the Proposed Project. The Santa Barbara Coalition for Responsible Cannabis' appeal application (Attachment 8) contains a letter detailing why the Appellant believes the decision of the Planning Commission is not in accord with applicable law, including the Comprehensive Plan. These issues include: lack of transparency in the County permitting process, inadequacy of environmental review under CEQA, improper processing of the project under a Land Use Permit rather than a Conditional Use Permit, inconsistency with the Comprehensive Plan and Santa Ynez Valley Community Plan, and project findings that are not supported by substantial evidence and lack adequate specificity. Planning and Development staff has reviewed the appeal issues raised and has found that they are without merit. These appeal issues and staff's responses are summarized below.

Appellant Appeal Issue 1—Lack of transparency and public involvement in the County process:

The Appellant states: "The public has no opportunity to engage in permitting until permits are issued; the County's review and approval process is not transparent and instead, for this permit and others, the process has been conducted in such a way that the most affected individuals and businesses and the public receive significant project information at the last possible time."

Staff Response: Staff satisfied all of the legal noticing requirements for processing the LUP application for the Busy Bee project. Specifically, pursuant to the noticing requirements set forth in §35.42.075.B.3.a of the LUDC, staff provided notice of the proposed project in the form of a letter mailed to all property owners located within 1,000 feet of the project parcel (23 letters were sent), and in the form of a sign posted at the front entrance to the property. Additionally, the project underwent review by the Central Board of Architectural Review on June 14, July 25 and August 22, 2019, for which mailed notices were sent to all residents within 1,000 feet on June 3 and on July 12, 2019. Further, at the APAC's noticed, public meeting on January 11, 2019, ten members of the public attended. At this meeting the APAC considered the proposed project and its conformance with the Uniform Rules. Ultimately, the project was appealed to the Planning Commission and considered at two public hearings on October 30, 2019 and November 7, 2019. Pursuant to §35.42.075.B.3.a of the LUDC, staff mailed public notice to all property owners within 1,000 feet for the Planning Commission meeting and extensive public comment was received via mail, e-mail, and in-person testimony at both of the hearings. Finally, staff provided public notice of the March 17, 2020 Board of Supervisors hearing, pursuant to the requirements of §35.106.020 of the LUDC. Proper noticing was conducted pursuant to the requirements of the LUDC during the processing of the LUP application. Furthermore, members of the public can make arrangements to view project plans at Planning and Development Department offices and can directly contact the preparer of plans and request copies of the plans.

In addition to satisfying the specific LUDC noticing requirements for the proposed project, staff has provided other resources whereby the public may obtain general information regarding the cannabis land

use entitlement and business licensing process, as well as information regarding a specific project. For example, the County's "Cannabis Regulation and Licensing" website (<http://cannabis.countyofsb.org/>) contains detailed information about the "Step-by-Step Process" involved in reviewing a cannabis project application, the cannabis ordinances, the business licensing process, State licensing requirements, tax regulations, news and events related to cannabis, links to additional resources, and an interactive map that shows the proposed locations and statuses of all cannabis projects currently under consideration. In addition, the public may sign up for Accela Citizens Access (<https://aca.sbcountyplanning.org/CitizenAccess/Welcome.aspx>) which is an on-line portal for the public and others to monitor the status of a specific land use entitlement application. Additionally, as part of standard docketing procedures, Planning Commission staff reports and all associated documents are made available to the public on the County's website one week prior to hearings. This is the same day that Planning Commissioners themselves receive the same information in hard copy form by delivery. Therefore, the handling of the Busy Bee project specifically, and the County's cannabis project review process in general, have been transparent and have provided extensive opportunity for public involvement.

Appellant Appeal Issue 2—Inadequacy of CEQA Review: The Appellant asserts that the County's environmental review of the project under CEQA has been inadequate because the potentially significant environmental impacts of terpene drift from cannabis farms to neighboring agricultural sites and of pesticide drift from neighboring agricultural sites onto cannabis were not addressed in the PEIR.

Staff Response: The findings and CEQA analysis presented to the Planning Commission and to your Board in Attachments 1 and 3 discuss how the previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed. On February 6, 2018, the Santa Barbara County Board of Supervisors certified the PEIR that analyzed the environmental impacts of the Cannabis Land Use Entitlement and Licensing Program (collectively, "Program"). The PEIR was prepared in accordance with the State CEQA Guidelines Section 15168 and evaluated the 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 evaluated the potentially significant impacts of cannabis operations, including cultivation, nurseries, manufacturing (volatile and non-volatile), distribution, testing, microbusinesses, and retail, in the unincorporated areas of the County. Impacts in the issue areas of aesthetics and visual resources, agricultural resources, air quality, biological resources, cultural resources, geology, energy conservation, public services, water resources, hazards and public safety, land use, and noise, were found to be reduced to less than significant levels with mitigation. In addition, Class I impacts were identified in the areas of agricultural resources, air quality and greenhouse gas emissions, noise, and transportation. These Class I impacts are listed below and are discussed in more detail in the PEIR (Attachment 11):

- Impact AG-2. *Cumulative cannabis-related development would potentially result in the loss of prime agricultural soils. However, the Project would not result in conversion to non-agricultural use or impair agricultural land productivity (whether prime or non-prime).*
- Impact AQ-1. *Cannabis activities could be potentially inconsistent with the Clean Air Plan and County Land Use Element Air Quality Supplement.*
- Impact AQ-3. *Emissions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment.*
- Impact AQ-4. *Cannabis activities could be potentially inconsistent with the Energy and Climate Action Plan.*
- Impact AQ-5. *Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.*
- Impact NOI-2. *Cannabis cultivation, distribution, manufacturing, processing, testing, and retail sales facilities would result in long-term increases in noise from traffic on vicinity roadways and from cultivation operations.*
- Impact TRA-1. *Cannabis activities may result in increases of traffic and daily vehicle miles of travel that affect the performance of the existing and planned circulation system.*
- Impact TRA-2. *Cannabis activity operations may result in adverse changes to the traffic safety environment.*

The Board of Supervisors certified the PEIR and adopted a Statement of Overriding Considerations for these Class I impacts on February 6, 2018.

Section 15168(c)(2) of the State CEQA Guidelines applies to subsequent activities resulting from the project that was evaluated in the PEIR; it states that “[i]f the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document would be required.” Section 15162 of the State CEQA Guidelines gives the criteria where a previously certified EIR can be used and when a new EIR may be prepared. Because an EIR has already been certified, State CEQA Guidelines Sections 15162 and 15168 state that no subsequent EIR or Negative Declaration shall be prepared for the proposed project if it will not have effects that were not examined in the PEIR or unless one or more of the following have occurred: 1) substantial changes are proposed in the project which will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial

increase in the severity of previously identified significant effects; 2) substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or 3) new information of substantial importance which was not known and could not have been known at the time the previous EIR was certified as complete has become available.

The PEIR that analyzed the environmental impacts of the Cannabis Program constitutes adequate environmental review for the Busy Bee's Organics, Inc. Cannabis Cultivation project. The proposed project consists cannabis activities and development that were studied within the PEIR and has no effects that were not examined in the PEIR (Attachment 3). The proposed project site is zoned AG-II-40, which is one of the zones that was evaluated for proposed cannabis cultivation activities in the PEIR (PEIR page 2-36, Table 2-5). Furthermore, the Santa Ynez region in which the proposed project site is located is one of five regions 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).

There are no substantial changes or changed circumstances under which the proposed project is to be undertaken as analyzed in the PEIR. No new significant environmental effects or substantial increases in severity of previously identified significant effects under the certified PEIR would result from the proposed project. Further, there is no new information that the proposed project will have one or more significant effects not discussed in the certified PEIR. The analysis contained within the PEIR addresses the cumulative impacts that would be associated with the proposed project and the PEIR identifies the mitigation measures that would mitigate those impacts to the extent feasible. These mitigation measures were included as development standards in Section 35.42.075 [Cannabis Regulations] of the LUDC, and have been applied as development standards and as proposed project conditions of approval for the Busy Bee's Organics Cannabis Cultivation project. Section 6.4.4 of the Planning Commission Staff Report dated October 10, 2019 (Attachment 4), incorporated herein by reference, lists applicable development standards from Section 35.42.075 of the LUDC and describes how the proposed project complies with these standards. Proposed project conditions resulting from applicable development standards are included within Attachment 2A (Planning Commission Conditions of Approval) and Attachment 2B (Applicant Proposed Conditions of Approval) incorporated herein by reference. The proposed project would be monitored by Planning and Development staff to ensure compliance with development standards and approved project conditions (Attachment 2A, Condition No. 33 and Attachment 2B, Condition No. 32).

Additionally, the environmental conditions present on the subject parcel were carefully evaluated by Planning and Development staff in addition to local and regional experts in order to make sure that there is nothing unique or sensitive about the parcel. The Applicant provided a Biological Assessment and Wildlife Movement Plan prepared by County-approved biologist David Lee at the Davey Resource Group (DRG) on March 1, 2019. The California Department of Fish & Wildlife (CDFW) evaluated the Proposed Project, conducted a site visit, and on February 14, 2019, issued a Notification that a Lake and Streambed Alteration Agreement is not required for the Proposed Project. The Regional Water Quality Control Board (RWQCB) reviewed the Proposed Project and determined that it meets the requirements for the State Water Board's Cannabis Cultivation Waste Discharge Regulatory Program on November 16, 2018. The California Department of Food and Agriculture (CDFA)-CalCannabis approved the Pest Management Plan dated March 23, 2018, for the Proposed Project.

Because none of the conditions in State CEQA Guidelines Section 15162 have occurred, the PEIR constitutes adequate environmental review and no subsequent initial study, negative declaration, tiered EIR, or new EIR is required for the Busy Bee's Organics, Inc. Cannabis Cultivation project (Case No. 18LUP-00000-00496). As discussed above, the Board of Supervisors certified the PEIR and adopted a statement of overriding considerations to justify approval of the Program despite the Program's unavoidably significant impacts. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.

With regard to terpene drift from cannabis farms to neighboring agricultural sites (e.g., viticulture sites), there is insufficient scientific information to determine to what degree (if at all) terpenes from cannabis can adversely affect agricultural crops which might be exposed to cannabis terpenes. Furthermore, the PEIR analyzed terpenes as Biogenic Volatile Organic Compounds (BVOCs) in the context of odor impacts in the Air Quality Section (8-8) and concluded that impacts are unavoidably significant. The PEIR included mitigation for terpene related impacts in the form of requiring Odor Abatement Plans for all cannabis projects in AG-I areas. During the adoption hearings, the Board also required OAPs for cannabis projects in AG-II areas where a Conditional Use Permit is required. The use of pesticides and insecticides by non-cannabis cultivation and the accompanying regulatory framework was the same at the time the PEIR was prepared and certified as it is now. It is not new information that triggers additional environmental review.

Operations are subject to existing laws and regulations governing the cultivation and associated hazardous activities, including pesticide use regulations under the US Environmental Protection Agency (USEPA), the California Environmental Protection Agency (CalEPA) and the California Department of Pesticide Regulation. Existing State and Agricultural Commissioner policies regulate pesticide spray and drift. Agriculturalists who use pesticides must obtain an Operator Identification Number from the Agricultural Commissioner's Office before they can purchase or use pesticides. The Agricultural Commissioner's Office is currently investigating this potential and important issue.

The use of pesticides and insecticides by non-cannabis cultivation and the accompanying regulatory framework was the same at the time the PEIR was prepared and certified as it is now. It is not new information that triggers additional environmental review. In addition, CEQA requires the assessment of a project's impact on the environment. The issue of pesticide drift is an important issue, but it would not be considered an environmental impact resulting from the project. It should also be noted that adjacent agricultural operations may still use other application methods that would minimize or eliminate the potential for drift.

In addition, CEQA requires the assessment of a project's impact on the environment. The issue of pesticide drift is an important issue, but it would not be considered an environmental impact resulting from the project. This issue is also addressed under Appellant Appeal Issue 3 Staff Response.

Appellant Appeal Issue 3—APAC did not review compatibility with neighboring agricultural uses:

The Appellant asserts that the APAC did not review the project's compatibility with neighboring agricultural uses when it was approved.

Staff Response: APAC reviewed the Busy Bee project on January 11, 2019, and determined it was consistent with the Uniform Rules. The Uniform Rules include §2.1.1 (Principles of Compatibility) which state:

1. *The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or other contracted lands in agricultural preserve.*
2. *The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or other contracted lands in agricultural preserve.*
3. *The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.*

The Uniform Rules do not require APAC to evaluate the impacts of terpene and pesticide drift. However, terpene drift in the form of odor impacts was considered under CEQA and is discussed above in Appellant Appeal Issue #2 above.

Appellant Appeal Issue 4—The project should have been processed as a Conditional Use Permit (CUP): The Appellant contends that the Applicant should have been required to apply for and obtain a Conditional Use Permit instead of a Land Use Permit, because the Proposed Project site is adjacent to the North Highway 246 Existing Developed Rural Neighborhood (EDRN).

Staff Response: The subject parcel is not located within or adjacent to an EDRN. Pursuant to §§ 35.42.075.B.4 of the LUDC, commercial cannabis cultivation on lots located in or adjacent to an EDRN, or commercial cannabis cultivation that requires the use of a roadway located within an EDRN as the sole means of access to the lot on which cultivation will occur, require a CUP. Additionally, cultivation on lots located adjacent to an EDRN and/or Urban Rural boundary shall require approval of a CUP. The subject parcel is not adjacent to the North Highway 246 EDRN, because Highway 246 (a separate parcel owned by the State) is located between the subject parcel and the EDRN. Pursuant to Section 35.110.020 of the Land Use and Development Code, “adjacent” (which has the same meaning as “abut”) is defined as “[t]o physically touch or border upon; or to share a common property line.” Additionally, there are two paths of travel to the proposed site, one of which does not pass through an EDRN, thus the sole means of access is not located within an EDRN. The path of travel not located through the EDRN would be from Highway 101 through Drum Canyon Road to Highway 246 and would access the project site from the west. This is a feasible route to the site. Therefore, a CUP is not required for the proposed project and instead a LUP is the appropriate permit type.

Appellant Appeal Issue 5— Fails to Comply with Applicable Land Use Plans and LUDC: The Appellant asserts that the project violates a number of the SYVCP and County’s Comprehensive Plan policies, including policies in the Agricultural Element, the Environmental Resource Management Element, the Air Quality Supplement to the Land Use Element, and others.

Staff Response: Section 6.3 of the Planning Commission Staff Report dated October 10, 2019 (Attachment 4), incorporated herein by reference, analyzes the proposed project’s consistency with the Comprehensive Plan, the LUDC and the SYVCP. The Busy Bee’s Organics Cannabis Cultivation project (Case No. 18LUP-00000-00496) conforms to the applicable provisions of the Comprehensive Plan, including the LUDC and the SYVCP.

Appellant Appeal Issue 6-- Finding 2.1.1 in the Planning Commission's approval cannot be made:

The Appellant asserts that Finding 2.1.1 “that adequate public or private services or resources are available to serve the proposed development” cannot be made. The Appellant noted that the finding mentions that the H-2A Agricultural Workers program will provide portable toilets and handwashing stations to the project, however, the H-2A Agricultural Workers program is impermissible for cannabis cultivation under Federal law.

Staff Response: Provision of portable toilets and handwashing stations by the H-2A program is not a component in the project description. All toilets and handwashing stations will be provided by the Applicant subject to the approval of the County's EHS Department and in compliance with OSHA standards. This finding has been rewritten for the Board to remove reference to the H-2A program. (See Finding 2.1.1 of Attachment 1). Therefore, Finding 2.1.1 can be made that adequate sanitation services are available to serve the project from the existing onsite permanent restrooms attached to an adequate septic system and portable toilets as approved by EHS.

Appellant Appeal Issue 7-- Finding 2.1.2 in the Planning Commission's approval cannot be made:

The Appellant asserts that the finding that “the subject property is in compliance with all laws, regulations and rules...” cannot be made because the project expanded beyond its existing legal nonconforming size and was therefore not in compliance with all laws, regulations, and rules.

Staff Response: The Applicant filed an affidavit on December 27, 2017 stating that they had been operating a medical marijuana cultivation site on their property since or before January 19, 2016. On January 5, 2018 the County sent a letter to the Applicant which acknowledged receipt and acceptance of this affidavit. Subsequently, the County received two complaints regarding the Busy Bee Organic's operations. The first complaint was filed in April of 2019 refuting the applicant's legal non-conforming status. The second complaint was filed in November of 2019 regarding odor. As detailed in Section B of this Board Letter, the Applicant submitted an application for a Land Use Permit (LUP) in November of 2018. The LUP was approved in May of 2019, thereby authorizing the existing cannabis operation. With approval of the LUP as conditioned, the proposed project will be in full compliance with all laws, rules, and regulations pertaining to zoning uses, subdivisions, setbacks, and all other applicable provisions of the Land Use and Development Code for cannabis cultivation within the AG-II zone district.

Other Issues: The Appellant alleges that the absence of a temporal limit on the cultivation entitlement has the potential to vest a right to continue operating as permitted despite revisions to the County's ordinances, changes in state law and changes in air pollution control and other mitigation technologies that are inevitable. This allegation is with regard to County Code requirements and is not specific to this project.

For the reasons discussed above, staff finds that the appeal issues raised are without merit and Planning and Development staff recommends that the Board deny the appeal.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$13,915 (60 hours of staff time). The costs for processing appeals are partially offset by a fixed appeal fee and General Fund subsidy in Planning and Development's adopted budget. The fixed appeal fee was paid by two appellants in the amount of \$685.06

each or \$1,370.12 total. Funding for processing this appeal is budgeted in the Planning and Development Permitting Budget Program, as shown on page D-269 of the adopted 2019-20 Fiscal Year budget.

Special Instructions:

The Clerk of the Board shall forward a minute order of the hearing to the Planning and Development Department, Hearing Support.

Attachments:

1. Findings
- 2A. Conditions of Approval (PC Approval)
- 2B. Conditions of Approval (Applicant Proposed)
3. Environmental Document including CEQA Checklist
4. Planning Commission Staff Report dated October 10, 2019
5. Planning Commission Memorandum dated October 29, 2019
6. Planning Commission Memorandum dated November 5, 2019
7. Planning Commission Action Letter dated November 12, 2019
8. Board of Supervisors Applicant Appeal Application dated November 18, 2019
9. Board of Supervisors Appellant Appeal Application dated November 18, 2019
10. PEIR (17EIR-00000-00003) Executive Summary
11. PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003
12. Pesticide Drift Mitigation Considerations Guide – prepared by Agricultural Commissioner’s Working Group
13. Site Plans dated October 9, 2019
14. APAC Minutes from January 11, 2019
15. Co-Appellant Withdrawal dated February 17, 2020
16. Comprehensive Plan and Policy Consistency Analysis (PC Approval)
17. Comprehensive Plan and Policy Consistency Analysis (Applicant Proposed)

Authored by:

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Development Review Division, Planning and Development Department