



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 & Development
Department No.: 053
For Agenda Of: June 4, 2024
Placement: Departmental
Estimated Time: 30 min.
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development 
Director(s) (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Planning and Development
(805) 568-2518

SUBJECT: Appeal of the County Planning Commission Approval of the Moriarty Holdings Cannabis Cultivation Project, Case Nos. 23APL-00005, 23CUP-00014, and 19LUP-00000-00273, Fourth Supervisorial District

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Staff recommends that the Board of Supervisors take the following actions to deny the appeal and approve the Project:

- a) Deny the appeal, Case No. 23APL-00005;
- b) Make the required findings for approval of the Project, Case No. 23CUP-00014, including CEQA findings;
- c) Determine that the previously certified Programmatic Environmental Impact Report (PEIR) (17EIR-00000-00003) is adequate and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines §15162 and 15168(c); and
- d) Grant approval of the Project, Case No. 23CUP-00014, subject to the conditions of approval.

Summary Text:

James Sullivan, et al., requests a hearing to consider Case No. 23APL-00005, an appeal of the County Planning Commission's decision to approve the Moriarty Holdings Cannabis Cultivation Project. The appeal was filed on January 31, 2023, in compliance with Chapter 35.102 of the County Land Use and Development Code (LUDC).

Section A of this Board Agenda Letter contains a description of the prior actions and ordinance amendments applicable to the Project, Section B contains a detailed description of the Project scope, and Section C contains the Appellant's appeal issue and staff's response. Staff reviewed the appeal and finds the issue raised is without merit. As discussed in Section 6.2 of the Planning Commission Staff Report (Attachment 6), the Project was appropriately reviewed under CEQA with preparation of a State CEQA Guidelines Section 15168(c)(4) Checklist (Attachment 4). Additionally, as discussed in Sections 6.3 and 6.4 of the Planning Commission Staff Report (Attachment 6), the Project is consistent with the Santa Barbara County Comprehensive Plan and applicable policies and standards set forth in the LUDC. The information included in the administrative record, including this Board Agenda Letter, supports approval of the Project.

A. Background:

On July 5, 2019, Jason Moriarty (hereinafter Applicant) submitted an application for a Land Use Permit (LUP), Case No. 19LUP-00000-00273, to allow commercial cannabis cultivation activities on a 40-acre parcel in the Santa Maria area, zoned Agriculture II (AG-II-100). On March 10, 2022, the Planning and Development Department Director approved the Project, finding it within the scope of the project covered by the previously-certified PEIR (Case No. 17EIR-00000-00003), and consistent with all applicable policies and standards set forth for cannabis projects in the Comprehensive Plan and LUDC.

On March 21, 2022, a group of appellants represented by James Sullivan (hereinafter Appellant) filed a timely appeal of the Director's approval, citing (1) impacts to the shared aquifer and surrounding groundwater wells, and (2) lack of legal access to the northern portion of the subject property via Long Canyon Road, as the basis of the appeal.

Staff reviewed the appeal and found the issues raised were without merit. The Applicant provided substantial evidence that demonstrated adequate water resources would be available to serve the Project and that the projected groundwater use of the Project would not result in a significant impact to groundwater resources. Additionally, the Project's proposed means of access to the northern portion of the Project site was sufficient for the purposes of the permit to demonstrate adequate services (i.e., roads) exist to serve the Project. On January 25, 2023, the appeal of the Director's approval of the Project LUP application was presented to the County Planning Commission. The County Planning Commission considered all evidence set forth in the record and statements given by the Appellant and the Applicant, and took action to deny the appeal and grant *de novo* approval of the Project.

It should be noted that on August 16, 2022, the Board of Supervisors adopted an amendment to LUDC Section 35.42.075 (Cannabis Regulations). This ordinance amendment became effective on January 31, 2023, after the Planning Commission's action, and changed the required permit for commercial cannabis cultivation activities from an LUP to a Conditional Use Permit (CUP). Accordingly, the Project LUP application was converted to a CUP application, Case No. 23CUP-00014.

On January 31, 2023, the Appellant filed a timely appeal of the County Planning Commission's approval of the Project LUP, citing the following issue as the basis of the appeal:

- Potential adverse impacts to surrounding domestic groundwater wells resulting from the Project's projected water use

As discussed in detail in Section B below, after the appeal was filed, the Applicant revised the proposed Project to remove all previously proposed components of the Project located north of Cat Canyon Creek. Staff reviewed the appeal and the revised Project and continues to find the appeal issue raised is without merit. Additionally, staff reviewed the Project in accordance with the CUP permit processing procedures provided in Section 35.82.060 of the LUDC, and findings for approval of the Project CUP application can be made (Attachment 1).

B. Proposed Project:

Following approval of the Project by the County Planning Commission and appeal by the Appellant, the Applicant revised the proposed Project to remove all previously-proposed components of the Project that were to be located north of Cat Canyon Creek. Specifically, the following has been removed from the scope of the proposed Project:

- 12.21 acres of outdoor cannabis cultivation under hoop structures
- A 9,500-square foot administrative office and processing building with permanent restrooms
- A new onsite wastewater treatment system
- A new groundwater well
- A 9,500-square foot processing building
- A 120-square foot guard shack
- A 2,400-square foot water storage and fertigation equipment barn
- A 26,000-square foot road base parking and loading area
- A 20-foot-wide all-weather road base driveway from Long Canyon Road (1,950 feet in length)
- A 3-foot by 6-foot box culvert crossing within a tributary to Cat Canyon Creek
- Grading consisting of 147 cubic yards of cut and 5,481 cubic yards of fill
- 21,548 square feet of landscape screening

The revised Project is now limited to 5.19 acres of outdoor cannabis cultivation and accessory development located south of Cat Canyon Creek, and no cannabis processing will occur onsite. The revised Project description is as follows:

The Project is a request for a Conditional Use Permit to allow 5.19 acres of outdoor cannabis cultivation under hoop structures. Each year, the operation will involve two grow cycles (one 90-day grow and one 120-day grow) and two harvest periods for a duration of one month per harvest period.

The Project site is bisected by Cat Canyon Creek. The 5.19 acres of outdoor cannabis cultivation is located south of the creek. All outdoor cannabis cultivation will be grown in soilless media pots and under hoop structures setback a minimum of 50 ft. from all property lines, and 100 ft. from the top-of-bank and edge of riparian vegetation of Cat Canyon Creek. Hoop structures will have a maximum height of 12 ft. and will not include any permanent structural elements, utilities, or lighting. The Project also includes a 120 sq. ft. pesticide and agricultural chemical storage shed (“Building B”), a 2,400 sq. ft. water storage and fertigation equipment barn (“Building A”), and a 7,300 sq. ft. road base parking and loading area south of Cat Canyon Creek. Access to the Project area will be provided by a new road base driveway, a minimum of 20-ft. in width, off Cat Canyon Road. The existing driveway (northerly easement) that extends from Long Canyon Road to the northeast corner of the Project site will not be used by the Project.

All harvested cannabis will be transferred offsite for processing the same day it is harvested, and there will be no cannabis processing (i.e., drying, curing, trimming, storing, packaging, or labeling) on the Project site. The operation will require a maximum of 6 regular, full-time employees and 8 seasonal employees who will be employed onsite during the two harvest periods per year (one month each; 2 months total per year). Hours of operation will be limited to the daylight hours that occur between 6 AM and 8 PM Monday through Saturday. Portable restrooms and bottled water will be provided for employee use in compliance with CalOSHA. Irrigation water will be provided by an existing groundwater well located south of Cat Canyon Creek.

The operational area south of Cat Canyon Creek will be secured with 6-ft.-tall wire mesh security fencing. Access will be controlled with a 6-ft.-tall, 16-ft.-wide wire mesh gate, which will remain locked at all times except during active ingress/egress. Additional security features include pole-mounted security lights at the access gate. All security light fixtures will be fully shielded and directed downward, and installed at a maximum height of 8 ft. All security light fixtures will be motion activated, and when triggered, will remain on for a maximum of three minutes. Screening will be provided by approximately 15,820 sq. ft. of landscaping planted along the southwestern, southern, and southeastern boundaries of the property.

Fire protection will be provided by the Santa Barbara County Fire Department, law enforcement will be provided by the Santa Barbara County Sheriff's Department, and electricity will be provided by Pacific Gas & Electric Co. No generators will be used onsite.

The Project site is a 40-acre parcel, zoned AG-II-100, and shown as Assessor's Parcel Number 101-070-069, located at 6980 Cat Canyon Road, in the Santa Maria area, 4th Supervisorial District.

C. Appeal Issue and Staff Response:

Appeal Issue – Impacts to Groundwater Resources

The Appellant asserts that the Project's projected water use will adversely impact the domestic water wells of neighboring residents.

Staff Response:

The Applicant provided substantial evidence that demonstrates adequate water resources are available to serve the Project, and that the projected groundwater use of the Project will not result in a significant impact to groundwater resources.

As discussed in detail in Section B above, following the approval of the Project by the County Planning Commission and appeal by the Appellant, the Applicant revised the proposed Project to remove the all previously-proposed components that were to be located north of Cat Canyon Creek, including 12.21 acres of outdoor cannabis cultivation, two 9,500-square foot processing buildings, 21,548 square feet of landscape screening, and a new (additional) Project well. Water for the remaining components of the proposed Project will be provided by the existing groundwater well located in the southeastern corner of the property. This existing well (identified as "B-2") is a 5-inch-diameter PVC-cased well, drilled to a depth of 140 ft. below ground surface (bgs), and screened (0.040-inch-aperture slotted perforations) from 60 ft. to 140 ft. bgs. There are also two additional wells in this southeastern corner of the property (identified as "B-5" and "irrigation well") that will not be used by the Project.

The Applicant provided a Revised Water Demand Memo (Attachment 11) prepared by an Agronomist/Certified Crop Advisor that analyses the total projected water demand of the reduced Project. The Revised Water Demand Memo demonstrates that the total projected water demand of the reduced Project, including demand for crop irrigation and landscape irrigation, will be 1.70 acre-feet per year. The Applicant also provided a Water System Source Yield Assessment Memo (Attachment 8), prepared by Jordan Kear, a Professional Geologist and Certified Hydrogeologist, that analyzed the groundwater yield of the original proposed water system based on the hydrogeologic conditions of the area and recent yield tests of the existing groundwater well. Additionally, the Applicant provided a Groundwater Supply and Irrigation Plan Memo prepared by Jordan Kear (Attachment 12) that provides an updated evaluation of water supply availability for the reduced Project based on the yield test detailed in the Water System Source Yield Assessment Memo and the revised water demand detailed in the Revised Water Demand Memo. As discussed in the Water System Source Yield Assessment Memo, on April 14, 2021, a source yield pump test was performed on the existing well “B-2” at over 16 gallons per minute (gpm) for a period of 24 hours. During the pump test, the adjacent onsite well “B-5” (located 103.5 ft. from “B-2”) was also monitored for induced interference. As detailed in the Groundwater Supply and Irrigation Plan Memo, based on the projected water demand of the reduced Project, the Project well (“B-2”) equipped with a 10 gpm pump can meet the irrigation demand of the Project through 14-hour pumping cycles with equal to or longer recovery periods between pumping cycles. Additionally, using interference data derived from the April 14, 2021 pump test, in a 14-hour pumping cycle a drawdown of 0.1 foot would be induced at a radial distance of 400 feet, which is less than the distance to the nearest off-property well. Accordingly, the Groundwater Supply and Irrigation Plan Memo concludes that the Project well is adequate to supply the much-reduced anticipated demand of the Project.

The Project site is located within the State-delineated Santa Maria River Valley Groundwater Basin (Santa Maria Basin). Water rights within the Santa Maria Basin have been adjudicated since 2008. Specifically, the Project site overlies the Santa Maria Valley Management Area (SMVMA), one of three management areas of the larger adjudicated Santa Maria Basin. Luhdorff and Scalmanini, Consulting Engineers (LSCE) serve as the Management Area Engineer for the SMVMA. LSCE follows a Monitoring Program for the Santa Maria Valley Management Area¹, as required by the terms and conditions of the Stipulation in the Basin Litigation. The monitoring program includes (1) assessment of groundwater conditions (levels and quality), (2) determination of land use, water requirements, and water supply, and (3) accounting of quantities utilized. Also in accordance with the Stipulation, the monitoring results are utilized for preparation of annual reports on the SMVMA, which include reporting of total annual groundwater extraction and assessment of whether conditions of severe water shortage are present. The 2022 SMVMA Annual Report² lists a total groundwater extraction of 126,342 acre-feet for the year, which is a decrease of 4,868 acre-feet from the previous water year. The total projected water demand of the Project is 1.70 acre-feet per year and represents approximately 0.001% of the SMVMA groundwater extraction. The 2022 SMVMA Annual Report concludes that “conditions in the SMVMA do not satisfy all the criteria delineated in the Stipulation for defining a severe water shortage; as a result, it is concluded that there is no finding of severe water shortage conditions in the SMVMA in 2022.”

¹ Available at: <https://cawaterlibrary.net/document/monitoring-program-for-the-santa-maria-valley-management-area/>

² Available at: <https://content.civicplus.com/api/assets/e16a95dd-2e2c-4a35-8524-13f4edeb1fad?scope=all>

Additionally, for groundwater basins in the County, the Environmental Thresholds and Guidelines Manual³ establishes thresholds of significance that serve as the basis for the evaluation of a project's impacts to groundwater resources under CEQA. The thresholds of significance correspond to the point at which a project's estimated contribution to use of groundwater in an alluvial basin is considered significantly adverse. The thresholds of significance were calculated from hydrologic parameters for each of the basins including safe yield, available storage, and net annual overdraft. The established threshold of significance for the Santa Maria Basin is 25 acre-feet per year. As discussed above, the total projected water demand of the Project is 1.70 acre-feet per year, which is below the established threshold of significance for the basin.

In the application for appeal to the Board of Supervisors, dated January 31, 2023, the Appellant states a *"hydrogeologist consulted by the appellants substantiated the appellants' belief that the proposed 25 AFY water use for cannabis cultivation would adversely impact residents' domestic water wells"* and the *"appellants will provide a hydrogeological assessment at a future date"*. The Appellant's hydrogeological assessment, prepared by Cleath-Harris Geologists, Inc. (CHG), is dated September 25, 2023, and was provided to P&D on April 26, 2024 (Attachment 9). The Appellant's hydrogeological assessment disagreed with the conclusions of the Applicant's Water System Source Yield Assessment and stated, *"hydrogeologic information and deep well information indicate that a well at this proposed location [new well in the northwest portion of the Project site] would not be capable of producing sufficient water for the proposed project"*. However, as discussed in detail above, the new well in the northwest portion of the Project site, along with 12.21 acres of outdoor cannabis cultivation, two 9,500-square foot processing buildings, and 21,548 square feet of landscape screening, which the new well was previously proposed to serve, are no longer included in the scope of the Project. Additionally, regarding the existing well in the southeast portion of the Project site, the Appellant's hydrogeological assessment states, *"this source will not be sufficient to provide the 24.39 acre-feet per year (approximately 15.1 gpm continuous flow) of water to the project during similar (dry year) climatic conditions"*. However, as discussed in detail above, the existing well in the southeast portion of the Project site will only provide irrigation water to 5.19 acres of outdoor cannabis cultivation and 15,820 square feet of landscape screening proposed in the southern portion of the site. The total projected water demand is 1.70 acre-feet per year (significantly less than the 24.39 acre-feet per year cited in the Appellant's hydrogeological assessment). The Appellant's hydrogeological assessment also states, *"groundwater impacts at adjacent wells should be determined and be found to be in accord with the County Environmental Health permitting requirements and the Governor's Order"*. Pursuant to Executive Order N-7-22 signed by Governor Newsom and issued by the State of California, effective March 28, 2022, all new well applications are required to be reviewed following specific guidelines established in the Executive Order. However, the Project well is an existing, permitted well, to which the new well application review guidelines established in Executive Order N-7-22 are not applicable. Furthermore, as detailed in the Groundwater Supply and Irrigation Plan Memo, the projected water demand of the Project can be met without inducing acute water level drawdown of greater than 0.1 foot at a radial distance of 400 feet, which is less than the distance to the nearest off-property wells. Lastly, the Appellant's hydrogeological assessment discusses the drawdown in the nearest onsite well that was observed during the pump test (which pumped 16 gpm over a 24-hour period), and equates this drawdown to a 6.8 percent loss of saturated depth above the aquifer zone at a distance of 103.5 feet from the Project well. The Appellant's hydrogeological assessment states, *"CHG considers a loss of more than five percent to be significant."* Using the same methodology, a drawdown of 0.1 foot at a distance of 400 feet from the Project well would equate to a 0.3 percent loss of saturated depth above the aquifer zone,

³ Available at: <https://cosantabarbara.app.box.com/s/vtxutffe2n52jme97lgmv66os7pp3lm5>

and would be considered less than significant. As stated above, 400 feet is less than the distance to the nearest off-property wells.

In summary, the Applicant provided substantial evidence that demonstrates adequate water resources are available to serve the Project. Additionally, the projected groundwater use of the Project is significantly less than the threshold of significance established in the County Environmental Thresholds and Guidelines Manual for the Santa Maria Basin – an adjudicated basin within which “there is no finding of severe water shortage conditions”. As such, the Project’s potential impact to groundwater resources is less than significant.

Summary

The revised Project, which consists of a reduction in scope from the project discussed in the Planning Commission Staff Report (Attachment 6), is consistent with the Santa Barbara County Comprehensive Plan and applicable policies and standards set forth in the LUDC for cannabis projects, as discussed in Sections 6.3 and 6.4 of the Planning Commission Staff Report. The Project will implement a Landscape Plan and Screening Plan (Attachment 10) to ensure the Project will be screened from public views within 5 years. The Project will implement a Lighting Plan (Attachment 10) to ensure all exterior security lighting under the scope of the Project will be fully shielded, directed downward, and motion activated. The Project will implement a Fencing and Security Plan (Attachment 10) to ensure the cannabis operation will be secured. The Project is located on a property zoned AG-II, is not located adjacent to an EDRN or Urban Rural Boundary, and does not include proposed cannabis cultivation exceeding 51% of the subject lot area. As such, an Odor Abatement Plan pursuant to LUDC Section 35.42.075.C.6 is not required for the Project. Nevertheless, the Project includes measures to minimize the effect of cannabis odors generated by the Project on surrounding areas. Specifically, in accordance with Condition Nos. 1 and 2 of the Conditions of Approval (Attachment 2), all harvested cannabis will be transferred offsite the same day it is harvested and no cannabis processing will occur onsite.

Additionally, as discussed in Section 6.2 of the Planning Commission Staff Report (Attachment 6), the Project was appropriately reviewed under CEQA with preparation of a State CEQA Guidelines Section 15168(c)(4) Checklist (Attachment 4). The environmental impacts of the Project are within the scope of the project covered by the Programmatic Environmental Impact Report (PEIR) for the Cannabis Land Use Ordinance and Licensing Program (Case No. 17EIR-00000-00003; Attachment 3), and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines Section 15162.

Update

On May 21, 2024, shortly before this Board Letter was docketed, staff received a letter from Marc Chytilo, counsel for the Appellant, that states: “*If your Board approves the revised Project as has been described to us and through documents the applicant has submitted to us and the County, Mr. Sullivan will take no further actions to appeal the County’s issuance of 23CUP-00000-00014.*” The letter provided by Marc Chytilo is included as Attachment 14 to the Board Letter.

Fiscal and Facilities Impacts:

Budgeted: Yes Total costs for processing the appeal are approximately \$14,000 (50 hours of staff time). The costs for processing cannabis project appeals are partially offset by a fixed appeal fee and cannabis tax revenues. Funding for this Project is budgeted in the Planning and Development Department’s

Permitting Budget Program, as shown on Page 313 of the County of Santa Barbara Fiscal Year (FY) 2023-24 Adopted Budget.

Special Instructions: *

The Clerk of the Board shall publish a legal notice in the Santa Maria Times at least 10 days prior to the hearing on June 4, 2024. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward the minute order of the hearing, proof of publication, and return one printed copy of the Cannabis Program PEIR to the attention of Planning and Development Department: Hearing Support.

Attachments:

1. Findings
2. Conditions of Approval
3. Link to the Program Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003
4. Updated CEQA Guidelines § 15168(c)(4) Environmental Checklist
5. Appeal Application, dated January 31, 2023
6. Planning Commission Staff Report, dated January 10, 2023
7. Planning Commission Action Letter, dated January 30, 2023
8. Water System Source Yield Assessment Memo, dated June 18, 2021
9. Appellant's Hydrogeological Assessment, dated September 25, 2023
10. Updated Project Plan Set, dated May 18, 2024
11. Revised Water Demand Memo, dated May 15, 2024
12. Groundwater Supply Availability Memo, dated May 15, 2024
13. Facilitation Report, dated April 18, 2024
14. Appellant Letter, dated May 21, 2024

Authored by:

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