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LLP

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Via Electronic Mail
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Honorable Supervisor Nelson, Chair
Honorable Boardmembers
Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Room 407
Santa Barbara CA, 93101

Re: Agenda Item No. 6 – Santa Barbara County Coalition for Responsible Cannabis Appeal of the Planning Commission Approval of Central Coast Agriculture, Inc. (Case # 21APL-000000-00003)

Dear Chairman Nelson and Honorable Supervisors:

We submit this letter on behalf of Central Coast Agriculture, Inc., and concur with staff’s recommendation to deny the above referenced appeal. Substantial evidence in the record supports staffs’ conclusion that no additional environmental review is required under the California Environmental Quality Act (“CEQA”) because the potential effects of the Project fall within the scope of the previously certified Program EIR (17EIR-00000-00003). We offer this letter to merely clarify some of the language in the project description relating to the existing baseline conditions at 8701 Santa Rosa Road (the “Project” site), leading up to the application submittal and as part of the existing ongoing environment.

I. The existing operations and environmental conditions will remain largely unchanged under the Project.

Public agencies, when considering whether to adopt a proposed project subject to CEQA, must first consider the existing physical environmental conditions in the vicinity of a project prior to the approval. (See Guidelines, § 15125, subd. (a).) This environmental setting “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (*Ibid.*)

CEQA is “concerned only with *physical changes* to the environment.” (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1387; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1280-81 [upholding county’s baseline recognizing ongoing

airport operations despite previously unpermitted airport expansion]; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1315; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 [same]; see also *Del Cerro Mobile Estates. v. City of Placentia* (2011) 197 Cal. App. 4th 173, 179 [upholding City's reliance, for the first time in court, on an exemption from CEQA despite having prepared and certified an EIR for the project].)

Here, if the Board denies the appeal, as recommended by staff, and allows the Project to move forward, the only physical changes that would occur under the Project are reflected in the Site Plan as follows:

- the addition of a 3,900 square foot storage overhang to the existing greenhouse, thereby replacing as-built hoop structures which currently serve the same purpose (storage);
- construction of a 10-foot tall 480 square foot shade structure for storage of agricultural equipment, thereby replacing the as-built hoop structures currently used for the same purpose (agricultural equipment);
- installation of 1 new light at the entrance to the Project site on an existing pole;
- installation of a new 6-foot-tall no climb fence which will connect to the existing 6-foot-tall no climb fence that runs along the cement lined drainage channel and the western property boundary;
- construction of a 200 square foot permanent security building at the entrance (to replace an existing trailer used for the same purpose), and associated grading in an area with less than 10% slope;
- temporary use of mobile 12-foot tall windscreens that will be moved around depending on wind conditions;
- installation of a vapor-phase odor control system around the north and east perimeter of the Project site; and
- undergrounding of existing electrical lines with no increase in tower/voltage size.

As recognized in the Site Plan and "Background" section of the Board's Agenda Letter, the total number of acres used for cannabis cultivation, including nursery cultivation, will remain the same. The total number of acres under cultivation has not changed since submittal of our client's 2019 application.

Processing of cannabis grown by our client (both on-site and off-site at its sister farm), will continue within the existing agricultural building. Processed cannabis will then continue to be transported to an off-site manufacturing facility in the City of Lompoc as is the current practice. Storage practices will continue unchanged except that, within 3 years, 42 of the "as built" storage containers will be removed from the Project site.

The following ongoing activities and aspects of the Project will also remain unchanged from the exiting conditions: hours of operation (7:00 a.m. to 7:00 p.m.), number of employees (20 full-time plus 20 additional employees during harvest season),

number of employees living onsite (up to 9 total), total number of parking spaces, average and peak truck trips, average and peak passenger car trips, and water demand.

As explained below, in addition to falling within the scope of the overall impacts analyzed in the PEIR, all of the proposed improvements to the site would also fit within one or more categorical exemptions under CEQA.

II. The Project is subject to several Categorical Exemptions.

Although we agree with staff that the potential effects of the Project fall within the scope of the previously certified PEIR, we note that the County could also have found the Project exempt from having to conduct further environmental review under CEQA pursuant to the following categorical exemptions.

A. Class 1: Existing Facilities

The Class I (Existing Facilities) Exemption - “consists of the *operation*, repair, maintenance, *permitting*, leasing, licensing, or *minor alteration of existing public or private structures, facilities*, mechanical equipment, or topographical features, involving *negligible or no expansion of existing or former use.*” (CEQA Guidelines, § 15301 [emphasis added].) Examples include but are not limited to:

- Interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances;
- Existing facilities . . . used to provide electrical power . . . or other public utility services;
- Additions to existing structures, provided that the addition will not result in an increase of more than: (i) 50% of the floor area of the structures, or 2,500 square feet, whichever is less; or (ii) 10,000 square feet if: (A) The project “is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan” and (B) The area in which the project is located is not environmental sensitive; and
- Demolition and removal of individual small structures.

(CEQA Guidelines, § 15301, subds. (a)-(b), (e)(2), (l).)

As described above, the Project site is in an area where all public services and facilities are available to support the existing operations which are located on the Project site within previously disturbed areas. The total square footage of the proposed improvements, moreover, will not exceed 10,000 square feet. (CEQA Guidelines, § 15301, subd. (e)(2).)

B. Class 2: Replacement or Reconstruction

The Class 2 exemption consists of “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” (CEQA Guidelines, § 15302.) Examples include but are not limited to:

- Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity;
- Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity; and
- Conversion of overhead electrical utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

(*Id.*, subs. (b)-(d).) The security guard building – which is replacing an existing structure on the site in the same location for substantially the same purpose – falls under this exemption as well as the Class 1 exemption, as does the 480 square foot shade structure, the 3,900 square foot storage addition and the conversion of the frontage electrical utility lines to be underground.

C. Class 3: New Construction or Conversion of Small Structures

The Class 3 categorical exemption consists of “construction and location of limited numbers of new, small facilities or structures ... and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.” (Guidelines, § 15303.) Examples include:

- Commercial structures such as “store[s], motel[s], office[s], restaurant[s] or similar structure[s],” not involving the use of significant hazardous wastes; and
- Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

Here, the 3,900 square foot storage expansion, the 450 square foot shade structure, construction of the security building and extension of the existing fencing all fall under this exemption.

D. Class 4: Minor Alterations to Land

The Class 4 exemption “consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes.” (Guidelines, § 15304.)

This includes “[g]rading on land with a slope of less than 10 percent” provided the site is not otherwise exempt (as a waterway, wetland, designated scenic area, or area of severe geological hazard). (Guidelines, § 15303, subd. (a).) Additionally, this includes “[m]inor trenching and backfilling where the surface is restored.” (Guidelines, § 15303 (f).)

As noted above, the security building will replace the existing trailer unit and will involve grading on land with a slope of less than 10 percent. Therefore, any alterations to the land as a result of the construction of the security building will be “minor” and exempt from CEQA.

Additionally, the undergrounding of the electrical lines will consist of “minor trenching” and “backfilling” where the surface is restored once the lines have been undergrounded, consistent with this exemption.

Thank you for your consideration of our above reference clarifications to the baseline environmental conditions and for staff’s hard work to address all of the concerns raised with respect to the appeal. We respectfully request that you deny the appeal.

Very truly yours,



Andrea K. Leisy

Cc: Honorable Supervisor Williams (dwilliams@countyofsb.org)
Honorable Supervisor Hart (ghart@countyofsb.org)
Honorable Supervisor Hartmann (jhartmann@countyofsb.org)
Honorable Supervisor Lavagnino (steve.lavagnino@countyofsb.org)
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