



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: August 20, 2019
Placement: August 20, 2019
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 *Lisa Plowman*
Contact Info: Jeff Wilson, Assistant Director, Planning and Development
(805) 568-2085
SUBJECT: **G&K Farm/K&G Flower Cannabis Cultivation Appeal,
Case No. 19APL-00000-00018, First Supervisorial District**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On August 20, 2019, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 19APL-00000-00018;
- b) Make the required findings for approval of the project, Case No. 18CDP-00000-00077, included as Attachment 1, including California Environmental Quality Act (CEQA) findings;
- c) Determine that the previously certified Program Environmental Impact Report (PEIR) (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); and
- d) Grant *de novo* approval of the project, Case No. 18CDP-00000-00077, subject to the conditions included as Attachment 2.

Summary Text:

A. Proposed Project

The project is for a proposed cannabis operation by Magu Farms, LLC, to allow the use of 5 existing greenhouses totaling 356,070 square feet for cannabis cultivation, with nursery, mixed-light cultivation, and off-site distribution. A security fence ranging from six to eight feet in height, part of which is existing, is proposed around the perimeter of the cannabis operation. The odor abatement unit would be located within an existing shade structure. Two (2) existing water tanks and four (4) proposed water tanks would be used as part of the cannabis operation. The existing agricultural warehouse of 16,896 square feet is not proposed to be used as part of the cannabis cultivation operations approved under this Coastal Development Permit. The cannabis operation would utilize 15-22 line or contract employees and six to eight managerial and executive staff, depending on the season. The hours of operation would be from 6:00am to 3:30pm for line or contract staff and 6:00am to 8:00pm for managerial and executive staff, depending on the season. Water for the cannabis cultivation operations would be served by an existing agricultural water well. Domestic water will continue to be served by Carpinteria Valley Water District. The parcel will continue to be served by an existing septic system and the Carpinteria/Summerland Fire Protection District. No grading, tree removal, or vegetation removal is proposed as part of this project. Access will continue to be provided off of Via Real. The property is a 14.66 acre parcel zoned AG-I-10 and shown as Assessor Parcel Number 005-280-040, located at 3480 Via Real with a secondary address of 3561 Foothill Road, Carpinteria, First Supervisorial District.

B. Background:

On February 6, 2018 the Santa Barbara County Board of Supervisors adopted a series of ordinances, including Section 35-144U [Cannabis Regulations] of Article II, the Coastal Zoning Ordinance, that regulate commercial cannabis operations within the County's unincorporated area. Section 35-144U of Article II, the Coastal Zoning Ordinance, was certified by the California Coastal Commission on October 10, 2018. The Applicant submitted a Cannabis Coastal Development Permit (CDP) application to the Planning and Development Department on December 14, 2018. Staff reviewed the Cannabis CDP application for compliance with Section 35-144U of Article II, the Coastal Zoning Ordinance, and the Director approved the application on March 6, 2019. The Director's approval was granted based upon the proposed cannabis operation complying with the applicable policies and standards contained in Article II, the Coastal Zoning Ordinance. The Coastal Development Permit was approved on March 6, 2019 with an appeal deadline of March 18, 2019, at 5:00 PM. A timely appeal of the Director's approval was filed by the Appellant on March 18, 2019.

The project was heard by the Planning Commission on June 5, 2019, at which time the Planning Commission denied the appeal, Case No. 19APL-00000-00009 and made the required findings for approval of the project. Upon further review of the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), incorporated herein by reference, staff identified that the third recommended motion was phrased incorrectly. The third motion that was made by the Planning Commission was as follows: "*Determine the project is exempt from CEQA pursuant to CEQA Guidelines Section 15162, 15164, and 15168(c)(2), included as Attachment C of the staff report dated May 29, 2019...*" (see Attachment 6). The motion should have included the following language: "*Determine that the previously certified Program Environmental Impact Report (PEIR) (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 Attachment C of the staff report dated May 28, 2019...*". The motion before the Planning Commission incorrectly used

the term “exempt” instead of language stating that the “previously certified PEIR constitutes adequate environmental review”. It should be noted that both the findings and Attachment C of the staff report did cite the correct sections of CEQA. Due to the fact that this project is on appeal for a “de novo” review and action by the Board of Supervisors, the corrected language related to CEQA review is being provided to the Board for consideration, as presented in recommended actions above.

During the June 5, 2019 hearing, the Planning Commission granted *de novo* approval of the project, Case No. 18CDP-00000-00077. The Planning Commission Staff Report dated May 28, 2019 and subsequent memorandum dated June 5, 2019 are included as Attachments 4 and 5 and provide an analysis of the project’s consistency with Article II, the Coastal Zoning Ordinance. During the June 5, 2019 hearing, 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 Appellant commented primarily on the project’s odor and air quality impacts, and on June 17, 2019 the Appellant filed a timely appeal of the Planning Commission’s *de novo* approval of the project to the Board of Supervisors.

C. Appellant Appeal Issues and Staff Responses

As noted above, the Appellant filed a timely appeal of the Planning Commission’s *de novo* approval of the project, Case No. 18CDP-00000-00077. The appeal application (Attachment 7) contains a letter detailing why the Appellant believes the decision of the Planning Commission is not in accord with applicable law, including Article II, the Coastal Zoning Ordinance. These issues include alleged non-compliance with CEQA, inadequacy of the odor mitigation measures in the PEIR, lack of analysis or mitigation of air quality impacts, and inconsistency with the local coastal land use plan. 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.

Appeal Issues Regarding Noncompliance with CEQA: The Appellant contends that the County’s decision to exempt the project from an EIR violates CEQA for the following reasons: 1) the County failed to conduct an adequate initial study and 2) the County’s finding that it was not required to complete a tiered EIR is not supported by the evidence.

Staff Response for Appeal Issues Regarding Noncompliance with CEQA: As indicated above in the Background Section, staff’s review of the motions and material presented to the Planning Commission in the staff report dated May 28, 2019 (Attachment 4), incorporated herein by reference, found that the third motion presented to the Planning Commission and the wording in the Environmental Analysis section incorrectly used the term “exempt” instead of stating that the previously certified Program Environmental Impact Report (PEIR) (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). The analysis and findings presented to the Planning Commission and to your Board in Attachments 3 and 4 discuss how the previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed. The corrected motion is being presented to the Board of Supervisor’s for your “de novo” review and action on the project with the appropriate findings (See Attachment 1).

On February 6, 2018, the Santa Barbara County Board of Supervisors certified a Program Environmental Impact Report (PEIR), Case No. 17EIR-00000-00003, which analyzed the environmental

impacts of the Cannabis Land Use Ordinance and Licensing Program (Program). The PEIR was prepared in accordance with 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 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 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's Executive Summary (Attachment 8):

- 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 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 in a Program EIR (such as 17EIR-00000-00003) and 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 Environmental Impact Report 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 Program Environmental Impact Report (17EIR-00000-00003) that analyzed the environmental impacts of the Cannabis Land Use Ordinance and Licensing Program constitutes adequate environmental review for the G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077). The proposed project presents no additional impacts and clearly falls within the

definition of a cannabis cultivation project as studied within the PEIR and has no effects that were not examined in the PEIR (see Attachment 3). The proposed project is consistent with the Land Use Element Air Quality Supplement because there is no increase in the reliance on automobiles or a shift away from alternative modes of transportation, nor does it result in the development of employment opportunities or residential areas outside of the urban/rural boundary. The property is already established as a cultivation site which was previously utilized for the cultivation of cymbidium orchids.

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 35-144U [Cannabis Regulations] of Article II, the Coastal Zoning Ordinance, and have been applied as development standards and as proposed project conditions of approval for the G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077). Section 6.4.4 of the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), incorporated herein by reference, lists applicable development standards from Section 35-144U of Article II and describes how the proposed project complies with these standards. Proposed project conditions resulting from applicable development standards are included within Attachment 2 (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 (see Condition 27, Attachment 2).

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, or environmental impact report is required for the G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077).

Appeal Issue Regarding the Inadequacy of the Odor Mitigation Measures in the PEIR: The Appellant contends that “the PEIR failed to adequately assess whether approved odor mitigation measures are actually effective in reducing environmental impacts.”

Staff Response for Appeal Issue Regarding the Inadequacy of the Odor Mitigation Measures in the PEIR: As discussed above, the Santa Barbara County Board of Supervisors certified a Program Environmental Impact Report (PEIR), Case No. 17EIR-00000-00003, which analyzed the environmental impacts of the Cannabis Land Use Ordinance and Licensing Program. The PEIR was prepared in accordance with State CEQA Guidelines Section 15168 and evaluated the Cannabis Land Use Ordinance and Licensing Program’s impacts. Class I impacts were identified, including the following impact regarding odor: “Impact AQ-5. *Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.*” On February 6, 2018 the Board of Supervisors adopted a Statement of Overriding Considerations for the Class I impacts that were identified, including the above Class I impact regarding odor. Additionally, the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, has expired (see CEQA Guidelines Sections 15112(c) and 15094(g)).

The analysis contained within the PEIR addresses the cumulative impacts that would be associated with the proposed project, and the PEIR identified the mitigation measures that would mitigate those impacts to the extent feasible. These mitigation measures have been applied as proposed project conditions of approval and development standards. As discussed in the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), incorporated herein by reference, the development standards regarding odor that are outlined in Subsection 35-144U.C.6 of Article II require the submittal of an Odor Abatement Plan with applications for indoor cannabis cultivation and associated processes. The Plan is reviewed and approved by the Planning and Development Department and is required to be implemented prior to issuance of final building and/or grading inspection and/or throughout operation of the project. The Applicant for the G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077) submitted the required information to comply with these development standards. The Odor Abatement Plan that was submitted includes a floor plan that specifies all locations of odor-emitting activities and emissions, specifies descriptions of all proposed equipment and methods to be used for reducing odor, and contact information for the designated individual responsible for responding to odor complaints (see Attachments I and L of the Planning Commission Staff Report dated May 28, 2019, incorporated herein by reference). Additionally, during the June 5, 2019 Planning Commission hearing, the Commission added specific language to the Odor Abatement Plan condition of approval in order to ensure compliance with the requirements of Section 35-144U.C.6 of Article II, the Coastal Zoning Ordinance. The language added under the monitoring section of the Odor Abatement Plan condition requires that upon installation of the odor control system and quarterly thereafter for one year, Permit Compliance staff shall conduct an inspection of the system to assess its compliance with the requirements of the condition and Coastal Zoning Ordinance Section 35-144U.C.6. As part of each inspection, the County shall retain a professional engineer or certified industrial hygienist to certify that the odor control system meets all applicable requirements. See Attachment 6 for the June 5, 2019 Planning Commission Action Letter.

Appeal Issue Regarding the Lack of Analysis or Mitigation of Air Quality Impacts: The Appellant asserts that “the PEIR did not adequately examine impacts on air quality or provide sufficient mitigation for such impacts.” The Appellant refers to BVOC emissions created by cannabis plants, including terpenes, and their potential to contribute to air pollution and cause health impacts.

Staff Response for Appeal Issue Regarding the Lack of Analysis or Mitigation of Air Quality Impacts: As discussed above, the Santa Barbara County Board of Supervisors certified a Program Environmental Impact Report (PEIR), Case No. 17EIR-00000-00003, which analyzed the environmental impacts of the Cannabis Land Use Ordinance and Licensing Program. The PEIR was prepared in accordance with State CEQA Guidelines Section 15168 and evaluated the Cannabis Land Use Ordinance and Licensing Program’s impacts. Class I impacts were identified, including the below impacts regarding air quality:

- 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.*

On February 6, 2018 the Board of Supervisors adopted a Statement of Overriding Considerations for the Class I impacts that were identified, including the above Class I impacts regarding air quality. These impacts were identified by utilizing thresholds 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).

Furthermore, the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, has expired (see CEQA Guidelines Sections 15112(c) and 15094(g)).

In addition, the Appellant alleges that the PEIR did not adequately address air quality impacts as it relates to the formation of ground level ozone. Ground level ozone is a photochemical pollutant, and is formed from complex chemical reactions involving volatile organic compounds (VOCs), nitrogen oxides (NO_x), and sunlight; therefore, VOCs and NO_x are ozone precursors. VOCs and NO_x are emitted from various sources throughout the County. Significant ozone formation generally requires an adequate amount of precursors in the atmosphere and several hours in a stable atmosphere with strong sunlight. High ozone concentrations can form over large regions when emissions from motor vehicles and stationary sources are carried hundreds of miles from their origins. NO_x is produced from the reaction of nitrogen and oxygen gases in the air during combustion, especially at high temperatures. VOCs (and reactive organic compounds) are hydrocarbons and the major sources of hydrocarbons include but are not limited to combustion engines, petroleum fumes, solvents, and paint. The PEIR (Section 3.3) found that: "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 [including ozone] for which the County is in nonattainment." This was determined to be a significant and unavoidable impact and the Board of Supervisors adopted a Statement of Overriding Considerations.

Included in the Appellant's allegation is that the cannabis plants also emit VOCs and Appellant cites to a letter from Patricia Holden, Ph.D. that says terpenes emitted from cannabis plants are categorized as biogenic VOCs. These are called biogenic VOCs and all living things emit these compounds. Biogenic VOCs are ubiquitous. Biogenic VOCs produced by plants are involved in plant growth development, reproduction, and defense. Cannabis plants primarily produce a kind of biogenic VOCs called monoterpenes which are aromatic oils that provide cannabis varieties with distinctive flavors like citrus, berry, mint, and pine. These are the same kind of terpenes that are found in any other plant such as roses, orange trees, rosemary, and pine trees. Terpenes in cannabis began for adaptive purposes: to repel predators and lure pollinators. The emission rates from two strains of cannabis (Critical Mass and Elephant Purple) are 8.6 and 4.5 micrograms of carbon (terpenes) produced per gram of plant per hour, respectively. For comparison, pine trees produce approximately 16 micrograms of terpenes per gram of plant per hour, twice the amount of monoterpenes than either of the two strains of cannabis. Similar to pine trees, oak trees, native to Santa Barbara County, are also significant VOC emitters.

As discussed above, the presence of VOCs was known at the time the PEIR was prepared. VOCs and terpenes are discussed in the PEIR and were considered as part of the Class I air quality impacts. The PEIR discusses that VOCs are precursors to ozone and terpenes as the odor that is produced by cannabis plants. This was part of the consideration of the Class I impact, and the required mitigation measures related to odor and terpenes. Thus, this is an effect that was examined in the PEIR. As stated above, the PEIR found that the Cannabis Program would result in significant and unavoidable air quality impacts and the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, has expired (see CEQA Guidelines Sections 15112(c) and 15094(g)).

Appeal Issue Regarding the Coastal Land Use Plan: The Appellant asserts that the “Project, as approved, violates the County’s Coastal Land Use Plan.”

Staff Response for Appeal Issue Regarding the Coastal Land Use Plan: Section 6.3 of the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), incorporated herein by reference, analyzes the proposed project’s consistency with the Comprehensive Plan, including the Coastal Land Use Plan. The G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077) conforms to the applicable provisions of the Comprehensive Plan, including the Coastal Land Use Plan and the Toro Canyon Plan.

Other Appeal Issues Raised

- **Coastal Zoning Ordinance.** The Appellant asserts that the “Project, as approved, violates the County’s Article II Coastal Zoning Ordinance”. As noted in Section 6.4 of the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), incorporated herein by reference, the proposed project complies with all applicable development standards from Article II, the Coastal Zoning Ordinance.

Additionally, the Appellant asserts that “the County failed to recognize that the project changes the previously exempt flower operations and includes changes to development that should require a Development Plan”. The existing greenhouses on the subject property were approved as part of a Final Development Plan by the County Planning Commission on September 14, 1983. At that time the existing greenhouses were used for the cultivation of cymbidium orchids. In 2018, a Development Plan Amendment (13AMD-00000-00003 to 82-DP-030) was approved by the Director of the Planning and Development Department. The Amendment allowed changes to the approved Development Plan, including the as-built increase of the height of the existing greenhouses, the as-built construction of a restroom, and the as-built construction of a water well that provides water for irrigation. The existing greenhouses continued to be used for the cultivation of cymbidium orchids. The five existing greenhouses are currently vacant and are not being used for any type of cultivation as confirmed during a site visit to the property on May 1, 2019.

Section 35-144U.B of Article II, the Coastal Zoning Ordinance, provides a table outlining what permit is required depending on the type of project being proposed and depending on the zone district. The proposed cannabis project (Case No. 18CDP-00000-00077) located in the AG-I zone district which includes cultivation, nursery, distribution, and nonvolatile manufacturing requires a Coastal Development Permit. The changes to the project site would not result in an increase of previously approved development area and the project is in conformance with the original

Development Plan for the site, Case No. 82-DP-30, and subsequent Amendment (Case No. 13AMD-00000-00003). Therefore, no new Development Plan is required.

- **Fencing.** The Appellant asserts that the “Project’s fencing plan violates Section 35-144U.C(2)(c) of the Coastal Zoning Ordinance.” As noted above and in Section 6.4 of the Planning Commission Staff Report dated May 28, 2019 (Attachment 4), the proposed project complies with all applicable development standards from Article II, the Coastal Zoning Ordinance. Additionally, no portion of the existing or proposed fence is located in a creek bed as indicated by the Appellant.
- **Due Process.** The Appellant asserts that the “County violated Concerned Carpenterians’ Due Process Rights” based on 1) non-acceptance of late-submitted comments by Concerned Carpenterian’s members and other aggrieved members of the public, 2) receiving a staff report regarding revised recommendations for the project to be debated approximately twenty minutes prior to the hearing, and 3) failure to articulate reasons for denying the appeal. All citizens’ due process rights, including the Appellant’s, were protected and respected during the Planning Commission hearing as discussed below.

First, the Planning Commission followed required procedures, which establish a deadline for submissions to the Commission and require a four-fifths vote of the Commission to accept late submissions. The Commission voted to consider late-submitted comment letters but the motion failed as there was not four-fifths support and the letters were not included in the Commission’s record in accordance with Resolution 04-243, “*Procedural Rules Governing Hearing Bodies Before the Santa Barbara County Board of Supervisors, County Planning Commission and Montecito Planning Commission.*” Second, a short memorandum recommending minor amendments to two of the proposed project’s conditions was submitted at the beginning of the hearing to the Planning Commission, the Appellants, the Applicant, and was made available to the public. Additionally, the recommended amendments included in the memorandum were discussed as part of staff’s presentation. The memorandum solely consisted of a recommendation to the Planning Commission to modify two of the project’s conditions in order for all of the project’s conditions to be consistent with Section 35-144U [*Cannabis Regulations*] of Article II, the Coastal Zoning Ordinance. All members of the public were able to address the memorandum and recommended changes during their appeal presentations or during public comment. Lastly, the Planning Commission adopted findings for denial of the appeal and approval of the project. These findings were included in the Planning Commission Staff Report dated May 28, 2019 (Attachment 4).

- **Light Pollution, Noise Pollution, and Increased Traffic.** The Appellant asserts that the “G&K Project approvals and the PEIR do not adequately address a number of other environmental hazards and issues.” As stated above, the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, has expired (see CEQA Guidelines Sections 15112(c) and 15094(g)). Furthermore, as discussed in Section 6.4 of the Planning Commission Staff Report dated May 28, 2019, incorporated herein by reference, the Applicant for the G&K Farm/K&G Flower Cannabis Cultivation project (Case No. 18CDP-00000-00077) submitted the required information, including a Lighting Plan, a Site Transportation Demand Management Plan, and an Operational Plan that describes noise-generating equipment, to demonstrate compliance with all applicable development standards.

- **Impacts of Cannabis Operations on Existing Land Uses and Agricultural Operations.** The Appellant asserts that “the PEIR did not adequately assess the impact of cannabis operations on existing land uses and agricultural operations in the Carpinteria area.” As discussed above, the Santa Barbara County Board of Supervisors certified a Program Environmental Impact Report (PEIR), Case No. 17EIR-00000-00003, which analyzed the environmental impacts of the Cannabis Land Use Ordinance and Licensing Program. The PEIR was prepared in accordance with State CEQA Guidelines Section 15168 and evaluated the Cannabis Land Use Ordinance and Licensing Program’s impacts, including impacts regarding agricultural resources and land use. See the PEIR’s Executive Summary, Attachment 8, for specific agricultural resources and land use impacts and associated mitigation measures. Additionally, the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, has expired (see CEQA Guidelines Sections 15112(c) and 15094(g)).

As discussed in the PEIR for the Cannabis Program, cannabis cultivation is 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 policies regulate pesticide spray and drift. Any commercial agricultural operations planning on using pesticides must obtain an Operator Identification Number from the Agricultural Commissioner’s Office before they can purchase or use pesticides. In addition, with the implementation of Mitigation Measure HWR-1, Cannabis Waste Discharge Requirements General Order and Pest Management Plan, the Planning and Development Department ensures that impacts from pesticides/fertilizers would be minimized by reviewing and approving compliance with the requirements of the State Water Resources Control Board (SWRCB). As part of the submittal materials for the proposed project, Case No. 18CDP-00000-00077, the Applicant provided documentation demonstrating compliance with SWRCB requirements (see documentation included as part of Attachment I of the Planning Commission Staff Report dated May 28, 2019). In addition, a condition of approval regarding compliance with SWRCB requirements was added to the proposed project (see Condition No. 4 of Attachment 2).

As discussed above, all of the appeal issues raised are meritless and Planning and Development staff recommends that the Board deny the appeal and grant *de novo* approval of the Coastal Development Permit, 18CDP-00000-00077.

Fiscal and Facilities Impacts:

Budgeted: Yes

Funding for this project is budgeted in the Planning and Development’s Permitting Budget Program on page D-269 of the County of Santa Barbara Fiscal Year 2019-20 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on August 20, 2019. The notice shall appear in the Santa Barbara News-Press. 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 Planning and Development Department, Hearing Support.

Attachments:

1. Findings
2. Conditions of Approval
3. Environmental Document including CEQA Checklist
4. Planning Commission Staff Report dated May 28, 2019
5. Planning Commission Memorandum dated June 5, 2019
6. Planning Commission Action Letter dated June 11, 2019
7. Board of Supervisors Appeal Application dated June 17, 2019
8. PEIR (17EIR-00000-00003) Executive Summary
9. Link to the PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003

Authored by:

Nereyda (Rey) Harmon, Planner, (805) 568-2513
Development Review Division, Planning and Development Department