



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: June 22, 2021  
Placement: Departmental  
Estimated Time: 3 hours on June 22, 2021  
Continued Item: No  
If Yes, date from: N/A  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Lisa Plowman, Director, Planning and Development  
Director: (805) 568-2086  
Contact Info: Travis Seawards, Deputy Director, Development Review Division  
(805) 568-2518  
**SUBJECT:** Melville et al. Appeal of the Planning Commission Approval of the SFS Farms OpCo 1, LLC. Cannabis Cultivation Project, Case Nos. 21APL-000000-00012 and 19LUP-00000-00312, Fourth Supervisorial District

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:**

Staff recommends that your Board take the following actions to deny the appeal and uphold the Planning Commission's approval of the Project:

- a) Deny the appeal, Case No. 21APL-00000-000012;
- b) Make the required findings for approval of the Project, Case No. 19LUP-00000-00312, including CEQA findings (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) (Attachments 3 and 4); and
- d) Grant *de novo* approval of the Project, Case No. 19LUP-00000-00312, subject to the conditions of approval (included as Attachment 2).

**Summary Text:**

On July 26, 2019, the Applicant submitted an application for a Land Use Permit for cannabis cultivation on a 965.59-acre parcel zoned AG-II historically used for cultivation of vegetables, berries and cattle grazing. No cannabis is currently being grown on the subject property. A detailed Project Description is provided below.

**A. Proposed Project**

The project is a request for outdoor cannabis cultivation of approximately 82.62 acres and 4.18 acres of cannabis nursery operations for a total of 86.80 acres. Nursery and cannabis cultivation will occur outdoors and not under hoop structures. No on-site processing will occur. There will be up to two harvests per year, each lasting a maximum of 3 weeks. An existing 4,800 SF building will be used for a 200 SF office and employee bathrooms. The remaining 4,560 SF of the building will remain unused and is not a part of the cannabis operation. An existing 5,000 gallon water tank will be used for domestic purposes. An existing as-built 320 SF shipping container is to be used for irrigation equipment storage related to the cannabis operation and will be permitted under this Land Use Permit. An existing as-built 320 SF shipping container is to be used for chemical and fertilizer storage related to the cannabis operation and will be permitted under this Land Use Permit. One 320 SF shipping container is proposed for additional storage.

Existing permitted structures on-site which are not a part of the cannabis operation include an 800 SF carport, a 1,878 SF residence, an additional 1,450 SF residence, a 1,540 SF shop, a 4,030 SF barn, and a 4,800 SF storage building.

A 6-foot high deer fence will enclose the cultivation and nursery area. There is an existing 18-foot wide secured gate located north of the premises. Two 7-foot high, 20-foot wide secured gates are proposed. Security cameras will be mounted to the office and bathroom building and to security poles at a height of eight feet. Security lighting will be pointed downward, fully-shielded, and motion sensor activated. Lighting will be mounted to the office and bathroom building at a height of eight feet and to light poles at a height of ten feet near the gated entrance to the property and in the parking area.

Hours of operation during non-harvest season will be 6:00 A.M. to 3:00 P.M., 7 days a week. Hours of operation during harvest season will be from 5:00 A.M. to 7:00 P.M., 7 days a week in the field, with 24-hour a day on-site security. There will be nine (9) full-time employees year-round, an additional five (5) to fifteen (15) workers during growing season, and up to one hundred (100) additional, seasonal workers. Sanitary facilities for employees will be provided by portable chemical toilets with hand-washing stations. Existing parking includes 47 parking spaces and will include eleven rideshare spaces, four shuttle spaces, and one handicapped space. No grading is proposed.

The parcel will be served by a private on-site well, proposed single parcel water system, and proposed septic system. The project will be served by the Santa Barbara County Fire District. Access will continue to be provided via a private 20-foot access driveway off of Hapgood Road. The property is a 965.59-acre parcel zoned AG-II-100 and shown as Assessor's Parcel Number 099-150-065, located at 4874 Hapgood Road in the Lompoc area, 4th Supervisorial District.

**B. Background:**

On July 26, 2019, the Applicant submitted a Land Use Permit application for the SFS Farms OpCo 1, LLC. Cannabis Cultivation Project (herein after Proposed Project), Case No. 19LUP-00000-00312. The Proposed Project is a request for 86.80-acres of cannabis cultivation on a 965.59-acre parcel zoned AG-II. The parcel is currently used for crop cultivation and cattle grazing. No cannabis is currently grown on the subject parcel. Staff reviewed the LUP application for compliance with the applicable policies of the

County Comprehensive Plan and development standards set forth in Section 35.42.075 (Cannabis Regulations) of the County Land Use and Development Code (LUDC). On September 10, 2020, the Planning and Development Department Director (herein after Director) approved the Proposed Project. On September 18, 2020, Chad and Ron Melville and Dan Gainey filed a timely appeal (Case No. 20APL-00000-00024) of the Director's approval.

Prior to the Planning Commission appeal hearing on February 3, 2021, the Applicant revised the Project to lower the mounting height of the lighting fixtures, revise the hours of operation and employee count during growing/harvest season, clarify that no processing will occur on-site, and to specify the road and access to the property. Staff reviewed the revised Project and found the Project consistent with the applicable policies and standards set forth in Section 35.42.075 (Cannabis Regulations) of the County Land Use and Development Code (LUDC). Additionally, pursuant to the State CEQA Guidelines Section 15168(c)(4), staff updated the Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications and determined that the environmental effects of the Project would not create new significant environmental effects or a substantial increase in the severity of previously identified significant effects evaluated in the PEIR (Attachment 3). The appeal issues raised by the Appellant in the Planning Commission Appeal Application and staff's responses to the appeal issues are addressed in detail in the Planning Commission Staff Report dated January 27, 2021 (Attachment 8). On February 3, 2021, the Planning Commission considered evidence set forth in the record, statements given by the Appellant and the Applicant, and public testimony, and granted de novo approval of the revised Project.

On February 11, 2021, Melville et. al filed a timely appeal (Case No. 21APL-00000-00024) of the Commission's approval of the Proposed Project. The Board of Supervisor's (Board) Appeal Application is included as Attachment 5. The Appellant's appeal issues and staff's responses are discussed in further detail under Section C of this Board Agenda Letter.

### **C. Appeal Issues and Staff Responses**

The appeal application (Attachment 5) contains a letter, dated February 11, 2021 outlining the Appellant's appeal issues. The Appellant submitted a supplemental appeal letter, as well as an attached exhibit, on May 3, 2021 (Attachments 6 and 9). The appeal issues allege overconcentration of cannabis cultivation in the Santa Rita Hills, inconsistencies with the Agricultural Element of the County Comprehensive Plan, non-compliance with the Williamson Act, non-compliance with CEQA, conflicts with existing agricultural operations related to pesticide migration, and increased impacts to other agricultural operations from terpene taint. Staff reviewed the appeal issues and found they are without merit. The appeal issues and staff's responses are discussed below.

#### **Appeal Issue No. 1: Overconcentration of Cannabis Cultivation in the Santa Rita Hills**

The Appellant states that there is an overconcentration of cannabis cultivation projects proposed in the Santa Rita Hills area. The Appellant further states that the Board of Supervisors decision to adopt the Cannabis Program PEIR (17EIR-00000-00003) did not have the correct assumptions to adequately evaluate the cumulative effects of the Proposed Project, including impacts to agricultural resources, air quality, noise, and transportation and traffic.

#### **Staff Response:**

The Proposed Project was adequately analyzed for cumulative impacts in the PEIR. CEQA Guidelines Section 15168(c)(2) allows the County to approve an activity as being within the scope of the project covered by a Program EIR, if the County finds pursuant to Section 15162, that no new environmental document is required. For this particular project, project activities would contribute to cumulative impacts on transportation and traffic and air quality, as anticipated in the PEIR.

The Proposed Project is subject to the mitigation measures set forth in the PEIR to reduce its contribution to these cumulative impacts. These mitigations include a Site Transportation Demand Management Plan. Staff completed a written checklist pursuant to State CEQA Guidelines 15168(c)(4) and determined that all of the environmental impacts, including agricultural resources, air quality, noise, and transportation and traffic, of the Proposed Project would be within the scope of the PEIR. No additional cumulative impacts were identified, and no additional environmental review is needed for the Proposed Project.

The PEIR contemplated land use conflicts; compatibility issues with businesses; including wineries, near outdoor and indoor cultivation sites due to odors. The PEIR describes the Program impacts to Agricultural Resources; proposed cannabis land uses are potentially incompatible with existing zoning for agricultural uses and Williamson Act contracts. The PEIR explains that growing cannabis is a land use for agricultural purposes and cannabis products are agricultural products; utilizing a license to grow cannabis would ensure agricultural purposes are carried out; these actions would not convert associated FMMP farmland or prime agricultural soils to non-agricultural uses, nor conflict with existing zoning for agricultural uses. The PEIR assumed and analyzed concentrations of cannabis activities throughout five regions within the County. These regions were 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). One of these regions of concentration was the Lompoc region, which includes portions of the Santa Rita Hills AVA. There were no caps or other limitations on the allowable number of projects assumed in the PEIR. The proximity of the Proposed Project to other cannabis projects in the Lompoc region, both proposed and approved, is therefore not new information and was adequately considered in the PEIR.

On September 26, 2019, the Board adopted a cap of 1,575 acres on the total allowed cannabis cultivation acreage that can be approved in the inland areas of the County. However, this cap does not limit the number or acreage of cultivation sites within a particular area or region of the inland portions of the County. The significant and unavoidable (Class I) impacts associated with cumulative effects were identified within the PEIR, and either mitigated or overridden. The Proposed Project consists of cannabis activities and development that were studied within the PEIR, and therefore the project has no effects, including cumulative effects, that were not examined in the PEIR.

Lastly, the Board of Supervisors adopted a Statement of Overriding Considerations (Attachment 2 to the CEQA Checklist [Attachment 3 to this Board Letter]) concluding that the benefits of the Cannabis Program outweigh the unavoidable adverse environmental effects identified above, and the 30-day statute of limitations to challenge the adequacy of the PEIR, 17EIR-00000-00003, expired. Therefore, the previously certified PEIR (17EIR-00000-00003), together with the CEQA Checklist and supplemental documents is adequate, and subsequent environmental review is not required pursuant to CEQA Guidelines Sections 15162, 15164, and 15168 (c)(2).

**Appeal Issue No. 2: Comprehensive Plan Inconsistency – Agricultural Element**

The Appellant states that the Proposed Project is inconsistent with Goal 1 and Policy 1.E of the Agricultural Element of the Comprehensive Plan.

**Staff Response:**

The Proposed Project is consistent with all applicable polices of the Comprehensive Plan, including the Agricultural Element. As detailed in Section 6.3 of the Planning Commission staff report, included as Attachment 8 and Attachment 10 to this Board Letter, herein incorporated by reference, staff determined that the Proposed Project is consistent with the Agricultural Element, including Goal I and Policy I.E.

Additionally, the PEIR considered consistency of cannabis cultivation with Goal I and Policy I.E. (PEIR 3.2-11.) The Proposed Project will continue the long-time agricultural use of the property and will not convert any agricultural lands to non-agricultural development. The Proposed Project is consistent with goals and policies to assure viable agricultural production as the project consists of a change of crop, and therefore agricultural activities will continue on the subject property.

The intent of Goal I is to protect agricultural operations from non-agricultural industry, not from other agricultural operations. Cannabis cultivation is a continuation of the agricultural use of the subject property and is consistent with Goal I of the Agricultural Element. Appellants have not presented substantial evidence supporting that this project could significantly compromise the long-term productive agricultural capability of other parcels or displace or impair current or reasonably foreseeable agricultural operations on other parcels or will result in significant removal of adjacent contracted land from agricultural use.

Consistent with Policy I.E., the Proposed Project is proposed to and conditioned to minimize the effects of noise, smoke, odor and dust (Attachment 2). The cannabis cultivation area is located approximately 0.70 miles from the nearest residential zone, with the majority of the surrounding land zoned for agricultural use. The intent of Policy I.E is to minimize the effects of agricultural operations on other non-agricultural uses, such as residentially-zoned areas. No construction or grading is proposed that would generate dust or noise. The Proposed Project includes a Noise Plan, which concludes that project activities will not generate noise greater than 65 decibels at the property line. The Proposed Project is anticipated to generate odors from cannabis cultivation harvesting activities. However, no odor abatement requirements are applicable to this project as it does not require the approval of a Conditional Use Permit and is not proposing any onsite processing.

### **Appeal Issue No. 3: Non-compliance with the Williamson Act**

The Appellant identifies three specific issues related to the Proposed Project's non-compliance with the Williamson Act including: 3.A: The lack of a compatibility review by the Agricultural Preserve Advisory Committee (APAC); 3.B: Changes to the project description warranting re-review by APAC; and 3.C: Subsequent amendments to the Uniform Rules that now make odor mitigation on AG-II zoned parcels feasible.

#### **3.A Compliance with Williamson Act– Lack of Compatibility Review by APAC**

The Appellant states that the Proposed Project does not comply with the Williamson Act due to APAC's lack of a compatibility analysis with other surrounding agricultural uses. The Appellant also states that the lack of a compatibility analysis is contrary to the PEIR's assumption that all projects would be reviewed by APAC.

### **Staff Response**

The Uniform Rules of Agricultural Preserves and Farmland Security Zones (Uniform Rules) are used to implement the Williamson Act and administer the Agricultural Preserve program in Santa Barbara County. The Agricultural Preserve Advisory Committee (APAC) is responsible for reviewing land use applications for consistency with the Uniform Rules and the Williamson Act. The Proposed Project site is enrolled in the Agricultural Preserve Program (Contract No. 69AP-035) which requires projects to be reviewed by the APAC to ensure on-site activities are consistent. The Proposed Project is fully compliant with the Williamson Act and was found to be consistent with the Uniform Rules by the Agricultural Preserve Advisory Committee (APAC). The APAC minutes are included as Attachment J of Attachment 8 to this BAL. It is important to note that the APAC does not make decisions on land use permits. As analyzed in the PEIR, proposed cannabis projects are not solely limited to Williamson Act contracted

parcels. It is clear the PEIR did not rely on APAC review under the Uniform Rules to ensure compatibility with existing agricultural uses, because not all proposed cannabis projects would have been subject to APAC review. Also, as discussed above in Appeal Issue 1, the PEIR contemplated land use conflicts and compatibility issues with surrounding agriculture.

### **3.B Compliance with Williamson Act – Changes to the Project Description**

The Appellant states that the modifications to the Project Description after APAC review and approval affect the consistency of the Project with the Uniform Rules due to increased emissions, traffic, employees and facilities, and closer proximity to neighboring properties. The Appellant asserts that the Proposed Project should undergo APAC re-review due to the change in the Project Description.

#### **Staff Response**

On February 7, 2020, the APAC reviewed the Proposed Project for consistency with the Agricultural Preserves and Farmland Security Zones (Uniform Rules) and voted 4-0 to find the Proposed Project consistent with the Uniform Rules (Attachment 9). APAC is only responsible for reviewing land use applications for consistency with the Uniform Rules and the Williamson Act. APAC does not make decisions on land use permits or consider consistency with the Comprehensive Plan. 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 in Appeal Issue 6.

Since APAC's review in February, the Proposed Project was modified to remove the processing component and add approximately 21 acres of outdoor cultivation. The acreage increased due to a downsizing of a 100-foot buffer from the on-site ephemeral drainage to a 50-foot buffer. When the Proposed Project went before APAC, all existing agriculture within the 100-foot buffer area was proposed to be discontinued and the use of the buffer area was to be limited to roads. Once the buffer was decreased to 50-feet from top of bank in coordination with state resources agencies and County concurrence, the proposed cannabis cultivation area was expanded into the reduced buffer area. The buffer reduction and the resulting additional 21-acres of cannabis cultivation did not result in further reduction or changes to the existing agricultural operation as reviewed by the APAC in February. The changes in the Proposed Project did not affect the consistency with the Uniform Rules and do not warrant additional review by the APAC. As detailed under Appeal Issue 3.B. APAC's role related to the property is not limited to review associated with the requested LUP. In order to ensure compliance with the Uniform Rules, APAC has the authority to review activities outside of a permit application on Williamson Act parcels to consider ongoing eligibility of the property as an agricultural preserve consistent with the Uniform Rules and whether to pursue any enforcement actions pursuant to Uniform Rule 6.

### **3.C Compliance with Williamson Act – Amendments to the Uniform Rules**

The Appellant states that the amendment to the Uniform Rules to classify cannabis as an agricultural commodity constitutes a substantial, unanticipated change and warrants additional environmental review. The Appellant also states that the absence of APAC's analysis prevents a determination of whether the Proposed Project could be found compatible with other surrounding agricultural lands.

#### **Staff Response**

The Board-adopted amendment to the Uniform Rules to classify cannabis as an agricultural commodity does not constitute a substantial unanticipated change to the circumstances or new information requiring further environmental review. As analyzed in the PEIR, proposed cannabis projects were not and are not limited to contracted parcels. It is clear the PEIR did not rely on APAC review under the Uniform Rules to ensure compatibility with existing agricultural uses, because not all proposed cannabis projects would

have been subject to APAC review. Section 3.9 (Land Use Section) of the PEIR anticipated that amendments to the Uniform Rules based on adoption of the Cannabis Program would take place.

APAC does not make decisions on land use permits or consider consistency with the Comprehensive Plan. Cannabis cultivation is within the definitions of “agricultural commodity” and “agricultural use” and is considered an agricultural use pursuant to the Uniform Rules, thus the Uniform Rule “Principles of Compatibility” do not apply. A project-specific evaluation was prepared for the Proposed Project and is included within Attachment 8 to this Board Agenda Letter. The Proposed Project is compatible with the applicable Comprehensive Plan policies and LUDC, and the Board is able to make the Land Use Permit findings, which require Project compatibility. Finally, the proposed cannabis cultivation is an agricultural activity that will be located on an agriculturally zoned property.

Appellants have not presented substantial evidence supporting that this project could significantly compromise the long-term productive agricultural capability of other parcels or displace or impair current or reasonably foreseeable agricultural operations on other parcels or will result in significant removal of adjacent contracted land from agricultural use. Appellants have not presented any evidence that terpene taint of grapes, even if it were shown to exist, would lead to the conversion of vineyards to urban uses due to unprofitability. Nor that the threat of liability for pesticide overspray would lead to the conversion of agricultural land to urban uses.

#### **Appeal Issue No. 4: Non-compliance with CEQA**

The Appellant identifies three specific issues related to the Proposed Project’s non-compliance with CEQA and the inadequacy of the PEIR, including: 4.A: Reliance on the CEQA Checklist; 4.B: Subsequent amendments to the Uniform Rules; and 4.C: Odor impacts. These appeal issues are further outlined in Staff’s responses below.

#### **4.A Compliance with CEQA – CEQA Checklist**

The Appellant states approval of the Proposed Project would violate CEQA. The Appellant also states that the County’s use of a CEQA Checklist to approve the Proposed Project is flawed.

#### **Staff Response:**

Approval of the Proposed Project complies with CEQA, and the Proposed Project will not have impacts that were not reviewed in the PEIR. The previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed. Additionally, environmental conditions unique to this parcel were analyzed through the review of the Land Use Permit, as well as through a CEQA Checklist that was prepared pursuant to CEQA Guidelines Section 15168 (c)(4). The findings and analyses presented to the Commission and to the Board (Attachments 1, 3 and 4), discuss that the PEIR provides adequate environmental review, and no subsequent environmental review is needed.

On February 6, 2018, the Board certified the PEIR that analyzed the environmental impacts of the Cannabis Program. The PEIR was prepared in accordance with the State CEQA Guidelines Section 15168 and evaluated the Cannabis Program’s impacts with regard to the 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 concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to the following environmental resources or issues:

- Aesthetics and visual resources
- Agricultural resources
- Air quality (including odor impacts)
- Noise
- Transportation and traffic

Under State CEQA Guidelines Sections 15162 and 15168, following certification of a PEIR, later activities within the Program that will not result in environmental effects not examined in the PEIR may be approved under the PEIR unless a subsequent environmental document is required under Section 15162. Pursuant to Section 15162, a subsequent environmental document shall not be prepared unless there are: 1) substantial changes to the project; 2) substantial changes to the circumstances under which the project will be undertaken; and/or 3) new information of substantial importance, which was not and could not have been known at the time the previous environmental document was completed, regarding new or substantially more severe significant impacts, or new or newly feasible mitigation measures or project alternatives. The Proposed Project does not meet any of these criteria, and therefore no subsequent environmental document is needed for this Project.

On September 10, 2020, pursuant to the State CEQA Guidelines Section 15168(c)(4), staff completed the Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications (Attachment 3) and determined that all of the environmental impacts of the Project were within the scope of the project covered by the PEIR for the Cannabis Program. Staff updated the checklist on January 25, 2021, to include changes to the project description. On May 7, 2021, the checklist was revised to attach the Statement of Overriding Consideration regarding the PEIR and subsequent to that in June of 2021, the checklist was revised to clarify details regarding the two as-built shipping containers and their relation to the cannabis cultivation activities, as well as to attach historical and projected water usage. The Proposed Project will not create any new significant effects or a substantial increase in the severity of previously identified significant effects on the environment, and there is no new information of substantial importance under State CEQA Guidelines Section 15162, warranting the preparation of a new environmental document for the Proposed Project. The PEIR (Attachment 4) considered together with the CEQA Checklist (Attachment 3) is adequate, and subsequent analysis of the environmental impacts of the Proposed Project is not required pursuant to CEQA Guidelines Sections 15162 and 15168(c)(2).



**4.B Compliance with CEQA – Amendments to the Uniform Rules**

The Appellant states that the subsequent amendment to the Uniform Rules classifying cannabis cultivation as commercial production of an agricultural commodity removed the APAC’s compatibility review for projects under Williamson Act contracts. The Appellant further states that due to these amendments, the adequacy of the PEIR is undermined, and additional environmental review is required.

**Staff Response:**

The Board’s decision to amend the Uniform Rules was not inconsistent with APAC’s compatibility review and does not undercut the adequacy of the PEIR’s environmental analysis. The Proposed Project was reviewed by APAC on February 7, 2020 and was found to be consistent with the Uniform Rules, and therefore is fully compliant with the Williamson Act and does not require additional environmental review. As discussed above in Appeal Issue 3, the APAC does not make decisions on land use permits, and is only responsible for reviewing land use applications for consistency with the Uniform Rules and the Williamson Act. At the time the PEIR was certified, cannabis projects were not limited to parcels under agricultural preserve contracts. Furthermore, as detailed in Appeal Issue 3, Section 3.9 (Land Use Section) of the PEIR anticipated that amendments to the Uniform Rules would take place based on the adoption of the Cannabis Program. The PEIR did not assume that cannabis cultivation would be defined as a compatible use. The Board-adopted amendment to the Uniform Rules in 2018 classifying cannabis as a principle use rather than a compatible use is not new information and no additional environmental review is warranted.

**4.C Compliance with CEQA – Odor Impacts**

The Appellant states that the PEIR did not analyze the impacts of cannabis odors on tourism and tasting rooms and the resultant economic impacts leading to the decline of agricultural viability in the region.

**Staff Response:**

The PEIR concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to Air Quality and malodors. The PEIR acknowledges that visitors come to Santa Barbara County for purposes of “tourism, wine-tasting, beach-going, bicycling, hiking, equestrian, cultural events and other recreational activities.” The presence of wine tasting rooms in the County was known at the time the PEIR was certified. The PEIR anticipated potential impacts to these activities as well as a variety of other land uses and receptors. The PEIR anticipated that the implementation of the Cannabis Program would expand cannabis operations throughout the County and create the potential for nuisance odor impacts to neighboring receptors. Furthermore, the PEIR acknowledged that odors may not be controlled in all instances due to the range of potential cultivation locations, types of cultivation operations, surrounding land uses, wind patterns and other variables. The Board of Supervisors adopted a Statement of Overriding Considerations for the unavoidable and significant (Class I) impacts (including those related to air quality and odor) and the 30-day statute of limitations to challenge the adequacy of the PEIR expired without legal challenge.

Odor Abatement Plans (OAPs), which can include a variety of odor abatement systems, are required for cannabis projects in AG-I and in AG-II areas where CUPs are required. For this particular Project, a CUP was not required as the Proposed Project does not include any onsite processing, and therefore an Odor Abatement Plan is not required.

Under CEQA Guidelines Sections 15162 and 15168, following certification of a PEIR, later activities within the Program that will not result in environmental effects not examined in the PEIR may be approved under the PEIR unless a subsequent environmental document is required under Section 15162. Pursuant

to Section 15162, a subsequent environmental document shall not be prepared unless there are: 1) substantial changes to the project; 2) substantial changes to the circumstances under which the project will be undertaken; and/or 3) new information of substantial importance, which was not and could not have been known at the time the previous environmental document was completed, regarding new or substantially more severe significant impacts, or new or newly feasible mitigation measures or project alternatives. As discussed above in Appeal Issue 4.A, the Project does not meet any of these criteria and therefore no subsequent environmental document is needed for this Project.

Moreover, agricultural land use conflicts claimed by the Appellants are not environmental impacts under CEQA. Social and economic effects are not to be considered a significant environment effect only need to be considered under CEQA if they are reasonably likely to result in physical change to the environment. As discussed above in Appeal Issue No. 2, Appellants have not presented substantial evidence supporting that this project could significantly compromise the long-term productive agricultural capability of other parcels or displace or impair current or reasonably foreseeable agricultural operations on other parcels or will result in significant removal of adjacent contracted land from agricultural use.

#### **Appeal Issue No. 5: Pesticide Migration**

The Appellant asserts that the Proposed Project will have substantially increased impacts to adjacent agriculture due to pesticide migration, which could not have been known at the time the PEIR was certified.

#### **Staff Response:**

The use of pesticides and insecticides by non-cannabis conventional agriculture and the accompanying regulatory framework as analyzed in the PEIR is the same now as when the PEIR was certified. The California Department of Pesticide Regulation does not allow substantial pesticide drift onto non-target areas (Food and Agriculture Code 12972). The Proposed Project will not affect pesticide applications on surrounding properties provided that the pesticides are being applied in compliance with State regulations. Regardless of the crop or commodity being grown, County Agricultural Commissioner offices investigate all complaints of pesticide drift and have the option of taking enforcement actions when violations occur. The Santa Barbara County Agricultural Commissioner's office also provides education and outreach to help prevent pesticide drift from occurring.

Agricultural 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, not the impact of the surrounding environment on the project. The issue of pesticide drift is not considered an environmental impact resulting from the project.

State law deems cannabis an “agricultural product” only for the purposes of the Business and Professions Code (Bus. & Prof. Code § 26069(a).) For all other purposes, cannabis is considered a controlled substance. Cannabis cultivation is considered an agricultural use pursuant to the Uniform Rules, but is specifically excluded from the County’s Right to Farm Ordinance. There is no new regulatory information that would trigger the need for additional environmental review regarding pesticides and insecticides. The Proposed Project does not conflict with adjacent farmed agriculture in the vicinity and does not preclude the production of agricultural products, including wine grapes, in the vicinity of the Proposed Project. Therefore, no additional environmental review is needed.

**Appeal Issue No. 6: New Information Regarding Terpene Taint**

The Appellant asserts that airborne terpenes resulting from the Proposed Project may result in tainting of the Appellant’s wine grapes and other nearby agriculture. The Appellant argues that this is new information that was not known at the time the PEIR was certified, and therefore necessitates project-specific environmental review as well as an independent research project on the impact of cannabis terpenes.

**Staff Response:**

Terpenes are considered to be biogenic volatile compounds (BVOCs) and the existence of terpenes and BVOCs is the same now as when the PEIR was certified. 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. 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. There continues to be a lack of evidence that terpenes from cannabis cultivation result in impacts to the quality or marketability of surrounding agricultural crops. As explained by William Vizute, professor of environmental sciences and engineering at the University of North Carolina, during the Board hearing of August 20, 2019, and incorporated by reference, all living things emit BVOCs. Therefore, BVOCs are ubiquitous. BVOCs produced by plants are involved in plant growth development, reproduction, and defense. Cannabis plants primarily produce a kind of biogenic VOC 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 other plants such as roses, orange trees, rosemary, and pine trees.

BVOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of air quality impacts and their existence and alleged impacts are not new information (PEIR page 3.3-7). Additionally, economic or social impacts are not considered to be significant environmental effects under CEQA. Under CEQA Guidelines Sections 15162 and 15168, following certification of a PEIR, later activities within the Program that will not result in environmental effects not examined in the PEIR may be approved under the PEIR unless a subsequent environmental document is required under Section 15162. None of the criteria requiring additional environmental review are present in relation to this Project.

**Conclusion:** For the reasons discussed above, staff finds that the appeal issues raised are without merit. Planning and Development staff recommends that the Board approve the Project *de novo* based on the findings provided as Attachment 1.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

Total costs for processing the appeal are approximately \$12,450.00 (50 hours of staff time). The costs for processing cannabis project appeals are partially offset by a fixed appeal fee and cannabis tax revenues. The fixed appeal fee was paid by the Appellant in the amount of \$701.06. Funding for processing this appeal is budgeted in the Planning and Development Department's Permitting Budget Program as shown on page D-294 of the County of Santa Barbara Fiscal Year (FY) 2020-21 adopted budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on June 22, 2021. The notice shall appear in the *Lompoc Record*. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing to the attention of Dara Elkurdi and return one printed copy of the Cannabis Program PEIR to the Planning and Development Department Hearing Support.

**Attachments:**

1. Findings
2. Conditions of Approval
3. CEQA Checklist dated June 9, 2021
4. Link to Program EIR [hardcopy provided to the Clerk of the Board]
5. Appeal Application dated February 11, 2021
6. Supplemental Appeal Letter dated May 3, 2021 and associated Attachments
7. Project Plans dated January 2021
8. Planning Commission Staff Report dated January 27, 2021 and associated Attachments
9. Exhibit 6 Vizuete Study
10. Supplemental Comprehensive Plan Policy Consistency Analysis

**Authored by:**

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Development Review Division, Planning and Development Department