



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: October 6, 2020
Placement: Departmental
Estimated Time: 3 hours
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director: (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review Division
(805) 568-2518
SUBJECT: **Santa Barbara County Coalition for Responsible Cannabis Appeal of the Planning Commission Approval of the Castlerock Family Farms II, LLC Cannabis Cultivation Land Use Permit, Case No. 20APL-000000-00019, Third Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On October 6, 2020, 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. 20APL-00000-00019;
- b) Make the required findings for approval of the Project, Case No 19LUP-00000-00050, as specified in Attachment 1, including CEQA findings;
- c) Determine that the previously certified Program EIR (17EIR-00000-00003) constitutes adequate environmental review and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines Sections 15162 and 15168 (c)(2) (included as Attachments 3 and 11); and
- d) Grant *de novo* approval of the Project, Case No. 19LUP-00000-00050 subject to the conditions of approval (included as Attachment 2).

Summary Text:

A. Proposed Project

Castlerock Family Farms II, LLC, the Applicant, requests a Land Use Permit, Case No. 19LUP-00000-00050, to allow approximately 22.95 acres of outdoor cannabis cultivation. All cultivation would occur under hoop structures with a maximum height of 16 feet and would be located in three separate areas. Cultivation Area A would be 16.53 acres, Cultivation Area B 4.63 acres, and Cultivation Area C 1.79 acres (Sheets 2 and 3 of Plan Set). No processing would occur on-site. The three cultivation areas, the operations area, and an administrative hold area would each be fully encircled separately with six to eight-foot tall no-climb deer fencing. Outdoor lighting would be fully-shielded, night sky compliant, activated by motion sensor and set to shut off after six minutes or less. No new structures are proposed as part of this Project. The Project would be screened from view from Highway 246 by 70 Bishop Pine and 57 Coast Live Oak trees that will be planted along an existing berm. Revegetation of a 3.28 acre area along the Santa Ynez River riparian corridor would include 9 Bishop Pines, 110 Coast Live Oaks and 30 California Box Elder trees, as well as 6 species of shrubs, groundcovers and perennials.

At present, there are 27 structures on the site. The cannabis operation would include the use of five of the existing structures. Six structures will be demolished. Of the remaining 21, five will be part of the cannabis operation and sixteen are a part of the existing residential and agricultural uses as outlined below. Nine existing but previously unpermitted structures will be legalized through this LUP approval and subsequent building permit approvals (one of these will be part of the cannabis operation and eight will not be part of the cannabis operation). Structure numbers listed below correspond with structure numbers listed on the Site Plan.

Five Existing Structures for Cannabis

- Structure #30: Pesticide/Chemical/Tool Storage Building (320 sq. ft.)
- Structure #36: Farm Office (160 sq. ft.) – restroom to be added
- Structure #37: 5,000-gallon Water Tank (80 sq. ft.) (as built - previously unpermitted)
- Structures #38 and #39 20,000-gallon water tanks (155 sq. ft. each)

Six Structures for Demolition

- Structure #9: Singlewide Residential Trailer (640 sq.ft.)
- Structure #10: Shed (112 sq. ft.)
- Structure #11: Carport (256 sq. ft.)
- Structure #13: Bunker/Bomb Shelter
- Structure #20: Doublewide Residential Trailer (1,320 sq. ft.)
- Structure #23: Processing Barn (6,260 sq. ft.)

Eight Non-Cannabis Structures – To Be Legalized

After demolition, 16 existing non-cannabis structures would remain. Eight of the existing non-cannabis related structures are ‘as-built’ (did not obtain the necessary permits) and would be legalized through this land use permit and subsequent building permit approvals.

- Structure #1: Primary Residence – Addition (1,216 sq. ft.)
- Structure #8: Garage conversion later (725 sq. ft.)
- Structure #14: Horse Corrals – Covered (3,000 sq. ft.)
- Structure #18: Fuel Dispenser w/ 2 Above-Ground Storage Tanks (64 sq. ft.)

- Structure #19: 3-Sided Pole Barn (736 sq. ft.)
- Structure #21: Shed #2 (180 sq. ft.)
- Structure #22: Tool Shed (280 sq. ft.)
- Structure #24: Horse Corrals – Covered (5,692 sq. ft.)

Operational hours are generally proposed for between 6:30 a.m. and 4:00 p.m., Monday through Friday. During four annual, one-month-long harvesting/planting periods, operating hours may be extended to include weekends and are proposed for between 6:00 a.m. to 8:00 p.m. The four annual harvesting/planting periods would run mid-February to mid-March, mid-May to mid-June, mid-August to mid-September and mid-November to mid-December.

The Project includes five full-time permanent employees, with up to 15 additional employees during the harvesting/planting periods. The site is served by four existing private water wells and existing private septic systems. Electrical service is provided by PG&E. Access to the site is provided via a private driveway off of State Highway 246. Twenty-nine parking spaces would be provided onsite.

The Project includes the construction of a permanent staff restroom within the existing 160-sq. ft. office building, and portable restroom facilities with hand washing stations will be placed in cultivation areas on the property to serve employees during harvesting/planting periods. The property is a 277.43-acre parcel zoned Ag-II-100 and shown as Assessor's Parcel Numbers 099-230-011 and 099-230-034, located at 2200 W. Highway 246 in the Buellton area of the 3rd Supervisorial District.

B. Background:

On February 8, 2019, the Applicant submitted a Land Use Permit (LUP) application for the Castlerock Family Farms II, LLC Cannabis Cultivation Project, Case No. 19LUP-00000-00050. Staff reviewed the Cannabis LUP application for compliance with Section 35.42.075 of the LUDC, and the Director approved the application on July 26, 2019, with an appeal deadline of August 5, 2019. A timely appeal of the Director's decision was filed by John Wagner, in association with the Santa Barbara County Coalition for Responsible Cannabis on August 5, 2019.

Prior to the Planning Commission (Commission) appeal hearing on July 8, 2020, the Applicant submitted a revised Project description to remove all on-site processing, to remove all cannabis activities west of Cultivation Area C, to add revegetation and restoration of a 3.2-acre swath along the Santa Ynez River corridor, and to add landscape screening to screen the Project from public views along Santa Rosa Road. The Project revision also eliminated a 3,950 sq. ft. processing building, a 6,260 sq. ft. processing building, and ten 320 sq. ft. metal shipping containers.

Staff reviewed the revised Project and determined that it was consistent with the Santa Barbara County Comprehensive Plan and Section 35.42.075 (Cannabis Regulations) of the LUDC. The appeal issues and staff's responses are addressed in detail in the Planning Commission staff report dated July 1, 2020, and included as Attachment 6 to this Board Letter. On July 8, 2020 the Planning Commission considered the evidence in the record, statements given by the Appellant and the Applicant, and public testimony and granted *de novo* approval of the revised Project.

On July 20, 2020, the Santa Barbara County Coalition for Responsible Cannabis filed a timely appeal (Case No. 20APL-00000-00019) of the Commission's approval of the Project. The Appeal Application is included as Attachment 4. 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 Santa Barbara County Coalition for Responsible Cannabis filed a timely appeal of the Planning Commission's approval of the Proposed Project. The Appeal Application (Attachment 4) contains a letter outlining the issues on appeal. The appeal issues include alleged non-compliance with CEQA, inconsistency with the Comprehensive Plan, and expansion beyond the Project's existing non-conforming cannabis footprint. Staff reviewed the appeal issues and found that they are without merit. The appeal issues and staff's responses are discussed below.

Appeal Issue 1: CEQA - General: The Appellant asserts that the County's approval of the Project failed to comply with the California Environmental Quality Act (CEQA).

Staff Response: The analysis and findings presented to the Planning Commission and to the Board (Attachments 1, 3 and 11), discuss that 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 and the associated CEQA Checklist, which were appropriately prepared pursuant to CEQA Guidelines Section 15168 (c)(4).

On February 6, 2018, the Santa Barbara County Board of Supervisors 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 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 found that the potential concentration of cannabis activities near the Proposed Project site would not create new significant environmental effects or a substantial increase in the severity of significant effects. The PEIR also evaluated the cumulative impacts to which cannabis projects would contribute. The analysis also considered other pending, recently approved, and reasonably foreseeable non-cannabis projects that would contribute to the cumulative effects. The PEIR concluded that unavoidable and significant (Class I) impacts would result from the 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

The Board of Supervisors adopted a Statement of Overriding Considerations concluding that the benefits of the Program outweigh the unavoidable adverse environmental effects identified above. Therefore, the PEIR (17EIR-00000-00003) together with the CEQA Checklist included as 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).

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 under Appeal Issues #2 through #7 below, the Project does not meet any of these criteria and therefore no subsequent environmental document is needed for this Project.

Appeal Issue #2 CEQA - Changes to the Uniform Rules and Right to Farm Ordinance: The Appellant asserts that the Board of Supervisors' March 20, 2018 amendment to the Uniform Rules, which classified cannabis cultivation on agricultural lands under the Williamson Act as a "principle use" rather than as a "compatible use", eliminated the requirement of compatibility review of cannabis projects by the Agricultural Preserve Advisory Committee (APAC). The appellant asserts that this action resulted in the removal of a mechanism to consider how a cannabis project's odor impacts might affect nearby wine tasting rooms. The Appellant also asserts that the Board's May 8, 2018, amendment to the Right to Farm Ordinance, which removed limitations on cannabis activities being considered a nuisance, now allows some activities to be considered a nuisance and therefore allows odor abatement conditions to be placed on cannabis projects. The Appellant contends that these ordinance amendments represent substantial changes to the circumstances under which the Project will be undertaken and new information of substantial importance regarding new or newly feasible mitigation measures pursuant to CEQA.

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 only responsible for reviewing a land use application for consistency with the Uniform Rules and the Williamson Act. APAC does not make decisions on land use permits.

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. The Board-adopted amendment to the Uniform Rules to classify cannabis as a principle use rather than a compatible use, as asserted by the Appellant, does not constitute a substantial unanticipated change to the circumstances under which the Project will be undertaken or new information requiring further environmental review. Additionally, the subject property has historically been farmed with row crops and is subject to a Williamson Act Agricultural Preserve Contract (No. 69-AP-053). The proposed Project was reviewed by APAC and on June 21, 2019, APAC found the proposed Project consistent with the Uniform Rules. Therefore, the Project is fully compliant with the Williamson Act.

As noted under Appeal Issue #1, the Cannabis Program PEIR concluded that significant and unavoidable (Class I) impacts would result from the Program, including the following impact associated with air quality and malodor:

- *Impact AQ-5. Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.*

The PEIR identified the generation of objectionable odors and associated impacts to surrounding receptors as potentially significant. The proposed Project is located 1,500 feet to the north of the Peake Ranch Winery tasting room and 3,000 feet to the south of the Pence Winery tasting room. The PEIR anticipated potential impacts to a variety of land uses. 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. The presence of wine tasting rooms in the County was plainly known at the time the PEIR was certified. 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 PEIR considered odor impacts from cannabis cultivation and concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to Air Quality and malodors. Therefore, the PEIR's Impact AQ-5 (above) includes odor impacts to tasting rooms as a Class I Impact. The Board of Supervisors adopted a Statement of Overriding Considerations for Class I impacts, and the 30-day statute of limitations to challenge the adequacy of the PEIR expired without legal challenge.

Finally, methods and techniques for odor abatement including carbon filtration and vapor phase systems were available and feasible at the time the PEIR was prepared. Odor Abatement Plans, which can include a variety of odor abatement systems, are required for cannabis projects in AG-I and in AG-II areas where Conditional Use Permits are required. Therefore, changes in the Right to Farm Ordinance did not introduce new or previously infeasible mitigation techniques that were not available and considered under the PEIR.

On September 4, 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. 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 11) considered together with the CEQA Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications (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).

Appeal Issue # 3 CEQA - Pesticide Drift: The Appellant asserts that commercial third-party pesticide applicators sometimes refuse to apply materials to productive grape, avocado and citrus crops due to fears of potential conflict with nearby cannabis crops on which pesticides and insecticides are prohibited. The Appellant contends that this has caused some conventional crops to fail and has the potential to render conventional agricultural operations impossible or uneconomical, thus encouraging the conversion of those agricultural lands to non-agricultural uses. Further, the Appellant contends that this potential impact of cannabis cultivation on conventional agriculture was not previously known and was therefore not covered in the PEIR.

Staff Response: The use of pesticides and insecticides by non-cannabis conventional agriculture and the accompanying regulatory framework as analyzed in the Cannabis Program PEIR is the same now as when the PEIR was certified. Therefore, there is no new regulatory information that would trigger the need for additional environmental review regarding pesticides and insecticides.

Existing State and Agricultural Commissioner policies regulate pesticide spray and drift. Agricultural operations are subject to existing laws and regulations governing cultivation and associated hazardous activities, including pesticide regulations under the US Environmental Protection Agency (USEPA), the California Environmental Protection Agency (CalEPA), and the California Department of Pesticide Regulation which prohibit pesticide overspray.

Pesticide drift is not allowed under rules set forth by the California Department of Pesticide Regulation. Statewide, County Agricultural Commissioner offices are tasked with investigating pesticide complaints, taking enforcement actions when violations occur, and conducting education and outreach to prevent problems from pesticide drift from occurring. In an example of education and outreach, last year the Agricultural Commissioner convened a working group comprised of conventional crop growers, cannabis growers, vintners, pest control businesses, aerial pesticide applicators and pest control advisors. The working group collaboratively developed a reference document to guide farmers and applicators in considerations and assessments they can make before and during pesticide application to avoid any problems with drift or overspray (included as Attachment 8). One of the key recommendations is to communicate with neighboring agricultural operators. It should also be noted that adjacent agricultural operations may still use other application methods that would minimize or eliminate the potential for drift.

The regulatory framework governing pesticide drift and the need for all agricultural operators to comply with those requirements was known at the time the PEIR was certified. Therefore, subsequent environmental analysis of potential pesticide drift, an activity which is not allowed and which is regulated under existing and unchanged state and federal laws, is not required pursuant to CEQA Guidelines Sections 15162 and 15168(c)(2). In addition, CEQA requires the assessment of a project's impact on the environment. While pesticide drift is an important issue, environmental changes resulting from alleged

third-party actions taken to comply with existing legal requirements would not be considered a reasonably foreseeable indirect environmental impact of the Project.

Finally, the Project has been designed to comply with Section 35.42.075.D.1.n of the Cannabis Ordinance, which requires a minimum 50-foot setback between cultivation areas and property lines. The Project's Cultivation Areas are setback between 50 and 85 feet from the northern property line, at least 115 feet from the southern property line, 590 feet from the western property line, and 1,700 feet from the eastern property line. The cannabis cultivation setbacks, as proposed with the Project, would therefore further reduce potential conflicts resulting from pesticide drift.

Appeal Issue #4 – CEQA - Impacts to Tasting Rooms: The Appellant asserts that the PEIR did not specifically identify tasting rooms as sensitive receptors that could be affected by odors from cannabis cultivation and therefore a more robust and complete air quality analysis is necessary for this Project considering its proximity to tasting rooms.

Staff Response: 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 plainly know 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 PEIR considered odor impacts from cannabis cultivation and concluded that unavoidable and significant (Class I) impacts would result from the Cannabis Program with regard to Air Quality and malodors.

The proposed Project is located 1,500 feet to the north of the Peake Ranch Winery tasting room and is located 3,000 feet to the south of the Pence Winery tasting room. As discussed in response to Appeal Issues #1, #2 and #4, the Board of Supervisors adopted a Statement of Overriding Considerations for the 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.

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. Under 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. There have been no substantial changes to the project or the circumstances under which it will be undertaken. Additionally, the potential impact from cannabis odors to wine tasting rooms was

and could have been known at the time the PEIR was certified. Accordingly, none of the three above criteria requiring additional environmental review are present in relation to this Project.

Appeal Issue #5 – CEQA – Clustering: The Appellant asserts that the PEIR did not anticipate the number of cannabis projects currently in the permit process or already approved within proximity to this Project and therefore did not fully analyze cumulative impacts as required under CEQA Section 15130.

Staff Response: The Cannabis Program PEIR evaluated cumulative impacts associated with the Cannabis Program. The PEIR assumed and analyzed concentrations of cannabis activities throughout multiple regions within the County. One of these regions of concentration was the Santa Ynez Valley. There were no caps or other limitations on the allowable number of projects assumed in the PEIR. The proximity of the Project to other cannabis projects in the Santa Ynez Valley is therefore not new information and was considered in the PEIR.

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. Mitigation measures were adopted as development standards as part of the ordinance amendments allowing cannabis operations in Santa Barbara County. The Class I impacts associated with cumulative effects were identified and either mitigated or overridden. 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. Staff completed a written checklist pursuant to State CEQA Guidelines 15168(c)(4) and determined that all of the environmental impacts of the proposed Project would be within the scope of the PEIR. No additional cumulative impacts were identified. On September 4, 2020, P&D staff completed a new checklist (Attachment 3) for the revised Project, and again, no additional cumulative impacts were identified.

Regarding the concentration of cannabis cultivation activities in the West Highway 246 and Santa Rosa Road region, on September 26, 2019, the Board of Supervisors 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.

Appeal Issue #6 -CEQA Checklist: The Appellant asserts that the County's CEQA Checklist is flawed because it only addresses whether specific mitigation measures from the PEIR apply to the Project and does not evaluate unique site conditions or special aspects of the Project's operations which may not have been covered in the PEIR. Also, the Appellant contends that the County's conclusions in the CEQA Checklist are not substantiated by evidence in the record.

Staff Response: The CEQA Checklist prepared for the revised and current version of this Project pursuant to State CEQA Guidelines Section 15168(c)(4) is included as Attachment 3 to this Board Letter. Section C.1 of the attached checklist includes the consideration of sensitive or unusual environmental characteristics. Based on the evidence included as part of the Project record, staff found that the effects of this particular Project were anticipated and examined in the PEIR and there are no Project-specific

effects that were not examined in the program EIR. Therefore, no new initial study is required and the PEIR can be relied upon for this Project based upon the checklist prepared pursuant to State CEQA Guidelines 15168(c)(4). Conclusions reached in the CEQA Checklist are based on evidence provided as part of the Project record and included as Attachments 3, 9, 10, 11, 12, 13 14, 15, 16, 17 and 18 to this Board Letter.

Appeal Issue # 7— Comprehensive Plan Inconsistency: The Appellant asserts that the Project is inconsistent with Goal 1 of the Agricultural Element of the County’s Comprehensive Plan because the Project’s odor impacts and concerns regarding possible pesticide drift onto the Project would conflict with nearby Williamson Act contracts and legacy farming operations.

Staff Response: Staff’s response to Appeal Issue #3 above addresses pesticide drift, which is not allowed under rules set forth by the California Department of Pesticide Regulation and enforced by the County Agricultural Commissioner’s Office. Staff’s response to Appeal Issue #4 above addresses odor impacts of the Project which were analyzed in the PEIR, deemed Class I Significant and Unavoidable and overridden by the Board of Supervisors. Consistency of the Project with the Comprehensive Plan was analyzed in Section 6.3 of the Planning Commission Staff Report dated July 1, 2020 and included as Attachment 6.

Goal 1 of the Agricultural Element:

“Santa Barbara County shall assure and enhance the continuation of agriculture as a major viable production industry in Santa Barbara County. Agriculture shall be encouraged. Where conditions allow, (taking into account environmental impacts) expansion and intensification shall be supported.”

In the Policy Consistency analysis included in the Planning Commission Staff report, dated July 1, 2020 and included herein as Attachment 6, staff concluded that the Project is consistent with this policy because it will continue the long-time agricultural use of the property and will not convert any agricultural lands to development. No new structures are proposed. There are five existing agricultural accessory structures that will continue to be used as part of the cannabis operation, continuing the agricultural use of the structures. Therefore, the ongoing agricultural use of the 277-acre property will not be hindered or diminished as this Project represents a change of crop and there is no reduction in the total cultivated agricultural acreage.

Appeal Issue #8 —Expansion Beyond Legal Non-Conforming Status: The Appellant asserts that the Project has expanded beyond its legal non-conforming cannabis cultivation area and that there is an active zoning violation case pending on the property, and that therefore, the Project must be denied because the Board can not make Finding 2.1.2.3 which states that ‘The subject property is in compliance with all laws, regulations and rules pertaining to uses...’.

Staff Response: In October 2018 the Santa Barbara County Sheriff assessed the subject parcel for the potential for expansion of cannabis cultivation beyond the established extents of the legal non-conforming cultivation area. As a result, all cannabis was eradicated on the subject parcel. The following year, on March 18, 2019, P&D received a complaint that cannabis was again being cultivated on the site and, per standard County procedures, a zoning violation case (19ZEV-00000-00103) was opened. The complaint was investigated and it was determined that there was no evidence of cannabis growing on the site. The

zoning violation case remained open allowing P&D to investigate further as necessary. The zoning violation case was closed on April 3, 2020. Since the complaint was filed, P&D Development Review staff visited the site on two separate occasions, on December 23, 2019 and most recently on September 11, 2020. No cannabis cultivation was observed during either site visit, and it appeared that all previous cannabis activities has been eradicated. This application does not qualify as legal non-conforming, nor is the Applicant claiming that they are legal non-conforming.

As proposed, the Project would include the demolition of 6 as-built structures and the validation of 8 as-built structures. With approval of the LUP as conditioned, the proposed Project will be in full compliance with all laws, rules, and regulations pertaining to zoning uses, subdivisions, setbacks, and all other applicable provisions of the Land Use and Development Code for cannabis cultivation within the AG-II zone district and Finding 2.1.2.3 can be made.

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 from the Planning Commission provided as Attachment 1.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$19,000 (75 hours of staff time). The costs for processing appeals are partially offset by a fixed appeal fee and General Fund subsidy in Planning and Development's adopted budget. The fixed appeal fee was paid by the Appellant in the amount of \$685.06. Funding for processing this appeal is budgeted in the Planning and Development Permitting Budget Program, as shown on page D-303 of the adopted 2020-21 Fiscal Year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on October 6, 2020. The notice shall appear in the *Santa Ynez Valley News*. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing 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. Revised CEQA Checklist – September 4, 2020
4. Appeal Letter – July 20, 2020
5. Project Plans
6. Planning Commission Staff Report dated July 1, 2020
7. LUP Approval Appeal Letter dated August 5, 2019
8. Agricultural Commissioner Working Group – Pesticide Drift Mitigation Considerations
9. CDFW Comment Email, June 23, 2020
10. RWQCB Email – May 29, 2020
11. Link to the Program EIR
12. Revised Revegetation, Habitat Protection, Tree Protection & Wildlife Movement Plans – May 7, 2020
13. Revised Noise Plan – June 9, 2020

14. Biological Resources Assessment (BRA) – April 10, 2019
15. BRA Amendment Letter – July 18, 2019
16. Aquatic Survey Results – June 7, 2019
17. APAC Minutes – June 21, 2019
18. Caltrans Email – June 3, 2020

Authored by:

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