



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: July 13, 2021  
Placement: Departmental  
Estimated Time: 3 hours on July 13, 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:** Gaillard Appeal of the Planning Commission Approval of the Suarez Cannabis Cultivation Project, Case No. 21APL-00000-00018 and 19LUP-00000-00327, First Supervisorial District

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County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: 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-00000-00018;
- b) Make the required findings for approval of the revised Project, Case No. 19LUP-00000-00327, as specified in Attachment 1, including CEQA findings;
- c) Determine that the previously certified Programmatic 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) (Attachments 3 and 4); and
- d) Grant *de novo* approval of the revised Project, Case No. 19LUP-00000-00327 subject to the conditions of approval (included as Attachment 2).

**Summary Text:**

On August 7, 2019, the Applicant submitted an application for a Land Use Permit for a cannabis operation consisting of 34.7 acres of outdoor cultivation. No cannabis is currently being grown on the subject property.

The project description, plans (Attachment 6), and supporting documents have been revised since the Planning Commission hearing on March 31, 2021, with the following changes:

- A staging/loading area has been added to the proposed site plan (southwest of the parking lot).
- The proposed security fence height has been reduced from 8' tall to 6' tall.
- Sheet L-1.6 of the landscape plan has been updated with more precise plant quantities.
- A statement has been added to the project description which clarifies that the project will offset all groundwater used for irrigation of cannabis on a 1:1 basis for the duration of the project and if an offset cannot be secured or maintained, cultivation shall cease until a contract is secured.
- The location of the offset farm for the initial 1:1 groundwater offset program, as described in section B below, has been changed to a location closer to the proposed project site. The originally proposed offset farm location (APN 149-220-065) will remain as an alternate location for the offset program. Attachments 8 and 9 have been revised to reflect this information.

A detailed Project Description is provided below.

**A. Proposed Project**

The Proposed Project is a request for a Land Use Permit to allow 34.7 acres of cannabis cultivation under hoop structures. No cannabis processing will occur on site and all harvested cannabis will be removed from the site on the same day it is harvested. Six existing unpermitted structures on the parcel will be demolished prior to the commencement of cannabis cultivation activities. The six structures proposed for demolition include one 747 square foot (sq. ft.) cold storage structure, one 137 sq. ft. pump house, one 101 sq. ft. agricultural accessory building, one 320 sq. ft. storage container, one 822 sq. ft. barn, and one 120 sq. ft. orchard storage shed. Only one existing structure will be retained, a 120 sq. ft. shed (not part of the cannabis operation). A 160 sq. ft. security kiosk, a 168 sq. ft. two stall restroom building, a 160 sq. ft. pesticide and materials storage container and two 5,000 gallon water tanks will be constructed along with a 12 space parking lot and a fenced mulching area. A new septic system will be installed to serve the restroom. The cannabis operation will be fully enclosed by 6 foot tall no-climb deer fencing. Security lighting will be provided by 12 fully-shielded, downward-facing, motion-sensor activated lights mounted on 8 foot tall wooden posts or at 8 feet on the security kiosk. Lighting will be set to shut off within 3 minutes of activation. Screening of the project from public views from Foothill Road will be provided by 8 to 15 foot wide landscape areas along the west, north and east perimeter of the cannabis area featuring native trees and shrubs. Grading will total 280 cubic yards of cut and 280 cubic yards of road base fill for the parking area and driveway.

The cannabis operation will employ 4 full-time employees from March through December with an additional 20 temporary workers from April to November. Hours of operation will be 7am to 4pm, Monday through Saturday. The cultivation area will be divided into five blocks and planted in two week intervals commencing on April 1st and ending in August. Plants will be ready for harvest within 60-75 days of planting starting in June. Harvests would continue in two week intervals through mid-November.

As per the Project's Site Transportation Demand Management Plan, temporary employees will be transported to the site by vanpool from Santa Maria and/or Kern County. A drip irrigation system will be used to eliminate the potential for irrigation runoff and maximize the efficient use of water. Tensiometers will be used to monitor soil moisture and prevent over watering. The Project will offset all groundwater used for irrigation of cannabis and landscaping on a 1:1 basis for the duration of the Project by providing compensation to farmers within the same groundwater basin that switch from irrigated to non-irrigated agricultural activities, and/or by funding irrigation improvements in the same groundwater basin as outlined in Attachment 8 of the Board Agenda Letter dated July 13, 2021, incorporated herein by reference. In the event that a groundwater offset contract that meets the requirements of the 1:1 groundwater offset program (Attachment 8) cannot be secured or maintained, groundwater use for cannabis cultivation on the subject property shall cease until a contract is secured. Irrigation water for cannabis cultivation as well as domestic and fire suppression water will be provided by an existing onsite well and a new water well. Waste water will be handled by the proposed septic system. The parcel will be served by the County Fire Department and the County Sheriff. Access to the site will continue to be provided off Foothill Road along a proposed 20' wide all-weather driveway. The property is a 78.27-acre parcel zoned AG-II-100 and shown as Assessor's Parcel Number 149-160-033, located at 2225 Foothill Road in the Cuyama area, First Supervisorial District.

**B. Background:**

On August 7, 2019, the Applicant submitted a Land Use Permit (LUP) application for the Suarez Cannabis Cultivation Project (herein after Proposed Project), Case No. 19LUP-00000-00327. The subject property is an AG-II zoned, 78.27-acre parcel. The northern portion of the subject property has historically been used as a livestock farming operation as well as a Jujube tree orchard. The proposed cannabis cultivation area (southern portion of the property) consists of fallow farmland, which was last under crop in 2012. Since 2012, this portion of the property has been utilized as grazing land for livestock. 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 October 23, 2020, the Planning and Development Department Director (herein after Director) approved the Proposed Project. On October 30, 2020, the Appellant filed a timely appeal (Case No. 20APL-00000-00036) of the Director's approval, and the appeal was heard by the County Planning Commission on March 31, 2021.

Prior to the Planning Commission appeal hearing on March 31, 2021, the Applicant revised the Project to include a program to offset all groundwater proposed for cannabis irrigation and landscaping on a 1:1 basis, by providing compensation to farmers within the same groundwater basin that switch from irrigated to non-irrigated agricultural activities, and/or by funding irrigation improvements within the same groundwater basin. The 1:1 groundwater offset program (see Attachment 8) is supported by a Hydrogeologic Evaluation and Hydrologic Analysis, included as Attachment 9 to this BAL, and herein incorporated by reference, which indicated that the 1:1 water offset program may result in a net benefit to the Cuyama Groundwater Basin. The Applicant estimates that the Project's maximum total water demand for cultivating cannabis at this site will be approximately 104 acre-feet (AF) per year. This is based on a 3 AF per year/per acre estimated annual water demand of outdoor cannabis grown using drip irrigation, which the Applicant claims to be a conservative estimate (see sources in Attachment 8). The Applicant is proposing to utilize well metering to annually analyze if the 104 AF per year estimate is being achieved. If the Applicant pumps more than 104.1 AFY of groundwater in Year 1, they will make up the difference in the following year by offsetting additional groundwater resources. Irrigation allocated for screening

landscaping is estimated to use 1.14 AF per year, and temporary dust control during construction activities is estimated to use a maximum of 653,400 gallons over a 60-day period. The Applicant proposed to enter into a five year contract (with an option to renew) with the property owner of APN 149-150-017 to offset the water use. This parcel is owned by a local Cuyama farmer and is located less than one mile north east of the Project site. As a result of the 1:1 water offset program and agreement between the Applicant and the property owner of APN 149-150-017, the farmer will not plant or irrigate 32.1 acres of alfalfa in 2021 and the farmer will instead keep the existing grain crop in and cease irrigation of 32.1 acres on January 1, 2022. The water consumption of alfalfa in the Cuyama Valley is 4.02 AF per year. Ceasing irrigation for 32.1 acres of alfalfa will therefore result in a water savings of 128.8 AF per year to accommodate the Applicant’s 104 AFY estimated groundwater use for the Project, as well as the water necessary for landscaping irrigation and dust control during temporary construction activities. This also allows for a 24.7 AFY buffer in the event that cannabis water demand exceeds estimates. Table 1 is included below to help illustrate how the 1:1 water offset will be achieved.

**Table 1. Projected Water Consumption and Demand**

<b>Crop Type</b>	<b>Acreage</b>	<b>Estimated Water Duty (AFY per acre)</b>	<b>Gross Water Demand (AFY)</b>
Alfalfa	32.1	4.02	128.8
Cannabis	34.7	3	104.1
<b>Buffer (net savings)</b>			<b>24.7</b>

*Table 1: Acreage multiplied by water duty for the selected crop type provides the gross water demand. This calculation shows that the proposed cannabis cultivation project is expected to utilize less water than 32.1 acres of alfalfa cultivation, and that the offset will be achieved if the 32.1 acres is changed to a non-irrigated agricultural activity. The 24.7 AFY net savings will cover water needed for irrigation of screening landscaping (1.14 AFY) as well as water for dust control during temporary construction activities (max. 653,400 gal over a 60-day period).*

In the event that the property owner of APN 149-150-017 leaves the Cuyama Valley or decides not to renew his contract with the Applicant, the Applicant would be required by the Project Description continue the 1:1 water offset program by (a) entering into a non-irrigated agricultural activity agreement with another farmer located in the Cuyama Basin; or (b) paying another farmer to upgrade existing irrigation equipment, fix leaks, etc. The applicant will submit a technical report to the County providing detailed information supporting any future changes to the offset program. The originally proposed offset farm location (APN 149-220-065) will remain as an alternate location for the offset program (see attachments 8 and 9).

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 County’s PEIR for the Cannabis Land Use Ordinance and Licensing Program (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 March 23, 2021 (Attachment 12). On March 31, 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 April 12, 2021, the Law Office of Marc Chytilo on behalf of Jean Gaillard filed a timely appeal (Case No. 21APL-00000-00018) 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 D of this Board Agenda Letter.

As described in the Summary Text above, the project description and plans were revised since the Planning Commission Hearing on March 31, 2021 with minor changes and added information regarding the security fencing, the staging/loading area, the 1:1 groundwater offset program, and the landscape plans.

### **C. Issue Summary: Cuyama Groundwater Basin**

The Proposed Project is located within the Cuyama Groundwater Basin, which has been designated by the Department of Water Resources as a critically over drafted groundwater basin. Projects within this basin are subject to Cuyama Basin Groundwater Sustainability Agency's (GSA) Groundwater Sustainability Plan (GSP). The Cuyama GSP describes the GSA's approach to achieve sustainable groundwater management for the Cuyama Basin by 2040, as mandated by the Sustainable Groundwater Management Act (SGMA). The GSP identifies two Management Areas, the Central Basin Management Area and the Ventucopa Management area, where declining groundwater levels are the most severe due to decades of groundwater pumping for crop irrigation. These Management Areas are subject to groundwater pumping restrictions that are imposed and collected by the GSA. The Proposed Project is not located in either of the Management Areas designated in the GSP. Attachment 7 depicts the general boundaries of the proposed Management Areas and the approximate location of the Proposed Project, which can also be confirmed online through the Cuyama Basin GSA's website ([cuyamabasin.org](http://cuyamabasin.org)). The GSP, including the GSA's proposed Management Area boundaries, are subject to approval by the State Department of Water Resources and could be subject to expansion in the future if the GSA determines that the areas surrounding the Management Areas begin to experience severe groundwater level decline. The GSA will refine its groundwater model and review the GSP and boundaries every five years per SGMA requirements. The Central Basin Management Area may be revised during the 5-year GSP update in 2025. Planning and Development advised the applicant that the project -- in addition to any requirements of this permit -- is subject to the provisions of the SGMA and that the GSA may have the authority to manage groundwater pumping for the project in the future.

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

The Appeal application (Attachment 5) contains a letter, dated April 12, 2021, outlining the Appellant's appeal issues. The appeal issues allege inadequacy of the 1:1 groundwater offset program, lack of evidence to support the Land Use Permit Findings, inconsistency with Comprehensive Plan policies, non-compliance with CEQA, and improper receipt and failure to disclose ex-parte evidence. 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: Inadequate Groundwater Offset Program**

The Appellant states that the proposed 1:1 water offset program is inadequate to resolve the Project's groundwater impacts to the Cuyama Groundwater Basin because the project location and offset farm location are located in separate basin sub-regions and are separated by the Santa Barbara Canyon Fault, as designated by the United States Geological Service (USGS). The Appellant asserts that because of the vastly different conditions on either side of the Santa Barbara Canyon Fault, pumping groundwater in the Proposed Project area and offset area has different implications for groundwater management. The

Appellant states that the groundwater pumping for the Proposed Project will contribute to land subsidence that is already occurring in the central portion of the Cuyama Groundwater Basin.

**Staff Response:**

The proposed 1:1 water offset program (discussed in Section B above), in addition to the existing regulatory framework that the Cuyama GSP provides, adequately addresses groundwater impacts to the Cuyama Groundwater Basin. As discussed in Section C above, the GSA will continue to monitor groundwater levels throughout the entire Cuyama Groundwater Basin and has the ability to expand the areas of restrictions and limit water pumpage. The Applicant must comply with all applicable rules and regulations adopted by the GSA, such as reporting all water usage annually and paying all assessments and fees adopted by the GSA. The Applicant is also committed to providing water use data to the County and GSA including the following specific information: (i) well construction information and capacity; (ii) water demand for cannabis based on meter data and crop uptake; and (iii) water level and quality information.

The County's PEIR for the Cannabis Land Use Ordinance and Licensing Program analyzed hydrology and water quality impacts of the Program associated with cannabis operations, including specific discussions related to groundwater demand and the existing regulatory setting that the Cuyama GSP provides. Based on water demand factors of typical commercial agricultural products, as well as anecdotal information on average water demands associated with cultivation operations, the PEIR estimated that new cannabis cultivation licensed under the Project would potentially result in water demands between 1 to 5 AFY/acre. Impacts to groundwater supply and recharge were considered to be less than significant (Class III), but a mitigation measure (MM HWR-3, Water Conservation-Water Efficiency for Cannabis Activities) was implemented to further reduce impacts to groundwater. This mitigation measure was included as a development standard in the Land Use and Development Code (Section 35.42.075.D.1.j), which is applied to site-specific land use entitlement for commercial cannabis operations authorized under the Program. On March 22, 2021, Planning and Development staff completed a written checklist pursuant to State CEQA Guidelines 15168(c)(4) and determined that the Project will be an activity within the scope of the PEIR and will not result in additional water demand impacts beyond what was disclosed in the PEIR. No additional cumulative impacts were identified. Water efficiency measures that meet the requirements of LUDC Section 35.42.075.D.1.j have been proposed as a part of the Project and include use of a drip irrigation system and use of tensiometers to monitor soil moisture and prevent over watering. The proposed 1:1 water offset program described in section B above was voluntarily added to the Proposed Project by the Applicant, and is not required to meet the water efficiency measure requirements included in LUDC Section 35.42.075.D.1.j.

As discussed in Section B above the Applicant provided a Hydrogeologic Evaluation and a Hydrologic Analysis, both prepared by Kear Groundwater, dated June 25, 2021 (Attachment 9). The Hydrogeologic Evaluation and Hydrologic Analysis, herein incorporated by reference, support the proposed 1:1 water offset program and indicate that the program may result in a net benefit to the Cuyama Groundwater Basin. These project-specific evaluations indicate that the project will cause no localized impacts to any wells surrounding the property. Additionally, a new offset farm location has been secured since the Planning Commission hearing on March 31, 2021. Previously, the offset farm was located approximately 5.4 miles south east of the project site (APN 149-220-065). The offset farm location is now proposed for a farm located within the Central Basin Management Area, less than 1 mile north east of the project site as detailed in Attachment 8. The originally proposed offset farm location (APN 149-220-065) will remain as an alternate location for the offset program. The Hydrogeologic Evaluation and Hydrologic Analysis

(Attachment 8) support both offset farm locations and state that a decentralization of groundwater extraction will be realized because extraction from wells in the offset farm areas more directly impacts recharge to the basin. The Hydrologic Analysis estimates that reallocating well pumpage from the intensely pumped Central Basin Management Area or the Ventucopa Area to the 2225 Foothill property would result in a net benefit to the basin because it would cease groundwater pumping in a main area of recharge (Cuyama River). Attachment 7 depicts the boundaries of the GSP Management Areas and approximate locations of the Proposed Project and offset farms.

**Appeal Issue No. 2: Lack of Available Water Precludes Approval**

The Appellant asserts that there is inadequate water available to support the Proposed Project, and therefore Land Use Permit Finding 2.2.1 cannot be made. The Appellant also asserts that the Proposed Project's groundwater pumping will likely cause harm to shallow wells on Foothill Road surrounding the project site, which are currently used for food production and domestic use.

**Staff Response:**

There is sufficient information to make the finding that there are adequate public services and private resources, including water availability, to serve the Proposed Project. The Project proposes use of one existing onsite well and one proposed onsite well (Permit No. 0004497) to provide water for the Proposed Project. The existing water well was permitted and installed in 2001 and has historically been used for crop irrigation. The proposed cannabis cultivation area was last under crop in 2012. Environmental Health Services (EHS) reviewed the Proposed Project and confirmed that the existing and proposed wells are adequate for the Proposed Project's domestic uses (3 gal. per minute requirement). Additionally, the Applicant provided a Hydrogeologic Evaluation and Hydrologic Analysis, both prepared by Kear Groundwater, included as Attachment 9 of this Board letter, which conclude that groundwater resources underlying the subject property appear capable of supporting all planned agricultural operations and proposed domestic operations with proper management to hydrologic conditions and GSA oversight. Therefore, no harm to surrounding wells is anticipated. Lastly, the County does not adjudicate water rights. Per the State Water Resources Control Board, in most areas of California, overlying land owners may use groundwater without approval from the State Board, or a court. The State of California does not currently have a permit process for regulation of groundwater use. In several basins, however, groundwater use is subject to regulation in accordance with court decrees adjudicating the groundwater rights within the basins. Specifically for the Cuyama Basin, the GSA through the GSP will continue to monitor groundwater use and availability and has the ability to restrict groundwater pumping where needed.

**Appeal Issue No. 3: Failure to Comply with Applicable Comprehensive Plan Policies and Goals**

The Appellant asserts that the Proposed Project is inconsistent with the following Comprehensive Plan Policies:

- a. Land Use Element – Development Policy 4
- b. Conservation Element – Groundwater Resources Policy 3.5
- c. Conservation Element – Groundwater Resources Policy 3.6
- d. Land Use Element – Visual Resources Policy 2
- e. Agricultural Element – Goal I

***3.a Compliance with Land Use Element, Development Policy 4***

The Appellant states that there is a lack of available water in the Cuyama Groundwater Basin to serve the Project, making it inconsistent with Land Use Element, Development Policy 4.

### **Staff Response**

The Proposed Project is consistent with the Land Use Element, including Development Policy 4. Land Use Element, Development Policy 4 reads as follows:

*Prior to issuance of a use permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e. water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the Proposed Project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.*

The project is adequately served by public and private resources including roads, water, sewer, fire protection and police serves. As discussed in staff's response to Appeal issue 2, Environmental Health Services reviewed the Proposed Project and confirmed adequacy of the existing and proposed wells to serve the project's domestic uses. The Applicant provided a project-specific Hydrogeologic Evaluation and Hydrologic Analysis which conclude that there is adequate groundwater resources underlying the project site to serve the Proposed Project's water needs. Land Use Element, Development Policy 4 is addressed in full in Section 6.3 of the Planning Commission Staff Report, included as Attachment 12 and herein incorporated by reference.

### ***3.b-c Compliance with Conservation Element, Groundwater Resources Policy 3.5 and 3.6***

The Proposed Project is consistent with the Conservation Element, including Groundwater Resources Policies 3.5 and 3.6, as well as Actions 3.5.1 and 3.5.2.

Conservation Element, Groundwater Resources Policies 3.5 and 3.6, and Actions 3.5.1 and 3.5.2 read as follows:

***Groundwater Resources Policy 3.5:*** *In coordination with any applicable groundwater management plan(s), the County shall not allow, through its land use permitting decisions, any basin to become seriously over drafted on a prolonged basis.*

***Groundwater Recourses Action 3.5.1:*** *Based on input from the County Water Agency and P&D, the Board, in coordination with the responsible water purveyor(s), shall designate any basins within the county as "seriously overdrafted" if the following conditions are present: Prolonged overdraft which results or, in the reasonably foreseeable future (generally within ten years) would result, in measurable, unmitigated adverse environmental or economic impacts, either long-term or permanent. Such impacts include but are not limited to seawater intrusion, other substantial quality degradation, land surface subsidence, substantial effects on riparian or other environmentally sensitive habitats, or unreasonable interference with the beneficial use of a basin's resources. The County's fundamental policy shall be to prevent such overdraft conditions.*

***Groundwater Resources Action 3.5.2:*** *In seriously overdrafted basins, the County shall not approve discretionary development permits if such development requires new net extractions or increases in net extractions of groundwater, pending development and*



*County acceptance of a basin management plan, consistent with the Groundwater Management Act or other applicable law, which adequately addresses the serious overdraft.*

***Groundwater Resources Policy 3.6:*** *The County shall not make land use decisions which would lead to the substantial over commitment of any groundwater basin.*

The Proposed Project includes approximately 34.7 acres of outdoor cannabis cultivation under hoop structures located in areas of the site historically used for farming and was last under crop in 2012. As discussed above, the projected water use for the Proposed Project is approximately 104 acre-feet per year. The Proposed Project will offset 100% of the water use by providing compensation to farmers within the same groundwater basin that switch from irrigated to non-irrigated agricultural activities, and/or by funding irrigation improvements within the same groundwater basin. The Proposed Project will not lead to the substantial over commitment of the Cuyama Groundwater Basin. Attachment 13 to this Board Letter, herein incorporated by reference, includes detailed analysis of the consistency of the project with the Groundwater Resources Policies listed above.

### ***3.d Compliance with Land Use Element, Visual Resources Policy 2***

The Appellant states that the project entails substantial visual changes including hoop structures, security fencing, and lighting that conflict with the Land Use Element, Visual Resources Policy 2. The Appellant asserts that the proposed screening landscape buffer will have little effect in reducing the visual impact from Foothill Road due to topography and relative lack of significant vegetation.

### **Staff Response**

The Proposed Project is Consistent with the Land Use Element, including Visual Resources Policy 2. Land Use Element, Visual Resources Policy 2 reads as follows:

*In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.*

As is detailed in Section 6.3 of the Planning Commission Staff Report, included as Attachment 12 and herein incorporated by reference, staff determined that the Proposed Project is consistent with the Land Use Element, Visual Resources Policy 2. The proposed hoop structures will have a maximum height of 18 feet, which is less than the maximum height limit in the AG-II-100 zone. Technical requirements dictate that the hoop structure coverings must be white in color in order to allow a proper amount of light for successful crop growth. The proposed security kiosk, restroom building, storage container and water tanks also meet the height limit and setback requirements of the AG-II-100 zone. The project is located approximately 3 miles south of Highway 166 and will not be visible from the Highway. As required by Section 35.42.075.C.3 of the LUDC, the project will be screened from public viewing areas to the maximum extent feasible through implementation of the proposed Landscape and Screening Plan (Sheets L-1.5 and L-1.6 of Attachment 6). Condition of Approval No. 7 (Attachment 2) requires implementation of the Landscape and Screening Plan and filing of a performance security to ensure installation and maintenance for two years or until established. As required by Section 35.42.075.C.4 of the LUDC, all proposed outdoor lighting fixtures are dark-sky compliant, will be directed downward, fully shielded, and

motion-sensor activated and Condition No. 9 (Attachment 2) will ensure compliance with the approved Lighting Plan.

### ***3.e Compliance with Agricultural Element, Goal I***

The Appellant states that the Proposed Project is inconsistent with Goal I of the Agricultural Element of the Comprehensive Plan because the proposed large-scale outdoor cannabis cultivation project jeopardizes the continuation of traditional agriculture in the vicinity of the project area.

#### **Staff Response**

The Proposed Project is consistent with the Agricultural Element, including Goal I. Goal I reads as follows:

*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.*

The intent of Goal I is to protect agricultural operations from non-agricultural uses, not from other agricultural operations. The Proposed Project will continue the long-time agricultural activities of the property and will not convert any agricultural lands to non-agricultural development. The agricultural structures proposed as part of the project will be used for support of the agricultural operation. The ongoing agricultural operations on the 78.27-acre property will not be hindered or diminished as this project represents only a change of crop and will continue active agriculture. Goal I, along with other applicable Policies from the Agricultural Element are addressed in detail in Section 6.3 of the Planning Commission Staff Report, included as Attachment 12 and herein incorporated by reference.

#### **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: reliance of the CEQA Checklist, Environmental Justice impacts, and new information regarding agricultural land use conflicts. The Appellant further states that the Board must seek review and resolution of these issues through use of the CEQA review process prior to approval of the Proposed Project. These appeal issues are further outlined below.

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

The Appellant states that the County failed to comply with CEQA, which requires project-specific environmental review. The Appellant also states that the County did not undertake an adequate analysis to determine whether an additional environmental document must be prepared, and failed to consider substantial evidence of new and substantially more severe impacts resulting from changed circumstances and new information requiring subsequent environmental review. The Appellant further states that the CEQA checklist is defective and inadequate.

#### **Staff Response:**

The Proposed Project was adequately evaluated under the PEIR and there is no new information of substantial importance showing that the Project will have substantially increased impacts from what was identified in the PEIR. Additionally, environmental conditions unique to this parcel were analyzed through the review of the Land Use Permit and 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. As part of the Proposed Project, a 1:1 groundwater offset program is proposed, therefore the project will not exceed the 31 AFY groundwater threshold for the Cuyama Basin as specified in Planning and Development's Environmental Thresholds and Guidelines Manual.

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

The Board adopted a Statement of Overriding Considerations concluding that the benefits of the Program outweigh the unavoidable adverse environmental effects identified above. 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. As is discussed in the staff response to appeal issue 4c below, the Appellant failed to provide substantial evidence that the Project will have a new or substantially more severe significant effect than shown in the PEIR.

On October 23, 2020, pursuant to the State CEQA Guidelines Section 15168(c)(4), staff completed the Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications 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 March 22, 2021, to include changes to the project description. On June 30, 2021, the checklist (Attachment 3) was revised to attach the Statement of Overriding Consideration regarding the PEIR. 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 – Environmental Justice Impacts***

The Appellant states that PEIR lacked assessment of Environmental Justice Impacts associated with directing Cuyama’s limited water away from traditional crops to support cannabis cultivation that in turn produces noxious odors, degrades the visual environment, and increases safety impacts in an already disadvantaged community.

#### **Staff Response:**

The County did not evaluate Environmental Justice issues in the PEIR because it was not, and is still not, required pursuant to CEQA. Neither the CEQA statute nor the CEQA Guidelines require consideration of environmental justice. However, the State mandates that once a local agency amends two or more State-mandated general plan elements, they will be required to adopt an Environmental Justice element as part of their General Plan. At the time an Environmental Justice Element is adopted by the County and included in the County’s Comprehensive Plan, future projects will need to be consistent with the environmental justice policies.

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 on a variety of land uses. The Cuyama region was identified in the County’s PEIR for the Cannabis Land Use Ordinance and Licensing Program as one of the five County sub regions that were specifically analyzed. Additionally, 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 Board 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.

Additionally, the PEIR identified that cannabis cultivation could adversely affect scenic resources and vistas, existing visual character, and lighting and glare and set forth a mitigation measure (MM AV-1) that was included as a development standard the LUDC. Pursuant to LUDC Section 35.42.075.C.3 cannabis cultivation activities and structures (including hoops) shall be screened to the maximum extent feasible to avoid being seen from public places. The proposed a Landscape and Screening Plan (Sheets L-1.5 and L-1.6 of Attachment 6) will effectively screen the Proposed Project from public viewpoints along Kirschenmann Road and Foothill Road and therefore meets the requirements of this development standard. The project is not be visible from any other public viewing point.

The Project site is served by the County Sheriff's Department for public safety. The County does not regulate crime under Chapter 35, Zoning, of the Santa Barbara County Code, and enforcement of crime is not within the Planning and Development's purview. However, the Land Use and Development Code (LUDC) of Chapter 35 does include requirements related to site security and fencing for cannabis operations. Section 35.42.075.C.2 of the LUDC, requires implementation of a Fencing and Security Plan for ample security and screening of the proposed commercial cannabis activity. The Proposed Project was approved in compliance with all County requirements for cannabis operations, including those related to site fencing and security. As demonstrated in the Project's Fencing and Security Plan (Sheet L-1.4 of Attachment 6), the Proposed Project includes a barrier, at a minimum height of 6 ft., encompassing the proposed commercial cannabis operational area in its entirety, access gates that will remain locked at all times except during active ingress/egress, security cameras providing 24-hour video monitoring surveillance, and motion sensor lighting around the perimeter of the commercial cannabis operational area. Pursuant to Condition 6 (Attachment 2) the Fencing and Security Plan must comply with the requirements of Section 35.42.075.C.2 of the LUDC and the operator must maintain the Project site in compliance with the Fencing and Security Plan throughout the life of the Project. The County Sheriff's Office staff performed a site visit on April 20, 2021 along with Planning and Development Permit Compliance staff and preliminarily approved the proposed Fencing and Security Plan. Final review and approval of this plan will occur at the cannabis business licensing phase pursuant to Section 50-11 of Chapter 50 (Licensing of Cannabis Operations) of the Santa Barbara County Code.

#### ***4.c Compliance with CEQA – Agricultural Land Use Conflicts and Viability of Legacy Agriculture***

The Appellant states that new information of substantial importance has come to light showing that agricultural land use conflicts will be substantially more severe than the PEIR anticipated. The Appellant provided a letter from the Grower Shipper Association (dated March 6, 2020), reporting their members' experiences of conflict trying to grow traditional crops near cannabis. The Appellant also provided a letter to the Board from the Agricultural Advisory Committee (dated March 6, 2020, Attachment 5), requesting the Board continue the appeals of certain precedential projects related to cannabis land use (subject project not listed) until predictable land use conflicts between traditional agriculture and cannabis are resolved.

#### **Staff Response:**

The Proposed Project is compatible with surrounding agriculture and is consistent with all local policies and ordinances pertaining to agriculture. The exhibits (Exhibits 1 through 3 of Attachment 5 of this Board Letter) that the Appellant submitted as evidence of new or substantially more severe significant impacts provide an unsupported narrative that does not constitute substantial evidence that the Project will have a new or substantially more severe significant effect than shown in the PEIR. Pursuant to CEQA Guidelines Section 15384, substantial evidence shall include facts, reasonable assumptions predicated upon facts, and

expert opinion supported by facts; argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence.

The PEIR contemplated land use conflicts and compatibility issues with businesses 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 Cuyama region. 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 Cuyama region, both proposed and approved, is therefore not new information and was adequately considered in the PEIR.

As discussed in staff's response to Appeal Issue No. 3.e, the Proposed Project will continue the long-time agricultural activities on 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 Proposed Project will be a continuation of the agricultural activities on the subject property.

**Appeal Issue No. 5: Improper Receipt and Failure to Disclose *Ex Parte* Evidence**

The Appellant states that the County's procedures mandating the reporting and disclosure of evidence and argument collected by decision-making officials during site visits and *ex parte* meetings were not adhered to by the County Planning Commission. The Appellant asserts that Planning Commission members failed to disclose evidence of presentations received during site visits and these defects materially prejudiced the Appellant and public in this matter.

**Staff Response:**

During the Planning Commission Hearing on March 31, 2021, all *ex parte* communications were disclosed by the Planning Commission and captured in compliance with County procedures. The hearing on appeal and permit by the Board is a *de novo* hearing.

**Conclusion:** For the reasons discussed above, staff finds that the raised appeal issues 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 (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 this project is budgeted in the Planning and Development Department's Permitting Budget Program on page D-301 of the County of Santa Barbara Fiscal Year (FY) 2021-22 adopted budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on July 13, 2021. The notice shall appear in the *Santa Maria Times*. 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 Tina Mitchell 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 Guidelines § 15168(c)(4) Environmental Checklist dated June 30, 2021
4. Link to the Program Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003 [hardcopy provided to the Clerk of the Board]
5. Appeal Letter dated April 12, 2021
6. Project Plans dated June 2, 2021
7. Map of Cuyama GSP Basin Management Areas dated November 2019
8. 1:1 Water Offset Program Memos dated June 25, 2021
9. Hydrology Reports dated June 25, 2021
10. Biological Resources Survey Report dated May 7, 2020
11. Regional Water Quality Control Board Notice of Applicability dated July 10, 2020
12. Planning Commission Staff Report dated March 22, 2021 and associated Attachments
13. Supplemental Comprehensive Plan Policy Consistency Analysis

**Authored by:**

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Development Review Division, Planning and Development Department