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de la Guerra, Sheila **Public Comment**



From: Molly Pitluck <mpitluck@drwelchlaw.com>
Sent: Monday, August 15, 2022 4:24 PM
To: Vosburg, Alia; sbcob; David Welch; Licensing Group
Subject: Public Comments - Cuyama Greens, LLC regarding Board of Supervisors Meeting August 16, 2022
Attachments: 2022-08-15 Cuyama Greens [Public comment re proposed amendments].pdf

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Good Afternoon, Alia and Board of Supervisors,

Alia, thank you so much for sending over the agenda for tomorrow.

Attached please find the public comment by Cuyama Greens, LLC regarding tomorrow's Board of Supervisor meeting on the proposed ordinances.

Please let me know if any questions/issues.

Thank you so much and have a great evening!

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August 15, 2022

SENT VIA EMAIL

Santa Barbara County Board of Supervisors
105 E. Anapamu Street, Fourth Floor
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Re: Cuyama Greens, LLC (19LUP-00000-00306)

Dear Chair Hartmann and Honorable Supervisors:

As you are aware, the County currently has proposed amendments to its land use code which will require eight (8) projects on appeal to convert their land use permits (“LUP”) to conditional use permits (“CUP”) in order to “afford County decision-makers greater discretion when considering proposed, new commercial cannabis operations that involve cultivation.” (Attachment 8: Planning Commission Staff Report, dated May 3, 2022, pg. 3.) Additional CUP findings would require additional discretionary standards to comply with under LUDC 35.82.060(E).

Cuyama Greens, LLC’s (“Cuyama Greens”), LUP (19LUP-00000-00306) was approved by the County Planning Department (“Planning”) on April 27, 2022 after extensive consultation and expense, redesign pursuant to County requirements and approvals by the County Agricultural Preserve Committee (“Committee”) and Planning. Cuyama Greens is already on the wait list for eligible acreage and opposes its already issued LUP being converted to a CUP as follows:

A. Cuyama Greens’ project has gone through three years of County review and has received approval from all required County, state and federal agencies.

Cuyama Greens’ LUP authorizes the cultivation of 6.17 acres of cannabis with eight pages of conditions for the project attached. The property, located at 501 Harvey Road (APN 149-310-004), Cuyama 93254, consists of 100 acres total. Marc Chytilo appealed Cuyama Greens’ LUP on behalf of the Community Subcommittee of the Cuyama Valley Advisory Committee on May 9, 2022. Planning still has not processed the appeal.

Cuyama Greens submitted its LUP application in May 2019 and its original business license application was deemed complete on October 29, 2019. The initial LUP application was for 40 acres of cannabis cultivation with processing onsite. However, the County ultimately required Cuyama Greens to reduce its proposed cultivation area to only the developed portions of the property, from 40 acres to 6.17 acres. Throughout this time, Cuyama Greens also extensively consulted with both the United States and California Departments of Fish and Wildlife (“USFW” and CDFW,” respectively), who approved of the 6.17 acre project without further consultation.

While its applications were being processed, the County’s law changed further and Planning required Cuyama Greens to submit an Odor Control Plan approved by a certified industrial

hygienist. Now that processing is not going to occur on site, the Odor Control Plan does not need to cover processing activities. Cuyama Greens also had a hydrological evaluation prepared by a licensing hydrogeologist and has spent hundreds of thousands of dollars on the project to get the LUP approved, including installing a well, tens of thousands of dollars in County and expert fees (hydrologist, biologists, industrial hygienist, archeologist and consultants). Again, Cuyama Greens is already on the acreage wait list.

In addition, Cuyama Greens' project was approved by the Committee pursuant to a replacement Agricultural Preserve Contract (Case No. 77AP052) at a public hearing. The property is within the Williamson Act and must be used for agricultural purposes. Because the project is on appeal, it will still be heard by the Planning Commission ("Commission"), where they may impose further conditions of approval.

B. Planning and all required County agencies have already found the project meets all required conditions of a CUP when issuing the LUP.

The Planning Commission claims the additional required CUP findings will afford them additional discretion to deny Cuyama Greens' project or impose further conditions (in addition to the eight pages of conditions already imposed on the project). The findings are discussed and listed below, have already been extensively reviewed and found by Planning and will be reheard by the Commission during Cuyama Greens' appeal hearing:

- 1) The site is adequate in terms of location, physical characteristics, shape and size to accommodate the use.

This has already been determined by Planning after 3 years and reducing the project site to 6.17 acres. Cuyama Greens must operate within the project description according to the face of the LUP.

- 2) Significant environmental impacts are mitigated to the maximum extent feasible.

After extensive consulting with Planning, the State Water Resources Control Board, the USFW and CDFW, no significant environmental impacts were found with the proposed use. Cuyama Greens must follow the dust control and water conditions in its approved LUP.

- 3) Streets and highways are adequate to carry the traffic generated by the proposed use.

Planning required several revisions to and compliance with Cuyama Greens' site transportation demand management plan is a condition in the LUP. In addition, Cuyama Greens was required to record a road name for the project, which it did.

- 4) There are adequate public services, including fire, police, sewage and water supply.

Both Planning and the cannabis business license department sent Cuyama Greens' project and documentation to the necessary departments, all of which issued their approval. For instance, Cuyama Greens had to record a road name for emergency services to reach the parcel as approved by Fire. Environmental Health approved the project subject to conditions for replacing the septic system. The Conditions of Approval require a 5,000 gallon water tank for fire suppression. Planning and the Sheriff's department met Cuyama Greens onsite to approve of the

security, fencing and lighting plans, all of which are listed in the conditions of approval. Over the course of three years, the County's department provided valuable input and the conditions for approval of Cuyama Greens' LUP.

- 5) The project is not detrimental to the comfort, convenience, general welfare, health and safety of the neighborhood and is compatible with the surrounding area.

The County Committee approved the project to be within the agricultural preserve. Agricultural use of the property is required by law and such a use is not detrimental to the comfort, general welfare and health and safety of the neighborhood. The project is surrounded by rural, agricultural land. Due to the restrictive security measures approved by the County sheriff's department, there is no threat to health and safety. Finally, Cuyama Greens' hydrologist has studied the project and found the proposed water use was "relatively small" and will not cause undesirable results to the basin, natural resources or other beneficial users of water. Planning and the Environmental Health, Sheriff and Fire Departments extensively reviewed Cuyama Greens' project and found it was not detrimental to the community as long as the conditions were not imposed.

- 6) The project complies with all applicable requirements of County law and the comprehensive plan.

The LUP and business license application process, occurring over a period of three years, ensured Cuyama Greens' project complies with all applicable requirements of County law and the comprehensive plan. The Committee agreed when it approved the project in the Agricultural Preserve Replacement Contract.

- 7) The cultivation is compatible with and subordinate to the rural and scenic character of the area.

As stated, the property is within the Williamson Act and must be used for agricultural purposes. The landscaping plan approved by the County ensures the rural and scenic character of the area is preserved.

B. Cuyama Greens has vested rights in its LUP and taking it away without the proper appeal is fundamentally unfair in light of the conditions on the LUP.

"It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785, 791.)

While Cuyama Greens has not received a building permit, it has incurred substantial liabilities and work in good faith reliance upon the County's requirements and the LUP issued by the County, approved by the Committee, Planning, fire, the sheriff's department and environmental health services. Indeed, Cuyama Greens has been on the County's wait list since May 2022. For the County to now go back and require Cuyama Greens to yet again process its application under essentially the same criteria it already did (over the course of three years) when it is already going to be heard by the Commission who may impose additional conditions above the eight

pages of conditions already imposed, unnecessary expenses and additional Committee approvals for the Agricultural Replacement Contract, is egregiously and fundamentally unfair, arbitrary and capricious. Further, it treats Cuyama Greens differently than other applicants on the wait list who were able to get their appeals heard sooner than Cuyama Greens, as Cuyama Greens' analyst left the County and a new planner had to take over and get up to speed on the project. Cuyama Greens should not be penalized that its appeal has not been heard yet, especially since the Commission will hear the project and have an opportunity to propose additional conditions at the public appeal hearing.

Thank you for your consideration.

Sincerely,

By: /s/ Molly Pitluck

Molly Pitluck
Project Representative
Licensing

Cc: Alia Vosburg, Planning (avosburg@countyofsb.org)