



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: March 10, 2020
Placement: March 10, 2020
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: Dan Klemann, Deputy Director, Planning and Development
(805) 568-2072
SUBJECT: Santa Rita Valley Ag., Inc. Cannabis Cultivation Appeal, Case No. 19APL-00000-00032, Third Supervisorial District

County Counsel Concurrence

As to form: Yes
Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On March 10, 2020, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 19APL-00000-00032;
- b) Make the required findings for approval of the modified project, Case No. 18LUP-00000-00351, included as Attachment 1, including California Environmental Quality Act (CEQA) findings;
- c) Determine that the previously certified Program Environmental Impact Report (PEIR) (Case No. 17EIR-00000-00003) (Attachment 9) constitutes adequate environmental review as described in Attachment 3, and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines Sections 15162 and 15168(c)(2); and
- d) Grant *de novo* approval of the project, Case No. 18LUP-00000-00351, subject to the conditions included as Attachment 2.

Summary Text:

The original project description included a request for 37 acres of cannabis cultivation, which was approved by the Director on May 6, 2019. On November 6, 2019, the Planning Commission approved 12.75 acres of cannabis cultivation as part of the Planning Commission's *de novo* approval of the proposed project. The Applicant did not appeal the project. However, upon an appeal by Appellant Blair Pence, the Applicant is now requesting the Board of Supervisors to approve 32 acres of cannabis cultivation as part of the Board's *de novo* review of the project.

A. Revised Project Description

The following project description has been revised by the applicant from the project that was approved by the Planning Commission on November 6, 2019, subject to conditions of approval that reduced the acreage and required the cultivation to be located within the central portion of the lot. The project description that was approved by the Planning Commission as described above can be found in Attachment 6 (Planning Commission Action Letter dated November 8, 2019).

Santa Rita Valley Ag., Inc., the Applicant, requests a Land Use Permit (LUP) to allow 32 acres of outdoor cannabis cultivation. Processing of cannabis will take place at another off-site licensed facility. The application involves permitting a new fuel storage tank for a tractor and a new eight-foot chain link security fence encompassing the cultivation area. The Applicant is proposing to remove an existing barbed wire fence and to install a four-foot, redwood colored post rail fence to extend the length of the north side of the property along Highway 246 and on both sides of the driveway. Proposed landscaping will consist of adding a minimum of six coast live oaks (*Quercus agrifolia*), 19 olive trees (*Olea europaea*), and lavender (*Lavandula*) along Highway 246, and eight olive trees (*Olea europaea*) and lavender along the western property line. In addition, grapevines (*Vitis*) are proposed to be planted in front of the proposed chain link security fence along Highway 246 and along the western property line to mask the security fence. There will be four motion-sensor, hooded light fixtures mounted 12 feet high near the entry gate for security purposes. There is an existing 483 square-foot agricultural tool shed, a 1,180 square-foot single-family dwelling, and a 2,200 square-foot barn (for storage) onsite that will be affiliated with the cannabis operation. The single-family dwelling and barn pre-date County permit requirements (constructed before 1958). The agricultural tool shed will be permitted through the requested LUP. No grading or tree removal is proposed.

There will be 4-5 regular employees and 40-50 employees during harvest periods (two harvest periods per year, each lasting roughly three weeks). In addition to the agricultural workers, there will be 2-3 security personnel to monitor the property. The hours of operations will be from 6:00 a.m. to 6:00 p.m. from Monday through Saturday for all employees. The security personnel will work 24 hours a day, 7 days a week, for approximately two months prior to harvest and during harvest. The parcel is served by a private well and private septic system. The regular employees will use a bathroom in the existing single-family dwelling which will be part of the cannabis operation, and the Applicant will provide portable toilets for seasonal employees (during harvest periods). The Santa Barbara County Fire Department will continue to serve the site. Access will continue to be provided off of Highway 246. The property is a 42.5-acre parcel zoned AG-II-100 and shown as Assessor's Parcel Number 099-230-012, located at 7680 West Highway 246, Buellton, Third Supervisorial District.

B. Background:

On February 27, 2018, the Santa Barbara County Board of Supervisors adopted Ordinance No. 5027, an ordinance amending Section 35-1, the Land Use and Development Code (LUDC), of Chapter 35, Zoning, of the County Code to implement new development standards, permit requirements, and procedures regarding commercial cannabis activities for the inland area of the County. Pursuant to the newly adopted procedures, the Applicant submitted a LUP application for cannabis cultivation to the Santa Barbara County Planning and Development Department on November 21, 2018. Staff reviewed the Cannabis LUP application for compliance with Section 35.42.075 of the LUDC, and the Director's designee approved the application on May 6, 2019. The approved project included 37 acres of outdoor cannabis cultivation and 25 sea train containers to be used for ancillary processing activities (drying and storage). The approved LUP set forth a description of, and conditions regarding, fencing, lighting, landscaping, noise, hours of operation, and number of employees. The Director's designee granted approval based upon the proposed project's compliance with the applicable policies of the Comprehensive Plan and standards set forth in the LUDC. On May 15, 2019, Blair Pence, the Appellant, filed a timely appeal of the permit approval to the County Planning Commission (Commission).

The Commission considered the proposed project and appeal on August 8, 2019, at which time the Commission continued the item to a future hearing date in order for the Applicant to return with a revised project description to address concerns that the Commission and public raised during the hearing (e.g., additional landscaping to screen the proposed development and provide a buffer between the cultivation area and adjacent agriculture, the visual impacts of the proposed fencing, and the visual impacts of the proposed sea train containers). The Applicant revised the proposed project by including additional landscaping, selecting different fence design/materials, eliminating the proposed 25 sea train containers, removing on-site processing from the project, and relocating the cultivation area further away than originally proposed from Highway 246. On November 6, 2019, the Commission considered the revised project. During the hearing, the Commission reduced the cultivation area to 12.75 acres and required relocation of the cultivation area to the central portion of the lot, through conditions of approval. With these modifications to the project, the Commission denied the appeal (Case No. 19APL-00000-00008), made the required findings for approval of the revised project, and granted *de novo* approval of the revised project. During the hearings of August 8, 2019, and November 6, 2019, the Commission considered evidence in the record, statements given by the Appellant and the Applicant, and public testimony with regard to the proposed project to support the Commission's requested changes to the proposed project description. The Commission staff report dated July 17, 2019, subsequent memorandum dated November 6, 2019, updated Comprehensive Plan Consistency document, and updated Land Use and Development Code Compliance documents, are included as Attachments 4, 5, 14, and 15, respectively, and provide an analysis of the proposed project's consistency with the LUDC.

On November 18, 2019, the Appellant (Blair Pence) filed a timely appeal (Case No. 19APL-00000-000032) of the Commission's *de novo* approval of the project to the Board of Supervisors.

C. Appeal Issues and Staff Responses

As noted above, the Appellant filed a timely appeal of the Planning Commission's *de novo* approval of the proposed project. The appeal application (Attachment 8) contains a letter detailing why the Appellant believes that the decision of the Commission is not in accord with applicable law, including the

Comprehensive Plan. These issues include alleged non-compliance with CEQA, alleged failure to examine environmental impacts, project conditions which do not ensure enforceable mitigation, inadequacy of the odor mitigation measures in the PEIR, inconsistency with the Comprehensive Plan, and violation of due process stemming from failure to provide notice and impacts regarding project approval. Staff reviewed the appeal issues and found that they are without merit. These appeal issues and staff's responses are summarized below.

Appeal Issues Regarding Noncompliance with CEQA: The Appellant asserts that the CEQA checklist produced for the proposed project fails to complete the necessary project-level impact assessment or satisfy the County's duties to conduct project-level environmental analysis under CEQA. The Appellant contends that the County should have prepared an initial study, an independent environmental impact analysis, or a tiered environmental impact report (EIR).

Staff Response for Appeal Issues Regarding Noncompliance with CEQA: The analysis and findings presented to the Planning Commission and to your Board in Attachments 3, 4, 14, and 15 discuss how the previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed. As discussed in Attachments 3 and 4, on February 6, 2018, the Santa Barbara County Board of Supervisors certified the PEIR that analyzed the environmental impacts of the Cannabis Land Use Ordinance and Licensing Program (Cannabis Program). The PEIR was prepared in accordance with 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 program-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 evaluated the potentially significant impacts of cannabis operations, including cultivation, nurseries, manufacturing (volatile and non-volatile), distribution, testing, microbusinesses, and retail, in the unincorporated areas of the County. Impacts in the issue areas of aesthetics and visual resources,

agricultural resources, air quality, biological resources, cultural resources, geology, energy conservation, public services, water resources, hazards and public safety, land use, and noise, were found to be reduced to less than significant levels with mitigation. In addition, Class I impacts were identified in the areas of agricultural resources, air quality and greenhouse gas emissions, noise, and transportation. These Class I impacts are listed below and are discussed in more detail in the PEIR (Attachment 9):

- Impact AG-2. *Cumulative cannabis-related development would potentially result in the loss of prime agricultural soils. However, the Project would not result in conversion to non-agricultural use or impair agricultural land productivity (whether prime or non-prime).*
- Impact AQ-1. *Cannabis activities could be potentially inconsistent with the Clean Air Plan and County Land Use Element Air Quality Supplement.*
- Impact AQ-3. *Emissions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment.*
- Impact AQ-4. *Cannabis activities could be potentially inconsistent with the Energy and Climate Action Plan.*
- Impact AQ-5. *Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.*
- Impact NOI-2. *Cannabis cultivation, distribution, manufacturing, processing, testing, and retail sales facilities would result in long-term increases in noise from traffic on vicinity roadways and from cultivation operations.*
- Impact TRA-1. *Cannabis activities may result in increases of traffic and daily vehicle miles of travel that affect the performance of the existing and planned circulation system.*
- Impact TRA-2. *Cannabis activity operations may result in adverse changes to the traffic safety environment.*

The Board of Supervisors certified the PEIR and adopted a Statement of Overriding Considerations for these Class I impacts on February 6, 2018.

Section 15168(c)(2) of the State CEQA Guidelines applies to subsequent activities resulting from the project that was evaluated in the PEIR; it states that “[i]f the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document would be required.” Section 15162 of the State CEQA Guidelines gives the criteria where a previously certified EIR can be used and when a new EIR may be prepared.

Because an EIR has already been certified, State CEQA Guidelines Sections 15162 and 15168 state that no subsequent EIR or Negative Declaration shall be prepared for the proposed project if it will not have effects that were not examined in the PEIR or unless one or more of the following have occurred: 1) substantial changes are proposed in the project which will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; 2) substantial changes will occur with respect to the circumstances under

which the project is undertaken which will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or 3) new information of substantial importance which was not known and could not have been known at the time the previous EIR was certified as complete has become available.

The PEIR that analyzed the environmental impacts of the Cannabis Program constitutes adequate environmental review for the Santa Rita Valley Ag., Inc. Cannabis Cultivation project. The proposed project consists cannabis activities and development that were studied within the PEIR and has no effects that were not examined in the PEIR (Attachment 3). The proposed project site is zoned AG-II-100, which is one of the zones that was evaluated for proposed cannabis cultivation activities in the PEIR (PEIR page 2-36, Table 2-5). Furthermore, the Santa Ynez region in which the proposed project site is located is one of five regions 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).

There are no substantial changes or changed circumstances under which the proposed project is to be undertaken as analyzed in the PEIR. No new significant environmental effects or substantial increases in severity of previously identified significant effects under the certified PEIR would result from the proposed project. Further, there is no new information that the proposed project will have one or more significant effects not discussed in the certified PEIR. The analysis contained within the PEIR addresses the cumulative impacts that would be associated with the proposed project and the PEIR identifies the mitigation measures that would mitigate those impacts to the extent feasible. These mitigation measures were included as development standards in Section 35.42.075 [Cannabis Regulations] of the LUDC, and have been applied as development standards and as proposed project conditions of approval for the Santa Rita Valley Ag., Inc. Cannabis Cultivation project. Attachment 15, incorporated herein by reference, lists applicable development standards from Section 35.42.075 of the LUDC and describes how the proposed project complies with these standards. Proposed project conditions resulting from applicable development standards are included within Attachment 2 (Conditions of Approval), incorporated herein by reference. The proposed project would be monitored by Planning and Development staff to ensure compliance with development standards and approved project conditions (Attachment 2, Condition No. 18).

Because none of the conditions in State CEQA Guidelines Section 15162 have occurred, the PEIR constitutes adequate environmental review and no subsequent initial study, negative declaration, tiered EIR, or new EIR is required for the Santa Rita Valley Ag., Inc. Cannabis Cultivation project (Case No. 18LUP-00000-00351).

Appeal Issues Regarding Failure to Examine Environmental Impacts: The Appellant asserts that the PEIR did not examine a “plethora” of environmental impacts including those to aesthetic and visual resources, agricultural resources, air quality, land use compatibility, and cumulative impacts of project clusters (see Exhibit B of Attachment 8).

Staff Response for Appeal Issues Regarding Failure to Examine Environmental Impacts: As discussed above, the Santa Barbara County Board of Supervisors certified the PEIR, given that it was prepared in accordance with State CEQA Guidelines Section 15168 and fully evaluated the Cannabis Program’s environmental impacts. Furthermore, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired (CEQA Guidelines Sections 15112(c) and 15094(g)). The following provides an analysis of the specific points that the Applicant raised regarding the environmental analysis

of the proposed project; the numbering for the items below corresponds with the numbering of items presented in the appeal (Attachment 8).

- i. **Aesthetic and Visual Resources.** The Appellant alleges that the PEIR did not analyze or examine issues related to the visual and aesthetic impacts specific to the project site and specific to Highway 246. However, the analysis contained within the PEIR addresses the impacts that would be associated with the proposed project, and the PEIR identified the mitigation measures that would mitigate those impacts to the extent feasible. These mitigation measures have been applied as proposed project conditions of approval and development standards that the project description complies with.

Specifically, the PEIR identified the following aesthetic and visual resources impact that requires mitigation: “Impact AV-1. Cannabis cultivation could adversely affect scenic resources and vistas, existing visual character, and lighting and glare.” The mitigation measure (MM AV-1) that would mitigate this impact and reduce it to a less than significant level involves implementing screening requirements. As discussed in Attachment 15, incorporated herein by reference, the development standards regarding aesthetics and visual resources that are outlined in Subsection 35.42.075.C.3 of the LUDC require the submittal of a Landscape and Screening Plan with applications for outdoor cannabis cultivation. The Landscape and Screening Plan must include landscaping which, within five years, will reasonably screen the view of any new structure, including agricultural accessory structures, and on-site parking areas from the nearest public road(s). Additionally, this regulation requires that all cultivation be screened to the maximum extent feasible to avoid being seen from public places including, but not limited to, public right-of-ways (e.g., Highway 246). The Plan is reviewed and approved by the Planning and Development Department and is required to be implemented prior to final inspection and/or commencement of use, whichever occurs first, and throughout the life of the project.

The Applicant submitted the required information to comply with these development standards. The Applicant’s proposed Landscape and Screening Plan complies with these requirements in that the Plan illustrates the proposed landscaping along the entirety of the northern property line along West Highway 246, and along the entire western property line (Attachment 10). Six coast live oaks, 19 olive trees, and lavender are proposed to be planted within the front property line, along Highway 246, and eight olive trees and lavender along the western property line. In addition, grapevines are proposed to be planted in front of the proposed security fence along Highway 246 and the property entrance along the western property line to screen the security fence. No new structures are proposed to be constructed as part of this project. One as-built 483-square foot agricultural tool shed is proposed to be validated as part of this project and would be screened to the maximum extent feasible by the proposed landscaping along the northern property line. The Landscape and Screening Plan that was submitted by the Applicant demonstrates that, within five years, the proposed landscaping would adequately screen the cannabis activities, including associated structures and the parking area, from public views.

The Appellant contends that the County’s General Plan Scenic Highway Element contains preservation measures for eligible scenic routes and that the County did not examine visual or aesthetic impacts specific to Highway 246. However, according to this specific Comprehensive

Plan Element, Highway 246 is neither a designated scenic highway nor eligible for designation as a scenic highway. Therefore, the goals and policies to preserve scenic corridors, as stated in this Element, are not applicable to the proposed project site.

The Appellant further alleges that the County's General Plan Environmental Resource Management Element (ERME) and Open Space Element identifies Highway 246 between Lompoc and Buellton as a scenic corridor, and that the project's aesthetic and visual impacts were not reviewed by the County in light of it being located in a scenic corridor pursuant to these Elements. This travel corridor is considered a Level Two travel corridor, or "Moderately Scenic." According to the Open Space Element, Level Two travel corridors "may not be so scenic as to warrant preservation as open space, but should be treated with care if development is permitted." As discussed above, no new structures are proposed to be constructed as part of this project. One as-built 483-square foot agricultural tool shed is proposed to be validated as part of this project and would be screened to the maximum extent feasible. Additionally, all cultivation, associated structure, and the parking area would be screened to the maximum extent feasible to avoid being seen from public places. The subject parcel is not located within the Design Control Overlay zone and, therefore, the proposed project is not subject to design review by the Central Board of Architectural Review. The Applicant for the proposed project submitted an adequate Landscape and Screening Plan as required by LUDC Subsection 35.42.075.C.3.

- ii. **Agricultural Resources.** The Appellant alleges that the PEIR failed to analyze pesticide and insect drift in the project site vicinity and its impacts on agricultural resources, and that adjacent cannabis cultivation would restrict existing agricultural operations from applying pesticides to their crops. Operations are subject to existing laws and regulations governing the cultivation and associated hazardous activities, including pesticide use regulations under the US Environmental Protection Agency (USEPA), the California Environmental Protection Agency (CalEPA) and the California Department of Pesticide Regulation. Existing State and Agricultural Commissioner policies regulate pesticide spray and drift. Agriculturalists who use pesticides must obtain an Operator Identification Number from the Agricultural Commissioner's Office before they can purchase or use pesticides. The Agricultural Commissioner's Office is currently investigating this potential and important issue.

The use of pesticides and insecticides by non-cannabis cultivation and the accompanying regulatory framework was the same at the time the PEIR was prepared and certified as it is now. It is not new information that triggers additional environmental review. In addition, CEQA requires the assessment of a project's impact on the environment. The issue of pesticide drift is an important issue, but it would not be considered an environmental impact resulting from the project. It should also be noted that adjacent agricultural operations may still use other application methods that would minimize or eliminate the potential for drift.

In addition, the Appellant alleges that there are specific impacts from cannabis cultivation that occur near vineyards with regard to the effect of cannabis terpenes on grapes. However, currently there is a lack of evidence supporting that wine grapes absorb cannabis terpenes and, if so, the degree to which they do so. The Appellant cites a letter from Patricia Holden, Ph.D. that says that terpenes emitted from cannabis plants are categorized as biogenic VOCs. As explained by William Vizuite, professor of environmental sciences and engineering at the

University of North Carolina, during the Board of Supervisors hearing of August 20, 2019 for a proposed cannabis project, all living things emit biogenic VOCs. Therefore, biogenic VOCs are ubiquitous. Biogenic VOCs produced by plants are involved in plant growth development, reproduction, and defense. Cannabis plants primarily produce a kind of biogenic VOCs called monoterpenes which are aromatic oils that provide cannabis varieties with distinctive flavors like citrus, berry, mint, and pine. These are the same kind of terpenes that are found in any other plant such as roses, orange trees, rosemary, and pine trees. Terpenes in cannabis began for adaptive purposes: to repel predators and lure pollinators. The emission rates from two strains of cannabis (Critical Mass and Elephant Purple) are 8.6 and 4.5 micrograms of carbon (terpenes) produced per gram of plant per hour, respectively. For comparison, pine trees produce approximately 16 micrograms of terpenes per gram of plant per hour, twice the amount of monoterpenes than either of the two strains of cannabis. Similar to pine trees, oak trees, native to Santa Barbara County, are also significant VOC emitters. The presence of VOCs was known at the time the PEIR was prepared. VOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of potential impacts. This is not new information that triggers additional environmental review. The Agricultural Commissioner is currently investigating funding sources for, and researchers who are qualified to conduct, a study if wine grapes can absorb cannabis terpenes.

Furthermore, the Appellant presented questions regarding the checklist that was prepared for this project to determine whether the proposed project is an activity that was evaluated in the PEIR (Attachment 3). More specifically, the Appellant pointed out that on the CEQA Checklist where it asks if the proposed project site has prime soils located on it, both the “yes” and “no” responses are checked off on the written checklist in response to this question. However, this was because the northwest portion of the property does not have prime soils, but the southeastern portion of the property has prime soils. More importantly, no new buildings are proposed to be constructed in an area with prime soils. One 483-square foot agricultural tool shed is proposed to be validated as part of this project. However, the tool shed is located on the northwest portion of the property where there are no prime soils. The CEQA Checklist was modified solely to clarify that the tool shed proposed to be validated as part of this project is sited and designed to avoid prime soils.

- iii. **Air Quality.** The Appellant alleges that the PEIR did not examine whether the project, specifically, would create odors, the intensity of such odors, nor how many people would be impacted by odors emanating from the project site. However, the PEIR did, in fact, evaluate the air quality impacts of the Program; as stated above, the proposed project was an activity that was anticipated to occur with the adoption of the Program; and, consequently, the PEIR evaluated the impacts of the proposed project. The PEIR identified the following unavoidably significant impact regarding odor: “Impact AQ-5. Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.” As stated above, the Board of Supervisors adopted a Statement of Overriding Considerations for this significant, unavoidable impact and the 30-day statute of limitations to challenge the adequacy of the PEIR has expired. Therefore, no additional environmental analysis of the proposed project’s impacts are required.

Furthermore, pursuant to LUDC Section 35.42.075.C.6, no Odor Abatement Plan shall be required for cannabis activities on lots zoned AG-II, unless a Conditional Use Permit (CUP) is

required. The proposed project requires approval of an LUP and, therefore, the proposed cannabis project does not require an Odor Abatement Plan.

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

As discussed above, the Appellant alleges that the cannabis plants emit VOCs and the Appellant cites a letter from Patricia Holden, Ph.D. that says terpenes emitted from cannabis plants are categorized as biogenic VOCs. As explained by William Vizquete, professor of environmental sciences and engineering at the University of North Carolina, during the Board of Supervisors hearing of August 20, 2019 for a proposed cannabis project, all living things emit biogenic VOCs. Therefore, biogenic VOCs are ubiquitous. Biogenic VOCs produced by plants are involved in plant growth development, reproduction, and defense. Cannabis plants primarily produce a kind of biogenic VOCs called monoterpenes which are aromatic oils that provide cannabis varieties with distinctive flavors like citrus, berry, mint, and pine. These are the same kind of terpenes that are found in any other plant such as roses, orange trees, rosemary, and pine trees.

As discussed above, the presence of VOCs was known at the time the PEIR was prepared. VOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of air quality impacts. The PEIR discusses that VOCs are precursors to ozone, and cannabis plants produce terpenes that are detectable as odors. Therefore, the PEIR evaluated the impacts related to VOCs and odors and no additional analysis of these impacts is required given that the proposed project will not result in new impacts and will not increase the severity of the impacts identified in the PEIR.

The Appellant also alleges that the PEIR failed to examine whether the project, in conjunction with other cannabis operations, would have an impact on regional and localized air quality. However, Section 3.3 of the PEIR expected that overall increases in emissions would occur given the potential for growth in the agricultural and manufacturing industries under the Cannabis Program. The PEIR specifically states that combined with pending and further

projects in the County, operation of such development would increase operation generated emissions and would expose new residents and property to ROC and NO_x emissions. Furthermore, the PEIR acknowledged the Cannabis Program to be inconsistent with the County's CAP (Clean Air Plan) and ECAP (Energy and Climate Action Plan). The analysis concluded that the Cannabis Program's contribution to cumulative air quality would be significant and unavoidable (Class I). As discussed above, the PEIR evaluated air quality impacts, the Board of Supervisors certified the PEIR, and the Board of Supervisors adopted a statement of overriding considerations to justify approval of the Program despite the Program's unavoidably significant impacts to these resources. The Appellant does not present any new information regarding air quality impacts that triggers additional environmental review, and there is nothing unusual about the proposed project that is different than what was anticipated in the PEIR. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.

- iv. **Land Use Compatibility.** The Appellant asserts that due to alleged environmental impacts including those to aesthetic and visual resources, agricultural resources, and air quality, the project is incompatible with surrounding agriculture and with adjacent residential uses. However, as discussed above, the PEIR evaluated these impacts, the Board of Supervisors certified the PEIR, and the Board of Supervisors adopted a statement of overriding considerations to justify approval of the Program despite the Program's unavoidably significant impacts to these resources. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.
- v. **Cumulative Impacts of Project Clusters.** The Appellant alleges that the analysis in the PEIR did not contemplate large-scale cultivation nor clustering of cannabis cultivation along Highway 246 with regard to impacts to aesthetic and visual resources. However, Section 3.1 of the PEIR acknowledged that cumulative impacts associated with the Cannabis Program would include potential changes to scenic resources and existing visual character and noted that future cannabis cultivation would likely occur along Highway 246. Further, the PEIR acknowledged that cannabis-related development could be sited in areas that are publicly visible or within proximity to a scenic road or highway, and that full buildout of cannabis-related projects would create a significant, unavoidable cumulative impact to aesthetic and visual resources. As discussed above, the Board of Supervisors adopted a statement of overriding considerations to justify approval of the Program despite the Program's unavoidably significant cumulative impact to aesthetic and visual resources. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.

As discussed above, the Appellant also alleges that the PEIR failed to examine whether the project, in conjunction with other cannabis operations, would have an impact on regional and localized air quality. However, Section 3.3 of the PEIR expected that overall increases in emissions would occur given the potential for growth in the agricultural and manufacturing industries under the Cannabis Program. The PEIR specifically states that combined with pending and further projects in the County, operation of such development would increase operation generated emissions and would expose new residents and property to ROC and NO_x emissions. Furthermore, the PEIR acknowledged the Cannabis Program to be inconsistent with the County's CAP (Clean Air Plan) and ECAP (Energy and Climate Action Plan). The analysis concluded that the Cannabis Program's contribution to cumulative air quality would be

significant and unavoidable (Class I). As discussed above, the PEIR evaluated air quality impacts, the Board of Supervisors certified the PEIR, and the Board of Supervisors adopted a statement of overriding considerations to justify approval of the Program despite the Program's unavoidably significant impacts to these resources. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.

As discussed above, the Appellant contends that drift issues may have a significant adverse effect on adjacent agricultural resources, particularly when cannabis cultivation projects are clustered. Existing agricultural operations would have the ability to continue to apply pesticides to their crops as necessary and as allowed. These operations are subject to existing laws and regulations governing the cultivation and associated hazardous activities, including pesticide use regulations under the US Environmental Protection Agency (USEPA), the California Environmental Protection Agency (CalEPA) and the California Department of Pesticide Regulation. Existing State and Agricultural Commissioner policies regulate pesticide spray and drift. Agriculturalists who use pesticides must obtain an Operator Identification Number from the Agricultural Commissioner's Office before they can purchase or use pesticides.

Appeal Issue Regarding the Project Permit Requirements' Failure to Ensure Enforceable Mitigation: The Appellant asserts that mitigation required by the PEIR (for traffic and visual impacts) is not properly included in the conditions of approval for the proposed project.

Staff Response for Appeal Issue Regarding the Project Permit Requirements' Failure to Ensure Enforceable Mitigation: 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 following provides an analysis of the specific points that the Applicant raised regarding mitigation that is not properly included in the conditions of approval for the proposed project; the numbering for the items below corresponds with the numbering of items presented in the appeal (Attachment 8).

- i. Traffic & Noise Mitigation.** The Applicant submitted a Site Transportation Demand Management Plan (STDMP) (Attachment 13) that complies with the requirements of LUDC Subsection 35.42.075.D.1.j. The Plan includes ridesharing incentives such as bonus pay for employees who carpool and includes parking spaces designated for carpool vehicles. With the implementation of these methods, increased traffic that would otherwise result from implementation of the proposed project would be reduced. Condition No. 9 (Attachment 2) states that the Applicant shall demonstrate to P&D compliance staff that all components of the approved STDMP are implemented. Noncompliance with the STDMP could result in revocation of the permit entitlement [LUDC Section 35.84.060 (Revocation of Entitlement to Land Use)]. The Appellant titled this claim "Traffic & Noise Mitigation" yet does not elaborate on the alleged issues regarding noise mitigation. Regardless, the proposed project would not include any processing or other activities that would exceed acceptable noise standards and, therefore, does not require a noise plan pursuant to LUDC Subsection 35.42.075.C.5.

- ii. **Visual Impacts Mitigation.** As discussed above, the Applicant submitted a Landscape and Screening Plan (Attachment 10) that complies with the requirements of LUDC Subsection 35.42.075.C.3. The Plan illustrates the proposed landscaping along the entirety of the northern property line along West Highway 246, and along the entire western property line. Condition No. 7 (Attachment 2) states that all landscaping shall be installed prior to initiating cultivation activities. Furthermore, the condition requires that prior to the issuance of any permits, a performance security shall be filed with the County to ensure installation and maintenance of the landscaping for two years. Said performance security shall be released upon a written statement from the Planning and Development Department that the landscaping, in accordance with the approved Landscape and Screening Plan, has been installed and properly maintained for two years to ensure the successful establishment of the plantings. The condition goes on to state that landscaping shall be maintained for the life of the project, and that Permit Compliance staff shall monitor implementation prior to final inspection and/or commencement of use, whichever occurs first, and throughout the life of the project. Furthermore, the Applicant submitted a Lighting Plan that complies with the requirements of LUDC Subsection 35.42.075.C.4. Condition No. 8 (Attachment 2) states that the applicant shall implement the Lighting Plan stamped “Zoning Approved”.

Appeal Issue Regarding Failure of the PEIR to Provide Appropriate Mitigation to Minimize Impacts Resulting from Odor and Associated Land Use Issues: The Appellant asserts that there are impacts that were not addressed adequately in the PEIR or in the ordinance that are result of clustered cannabis cultivation. The Appellant further states that a tiered EIR is required to examine these impacts and provide mitigation measures.

Staff Response for Appeal Issue Regarding Failure of the PEIR to Provide Appropriate Mitigation to Minimize Impacts Resulting from Odor and Associated Land Use Issues: As discussed above, the impacts associated with odor from the proposed project were evaluated as part of the PEIR, and consequently, no additional environmental analysis of the proposed project’s impacts are required. The PEIR identified impacts with regard to air quality. In addition, existing cannabis activities and future cannabis cultivations along Highway 246 were considered and informed the PEIR’s analysis and conclusions. The PEIR identified unavoidably significant impacts, including (but not limited to) the following impact regarding odor: “Impact AQ-5. Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.” However, as discussed above, the Board of Supervisors adopted a statement of overriding considerations to justify approval of the Program despite the Program’s unavoidably significant cumulative impact related to air quality and odors. Finally, the 30-day statute of limitations to challenge the adequacy of the PEIR has expired.

Appeal Issue Regarding the Project’s Failure to Comply with Applicable Zoning and Land Use Plans: The Appellant contends that the project fails to comply with the County’s General Plan, the spirit of the Santa Ynez Valley Community Plan (SYVCP), and with Air Pollution Control District (APCD) Rule 303.

Staff Response for Appeal Issue Regarding the Project’s Failure to Comply with Applicable Zoning and Land Use Plans: Attachments 14 and 15, incorporated herein by reference, analyze the proposed project’s consistency with the Comprehensive Plan, including the SYVCP, and the LUDC. The Santa Rita Valley Ag., Inc. Cannabis Cultivation project conforms to the applicable provisions of the Comprehensive Plan, including the SYVCP and the LUDC. The Appellant specifically alleges that the County’s General

Plan Scenic Highway Element contains preservation measures for eligible scenic routes and that the County did not examine visual or aesthetic impacts specific to Highway 246. However, according to this specific Comprehensive Plan Element, Highway 246 is neither a designated scenic highway nor eligible for designation as a scenic highway. Therefore, the goals and policies to preserve scenic corridors, as stated in this Element, are not applicable to the proposed project site. The Appellant further alleges that the County's General Plan Environmental Resource Management Element (ERME) and Open Space Element identifies Highway 246 between Lompoc and Buellton as a scenic corridor, and that the project's aesthetic and visual impacts were not reviewed by the County in light of it being located in a scenic corridor pursuant to these Elements. According to the Open Space Element (Section 5, Table 3), this travel corridor is considered a Level Two travel corridor, or "Moderately Scenic." Level Two travel corridors "may not be so scenic as to warrant preservation as open space, but should be treated with care if development is permitted." As discussed above, no new structures are proposed to be constructed as part of this project. One as-built 483-square foot agricultural tool shed is proposed to be validated as part of this project and would be screened to the maximum extent feasible. Additionally, all cultivation would be screened to the maximum extent feasible to avoid being seen from public places. The subject parcel is not located within the Design Control Overlay zone and, therefore, the proposed project is not subject to design review by the Central Board of Architectural Review. The Applicant for the proposed project submitted an adequate Landscape and Screening Plan as required by LUDC Subsection 35.42.075.C.3.

Growing and harvesting of cannabis is considered an agricultural operation in accordance with APCD rules. APCD District Rule 303 (Nuisance) does not apply to odors emanating from agricultural operations necessary for the growing of crops (Attachment 7). Therefore, APCD does not regulate odor for cannabis operations related to the growing and harvesting of cannabis. Furthermore, as discussed above and in Attachment 15, incorporated herein by reference, the impacts associated with odor from the proposed project were evaluated as part of the PEIR, and consequently, no additional environmental analysis of the proposed project's impacts are required. Pursuant to LUDC Section 35.42.075.C.6, no Odor Abatement Plan is required for cannabis activities on lots zoned AG-II, unless a CUP is required. The proposed project requires approval of an LUP and, therefore, the proposed cannabis project does not require an Odor Abatement Plan.

Appeal Issue Regarding the County's Failure to Provide Notice and Key Data Regarding Project Approval, Which Violates the Appellant's Right to Due Process: The Appellant asserts that the County failed to provide the Appellant and other potentially aggrieved parties with reasonable notice regarding project approval and with notice of all data considered at public hearings pertaining to the proposed project.

Staff Response Regarding the County's Failure to Provide Notice and Key Data Regarding Project Approval, Which Violates the Appellant's Rights to Due Process: The Appellant alleges that the Applicant and his attorney have not been notified that the County has approved development permits for cannabis projects within the vicinity of the Applicant's property. A notice for pending action on this cannabis LUP, which described that the proposed project would be for the outdoor cultivation of 37 acres of cannabis, was mailed to all owners within a 1,000-foot radius of the exterior boundaries of the subject property. Pursuant to LUDC Sections 35.42.075.B.3 and 35.106.050, for pending action on a cannabis LUP, a mailed notice shall be provided to all owners located within a 1,000-foot radius of the exterior boundaries of the subject lot, and to any person who has filed a written request therefore and has supplied the Planning and Development Department with self-addressed stamped envelopes. In addition, the Department shall conspicuously post notice at a minimum of one public place within the County's

jurisdiction. Furthermore, the Applicant is required to conspicuously post a notice at a minimum of one location on the subject lot with at least one notice posted in a location that can be viewed from the nearest public street. Staff and the Applicant satisfied these noticing requirements (LUDC Sections 35.42.075.B.3 and 35.106.050) for the proposed project. The County is not legally required to notify owners or residents within a 1,000-foot radius of the exterior boundaries of the subject lot when a LUP has been approved.

The Appellant further contends that the County refused to provide the Appellant or his legal counsel with copies of key project plans, mitigation measures, and permitting requirements. Because project plans are intellectual property of architects and designers, the Planning and Development Department's standard procedure is not to allow members of the public to make copies of project plans. However, members of the public can make arrangements to view project plans at Planning and Development Department offices and can directly contact the preparer of plans and request copies of the plans. Additionally, cannabis mitigation measures (including the entirety of the PEIR and the PEIR's Executive Summary which clearly identifies all cannabis mitigation measures) and cannabis permitting requirements (including the entirety of the LUDC) are publicly available online via <http://cannabis.countyofsb.org/> and <https://www.countyofsb.org/plndev/policy/LUDC.sbc> .

The Appellant further alleges that the CEQA Checklist (Attachment 3) was modified 80 days after project approval to indicate that the project was in fact on prime soils. As discussed above, a "yes" box was checked off on the written checklist to clarify that although the northwest portion of the property does not have prime soils, the southeastern portion of the property does have prime soils. However, no new structures are proposed to be constructed as part of this project and, therefore, no new structures would be constructed in an area with prime soils. One 483-square foot agricultural tool shed is proposed to be validated as part of this project. However, the structure is located on the northwest portion of the property where there are no prime soils. The CEQA Checklist was modified solely to clarify that although the proposed project involves validation of one structure, the structure is sited and designed to avoid prime soils. Furthermore, the checklist was modified prior to the Planning Commission's August 8, 2019 *de novo* hearing of the project. As a *de novo* decision, staff can modify the CEQA Checklist for the purpose of clarifying the conclusions of our analysis.

The Appellant further contends that the Appellant received the Planning Commission Staff Report dated July 17, 2019, including modified conditions of approval, on August 1, 2019, less than two business days prior to the deadline for written comments regarding the project. In order to avoid unfair advantage, it is the Planning and Development Department's standard practice not to provide any members of the public, including the Applicant and the Appellant, with a final staff report before it is available to all members of the public one week before a hearing date. Online records show that the Planning Commission Staff Report dated July 17, 2019, and all pertinent attachments were posted to the P&D website on July 31, 2019. The Appellant was able to address the Planning Commission Staff Report dated July 17, 2019, and the recommended modifications to the conditions of approval during their appeal presentation or during public comment during the Planning Commission hearing on August 8, 2019. Therefore, all citizens' due process rights, including the Appellant's, were protected and respected.

Appeal Issue Regarding Failure of the County to Require the Applicant to Obtain a CUP: The Appellant alleges that the project requires the approval of a CUP and improperly was approved with a LUP, despite the identified routes of project ingress and egress passing through Existing Developed Rural Neighborhoods (EDRNs).

Staff Response to Appeal Issue Regarding Failure of the County to Require the Applicant to Obtain a CUP: Pursuant to Subsection 35.42.075.B.4 of the LUDC, a LUP is required for outdoor cannabis cultivation on a property that is zoned AG-II. Table 4-10 within this LUDC section provides the following standard: "...Cultivation on lots adjacent to an Existing Developed Rural Neighborhood and/or Urban Rural boundary shall require approval of a Conditional Use Permit." The proposed project site is not adjacent to an EDRN and/or Urban Rural boundary. Furthermore, LUDC Subsection 35.42.075.D.1 states that "Cultivation sites located within an EDRN, or cultivation that requires the use of a roadway located within an EDRN as the sole means of access to the cultivation lot, shall require approval of a Conditional Use Permit by the Planning Commission and compliance with applicable standards in Chapter 35.82.060 (Conditional Use Permits and Minor Conditional Use Permits)". The proposed project site is not located within an EDRN. Additionally, the site has two means of access, one of which does not require the use of a roadway located within an EDRN. Therefore, the above development standards do not apply to the proposed project and the project does not require approval of a CUP.

Other Appeal Issues:

- The Appellant alleges that the absence of a temporal limit on the cultivation entitlement has the potential to vest a right to continue operating as permitted despite revisions to the County's ordinances, changes in state law and changes in air pollution control and other mitigation technologies that are inevitable. This allegation is with regard to County Code requirements and is not specific to this project.
- The Appellant asserts that the approval of the project was undertaken in an unfair hearing. All citizens' due process rights, including the Appellant's, were protected and respected during the Planning Commission hearings of August 8, 2019 and November 6, 2019. The Commissioners followed all established procedures and articulated their reasons for modifying the project's conditions of approval, approving the project, and denying the appeal.
- The Appellant alleges that the findings are not supported by substantial evidence and lack specificity. The findings included as Attachment 1 clearly specify how the proposed project conforms to the applicable provisions of the Comprehensive Plan and the Land Use and Development Code (LUDC). The findings refer to Attachments 14 and 15, each of which provides substantial evidence describing how the project will comply with applicable requirements of the Comprehensive Plan and the LUDC. As discussed throughout this Board Agenda Letter and in the findings, 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 the AG-II zone district.

As discussed above, all of the appeal issues raised are meritless and Planning and Development staff recommends that the Board of Supervisors deny the appeal and grant *de novo* approval of the LUP.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$9,665.00 (40 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-269 of the adopted 2019-20 Fiscal Year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on February 25, 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 to the Planning and Development Department, Hearing Support.

Attachments:

1. Findings
2. Land Use Permit with attached Conditions of Approval
3. Environmental Document: CEQA Checklist
4. Planning Commission Staff Report dated July 17, 2019
5. Planning Commission Memorandum dated November 6, 2019
6. Planning Commission Action Letter dated November 8, 2019
7. APCD Advisory – Air Quality and Cannabis Operations, updated May 7, 2019
8. Board of Supervisors Appeal Application dated November 18, 2019
9. Link to the PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003
10. Revised Landscape and Screening Plan with Attached Visual Renderings
11. Revised Fencing and Security Plan
12. Revised Lighting Plan
13. Revised Site Transportation Demand Management Plan
14. Updated Comprehensive Plan Consistency Analysis
15. Updated Land Use and Development Code Compliance Analysis

Authored by:

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