

Appeal

APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

20APL-00000-00028

RECEIVED

DECKER APPEAL OF DENIAL OF DECK
988 FREDENSBORG CYN RD 10/23/20
SOLVANG 137-140-033

Submit to: Clerk of the Board
County Administration Building
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Santa Barbara, CA 93101

2020 OCT 14 P 2:20

COUNTY OF SANTA BARBARA
CLERK OF THE

RE: Project Title DECKER GREENHOUSE 19 LUP # 000000-00469
Case Number 20 APL - 00000 - 00011
Tract/ APN Number 137-140-033
Date of action taken by Planning Commission, or Surveyor 10/07/2020

I hereby appeal the DENIAL of the PLANNING COMMISSION
(approval/ approval with conditions/ or denial) (Planning Commission or County Surveyor)

Please state specifically wherein the decision of the Planning Commission or Surveyor is not in accord with the purposes of the appropriate ordinance (one of either Article II Coastal Zoning Ordinance, County Land Use and Development Code, Montecito Land Use and Development Code or Chapter 21, Land Division) or other applicable law, or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission or Surveyor, or that there was a lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration leading to the making of the decision or determination that is being appealed, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made. {References: Article II Section 35-182.2.C; County Land Use and Development Code Section 35.102.020.C; Montecito Land Use and Development Code Section 35-492.020.C, Chapter 21 Section 21-71.4.2.C.2}

Attach additional documentation, or state below the reason(s) for this appeal.

Specific conditions being appealed are:

SEE ATTACHED

Name of Appellant (please print): STEVE DECKER ~~STEVE DECKER~~
Address: 988 FREDENSBORG CANYON ROAD SOLVANG, CA 93463 805 708-6400
(Street, Apt #) (City/ State/ Zip Code) (Telephone)
(cc: record.com)

Appellant is (check one): Applicant Agent for Applicant Third Party Agent for Third Party

Fee \$ _____ {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: [Signature] Date: 10/13/2020

FOR OFFICE USE ONLY

Hearing set for: _____ Date Received: _____ By: _____ File No: _____

Applicant's Grounds For Appeal of County Planning Commission Denial of Land Use Permit 19LUP-00000-00469, Decker Greenhouse:

(1) Violations of Santa Barbara County Land Use Development Code 35.21.020 A., 35.30.120 C.2., 5.j.

(2) Violations of Santa Ynez Valley Community Plan (SYVCP) Goal LUA-SYV, Policy LUA-SYV-1, Policy LUA-SYV-2, Policy LUA-SYV-3.

COMMISSION ERRORS:

(1) The Commission erred in applying SYVCP Policy LUA-SYV-3. The policy refers to new non-agricultural development adjacent to agricultural lands. Using this policy to deny the project to protect the neighborhood is the exact opposite of the plain language and intent of the policy. This policy is meant to protect agriculture operations from encroachment by non-agricultural or urban residential uses.

(2) The Commission erred in denying the project in that there was no finding the proposed project will adversely impact the neighborhood. No nuisance has been demonstrated that cannot be mitigated, such as the lighting issue. Potential noise, dust, odor, etc. have all been mitigated by the project conditions.

(3) The Commission erred in applying SYVCP Policy VIS-SYV-3. The policy refers to outdoor lighting on new development. Not indoor lighting.

In any event, temporary agricultural lighting, of a limited duration, is exempt from VIS-SYV-3. Interior greenhouse grow lights are not outdoor lighting. They are used temporarily for a limited duration. Additionally, Applicant's project description included light deprivation curtains.

Notwithstanding this exemption, Applicant offered the Commission to condition his project to comply with Attachment H, C.5.b., wherein light deprivation curtains will be fully closed from 9:00 p.m. to sunrise, if grow light are on.

COMMISSION ABUSE OF DISCRETION:

The Commission abused its discretion by not discussing the conflicting policy citations presented by the Applicant. There was no discussion as to the interpretation of Policy LUA-SYV-3. Further, there was no discussion of Applicant's offer to condition his project for required activation of light deprivation curtains.

LACK OF FAIR AND IMPARTIAL HEARING:

Commissioner John Parke was an attorney representing the Applicant in a legal matter 23 years ago. Applicant fired Parke and refused to pay his final billing. Applicant requested Parke recuse himself from hearing the matter, but he refused to do so.

Commissioner Parke did not make a project site visit prior to the initial hearing on the appeal of the project.

Commissioner Parke stated he has 2-3000 square foot steel buildings on his AG-1 zoned land in the Santa Ynez Valley. He further stated he received negative comments about the appearance of the buildings and therefore cannot support someone else having such buildings on AG-1 zoned land.

For these reasons, Applicant believes Commissioner Parke, as the motion maker to deny the project, was biased and not impartial in his consideration of the project and its applicant.

Dear Chair Bridley and fellow Commissioners:

Citing **Santa Ynez Valley Community Plan (SYVCP) Policy LUA-SYV-3**, Commissioner Parke has made the motion to deny my project because he states he "cannot make the finding that the project is compatible with adjacent agricultural lands." Mr. Parke grossly misinterprets and misapplies this policy.

LUA-SYV-3 states: "*New development shall be compatible with adjacent agricultural lands.*" The "new" development is "non-agricultural" uses. Not new agricultural uses.

This is borne out by **DevStd LUA-SYV-3.1** that immediately follows it. It states that adjacent new "non-agricultural" uses must protect adjacent agricultural operations from potential conflicts and claims of nuisance. Policy **LUA-SYV-3** and **DevStd LUA-SYV-3.1** are meant to be read together.

This policy is meant to protect agricultural uses, not limit them. It is meant to prevent adjacent non-agricultural uses (e.g. residential) from impinging on adjacent agriculture uses.

By singling out just one policy, Mr. Parke ignores the previous two SYVCP policies, **LUA-SYV-1 & 2**. Both of these policies hold that land designated for agriculture shall be preserved and protected for agricultural use. Not limited by adjacent non-agricultural uses.

How is denying an otherwise ordinance compliant agricultural project, on agriculturally zoned land, because adjacent non-agricultural land users don't want it, preserving and protecting agricultural land use? The claims of the non-agricultural use neighbors is the very situation the SYVCP rejects as being contrary to the plan's goals and policies for protecting agriculture.

The entirety of **Section 3. AGRICULTURAL AND RURAL LANDS GOALS, POLICIES, ACTIONS AND DEVELOPMENT** is devoted to promoting and protecting agriculture. Not non-agricultural uses. The use of any policy from within this particular SYVCP section, to deny an otherwise ordinance compliant agricultural project, defies its intent. In doing so, and if Mr. Parke's motion is carried, my agriculturally zoned land will have been rezoned, by fiat, for residential use only. This is an egregious violation of our right to equal protection under the law.

The Agricultural Element of the Santa Barbara County Comprehensive Plan is the County's primary statement on this issue. Under **GOALS AND POLICIES, Policy 1A** states "**The integrity of agricultural operations shall not be violated by recreational or other non-compatible uses.**" The SYVCP policy LUA-SYV-3 and DevStd LUA-3.1 further support this clear policy mandate.

Additionally, ignoring its clearly stated purpose and intent, Mr. Parke cites **SYVCP Attachment H, Section C.5.b** as a basis for denying the project. That the greenhouse indoor cultivation lighting, during nighttime hours, does not comply with the intent of this section.

SYVCP Attachment H, Section C.5.b. does not speak of indoor illumination. It only addresses outside illumination on “any building and/or surrounding landscape...” Attachment H, Section C. 2. Clearly states its purpose and intent “is to create standards for outdoor lighting...”

Additionally, under **Section C 6.j.**, “temporary lighting for agricultural activities of a limited duration...” is exempt from the lighting restrictions. Greenhouse lighting is temporary and of a limited duration. It is used to extend the growth effects of daylight when this photo period duration is reduced during half of the year.

Extension or reduction of the photo period experienced in a greenhouse can be adjusted either in the evening, after sunset, or in the morning, before sunrise. Therefore, its use is temporary and of limited duration because they are not, of necessity, kept on full time, all night, year round. As would outside security lights on the greenhouse.

However, notwithstanding this exemption, I have included light deprivation greenhouse curtains in my project proposal.

Do to the concern the curtains would not be used, notwithstanding the huge expense (\$180,000) and business reasons to have and use them, I am willing to condition my project that our light deprivation curtains must be activated, to block cultivation light emissions, between 9:00 p.m. and sunrise, as the SYVCP, Attachment H, Section 5.b. otherwise requires of non-complaint outside lighting.

**3. AGRICULTURE AND RURAL LANDS GOALS, POLICIES,
ACTIONS AND DEVELOPMENT STANDARDS**

- GOAL LUA-SYV:** Protect and Support Agricultural Land Use and Encourage Appropriate Agricultural Expansion.
- Policy LUA-SYV-1:** The County shall develop and promote programs to preserve agriculture in the Santa Ynez Valley Planning Area.
- Policy LUA-SYV-2:** Land designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use.
- Policy LUA-SYV-3:** New development shall be compatible with adjacent agricultural lands.
- DevStd LUA-SYV-3.1:** New non-agricultural development adjacent to agriculturally zoned property shall include appropriate buffers, such as trees, shrubs, walls, and fences, to protect adjacent agricultural operations from potential conflicts and claims of nuisance. The size and character of the buffers shall be determined through parcel-specific review on a case-by-case basis.
- Action LUA-SYV-3.2:** The County should consider approval of Agricultural Industrial Overlay areas on a case-by-case basis to ensure that adequate facilities for processing, packaging, treatment and transportation of agricultural commodities exist in the Valley.
- Policy LUA-SYV-4:** Opportunities for agricultural tourism shall be supported where such activities will promote and support the primary use of the land as agriculture without creating conflicts with on-site or adjacent agricultural production or impacts to the environment.
- Action LUA-SYV-4.1:** The County shall consider an ordinance allowing agricultural farmstays in the Santa Ynez Valley in accordance with Health and Safety code Section 113870 where compatible with on-site and neighboring agricultural production.
- Action LUA-SYV-4.2:** Planning and Development and the Agricultural Commissioner shall coordinate with other County departments (e.g. Economic Development Agency) and local and statewide organizations to promote agricultural tourism activities that are available in the County (e.g., Farmers' Markets, U-pick, harvest festivals, wineries, farmstays, etc.).
- Action LUA-SYV-4.3:** Planning and Development shall work with the Agricultural Advisory Committee to create a new policy(ies) that provide land

ATTACHMENT H

ARTICLE 35.3, Site Planning and Other Project Standards, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.30.120, Outdoor Lighting, of Chapter 35.30, Standards for all Development and Land Uses, to read as follows:

C. Santa Ynez Valley Community Plan area.

1. **General.** The regulations contained in this Subsection C. shall be known and referred to as the "Outdoor Lighting Regulations for the Santa Ynez Valley Community Plan Area".
2. **Purpose and intent.** The purpose of this Subsection C is to create standards for outdoor lighting that minimize light pollution, glare, and light trespass caused by inappropriate or misaligned light fixtures. These standards conserve energy and preserve the nighttime sky while maintaining night-time safety, utility, security and productivity. The County recognizes that the unique development patterns and environment of the Santa Ynez Valley make it an ideal area for astronomical observation and enjoyment of the nighttime sky. The County, through the provisions contained herein, intends to preserve and protect the nighttime environment of the Santa Ynez Valley by regulating unnecessary and excessive outdoor lighting.
3. **Definitions.** For the purposes of this Subsection C, the following words and phrases shall have the meanings respectively ascribed to them by this Subsection. The illustrations of the defined words or phrases are merely illustrative. If any conflict exists between the text of a definition and the corresponding illustration, the text shall govern.

Directional Lighting Methods. Direction of light downward, rather than upward or outward, with the intention of directing light where it is needed; on the ground. Downward lighting also prevents unnecessary and unwanted spillover of light to adjacent areas and properties.

Fossil Fuel Lighting. Fossil fuel light produced directly by the combustion of natural gas or other utility-type fossil fuels, for example: gas, propane and kerosene lighting.

High Intensity Discharge Lamp. High pressure sodium, mercury vapor, metal halide, low pressure sodium, and other similar lamps.

Light Pollution. Any artificial light which causes a detrimental effect on the environment, astronomical research, enjoyment of the night sky or causes undesirable glare or light trespass.

Light Trespass. Artificial light that produces unnecessary and/or unwanted illumination of an adjacent property.

Luminous Tube Lighting. Gas filled glass tubing which when subjected to high voltage becomes luminescent in a color characteristic of the gas used (neon, argon, etc.).

Outdoor Light Fixture. Artificial Illuminating Devices, outdoor fixtures, lamps and other similar devices, permanently installed or portable, used for flood lighting, general illumination or advertisement. Such devices shall include but are not limited

Unshielded. Unshielded means light fixtures lacking any means to restrict light emitted above the horizontal plane.



4. **Approved materials and methods of installation.** The provisions of this Subsection are not intended to prevent the use of any design, material or method of installation not specifically proscribed by this Subsection provided any such alternate has been approved by the County. The Department may approve any such alternate provided that the proposed design, material or method:
 - a. Provides approximate equivalence to the specific requirements of this Subsection C.
 - b. Is otherwise satisfactory and complies with the intent of this Subsection C.
5. **Prohibited lights.**
 - a. All illuminated advertising signs shall be off between 11:00 p.m. and sunrise, except that on-premises signs may be illuminated while the business is open to the public.
 - b. All outside illumination that is not fully shielded (full cutoff) of any building and/or surrounding landscape, public or private, for aesthetic and decorative purposes is prohibited between 9:00 p.m. and sunrise.
 - c. No outdoor recreational facility with lights that are not fully shielded (full cutoff) shall be illuminated between 9:00 p.m. and sunrise except to complete a specific organized recreational event, in progress and under illumination in conformance with this Subsection C at 9:00 p.m. Fully shielded (full cutoff) lights are not subject to a time restriction.
 - d. Search lights, laser source lights, or similar high intensity lights shall not be permitted except in emergencies, by police and/or fire personnel, or for the purposes of gathering meteorological data.
 - e. Mercury Vapor lights.
6. **Exemptions.** The following are exempt from the provision of this Subsection C.
 - a. All outdoor lighting fixtures existing and lawfully installed prior to the effective date of this ordinance are exempt from the shielding requirements of this

Subsection C. Existing lighting fixtures shall be subject to the remaining requirements of this Subsection C including the requirements of Subsection C.5 above, requiring lights that are not fully shielded (full cutoff) be turned off at 9:00 p.m. Fully shielded (full cutoff) lights are not subject to a turn-off time.

- b. Fossil fuel lights.
 - c. Traffic control signs and devices.
 - d. Street lights installed prior to the effective date of this ordinance.
 - e. Temporary emergency lighting (e.g., fire, police, public works).
 - f. Moving vehicle lights.
 - g. Navigation lights (e.g., airports, heliports, radio/television towers).
 - h. Seasonal decorations with individual lights in place no longer than 60 days.
 - i. Lighting for special events as provided by Subsection C.9 (Temporary exemption).
 - j. Temporary lighting for agricultural activities of a limited duration, not including unshielded arena lights.
 - k. Security lights of any wattage that are controlled by a motion-sensor switch and which do not remain on longer than 10 to 12 minutes after activation.
 - l. Projects with approved construction plans prior to the effective date of this Subsection C are excluded from compliance with this Subsection in the initial installation only.
 - m. Solar walkway lights.
7. **General requirements.** All non-exempt light fixtures requiring a County permit for their installation shall be subject to the following general requirements:
- a. All outdoor lighting fixtures installed after the effective date of this Subsection C and thereafter maintained upon private property, public property, or within the public right-of way shall be fully shielded (full cutoff).
 - b. All replaced or repaired lighting fixtures requiring a permit shall be subject to the requirements of this Subsection C.
 - c. Light trespass and glare shall be reduced to the maximum extent feasible through directional lighting methods.
 - d. Externally illuminated signs, advertising displays and building identification shall use top mounted light fixtures which shine downward and are fully shielded (full cutoff).
 - e. Outdoor light fixtures used for outdoor recreational facilities shall be fully shielded (full cutoff) except when such shielding would cause impairment to the visibility required in the intended recreational activity. In such cases, partially shielded fixtures and downward lighting methods shall be utilized to limit light pollution, glare, and light trespass to a reasonable level as determined by the Director.