



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: March 23, 2021

Subject: Appeal of Planning Commission Denial of Diablo Valley Farms Commercial Cannabis Cultivation Facility
Land Use Permit in the Brentwood Area

RECOMMENDATION(S):

1. OPEN the public hearing on an appeal of the County Planning Commission's denial of a land use permit to allow an indoor commercial cannabis cultivation business at 4425 Sellers Avenue in the unincorporated Brentwood area, RECEIVE testimony, and CLOSE the public hearing.
2. GRANT the appeal of Diablo Valley Farms, Robert Nunn, and Lisa Borba.
3. DETERMINE that the project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (existing structures).
4. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.
5. APPROVE a land use permit to allow an indoor commercial cannabis cultivation business to be established within two existing greenhouses located at 4425 Sellers Avenue in the unincorporated Brentwood area (County File No. CDLP20-02020).
6. APPROVE the findings in support of the project.
7. APPROVE the project conditions of approval, including modified COA No. 1 and additional security measures in COA Nos. 20-37.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **03/23/2021** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 23, 2021

Monica Nino, County Administrator and Clerk of the Board of Supervisors

Contact: Joseph W. Lawlor Jr, AICP
(925) 877-8251

By: June McHuen, Deputy

cc:

FISCAL IMPACT:

The applicant has paid the necessary application deposit, and is obligated to pay supplemental fees to cover all additional costs associated with the application process.

BACKGROUND:

This is a hearing to consider an appeal of the County Planning Commission's denial of a land use permit that would allow an indoor commercial cannabis cultivation business to be established within two existing greenhouses located at 4425 Sellers Avenue in the unincorporated area of Brentwood.

On December 10, 2019, the Board of Supervisors selected the applicant's proposal for one of the limited commercial cultivation permits under the County's cannabis ordinance, Chapter 88-28 of the County Ordinance Code. Under Ordinance Code Section 88-28.402, no more than 10 permits for commercial cultivation will be in effect at any one time. Prospective businesses and their locations are evaluated, ranked, and selected to apply for land use permits under the process authorized by Section 88-28.404. Here, after being selected, the applicant submitted a land use permit application for indoor commercial cannabis cultivation at the location specified in its proposal.

A land use permit for the applicant's project was approved by the County Zoning Administrator on November 2, 2020, based on County staff's recommendation. On November 12, 2020, representatives of the City of Brentwood appealed the ZA approval of the land use permit.

The County Planning Commission heard the appeal on January 27, 2021. Significant public testimony was in opposition to the proposed cannabis business, including testimony from representatives of the City of Brentwood. Against staff's recommendation, the Commission voted 4-3 to grant the appeal and deny the land use permit application, overturning the Zoning Administrator's approval. The Commission's basis for denial was that the proposed cannabis business did not satisfy the location requirement of the County's cannabis ordinance that a cannabis business may not be located within 1,000 feet of a "youth center." The Commission determined that the nearby Sunset Park was a "youth center" and that the proposed cannabis business could not be established.

On February 8, 2021, Applicants Diablo Valley Farms, Robert Nunn, and Lisa Borba filed an appeal of the Planning Commission's decision, citing the following bases:

- (1) The CPC's decision to deny the Permit was based on an erroneous finding that Sunset Park is a "youth center."
- (2) The project complies with: all requirements of the County's cannabis ordinance; applicable zoning; and the General Plan.

Project Description

The applicant is requesting approval of a land use permit to establish an indoor commercial cannabis cultivation business. The property is located in an A-2 agricultural zoning district. An existing 10,000 sq. ft. greenhouse located at 4425 Sellers Avenue would be retrofitted to cultivate cannabis. Additionally, 10,000 sq. ft. of greenhouse space at the same location that is currently being used for other cultivation would be added to the operation as demand increases for the business. The proposed commercial cannabis cultivation business would include the growing of immature cannabis plants in containers but would not include retail sales of any kind and would not be open to the public. The business proposal is consistent with the commercial cannabis cultivation proposal submittal to and selected by the Board of Supervisors in December 2019. The following summarizes the facilities that would be located at the site:

- Greenhouse One: The existing 10,000 sq. ft. greenhouse located at the southwest corner of the property would be retrofitted to include a 9,000 sq. ft. micro plant (seedlings) growing area and 1,000 sq. ft. of employee and office space to support the operation.
- Greenhouse Two: A second 10,000 sq. ft. greenhouse is proposed for a second phase of the project. This existing greenhouse is currently used for traditional agricultural cultivation and would be retrofitted for cannabis micro plant cultivation as demand increases for cannabis product.

Based on security concerns raised at the Planning Commission hearing, the applicant discussed several modifications to the conditions of approval for the project. Specifically, the applicant has agreed that no mature plants will be located on site (modified COA No. 1). This new condition will further minimize security concerns by ensuring there are no higher value mature plants on site and will also further minimize the potential for odor. The applicant has also agreed that additional security measures will be implemented (added COA Nos. 20-37). These added security measures will require the facility to ensure no cash is held or transferred on site, implement regular training on security protocols to prevent and respond to potential security breaches, and ensure access to the facility is adequately limited. The modifications to the conditions of approval are included in staff's recommendation.

Staff Analysis

The proposed cannabis business site is located approximately 175 feet northeast of the Sunset Park Athletic complex. Located at 655 Sunset Boulevard in the city of Brentwood, Sunset Park includes baseball and soccer fields, a playground, and picnic tables. County staff has determined that because Sunset Park is a park and not a "youth center" under the County's cannabis ordinance, the ordinance's location restrictions allow the cannabis business to be established at 4425 Sellers Avenue in unincorporated Brentwood with a land use permit.

County Ordinance Code section 88-28.410 prohibits a commercial cannabis business from being located within 1,000 feet of a youth center. Under Ordinance Code section 88-28.206, the definition of “youth center” in Health and Safety Code section 11353.1 applies to the location of commercial cannabis businesses:

'Youth Center' means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

This is in contrast to the definition of “playground” in Health and Safety Code section 11353.1:

'Playground' means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

Staff's determination that Sunset Park is not a "youth center" is consistent with Board direction during development of the County's cannabis ordinance. Development of the ordinance began in late 2016 after passage of Proposition 64 (Adult Use of Marijuana Act). The ordinance was developed over the following 18 months and included numerous public discussion items where the Board of Supervisors provided direction to staff on interim regulations, a draft framework, and ultimately the final cannabis regulations. On April 25, 2018, the Board discussed the then-draft ordinance's location requirements and considered several options for locational buffers around sensitive uses. Staff informed the Board that, due to the number of parks in the County, including parks as a buffered sensitive use would severely restrict the already-limited number of properties where a cannabis business could be established. The Board and staff did not consider a "park" to be included in the definition of "youth center." When the cannabis ordinance was adopted on June 26, 2018, the Board declined to include "park" as a use that must be at least 1,000 feet from a commercial cannabis business. The cannabis ordinance became operative following voter approval of Measure R, the Contra Costa County Cannabis Business Tax, at the November 6, 2018 General Election.

Under Ordinance Code section 88-28.410, a commercial cannabis business may not be located within 1,000 feet of any of the following uses located in the unincorporated County or in a city: a school providing instruction in kindergarten or any grades one through 12; a day care center; a youth center; or a drug treatment center. Ordinance Code section 88-28.410 does not prohibit a commercial cannabis business from being located within 1,000 feet of a park.

Following adoption of the County's cannabis ordinance, the County issued a request for proposals seeking qualified applicants for a limited number of commercial cannabis cultivation land use permits. A multi-departmental team of County staff scored and ranked each submitted proposal. On December 10, 2019, the Board of Supervisors reviewed the results of the scoring process and selected the applicant to invite to apply for a commercial cannabis cultivation land use permit.

The Board selected the applicant's proposal during the RFP process because the proposal scored well in the competitive review process and the business as proposed complied with the County's cannabis ordinance, including the location requirements. During the proposal review and selection process, the proximity to the Sunset Park Athletic Complex was considered. At that time, both the Board and County staff determined that Sunset Park is not a "youth center" or other buffered sensitive use under the ordinance.

Based on the above, County staff has determined that Sunset Park is a park and not a youth center. Accordingly, under the County's cannabis ordinance, the ordinance's location restrictions do not prohibit the proposed cannabis business from being established at 4425 Sellers Avenue in unincorporated Brentwood.

Staff has also determined that the applicant's proposal as conditioned complies with the County's cannabis ordinance, applicable zoning, and the General Plan. The proposed

business would not conflict with the site's Agricultural Lands (AL) General Plan land use designation or its A-2 General Agricultural zoning. The proposed project also complies with State regulations governing cannabis businesses and would be required to provide evidence to the County of all State approvals.

Conclusion

Staff recommends that the Board of Supervisors grant the applicant's appeal and approve a land use permit to allow the proposed indoor commercial cannabis cultivation business (County File No. CDLP20-02020) based on the attached findings and subject to the attached conditions of approval.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors denies the appeal, the County Planning Commission's decision to deny the land use permit for the proposed cannabis cultivation business will be upheld.

ATTACHMENTS

Maps

Plans

Business Proposal

Appeal Letter CDLP20-02020

Appeal Letter Additional Information

CDLP20-02020 Modified Findings and COAs

Staff Presentation