



**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

PLANNING COMMISSION

*Promoting the wise use of land
Helping build great communities*

MEETING DATE October 10, 2019	CONTACT/PHONE Jan Dileo (805) 781-5625 jdileo@co.slo.ca.us	APPLICANT Henry Mancini /Darren Shetler	FILE NO. DRC2019-00142 (formerly DRC2018-00171)
SUBJECT A continued hearing (from September 26, 2019) to consider a request by Henry Mancini / Darren Shetler for a Conditional Use Permit (DRC2019-00142 – formerly DRC2018-00171) to establish 21,600 square feet of indoor mixed-light cannabis cultivation within five greenhouses, 3,643 square feet of indoor nursery within one greenhouse, seven cargo containers for material storage, and related site improvements. A modification from the parking standards is requested to reduce the required number of parking spaces onsite from 50 to 12. The project would result in the disturbance roughly 3 acres of a 16.21-acre parcel. The proposed project site is within the Agricultural land use category and is located at 457 Green Gate Road, approximately 2 miles southeast of the City of San Luis Obispo. The site is in the South County Planning Area, San Luis Obispo Sub-Area South.			
RECOMMENDED ACTION Deny Conditional Use Permit DRC2019-00087 (formerly DRC2018-00171) based on the findings listed in Exhibit A.			
ENVIRONMENTAL DETERMINATION That the project is exempt under CEQA, pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines Section 15061(b)(4), which provides that CEQA does not apply to projects that a public agency rejects or disapproves.			
LAND USE CATEGORY Agriculture	COMBINING DESIGNATION Flood Hazard (FH), Airport Review Area (AR) Combining Designations	ASSESSOR PARCEL NUMBERS 044-161-015	SUPERVISOR DISTRICT(S) 3
PLANNING AREA STANDARDS: None Applicable			
EXISTING USES: Six greenhouses, hoop houses, multiple cargo containers, miscellaneous outdoor storage, a single-family residence, accessory buildings, and hemp cultivation			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North: Agriculture / Crops & Residential Use East: Agriculture / Pasture & Livestock</i> <i>South: Agriculture / Pasture & Livestock West: Agriculture/ Crops, Residential</i>			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

OTHER AGENCY / ADVISORY GROUP INVOLVEMENT:

The project was referred to: 3rd District Legislative Assistant, Agricultural Department, Air Pollution Control District (APCD), County Assessor, Building Division, CalFire/County Fire, Environmental Health, Public Works, Sheriff, PG&E, So Cal Gas, San Luis Coastal School District, City of San Luis Obispo, Regional Water Quality Control Board, CA Fish & Wildlife, US Fish and Wildlife, and AB 52 Tribal Consultation

TOPOGRAPHY:

Nearly level to gently sloping

VEGETATION:

Ornamental landscaping, ruderal, agriculture

PROPOSED SERVICES:

Water supply: Onsite well
Sewage Disposal: Portable Toilets
Fire Protection: County Fire

ACCEPTANCE DATE:

N/A

PROJECT DESCRIPTION

Summary

Henry Mancini / Darren Shetler are proposing a Conditional Use Permit (DRC2019-00142 – formerly DRC2018-00171) to establish 21,600 square feet of indoor mixed-light cannabis cultivation within five greenhouses, 3,643 square feet of indoor nursery within one greenhouse, seven cargo containers for material storage, and related site improvements. A modification from the parking standards is requested to reduce the required number of parking spaces onsite from 50 to 12. The project would result in the disturbance roughly 3 acres of a 16.21-acre parcel. The proposed project site is within the Agricultural land use category and is located at 457 Green Gate Road, approximately 2 miles southeast of the City of San Luis Obispo. The site is in the South County Planning Area, San Luis Obispo Sub-Area South.

Components of the project are summarized in Table 1.

Table 1 Proposed Structures & Buildings		
Building / Structures	Project Component	Building Floor Area Gross Square Feet (SF)
Greenhouse (5 @ 4,320 sf each)	Mixed-Light Indoor Cultivation	21,600
Greenhouse (1 @ 3,643 sf)	Ancillary Cannabis Nursery	3,643
Cargo Containers (7 @ ~ 320 sf each)	Material Storage	2,240
Total		27,483

The proposed project would operate seven days per week (Monday – Sunday), between the hours of 6 AM and 6 PM. Four employees are proposed. The cannabis operation would be surrounded by a 6-foot high, solid fence. Security measures include items such as cameras, an alarm system, and motion detection lighting. Other project components include a composting area, waste and recycling storage, establishment of PG&E power onsite, and parking and access improvements.

Surrounding land uses include agricultural operations (row crops) on parcels ranging in size from 25 acres to over 100 acres. Roughly 900 feet northwest of the project site is a single-family neighborhood; parcels in this area are roughly 5 acres in size. The project site is developed with six greenhouse buildings, hoop houses, multiple cargo containers, miscellaneous outdoor storage, a single-family residence, and accessory buildings. A portion of the site is being cultivated with research hemp. In 2018 the greenhouses onsite were used for cannabis cultivation and, more recently in 2019 for hemp cultivation without proper building or electrical permits (discussed below and summarized in Table 2).

The project site is located at the eastern terminus of Green Gate Road. Access to the project site is provided through 445 Green Gate Road (APN 044-161-014); a roughly 55-acre parcel located directly west of 457 Green Gate Road (see Attachment 2, Figure 2). Both parcels have a land use designation of Agriculture and the same property owner. A land use permit application for 3 acres of outdoor cannabis cultivation and cannabis processing at 445 Green Gate Road was submitted in early 2019 (DRC2019-00043). In June 2019, DRC2019-00043 was withdrawn by the property owner. Both 457 and 445 Green Gate Road have been cited for several cannabis

related violations within the last twenty-four months (discussed below and summarized in Table 2).

PROJECT ANALYSIS

Background

Denial Prior to a Project Being Deemed Complete for Processing. DRC2019-00142 (formerly DRC2018-00171) has been on information hold since February 4, 2019. The project has not been deemed complete for processing for purposes of the Permit Streamlining act. Under the County's Land Use Ordinance, a project may be taken to public hearing with a recommendation for denial at any time if a project is found to be inconsistent or in conflict with the County's Land Use Ordinance. As discussed below, due to previous cannabis related code violations at 445 and 457 Green Gate Road, DRC2019-00142 (formerly DRC2018-00171) is being taken to the Planning Commission with a recommendation for denial based on the inability to make the required findings for cultivation and nursery projects under County Code Sections 22.40.050 (E) (6) and 22.40.060 (E) (6). If the Planning Commission were to determine that the proposed project is consistent with Sections 22.40.050 (E) (6) and 22.40.060 (E) (6) discussed in detail below, then the Commission's action would be to "direct staff to continue processing of DRC2019-00142".

Previous Cannabis Related Violations

Minor Use Permit (MUP) Elevated to Conditional Use Permit (CUP). The project is subject to LUO Section 22.40.040, *Requirements for all Cannabis Activities*; Section 22.40.050, *Cannabis Cultivation* (indoor cultivation); and Section 22.40.060, *Cannabis Nurseries*. Under County Code, any site proposing cannabis activities where there have been verified violations of a County ordinance or other laws relating to cannabis within the last twenty-four (24) months shall require a Conditional Use Permit (CUP) approval.

In September 2018 the property owner submitted a MUP land use permit application for the proposed project involving indoor cannabis cultivation, indoor cannabis nursery, and cannabis related material storage (DRC 2018-00171). Due to code violations in 2018 and 2019 at 445 and 457 Green Gate Road, on March 29, 2019 the project's MUP (DRC2018-00171) was elevated to a CUP (new project number DRC2019-00142). Elevating the project to a CUP did not change the project's processing status, i.e., DRC2019-00142 is still not complete for processing.

Required Findings for Cannabis Projects. The Land Use Ordinance Sections 22.40.050 E. (6), and 22.40.060 E. (6) require a special finding that each proposed cannabis activity or use will not contribute to repeat violation on the site and that the subject site is in compliance with all laws, rules, and regulations pertaining to land uses, building and construction, health and safety, and any other applicable provisions of this Title, and that violation processing fees have been paid. If the Planning Commission is unable to make these findings, the project may not be approved, and the Planning Commission may deny the project. Below is a discussion of recent code violations at 445 and 457 Green Gate Road.

1. October 2018. SLO County Code Enforcement was contacted by the Sheriff's Office regarding a complaint of unlawful cannabis cultivation occurring at 445 and 457 Green Gate. The Sheriff's Office and Code Enforcement made contact with the property owner and inspected the two parcels. The site inspection found: (a) over 5-acres of outdoor cannabis cultivation located at 445 Green Gate Road, and (b) newly constructed greenhouses (roughly 25,000 square feet) which contained over 4,000 cannabis plants at 457 Green Gate Road. Each greenhouse contained lights and electrical improvements. The cannabis cultivation was not previously registered under the County's Urgency Ordinance, was not subject to the County's Abeyance Resolution, and did not have an approved land use permit or state license. The greenhouses, lights and electrical improvements did not have required building permits.

Code Enforcement issued a Notice of Violation and Notice of Nuisance Abatement for 445 and 457 Green Gate. The outdoor cultivation on 445 and 457 was abated prior to Code Enforcement's deadline and did not go to hearing; however, the indoor cultivation on 457 was not abated prior to Code Enforcement's deadline. The indoor cultivation violation on 457 was subsequently resolved through a stipulated order¹. A subsequent site inspection by Code Enforcement confirmed abatement of the indoor cultivation in compliance with the stipulated order and apparent disconnection of the unpermitted electrical and lighting improvements. Because the project site had an active cannabis land use application for indoor cultivation at 457 Green Gate Road, the greenhouse structures were allowed to remain pending processing of the applicant's cannabis land use permit (i.e., DRC2018-00171). The stipulated order expressly warned that any use and occupancy of unpermitted structures was prohibited under County Code and would be subject to further enforcement action.

2. February 2019. Code Enforcement received a complaint cannabis was being processed at 445 Green Gate Road unlawfully. A site inspection revealed that cannabis was being processed within unpermitted semi-truck trailers and stored onsite without local and state licenses and permits. In addition to the lack of required permits and licenses, the cannabis operation raised concerns regarding public health and safety because employees were working in structures that contained no windows or ventilation and contained unpermitted electrical. Another Notice of Violation and Notice of Nuisance Abatement was issued by Code Enforcement. The enforcement case was ultimately resolved through a second Stipulated Order applicable to 445 Green Gate Road.
3. June 2019. The Sheriff's Office and Planning and Code Enforcement staff conducted a site visit of the two active cannabis land use applications located at 457 Green Gate Road (DRC2018-00171) and 445 Green Gate Road (DRC2019-00043). DRC2019-00043 proposed outdoor cannabis cultivation and processing at 457 Green Gate Road.² This site visit revealed the property owner was using the existing, unpermitted greenhouse located at 457 Green Gate Road for hemp cultivation and had re-installed lighting and electrical improvements to these greenhouses (the same greenhouses and lighting and electrical improvements identified in October 2018). A Notice of Violation was issued in June 2019 for the unpermitted greenhouses and electrical/lighting. The property owner was notified this

¹ A stipulated order is an agreement signed by both parties that specifies how specific issues/items will be resolved and is subsequently reviewed and signed by the County Cannabis Hearing Officer.

² DRC2019-00043 was withdrawn by Mr. Shetler shortly after the June 2019 site visit.

violation needed to be resolved by July 13, 2019. On July 24, 2019, the property was re-inspected by Code Enforcement for compliance. This site inspection revealed the violation had not been fully resolved (see Attachment 2, Photos, Figure 5), and the site’s unpermitted electrical raised ongoing concerns regarding public health and safety. A Notice of Administrative Fine was issued on August 1, 2019 by Code Enforcement. As of August 20, 2019, the violation had not been confirmed resolved by Code Enforcement and the administrative fines have not been paid.

4. Other Recent Code Violations. In July 2017, the property owner was cited for conducting events with upward of 500 people in an existing barn and tree deck located at 445 Green Gate. This violation was resolved later in 2017. In 2019 events were advertised online for the project site’s vacation rental (e.g., weddings, parties, etc.). Although the property had required permits for a vacation rental, no permits for events (i.e., a minor use permit) had been obtained. On April 4, 2019, the property owner was notified of this violation. In July 2019, Code Enforcement confirmed events were removed from the vacation rental web page.

Table 2 445 & 457 Green Gate Summary		
Item	445 Green Gate Road, SLO	457 Green Gate Road, SLO
Assessor Parcel Number (APN)	044-161-014	044-161-015
Land Use Designation	AG	AG
Site Acres	~55 acres	~16 acres
Cannabis Application #	DRC2019-00043 (CUP)	DRC2019-00171 (MUP) elevated to a CUP (DRC2019-00142) 03/29/2019
Proposed	3 acres of outdoor cannabis cultivation & ancillary cannabis processing	21,600 sf of indoor cannabis cultivation & 3,643 sf ancillary indoor cannabis nursery
Status	Withdrawn 06/11/2019	Info Hold. P/C hearing 09/26/19
October 2018 Violations	Unpermitted outdoor cannabis cultivation (> 5 acres).	Unpermitted greenhouses / electrical used for indoor cannabis cultivation.
February 2019 Violation	Unpermitted cannabis processing and cannabis storage within semi-truck trailers.	
June 2019 Violation		Unpermitted greenhouses / electrical used for hemp cultivation.
April 2019	Events onsite without required permits	

Factors the Commission may wish to consider in determining whether the use will “...*contribute to repeat violations...*” include the following:

- *Repeat nuisance complaints; repeat verified violations of either local or State regulations.*

There has been a total of four verified cannabis related violations within the last year at 445 and 457 Green Gate Road. The construction and use of unpermitted greenhouses and electrical/lighting for cannabis in late 2018 at 457 Green Gate were ostensibly resolved by the property owner only to occur again in 2019 for the cultivation of hemp. Similarly, in 2018, the property owner was cited for cultivating cannabis at 445 and 457 Green Gate without proper permits, purportedly ceased all cannabis activities, on the parcels, but was subsequently cited in 2019 for the processing and storage of cannabis on 445 Green Gate without required permits and licenses. The property owner has repeatedly occupied unpermitted structures with unpermitted electrical service and conducted unpermitted and unlicensed cannabis activities in clear violation of State and County laws. [True?: There have also been several complaints from surrounding neighbors regarding the cannabis related violations on the Property, including nuisance odors and greenhouse lighting.]

- *The nature and severity of the complaints and verified violations (e.g., criminal behavior).*

Previous violations at 445 and 457 Green Gate were significant in staff's estimation because they consisted of significant cannabis activities being conducted without required permits or licenses, and the site was not registered as a cultivation site under the previous urgency ordinance. The violations also raised concerns regarding the use of unpermitted structures for cannabis activities as well as public health and safety issues related to employee processing cannabis in structures that contained no windows or ventilation and contained unpermitted electrical. The more recent violation at 457 Green Gate poses a similar health and safety concern due to the continued use of unpermitted structures and electrical components.

- *A pattern of behavior that suggests a lack of good faith effort at compliance.*

As discussed above, there have been a pattern of repeat cannabis related violations onsite, including recommencing violations previously abated. The property owner has conducted unpermitted and unlicensed cannabis activities in clear violation of State and County laws, and continued to use unpermitted structures and unpermitted electrical even after being informed the previous violations on the parcels had caused the application to be elevated to a CUP and the triggered the required findings under 22.40.050.E.(6) and 22.40.060.E.(6).

MODIFICATIONS

Section 22.18.050 – Required Number of Parking Spaces

The project includes a request for a modification of the parking standards set forth in LUO Section 22.18.050.C.1 to reduce the required number of spaces from 50 to 12.

The type of use listed in the County's parking standards that best matches the proposed indoor cannabis cultivation and nursery is "Nursery Specialties" which requires one parking space per 500 square feet of floor area. Table 4 provides a summary of required parking by use:

Table 3. Required Parking by Use

Use	Parking Standard (required parking space: square feet of area)	Floor Area of Use	Required Number of Spaces
Indoor Cultivation	1:500	21,600	44
Nursery		3,643	6
Total Required			50

Staff Comments: If the project were to move forward, the proposed parking reduction from 50 to 12 spaces would be justified, as with other similar projects, because:

- *The proposed cannabis activities are not as labor intensive as typical nursery specialties;*
- *The project site would provide at least 12 parking spaces located adjacent to proposed greenhouses.*
- *The applicant is proposing a maximum of 4 daily employees to serve the proposed cannabis activities;*
- *The project would be conditioned to allow a maximum of 4 employees daily.*

PLANNING AREA STANDARDS:

None are applicable.

COMBINING DESIGNATIONS:

The project is located within the Flood Hazard and Airport Land Use Review Area. The Flood Hazard and the Airport Land Use Area designations provide standards for new development proposed within these combining designations.

Staff comments: Proposed development would be located outside of the 100-year flood plain. If the project were to move forward, the Airport Land Use Committee would review the proposed development for consistency with this designation. Since the greenhouses would be roughly 18 feet tall and have minimal employees it is likely the project would be consistent with this combining designation.

ENVIRONMENTAL DETERMINATION

That the project is exempt under CEQA, pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines Section 15061(b)(4), which provides that CEQA does not apply to projects that a public agency rejects or disapproves.

COMMUNITY ADVISORY GROUP COMMENTS

The proposed project is not located within an area with an advisory group.

AGENCY REVIEW:

Public Works	Per referral response (Grim, February 14, 2019), the project should be placed on Info Hold until a report by a traffic engineer is provided. The project is subject to Caltrans' requirements, is located within a fee agreement area, a drainage review area, and is within a Flood Hazard area. The project is subject to the Sustainable Groundwater Management Act, access improvements consistent with CalFire standards, a drainage and erosion control plan, and a stormwater plan if the site will disturb more than one acre.
Building Department	Per referral response email (Stoker, February 21, 2019), a building permit is required.
Air Pollution Control District (APCD)	Per referral response (Gary Arcemont, February 14, 2019), the APCD determined the project's construction phase emissions would be less than APCD's significance threshold. APCD may have conditions if the project would involve the demolition or remodeling of existing structures or the disturbance, demolition, or relocation of above or below ground utility pipes/pipelines. No development burning of vegetative material is permitted. During construction the project may be subject to dust control measures.
CalFire	Per referral response (Wells, May 2, 2019), the greenhouses must be approved by CalFire and County Building Department. The following will be required: a water storage tank, a hydrant, access improvements, emergency access, and gates that meet CalFire standards.
Assessor	Per referral response of February 2019, the Assessor requests lease and/or production sharing agreements related to the proposed cannabis activities.
Ag Commissioner's Office	Per referral response of March 8, 2019, the Ag Department requests that parking areas be minimized, prior to commencing cultivation activities the applicant consult with the Ag Department to determine if licensing and/or permitting requirements are required and if an Operator Identification Number (OIN) is needed, and the use of best management water conservation practices throughout the life of the project.
Airport Land Use Committee (ALUC)	Per referral response (Pedrotti, April 26, 2019), this project will need to be reviewed by the ALUC for a determination of consistency.
Salinan Tribe	Per referral response (Dunton, February 5, 2019), a phase 1 surface survey should be completed for the project site. The February 4, 2019 Info Hold letter requested a Phase I Surface Survey. The Phase I Surface Survey has not yet been provided by the applicant.

LEGAL LOT STATUS

The parcel was legally created by a deed and a recorded Certificate of Compliance C14-0058
Staff report prepared by Jan Dileo and reviewed by Karen Nall.

ATTACHMENTS

Attachment 1 – Exhibit A – Findings

Attachment 2 – Figures / Photos

Attachment 3 – Referral Responses

Attachment 4 – Letters Received