



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: PC 20-048, **Version:** 1

PLN170296 - CABRERA (CHAPIN LIVING TRUST)

Public Hearing to consider allowing a commercial cannabis retail with commercial cannabis processing (edibles), and cannabis cultivation within an existing greenhouse in the Farmland zoning (former McShane's Nursery).

Project Location: 115 & 115 A Monterey Salinas Highway, Greater Salinas Area Plan (APN: 207-131-004-000 and 207-131-005-000)

Proposed CEQA action: Statutorily exempt pursuant to Section 15270 of the CEQA Guidelines - Projects that are not approved

RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution to:

- Find that denial of the project is statutorily exempt pursuant to Section 15270 of the CEQA Guidelines; and
- Deny an application requesting to amend a previously approved General Development Plan (PLN090138) and Use Permit PLN050366 (as amended by PLN060174) to allow a commercial cannabis retailer with commercial cannabis processing (edibles), and cannabis cultivation within the existing greenhouse.

PROJECT INFORMATION:

Applicant: Ricky Cabrera

Agent: Cerissa Skinner

Property Owner: The Chapin Living Trust

APN: 207-131-004-000; 207-131-005-000

Parcel Size: 0.79 acres and 2.0 acres respectively

Zoning: Farmlands/40 acre [F/40]

Plan Area: Greater Salinas Area Plan

Flagged and Staked: No

SUMMARY:

Mr Ricky Cabrera is leasing the former McShane's Nursery property located on Highway 68, south of the City of Salinas. An application has been submitted requesting to operate retail cannabis in addition to cannabis cultivation.

Prior to McShane's Nursery, Graber Gardens was considered a legal, non-conforming use because landscaping is not specifically listed as an allowed use in the Farmland zone. While a General Development Plan (GDP) is not required in the Farmland zone, staff suggested creating a GDP in this case to provide an avenue to memorialize continuation of a non-conforming landscaping business. Non-conforming uses are restricted from expanding, so the GDP also helped to memorialize pre-existing structures on the site. A new 1,080 square foot greenhouse was permitted for nursery use, subject to restriction that no retail operation occur within that building (limiting the retail component to the nursery operation only).

When the County considered regulations for the cannabis industry, retail was specifically prohibited in the Farmlands zoning designation. As such, staff finds that consideration of cannabis retail at this location would require amending the Zoning Code allowing retail cannabis in the Farmland zoning district or changing the zoning of the parcel from Farmland to Commercial. The Commission could consider amending the Zoning Code to allow retail cannabis in the Farmland zone, which would apply countywide. However, changing the zoning designation to allow retail cannabis on this site would effectively be spot-zoning in staff's opinion. Cultivation is an allowed use in the Farmlands zoning district, and staff could support amending the GDP for cultivation within the existing greenhouse.

The projects applicants have been informed in writing on multiple occasions, including at a DRC meeting, that the proposed use is inconsistent with the underlying zoning. However, the applicant has expressed they wish to pursue decision on their application that includes both the retail and cultivation components. In that context, staff recommends denial of the application, as proposed, finding that retail cannabis is not an allowed use in the Farmland zone.

DISCUSSION:

Proposed Project:

The project proposes to use existing structures for new cannabis-related uses. An existing 4,760 square foot building, portions of which had previously been used for retail nursery sales, would be used as a commercial dispensary and edibles manufacturing building. This building, had also been previously used for other commercial retail operations, not specifically related to the nursery, but those uses were not permitted. An existing 42'x72' barn structure, which has not been previously used for retail space, would be used as an overflow commercial dispensary building. Also on the site, is an existing office building that would continue to be used as an office, and two additional 360 square foot and 480 square foot buildings would continue to be used for non-cannabis retail sales and to house non-cannabis accessories. An existing 1,080 square foot greenhouse, which was constructed prior to January 1, 2016, would be used to cultivate cannabis for demonstration and education purposes only. This greenhouse is not proposed to produce cannabis that would be sold commercially.

Site History:

Previous discretionary permits issued for the project site have recognized the legal non-conforming uses with minor modifications.

- November 14, 1984: Use Permit 3402: allowed expansion of the existing retail nursery on the adjacent 1.99 acre parcel, and an accessory landscape materials business. This permit expired in 1994.
- February 28, 1996: Use Permit PC 95110 - recognized the two legal non-conforming uses under one Use Permit.
- July 27, 2005: Use PLN050366 - allowed continued use of a legal non-conforming use of a Nursery (Graber Gardens) and accessory ornamental landscape materials business (Deco Rock). PC approved the use permit without an expiration date under the condition that: *"No additional structures shall be erected, except for the reconstruction of structures that existed at the time that the legal non-conforming use was established upon, Assessor's Parcel Number 207-131-004-000. No permanent structures shall be erected upon the accessory parcel containing the ornamental landscape material business, located on Assessor's Parcel Number 207-131-005-000."*
- July 12, 2006: PLN060174 - an amendment to PLN050366 to allow a 35-foot-tall ornamental windmill structure, new entry gate, trellis, 3,024 sq ft greenhouse, 200 sq ft concrete batch plant, new parking lot and signage and new landscaping and irrigation.

- December 12, 2011: CE070454 - Code Enforcement case citing outdoor sales of Christmas trees in the parking lot in violation of the conditions of PLN060174 that the use shall not be expanded, enlarged, increased, or extended to occupy a greater area than that occupied at the time that the legal-non conforming use was established. Also cited outdoor lighting in violation with the condition regulating exterior lighting and on-site special events without a permit.

June 13, 2012: PLN090138 - General Development Plan to clear the above code enforcement case, allow a produce stand in an existing unoccupied building, authorize a lighting plan and a sign program in addition to the existing nursery and ornamental landscape business. This permit also included a list of industry-related and seasonal events that would occur on the property. Commercial retail uses outside nursery related operations were not permitted as part of this entitlement. The General Development Plan (GDP) specified that no retail space would be added, meaning no further expansion of the retail use past what was recognized in the GDP.

Zoning Regulations:

The property is zoned Farmlands/40 acres per unit (F/40). Allowed uses in the F/40 zoning district (Title 21 of the County's Inland Land Use Ordinance, Section 21.30) do not include retail shops, with the exception of stands for the sale of agricultural products grown on the premises. The currently permitted nursery and landscape business has existed since prior to 1984 and is considered legal non-conforming as recognized and modified by the permits listed above. Regulations for legal nonconforming land use, section 21.68.020, state that a legal nonconforming land use may be continued from the time that legal nonconforming land use is established, except that:

- A. No such use shall be expanded, enlarged, increased, or extended to occupy a greater area than that occupied when the legal nonconforming use was established
- B. No such use may be intensified over the level of use that existed at the time the legal nonconforming use was established.
- C. The legal nonconforming use may be changed to a use of a similar or more restricted nature, subject to a use permit in each case.

The proposed project is not considered a change in use to a similar nature because the County regulations do not consider cannabis retail similar to any other use. The County's adopted regulations for Commercial Cannabis Activities, Section 21.67.040, allow cannabis retailers only in Light Commercial, Heavy Commercial, and Mixed-Use zoning districts and explicitly state that "Cannabis retailers shall not be allowed in any other zoning district." Therefore, the project cannot be permitted on the Farmlands-zoned property.

The proposed project is in direct conflict with regulations for Commercial Cannabis Activities due to the property's F/40 zoning designation. While cultivation and non-volatile cannabis manufacturing are allowed uses in the F/40 zoning designation with an administrative permit, cannabis retailers are specifically not allowed in any zoning designation other than Light Commercial, Heavy Commercial and Mixed Use.

If the proposed project was modified to only include the cultivation components in the existing greenhouse on-site, then it would be consistent with the zoning regulations, and could be supported by staff.

In order for the project to be supportable as proposed, the Zoning Code would need to be amended to allow retail cannabis in the Farmland Zoning district. Section 21.67.040 allows cannabis cultivation in Light Commercial, Heavy Commercial, and Mixed Use zoning districts and specifically states that "cannabis retailers shall not be allowed in any other zoning district". Allowing cannabis retailers in the Farmland zoning district would have implications for Farmland zoned properties throughout the county and would be in direct conflict with the regulations for retail cannabis that were carefully developed at the time the ordinance was adopted.

Another potential option would be to apply to rezone the property to a designation that allows retail cannabis sales, either Light Commercial, Heavy Commercial, or Mixed Use. However, staff could not support this proposal as it would effectively be considered spot-zoning. The subject parcels are within a broader Farmland

area that is not identified for commercial expansion by the County. When the County consulted the City of Salinas on our General Plan update, the City specifically expressed opposition to commercializing this corridor. The Greater Salinas Area Memorandum of Understanding (GSA MOU) speaks to neither agency expanding development south of the City.

Public Comment:

On May 28, 2020, a letter was received from Hansen P. Reed, with law firm Walker + Reed, Attorneys at Law in opposition to the proposed project. The letter included reference to two previous letters received from the law firm on June 25, 2019 and July 16, 2019. The series of letter cite opposition to the project generally based on inconsistency with zoning, the need to preserve agricultural uses, and potential impacts to traffic in the area. The letter(s) are included as **Exhibit E**.

CEQA

CEQA Guidelines Section 15270 states that denial of a project is statutorily exempt.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- RMA-Public Works
- RMA-Environmental Services
- Monterey Regional Fire Protection District
- Monterey County Health Department

Agricultural Advisory Committee

The project was reviewed by the Agricultural Advisory Committee on June 27, 2019. The committee voted 4:2 to support staff's recommendation for denial, with two members abstaining, one recused, and four members absent.

LUAC

The project is not within the jurisdiction of a designated land use advisory committee; however, it does appear under the jurisdiction of the Spreckels Neighborhood Design Review Committee, and staff referred it to this committee seeking any feedback on the proposed project on July 17, 2019. The committee passed a motion of "no opinion or not applicable", noting that the project is not within the town of Spreckels and is of no concern related to historical review.

Prepared by: Cheryl Ku, Senior Planner

Reviewed by: Brandon Swanson, RMA Planning Services Manager

Approved by: John Dugan, FAICP, RMA Deputy Director of Land Use and Community Development and Acting Chief of Planning

The following attachments are on file with the RMA:

- Exhibit A - Project Data Sheet
- Exhibit B - Draft Resolution for Denial
 - Site Plans
- Exhibit C - Ag Advisory Committee Minutes
- Exhibit D - Vicinity Map
- Exhibit E - Letter Received (Reed)
- Exhibit F - PC Resolution 05035 - PLN050366

Exhibit G - PC Resolution 06042 - PLN060174

Exhibit H - PC Resolution 12-023 - PLN090138

cc: Front Counter Copy; Planning Commission, Brandon Swanson, RMA Planning Services Manager; Cheryl Ku, Planner; Cerisa Skinner, Agent; Ricky Cabrera and the Chapin Living Trust, Owners; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN170296.