

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 6/14/22
 49th Working Day: Waived
 Staff: D.Christensen - V
 Staff Report: 1/20/23
 Hearing Date: 2/8/23

STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-STB-22-0028

APPLICANT: Van Wingerden

APPELLANT: Jill Stassinis

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions of Coastal Development Permit No. 19CDP-00000-00027

PROJECT LOCATION: 3508 Via Real, Carpinteria area, unincorporated Santa Barbara County (APN 005-280-025)

PROJECT DESCRIPTION: Request to allow 4.15 acres of cannabis cultivation, consisting of 3.96 acres of mixed-light mature cannabis planting, growing, and harvesting in two existing permitted greenhouses, and 0.19 acres of cannabis processing within 0.28 acres of processing, packing, and shipping buildings. The project includes increasing the height of the two existing greenhouses to 22 feet, demolition of 39,739 sq. ft. of unpermitted buildings, four water tanks, and 3,240 sq. ft. of permitted greenhouse, after-the-fact approval of 10,299 sq. ft. of accessory structures, relocate a portion of an existing dirt perimeter road to adjacent to the greenhouse structures, installation of new water tanks and an underground storm water detention system, expansion of the existing septic system, fencing changes, and 1.24 acres of riparian habitat restoration.

STAFF RECOMMENDATION: **No Substantial Issue**

NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your

testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the subject appeal has been filed. The **motion** and **resolution** for a "no substantial issue" finding are found on **pages 8-9**.

The approved project is for cannabis cultivation and processing on an existing agricultural property at 3508 Via Real in the Carpinteria area of Santa Barbara County. The project includes increasing the height of the two existing greenhouses by 5-7 feet (to a maximum height of 22 feet for greenhouses), demolition of 39,739 sq. ft. of unpermitted buildings, four water tanks, and 3,240 sq. ft. of permitted greenhouse, after-the-fact approval of 10,299 sq. ft. of accessory structures, relocation of a portion of an existing dirt perimeter road to adjacent to the greenhouse structures, installation of new water tanks and an underground storm water detention system, expansion of the existing septic system, fencing changes, and 1.24 acres of riparian habitat restoration. The property is adjacent to Arroyo Paredon Creek, which is an environmentally sensitive habitat (ESH) area.

The subject site has been in agricultural production for over fifty years. The two legally existing greenhouses on-site that were approved in the County-approved CDP at issue to be retained and increased in height were originally permitted and built in 1973 and 1980 and were required to be set back 50 ft. from the Arroyo Paredon Creek bank. In addition to the two permitted greenhouses on-site (that had been used for cut flower cultivation and are currently used for cultivating cannabis), additional accessory structures, water tanks, and greenhouse areas have been built and installed on the property between 1973 and today, some of which were permitted and some of which were unpermitted prior to the County's action at issue. The subject project approved by the County is intended to address unpermitted site development as well as facilitate cannabis cultivation and processing in conformance with the County's LCP, including the cannabis regulations that were certified in 2018.

The appellant asserts that the approved project does not comply with the 100-foot ESH buffer setback requirement of the Carpinteria Agricultural Overlay District and that allowing greenhouses, an access road, and fencing to remain within the 100-foot buffer

will adversely impact Arroyo Paredon creek ESH and downstream habitats through the introduction of noise, light, odor, and runoff. The appellant also contends that the approved project would enlarge (raise the height of) the legal non-conforming greenhouse structures located within the 100-foot ESH buffer in a manner that is inconsistent with the Carpinteria Agricultural Overlay District. The appellant also asserts that cannabis odors, as well as the approved vapor phase odor control system that would release a proprietary chemical substance into the air, pose significant risks to water, soil and plant and animal life in the ESH (as well as to resident and coastal visitor health), and that the air quality and odor impacts would be a nuisance at the public beach areas and to visitors.

For lands in the Carpinteria Agricultural Overlay District, such as the subject site, Land Use Plan (LUP) Policy 8-6.3.e and Coastal Zoning Ordinance (CZO) Section 35-102F.8 of the County's LCP require that greenhouses, packing and shipping facilities, shade and hoop structures, and related structures shall provide a setback of 100 feet from top-of-bank or edge of riparian habitat of natural creek channels, whichever is greater. The County's action acknowledges that the two greenhouses on-site (permitted in 1973 and 1980 with a 50 ft. required creek setback), which the County approved to remain and be increased in height, are legal non-conforming structures as to the Carpinteria Agricultural Overlay District-required 100 ft. setback from Arroyo Paredon Creek. Therefore, the greenhouses are subject to the non-conforming structure provisions of the LCP. Those provisions require that a non-conforming structure shall not be enlarged, extended, moved, or structurally altered unless the enlargement, extension, etc., complies with the height, lot coverage, setback, and other requirements of the LCP.

The County approved a setback modification in this case (to reduce the Carpinteria Agricultural Overlay District-required 100 ft. setback to a 50 ft. setback) pursuant to CZO Section 35-174.8, and argued that the height of the greenhouses can be increased because the approved setback modification serves to change the legal non-conforming status of the greenhouse structures to legal conforming, causing the structure to no longer be subject to limitations of CZO Section 35-162 (Nonconforming Buildings and Structures). However, Commission staff does not agree with the County's analysis that the setback modification provision of CZO Section 35-174.8 can be used to apply to Coastal Development Permit (CDP) actions since that provision applies only to consideration of a "Development Plan", which is a separate type of discretionary planning permit processed by the County. The CZO standards pertaining to development plans are not the standard of review for CDPs. Therefore, it would not be appropriate in the context of a CDP action to modify a standard of the LCP, nor make a non-conforming structure conforming as to setbacks, through the Development Plan setback modification provision of CZO Section 35-174.8.

The County's staff report also states that CZO Section 35-97.19, which allows upward and downward adjustment of the width of minimum required stream ESH buffers, could be used to reduce the buffer for all elements of this entire project. However, the Commission does not agree with the County's analysis that the Carpinteria Agricultural Overlay District's 100 foot stream/riparian setback requirement for "greenhouses,

packing and shipping facilities, shade and hoop structures, and related structures”, is a buffer that can be reduced pursuant to the ESH Overlay District ESH buffer reduction provision of CZO Section 35-97.19.

Rather, based on the facts specific to this case, the approved greenhouse structures can be found consistent with the non-conforming structure provisions of the LCP and would not have necessitated a project redesign. The height of the legal non-conforming greenhouse structures would be increased to 22 feet, which is consistent with the maximum allowed height of 30 feet above finished grade for greenhouses within the Carpinteria Agricultural Overlay District. And the structure height increase would not increase the structure’s non-conformity with regard to the 100-foot stream setback requirement.

This project is unique in that the greenhouses are a more modular type of structure and the alterations needed to increase their height only require post extensions and exterior siding as additional materials without changing the foundation or the vast majority of the structure. The extent of structural alterations required to increase the height of the greenhouses (to 22 feet in conformance with the maximum height standard of the LCP) will not in this case increase the structure’s non-conformity with regard to the current LCP 100-foot stream setback standard. Therefore, the greenhouses retain their legal non-conforming status under CZO Section 35-162.

The approved relocation of portions of the dirt perimeter road between the greenhouse structures and the creek, as well as the approved fencing changes, are subject to the 100-foot ESH buffer requirements of CZO Section 35-97.19 (Environmentally Sensitive Habitat Area Overlay District – Development Standards for Stream Habitats)¹. CZO Section 35-97.19 allows downward adjustment of the width of minimum required stream ESH buffers on a case-by-case basis and after consultation with California Department of Fish & Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB). The County approved a buffer reduction in this case for the approved development, including the perimeter road and fencing changes, with the stated reasons being that such development, with implementation of the proposed habitat restoration and protection plan, would not result in significant impacts to the creek and biological resources. The County considered the required water quality and biological productivity factors in their decision and after consultation with CDFW and RWQCB, as required by CZO Section 35-97.19.

The approved project also consists of 1.24 acres of riparian habitat restoration, fencing changes to accommodate wildlife movement while excluding human activities, stormwater management, exterior lighting restrictions, an odor abatement plan, and polluted runoff and sediment control measures to protect water quality. The County’s staff report states that the proposed Odor Abatement Plan for the project meets all odor

¹ The Carpinteria Agricultural Overlay District 100-foot setback requirement of CZO Section 35-102F.8 does not apply to the road and fencing relocation components of the approved project since that provision only applies to greenhouses, packing and shipping facilities, shade and hoop structures, and related structures. Instead, the road and fencing are subject to the adjustable 100-foot buffer in CZO Section 35-97.19.

control standards of the LCP and the approved odor control systems will not contain or emit toxic air contaminants that would be harmful to humans, wildlife, or water quality. As such, the County's action on the CDP included findings and evidence in support of their conclusion that the approved development would not result in any significant disruption of habitat values in ESH and would protect water quality consistent with relevant policies and provisions of the County's LCP. Therefore, the appeal contentions regarding biological resources and water quality do not raise a substantial issue.

Lastly, the appeal contends that public views will be negatively impacted by raising the height of the two permitted non-conforming greenhouses to 22 feet, which will be visible by the public from Via Real and Hwy 101 and are incompatible with the height of structures on surrounding properties. The approved project includes increasing the height of the two existing permitted greenhouses by 5-7 feet to improve interior circulation and ventilation. The approved height increase would not be significant and is consistent with the maximum allowed height of 30 feet above finished grade for greenhouses within the Carpinteria Agricultural Overlay District. Based on the County's analysis, public views would be protected due to the project's distance from public viewing areas and with the proposed Landscape and Screening Plan. Therefore, the appeal contentions regarding visual resources do not raise a substantial issue.

In summary, there is substantial evidence in the County's record that adequately supports its position that the proposed project is consistent with the applicable LCP policies. Moreover, the extent and scope of the development is relatively limited, and it does not raise regional or statewide issues. Therefore, staff recommends that the Commission find that the appellant's contentions raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the County's certified LCP.

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EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Aerial View
Exhibit 3.	Project Plans
Exhibit 4.	Final Local Action Notice for 19CDP-00000-00027
Exhibit 5.	Appeal by Jill Stassinis

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their CDP actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities and counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff (Coastal Act Section 30603(a)). Any development approved by a county that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)).

In this case, the County's CDP approval is appealable to the Coastal Commission because portions of the development are within 100 feet of a natural watercourse. Additionally, the project proposes 12,379 sq. ft. for packing, shipping, processing and storage activities. Section 35-102F.5.3 of the Carpinteria Agricultural Overlay District of the County's certified LCP requires a Conditional Use Permit for the packing and shipping facilities, and Section 35-182.6.3 of the County's certified Implementation Plan indicates that development approved by the County that is not designated as the principal permitted use under the zoning ordinance or zoning district map, including development approved by the County that requires a Conditional Use Permit, is appealable to the Coastal Commission.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act (Coastal Act Section 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial

issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the “substantial issue” question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the CDP *de novo*. If the Commission determines that no substantial issue exists, then the local government’s CDP action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application *de novo*. The applicable test for the Commission to apply in a *de novo* review of the project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act (Coastal Act Section 30604(b) & (c)). If a *de novo* hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On March 2, 2022, the County of Santa Barbara (County) Planning Commission approved the subject project with conditions. On March 14, 2022, the project was appealed to the County Board of Supervisors by Jill Stassinis, who is also the appellant here. On May 24, 2022, the Board of Supervisors denied the appeal and approved the permit for the project.

The County’s Notice of Final Action was received by Commission staff on May 31, 2022 (Exhibit 4). Commission staff provided notice of the ten working-day appeal period, which began on May 31, 2022 and ended on June 14, 2022. Jill Stassinis filed an appeal on June 14, 2022, during the Commission’s appeal period (Exhibit 5). Commission staff notified the County and the applicant of the appeal and requested that the County provide its administrative record for the permit. The administrative record was received on June 28, 2022. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be August 23, 2022; however, according to Section 30625(a), the applicant can waive that time limit. On July 11, 2022, prior to expiration of the 49-working day deadline for Commission action, the applicant waived its right to a hearing within 49 working days.

II. STAFF RECOMMENDATION FOR NO SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-4-STB-22-0028 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the

Commission finds No Substantial Issue, will not hear the application de novo, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-4-STB-22-0028 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The subject Coastal Development Permit (CDP) approved by the County of Santa Barbara (County) is for the following:

- Cannabis cultivation consisting of 3.96 acres of mixed-light mature cannabis planting, growing, and harvesting in two existing permitted greenhouses.
- Cannabis processing of 0.19 acres within 0.28 acres of processing, packing, and shipping buildings.
- Increase height of the two existing permitted greenhouses - the existing 87,120 sq. ft. greenhouse would be raised from 15 ft., 1 in. to 22 ft. and the existing 85,378 sq. ft. greenhouse would be raised from 17 ft., 5 in. to 22 ft.
- Demolition of a 35,750 sq. ft. unpermitted greenhouse, approximately 4,000 sq. ft. of unpermitted accessory buildings, a 105,669 gallon unpermitted water tank, 3,240 sq. ft. of permitted greenhouse, and three 5,283 gallon water tanks.
- After-the-fact approval of 10,299 sq. ft. of processing, shipping, and other accessory structures.
- Installation of one 105,669-gallon water tank, one 25,360-gallon water tank, and after-the-fact approval of a 25,360-gallon water tank and three 36,984-gallon water tanks.
- Installation of exterior lighting on the existing greenhouses, security fencing around the perimeter of the site, and a carbon filter odor abatement system within the existing greenhouses.
- Relocate a portion of an existing dirt perimeter road to adjacent to the permitted greenhouse structures.
- Replacement of existing chain link fence with a barbed-wire, wildlife-friendly fence within the habitat buffer area.
- Upgrade of the existing septic system and construction of a 715 sq. ft. underground stormwater detention system for stormwater purposes, which would involve 120 cu. yds. of grading.
- Riparian habitat restoration of 1.24 acres within the buffer between the approved development and the riparian corridor of Arroyo Paredon Creek.

The project site is located at 3508 Via Real, in the Toro Canyon Community Plan area of the Carpinteria Valley, in unincorporated Santa Barbara County (Exhibits 1-3). The land use and zoning designation of the subject 8.96-acre property is Agriculture I (AG-I-10), and the property is also located within the Carpinteria Agricultural Overlay District.

The site has been in agricultural production for over fifty years. Most of the adjacent properties are also in agricultural production, designated for agricultural use, and contain greenhouses. In 1973, an approximately 85,000 sq. ft. greenhouse and two storage sheds were permitted by the County and built on the eastern portion of the property. In 1980, a second greenhouse of approximately 87,000 sq. ft. in size was permitted by the Coastal Commission (CDP No. 306-18) and the County and built on the western portion of the property. The Commission's CDP for the 1980 greenhouse included a special condition that required the greenhouse to be set back 50 ft. from the Arroyo Paredon Creek bank. Landscaping and a 25-ft. wide pervious road were also authorized by the CDP within the required creek setback and between the greenhouse structures and the creek.

Arroyo Paredon Creek is located along the northern property line and flows from east to west. Off-site, the creek continues under Via Real and Highway 101, and outlets to the Pacific Ocean approximately 900 feet downstream of the property. The riparian habitat associated with Arroyo Paredon Creek consists of western sycamore-arroyo willow woodland. The creek is designated in the County's certified LCP as an environmentally sensitive habitat (ESH) area. The creek is also U.S. Fish and Wildlife Service (USFWS)-designated critical habitat for southern California steelhead trout and tidewater goby.

In addition to the two permitted greenhouses onsite that had been used for cut flower cultivation, and are currently used for cultivating cannabis, additional accessory structures, water tanks, and greenhouse areas have been built and installed on the property between 1973 and today, some of which were permitted and some of which were unpermitted prior to the County-approved CDP at issue.

On November 7, 2018, the Commission certified an amendment to the Implementation Plan/Coastal Zoning Ordinance portion of the County's LCP, which added policies and provisions to allow for and regulate cannabis operations in the coastal zone of the County. The amendment limited cannabis activities to appropriately zoned areas, and allowed outdoor, indoor, and mixed-light cannabis cultivation and nursery in agriculture zone districts. Although cannabis cultivation is considered an agricultural activity, it is also much more regulated than typical agricultural products and operations. For example, the certified LCP requires cannabis cultivation areas to be screened from public viewing areas and requires the implementation of security fencing, noise plans, and odor abatement plans, among other requirements.

The mixed-light cannabis cultivation and processing use and associated development approved by the County in this case requires a Coastal Development Permit (CDP). A Minor Conditional Use Permit (CUP) was required in conjunction with the CDP to allow cannabis packing and shipping use. A Development Plan (DVP) was also required in conjunction with the CDP because the overall proposed structural development exceeds 20,000 sq. ft. A Development Plan is a type of discretionary planning permit that the

County requires for projects allowed by right within their respective zoning districts which, because of the type, scale, or location of the development, require comprehensive review.

B. SUMMARY OF APPELLANT'S CONTENTIONS

The County's final action on the subject CDP was appealed to the Commission by Jill Stassinis on June 14, 2022 (Exhibit 5). The appellant's grounds for appeal contend that the project as approved is inconsistent with environmentally sensitive habitat (ESH), water quality, and visual resource protection policies of the County's LCP. The appellant asserts that the project does not comply with the 100-foot ESH buffer setback requirement of the Carpinteria Agricultural Overlay District and allowing greenhouses, an access road, and fencing to remain within the 100-foot buffer will adversely impact Arroyo Paredon creek ESH and downstream habitats through the introduction of noise, light, odor, and runoff. The appellant also contends that the approved project would enlarge (raise the height of) the legal non-conforming greenhouse structures located within the 100-foot ESH buffer in a manner that is inconsistent with the Carpinteria Agricultural Overlay District. The appellant also asserts that cannabis odors, as well as the approved vapor phase odor control system that would release a proprietary chemical substance into the air, pose significant risks to water, soil, and plant and animal life in the ESH (as well as resident and coastal visitor health). The appeal asserts there will be negative air quality and odor impacts (individual and cumulative) as a result of the project, which are nuisances at the public beach areas and to visitors. Lastly, the appeal contends that public views will be negatively impacted by raising the height of the two permitted non-conforming greenhouses to 22 feet, which will be visible to the public from Via Real and Hwy 101 and are incompatible with the height of structures on surrounding properties.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant cited the County's LCP policies and provisions related to biological resources, water quality, and visual resources.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and, where applicable, the public access and recreation provisions of the Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its local coastal program; and
5. Whether the appeal raises only local issue as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

In this case, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

1. Biological Resources and Water Quality

The appellant asserts that the project, as approved by the County, does not conform to the following Biological Resource and Water Quality policies and provisions of the County's LCP.

Santa Barbara County Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies. In addition, Land Use Plan Policy 1-2 states that where policies within the land use plan overlap, the policy which is the most protective of coastal resources shall take precedence.

Coastal Act Section 30240:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Toro Canyon Plan Policy LUG-TC-8 (Coastal):

Protection of ESH and public access shall take priority over other development standards and where there is any conflict between general development standards and ESH and/or public access protection, the standards that are most protective of ESH and public access shall have precedence.

Land Use Plan Policy 8-6.3.e and Coastal Zoning Ordinance Section 35-102F.8 (Carpinteria Agricultural Overlay District - General Requirements) provides, in part:

3. Setbacks. The following setbacks for greenhouses, packing and shipping facilities, shade and hoop structures, and related structures shall apply:

...

e. 100 feet from top-of-bank or edge of riparian habitat of natural creek channels, whichever is greater.

Coastal Zoning Ordinance Section 35-102F.7 (Carpinteria Agricultural Overlay District - Conforming and Nonconforming Structures) provides:

As of the effective date of ordinance adoption, all existing greenhouses, packing and shipping facilities, shade and hoop structures, and greenhouse related development in both Areas A and B are considered conforming structures, provided such structures were legally approved and constructed and are consistent with the provisions set forth in this overlay district. Structures that were legally approved and constructed but are not consistent with the provisions set forth in this overlay district are considered nonconforming structures. In Area B, greenhouses, packing and shipping facilities, shade and hoop structures, and greenhouse related development of 20,000 square feet or more, and legally approved and constructed prior to date of adoption of this ordinance, are considered conforming structures if they meet all other requirements of this overlay district. Greenhouses and related structures that do not conform to the provisions of this overlay district, but are otherwise conforming uses (i.e. legally permitted as of the effective date of ordinance adoption), shall be subject to the provisions contained in Division 10. Section 35-162 (Nonconforming Buildings and Structures).

Coastal Zoning Ordinance Section 35-162 (Nonconforming Buildings and Structures) states, in part:

If a building or structure is conforming as to use but nonconforming as to setbacks, height, lot coverage, or other requirements concerning the building or structure, such structure may remain so long as it is otherwise lawful, subject to the following regulations.

1. Structural change, enlargement, or extension.

a. Enlargements or extensions allowed in limited circumstances.

1) Except as listed below or otherwise provided in this Article, a nonconforming structure shall not be enlarged, extended, moved, or structurally altered unless the enlargement, extension, etc., complies with the height, lot coverage, setback, and other requirements of this Article.

...

Coastal Act Section 30231:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Santa Barbara County Land Use Plan Policy 3-19:

Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.

Toro Canyon Plan Policy WW-TC-4.a (Coastal):

Development shall avoid the introduction of pollutants into surface, ground and ocean waters. Where avoidance is not feasible, the introduction of pollutants shall be minimized to the maximum extent feasible.

The appellant contends that the project does not comply with the 100-foot ESH buffer setback requirement of the Carpinteria Agricultural Overlay District and allowing greenhouses, an access road, and fencing to remain within the 100-foot buffer will adversely impact Arroyo Paredon Creek ESH and downstream habitats through the introduction of noise, light, odor, and runoff. The appellant also contends that the approved project would enlarge (raise the height of) the legal non-conforming greenhouse structures located within the 100-foot ESH buffer in a manner that is inconsistent with the Carpinteria Agricultural Overlay District. The appellant also asserts that cannabis odors, as well as the approved vapor phase odor control system that would release a proprietary chemical substance into the air, pose significant risks to water, soil and plant and animal life in the ESH (as well as resident and coastal visitor health). The appeal states that there will be negative air quality and odor impacts (individual and cumulative) as a result of the project, which are nuisances at the public beach areas and to visitors.

Arroyo Paredon Creek is located along the northern property line of the subject site and flows from east to west. Off-site, the creek continues under Via Real and Highway 101, and outlets to the Pacific Ocean approximately 900 feet downstream of the property. The riparian habitat associated with Arroyo Paredon Creek consists of western sycamore-arroyo willow woodland. The creek is designated in the County's certified LCP as an environmentally sensitive habitat (ESH) area. The creek is also U.S. Fish and Wildlife Service (USFWS)-designated critical habitat for southern California steelhead trout and tidewater goby.

The subject property has been in agricultural production for over fifty years. In 1973, an approximately 85,000 sq. ft. greenhouse was permitted by the County and built on the eastern portion of the property. In 1980, a second greenhouse of approximately 87,000 sq. ft. in size was permitted by the Coastal Commission and the County and built on the western portion of the property. The Commission's CDP for the greenhouse included a special condition that required the greenhouse to be set back 50 ft. from the Arroyo Paredon Creek bank. Landscaping and a 25-ft. wide pervious road were also authorized by the CDP within the creek setback and between the greenhouse structures and the creek.

In addition to the two permitted greenhouses onsite that had been used for cut flower cultivation, and are currently used for cultivating cannabis, additional accessory structures, water tanks, and greenhouse areas have been built and installed on the property between 1973 and today, some of which were permitted and some of which were unpermitted prior to the County-approved CDP at issue.

The development approved by the County in the subject CDP includes retaining the previously permitted greenhouse structures, increasing their height by 5-7 feet (to a maximum height of 22 feet for the greenhouse structures) to improve internal circulation and ventilation, as well as demolishing as-built unpermitted structures located between the permitted greenhouse structures and Arroyo Paredon Creek. The approved project also includes 1.24 acres of riparian habitat restoration between the approved development and the riparian corridor of Arroyo Paredon Creek, as well as relocation of a portion of an existing dirt perimeter road to a location immediately adjacent to the permitted greenhouse structures and replacement of existing chain link fence with a barbed-wire, wildlife-friendly fence within the habitat buffer area.

The subject property is zoned Agricultural I (AG-I) and is located within Area A of the Carpinteria Agricultural Overlay District. The LCP-stated intent of the Carpinteria Agricultural Overlay District is to ensure well-designed greenhouse development and to limit the loss of open field agricultural areas from piecemeal greenhouse expansion by providing well-crafted development standards that protect the water quality, visual resources, and rural character of the Carpinteria Valley. For lands in the Carpinteria Agricultural Overlay District, Land Use Plan (LUP) Policy 8-6.3.e and Coastal Zoning Ordinance (CZO) Section 35-102F.8 requires that greenhouses, packing and shipping facilities, shade and hoop structures, and related structures shall provide a setback of 100 feet from top-of-bank or edge of riparian habitat of natural creek channels, whichever is greater.

The County's staff report for the subject permit acknowledges that the two greenhouses on-site (permitted in 1973 and 1980 with a 50 ft. required creek setback) that would remain and be increased in height are legal non-conforming structures as to the Carpinteria Agricultural Overlay District-required 100 ft. setback from Arroyo Paredon Creek.

As discussed below, although the Commission disagrees with certain analyses on which the County based its approval of the CDP, the Commission finds that no

substantial issue exists with respect to the grounds raised by the appellant relative to the project's conformity to the policies contained in the certified LCP.

The County's staff report states that CZO Section 35-174.8 provides that at the time a Development Plan is approved, the decision-maker may modify setback requirements when the decision-maker finds the project justifies such modifications. The County approved a setback modification in this case (modified Carpinteria Agricultural Overlay District-required 100 ft. setback to a 50 ft. setback). The County's staff report states the setback modification will change the legal non-conforming status of the greenhouse structures to legal conforming, and therefore the height of the greenhouses can be increased because they are no longer subject to limitations of CZO Section 35-162 (Nonconforming Buildings and Structures).

However, Commission staff does not agree with the County's analysis that the setback modification provision of CZO Section 35-174.8 can be used to apply to Coastal Development Permit actions. That provision applies only to consideration of a "Development Plan", which is a type of discretionary planning permit that is required (pursuant to CZO Section 35-174) for "projects allowed by right within their respective zoning districts which, because of the type, scale, or location of the development, require comprehensive review". Where both a development plan and a coastal development permit are required approvals, the CZO provides that they will be processed concurrently.

In this case, a Development Plan was processed by the County concurrently with the CDP because the overall proposed structural development exceeds 20,000 sq. ft. However, a Development Plan permit is not a CDP and its standards are not the standard of review for CDPs. It is the CDP action that is appealable to the Commission and not the Development Plan action. Therefore, it would not be appropriate in the context of a CDP action to modify a standard of the LCP, nor make a non-conforming structure conforming as to setbacks, through the Development Plan setback modification provision of CZO Section 35-174.8.

The County's staff report also states that CZO Section 35-97.19, which allows downward adjustment of the width of minimum required stream ESH buffers, is applicable to this entire project. This section gives discretion for buffer width to be adjusted on a case-by-case basis for certain structures and after consultation with California Department of Fish & Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB). The County approved a buffer reduction in this case (50 feet instead of the 100 feet required for stream/riparian ESH in rural areas) with the stated reasons being that the approved greenhouses pre-date the regulations of the Carpinteria Agricultural Overlay District, and with implementation of the proposed habitat restoration and protection plan, impacts to the creek and biological resources will be less than significant. The County's staff report also states that the CDFW and RWQCB reviewed the proposed project and have no further comments regarding any impacts to Arroyo Paredon creek or biological resources.

While the Commission does not agree with the County's analysis that the Carpinteria Agricultural Overlay District's 100 foot stream/riparian setback requirement (as detailed in LUP Policy 8-6.3.e and CZO Section 35-102F.8) is a buffer that can be reduced for the greenhouses pursuant to the ESH Overlay District ESH buffer reduction provision of CZO Section 35-97.19, based on the facts specific to this case, applying the non-conforming structure provisions of the LCP, as explained further below, would not have necessitated a project redesign.

For lands in the Carpinteria Agricultural Overlay District, LUP Policy 8-6.3.e and CZO Section 35-102F.8 specifically require that "greenhouses, packing and shipping facilities, shade and hoop structures, and related structures" shall provide a setback of 100 feet from top-of-bank or edge of riparian habitat of natural creek channels, whichever is greater. There is no adjustment to this setback allowed by the LCP, unless through a variance, the findings of which could not be made in this case. Instead, the LCP requirements applicable here are CZO Sections 35-102F.7 and 35-162. CZO Section 35-102F.7 (Carpinteria Agricultural Overlay District - Conforming and Nonconforming Structures) states that greenhouses and related structures that do not conform to the provisions of this overlay district, but are otherwise conforming uses (i.e. legally permitted as of the effective date of ordinance adoption), shall be subject to the provisions contained in Section 35-162 (Nonconforming Buildings and Structures).

The greenhouses that were approved by the County to remain and have their heights increased were legally approved and constructed prior to certification of the County's LCP and provide a 50-foot buffer from the adjacent creek riparian area, but would not conform with the 100 foot setback now required pursuant to CZO Section 35-102F.8.3. Therefore, according to CZO Section 35-102F.7, the greenhouses are legal nonconforming. As such, the greenhouses are subject to the provisions of Section 35-162, which provides that a non-conforming structure shall not be enlarged, extended, moved, or structurally altered unless that enlargement, extension, etc., complies with the height, lot coverage, setback, and other requirements of the CZO.

The approved greenhouse height increase would meet the definition of a structural alteration under the LCP, and CZO Section 35-162 allows non-conforming structures to be enlarged, extended, moved, or structurally altered if the enlargement, extension, structural alteration, etc. themselves comply with the height, lot coverage, setback, and other requirements of the CZO. In this case, the height of the legal non-conforming greenhouse structures would be increased to 22 feet, which is consistent with the LCP's maximum allowed height of 30 feet above finished grade for greenhouses within the Carpinteria Agricultural Overlay District. And the structure height increase itself would not increase or otherwise impact the structure's non-conformity with regard to the lateral 100-foot stream setback requirement. Therefore, the greenhouses retain their legal non-conforming status under CZO Section 35-162.

This project is unique in that greenhouses are a more modular type of structure and the alterations required to increase their height involve less changes than would be required for raising the height of a more permanent structure. In this case, the existing legal greenhouse structures to remain would be lifted in place, which, according to the

applicant, is a relatively quick and non-invasive building process, and only requires the post extensions and exterior siding as additional materials. Pneumatic jacks powered by a compressor would be used to incrementally lift and secure the greenhouse until it reaches its final new height, then all of the new posts are welded in place and additional shores and crossmembers are added. All the work is done from inside of the structure and the foundation is unaffected, remaining as it was after the work is complete. In addition, the vast majority of the existing structure would be retained. Therefore, the extent of structural alterations required to increase the height of the greenhouses in this case would conform with the height standard of the LCP and would not increase the structure's lawful non-conformity with regard to the 100-foot stream setback standard pursuant to CZO Section 35-162.

In addition to the changes to the greenhouses, the project includes the approved relocation of portions of the dirt perimeter road between the greenhouse structures and the creek, as well as the approved fencing changes. Portions of the dirt road and fencing are currently within 100 feet of ESH and would remain within 100 feet of ESH under the project. The road and fencing components of the project are subject to the 100-foot ESH buffer requirements of CZO Section 35-97.19 (Environmentally Sensitive Habitat Area Overlay District – Development Standards for Stream Habitats)². CZO Section 35-97.19 allows downward adjustment of the width of minimum required stream ESH buffers on a case-by-case basis and after consultation with California Department of Fish & Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB). As discussed previously, the County approved a buffer reduction in this case for the approved development, including the perimeter road and fencing changes. The County determined that such development, with implementation of the proposed habitat restoration and protection plan, would not result in significant impacts to the creek and biological resources. The County considered the required water quality and biological productivity factors in their decision and after consultation with CDFW and RWQCB, as required by CZO Section 35-97.19.

The approved project also includes a Habitat Protection Plan, Wildlife Movement Plan, and Tree Protection Plan, which includes enhancing the riparian corridor of Arroyo Paredon Creek by planting 1.24 acres of native riparian vegetation along the northern portion of the parcel within the ESH buffer area. Fencing changes were also approved to accommodate wildlife movement while excluding human activities. These changes consist of removing existing chain-link fencing, moving a portion of fencing outside of the riparian canopy, and installing barbed-wire fencing with a wide gap at the bottom for wildlife passage. A stormwater management system as well as erosion and sediment control measures were approved to reduce pollutants in storm water runoff and avoid the introduction of pollutants into surface and ground water in order to protect water quality. Further, the proposed cultivation and processing is limited to operations within roofed structures, which would prevent rain from falling on the growing areas and

² The Carpinteria Agricultural Overlay District 100-foot setback requirement of CZO Section 35-102F.8 does not apply to the road and fencing relocation components of the approved project since that provision only applies to greenhouses, packing and shipping facilities, shade and hoop structures, and related structures. Instead, the road and fencing are subject to the adjustable 100-foot buffer in CZO Section 35-97.19.

prevent agricultural chemicals from drifting offsite or to Arroyo Paredon Creek. The proposed project would also utilize an elevated pot system with timed drip irrigation and an irrigation recycling system that would allow capture of fertilizers instead of them being discharged into the soil. The project received approval from the Regional Water Quality Control Board (RWQCB) and is compliance with the Regional Board's cannabis cultivation policy.

The County also coordinated review of the project with CDFW and USFWS since Arroyo Paredon Creek contains habitat for protected sensitive fish species such as the tidewater goby and steelhead trout. The County's staff report states that the agencies agreed with the location of the riparian habitat and top-of-bank boundaries and had no outstanding comments regarding the proposed project. Exterior lighting was also approved since it is required by the County Building and Safety Division and the County Sheriff Department for security and safety reasons for cannabis operations. The County conditioned the permit to require all exterior lighting to be low intensity, fully shielded, directed downward, and on motion sensors to limit duration of illumination after movement is detected, which is consistent with the exterior lighting standards for cannabis operations in the County's certified LCP. Further, the County conditioned the permit to require comprehensive blackout shades on the greenhouses to avoid light visibility outside of the structures during nighttime. As such, the County's action on the CDP included findings and evidence in support of their conclusion that the approved development would not result in significant impacts to the creek and biological resources and is consistent with relevant policies and provisions of the County's LCP.

The appellant also asserts that cannabis odors, as well as the approved vapor phase odor control system that would release a proprietary chemical substance into the air, pose significant risks to water, soil and plant and animal life in the ESH (as well as resident and coastal visitor health). The grounds for appeal state that there is evidence that odors can impact wildlife; however, the evidence the appellant provided are articles and studies that describe certain species' sense of smell. The appellant did not provide any evidence that either cannabis odor or the approved vapor phase odor control system has the potential to adversely impact ESH or sensitive species and their assertion is speculative. The approved Odor Abatement Plan for the project includes the use of a regenerative carbon scrubber system (RCSS) as the primary method of odor control within the greenhouses. A carbon absorption-based system would be used in the processing and packing building. The existing vapor phase odor control system in the greenhouse would be phased out and removed if the RCSS is adequate to prevent odor from being experienced in residential zones. The County found that the approved odor control systems will not contain or emit toxic air contaminants (TACs), and that the RCSS in the greenhouses and the carbon filters in the processing areas will filter out odiferous particles and will not emit any toxic or hazardous air pollutants or contaminants. The County's staff report also states that the vapor phase system in the greenhouses will emit either Ecosorb CNB 100 or CNB 107, both of which have been reviewed by the County and the Air Pollution Control District (APCD), and APCD has determined that neither solution contains TACs. As such, the County's action on the CDP included findings and evidence in support of their conclusion that odors and the odor control system of the approved project would not result in significant impacts to the

creek and biological resources and is consistent with relevant policies and provisions of the County's LCP.

The County's LCP requires cannabis projects to prepare and implement an odor abatement plan in order to prevent odors from being experienced within residential zones, as determined by the Planning Director. The requirements of an odor abatement plan include a description of all equipment and methods to be used for reducing odors and certification by a professional engineer or certified industrial hygienist that the equipment and methods are consistent with accepted and available industry-specific best control technologies and methods designed to mitigate odor. Other requirements for the odor abatement plan include designation of an individual who is responsible for responding to odor complaints, commencement of a corrective action within two hours of an initial odor complaint, a system for recording and tracking complaints, access to the facility at all times without notice by the County for the purpose of inspecting odor mitigation practices, odor sources, and complaint tracking system records, and other requirements if the County receives three verified complaints regarding odor events within any 365-day period.

The County's staff report states that the proposed Odor Abatement Plan for the project meets all odor control standards of the LCP. Further, the County conditioned the project to require the applicant to implement the approved Odor Abatement Plan to prevent odors from being experienced within residential zones and to maintain the odor abatement systems in good operating condition while cannabis cultivation occurs on site. Therefore, the County found that the project complied with relevant cannabis cultivation LCP policies and would prevent odors from being experienced in residential zones. Additionally, as described above, the LCP lays out the process to address odor complaints, and it is the County's responsibility to address odor nuisance issues and enforce the conditions of the project's permit. As part of the Odor Abatement Plan, the applicant is required to provide contact information for the primary odor contact to the owners and occupants within 1,000 ft. of the property, consistent with LCP requirements. The odor abatement system is subject to monitoring and enforcement by County Permit Compliance staff for the life of the project in accordance with the CDPs conditions of approval.

Therefore, although the County erred in their analysis and application of certain LCP provisions relative to the proposed project as explained above, applying the non-conforming structure provisions of the LCP in relation to the relevant LCP standards would not have necessitated project redesign or required other conditions of approval by the County. And the County's action on the CDP included findings and evidence in support of their conclusion that the approved development would not result in any significant disruption of habitat values in ESH and would protect water quality consistent with relevant policies and provisions of the County's LCP. As such, the appeal contentions regarding biological resources and water quality do not raise a substantial issue.

2. Visual Resources

The appellant asserts that the project, as approved by the County, does not conform to the following Visual Resource policy of the County's LCP. Santa Barbara County Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies.

Coastal Act Section 30251:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The appeal contends that public views will be negatively impacted by raising the height of the two permitted non-conforming greenhouses to 22 feet, which will be visible to the public from Via Real and Highway 101 and are incompatible with the height of structures on surrounding properties.

The approved project includes increasing the height of the two existing permitted greenhouses by 5-7 feet to improve internal circulation and ventilation - one existing 87,120 sq. ft. greenhouse would be raised from 15 ft., 1 in. to 22 ft. and the other existing 85,378 sq. ft. greenhouse would be raised from 17 ft., 5 in. to 22 ft. The approved height increase will not be significant and is consistent with the maximum allowed height of 30 feet above finished grade for greenhouses within the Carpinteria Agricultural Overlay District. The County also analyzed potential impacts to public views from the development and story poles were utilized in their analysis. The subject parcel is approximately 200 feet from Highway 101 and 100 feet from Via Real, a public road. According to the County's staff report, due to the high speed of travel on Highway 101 and existing development, the project site would not be readily visible from Highway 101. In addition, visibility from Via Real is limited since the entrance to the site and portions of development in the southwest area of the parcel are only partially visible from portions of Via Real approximately 100 ft. away. There are also existing greenhouse structures on surrounding parcels and the approved height increase would not be visually incompatible with the character of surrounding area. Consistent with LCP Policy 8-7 that requires landscaping and screening for new greenhouse and accessory structures, the applicant proposed, and the County approved, a Landscape and Screening Plan. The County found that public views would be protected due to the project's distance from public viewing areas and with the proposed Landscape and Screening Plan. Therefore, the Commission finds that this appeal contention does not raise a substantial issue with respect to the visual resource policies of the County's LCP.

3. Factors Considered in Substantial Issue Analysis

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant cited policies contained in the certified County of Santa Barbara LCP as grounds for appeal.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and, where applicable, the public access and recreation provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its local coastal program; and
5. Whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. In this case, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the Coastal Act and certified LCP. In this case, as discussed in detail above, the Commission finds that the County had substantial factual support for its conclusion that the proposed project is consistent with all of the applicable ESH, water quality, and visual resource protection policies and provisions of the certified LCP as well as the cannabis regulatory policies and provisions of the certified LCP. This factor weighs heavily against finding substantial issue.

The second factor is the extent and scope of the development as approved. As described above, the scope of the approved development includes 4.15 acres of cannabis cultivation and processing, as well as demolition, changes, and improvements to existing agricultural structures, and habitat restoration. The approved project only applies to the subject 8.96-acre property, which is zoned for agriculture and has long been developed with greenhouses and associated agricultural support development. The proposed cannabis activities are considered agricultural uses and are consistent with the uses allowed on the subject property. The approved project would result in a net decrease of the disturbed area on the subject property and enhance the buffer area

between the permitted development and Arroyo Paredon Creek. Therefore, the Commission finds that the extent and scope of development is not significant and weighs against finding substantial issue.

The third factor is the significance of coastal resources affected by the decision. Environmentally sensitive habitat areas, particularly streams and riparian habitats are significant coastal resources that are accorded maximum protection under the County's LCP. As described in detail above, the proposed project includes lawful non-conforming greenhouse development that will not be extended as required by the LCP. Further, all new development is consistent with the LCP. The project includes riparian habitat restoration, water quality and drainage improvements, and fencing changes that will serve to improve habitat and water quality. Given all of these factors, the County correctly found that the proposed project will not result in a significant disruption to habitat values and is consistent with the ESH and ESH buffer policies and provisions of the LCP. Even so, because ESH is a significant coastal resource, this factor weighs in favor of finding substantial issue.

The fourth factor is the precedential value of the local government's decision for the future interpretation of its LCP. On the one hand, the precedential value of the County's decision for future interpretation of its LCP could be significant because the County erred in their analysis and application of certain LCP provisions relative to the proposed project. The County's position is that CZO Section 35-174.8 (which applies to Development Plans) allows their decision-maker to modify height, setback and buffer standards of the LCP in a CDP action when the decision-maker finds the project justifies such a modification. In addition, the County took the position that the 100-foot setback requirement for greenhouses is adjustable under CZO Section 35-97.19. The County's interpretation of these provisions could have precedential value as it may potentially undermine many resource protection LCP policies. That provision is specific to Development Plans, which is a separate County planning permit that is not a CDP and its standards are not the standard of review for CDPs. The County's interpretation supports finding substantial issue. On the other hand, the approved project is consistent with the applicable policies of the LCP because of the unique factual circumstances of the project, which supports finding no substantial issue.

The final factor is whether the appeal raises issues of regional or statewide significance. This project is for a local cannabis operation and does not raise regional or statewide issues, much less significant ones. Thus, this factor also weighs against finding substantial issue.

In conclusion, the Commission finds that, taken together, the above factors do not support finding that a substantial issue exists. Applying the five factors identified above, the Commission finds that the following factors weigh against finding substantial issue: there is substantial evidence in the County's record that adequately supports its position that the proposed project is consistent with the applicable LCP policies, and although the subject decision may have precedential value in the interpretation of the County's LCP and significant coastal resources could potentially be affected by the decision, the extent and scope of the development is relatively limited and it does not raise regional

or statewide issues, much less significant ones. Therefore, as discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the County's certified LCP.