

COCHISE COUNTY

**SUA-21-01
(MM Ft Grant Rd Appeal La Sota)**

Appeal of a Planning and Zoning Commission Approval of
a Special Use Authorization for Medical Marijuana
Cultivation and Infusion Facility

Board of Supervisors

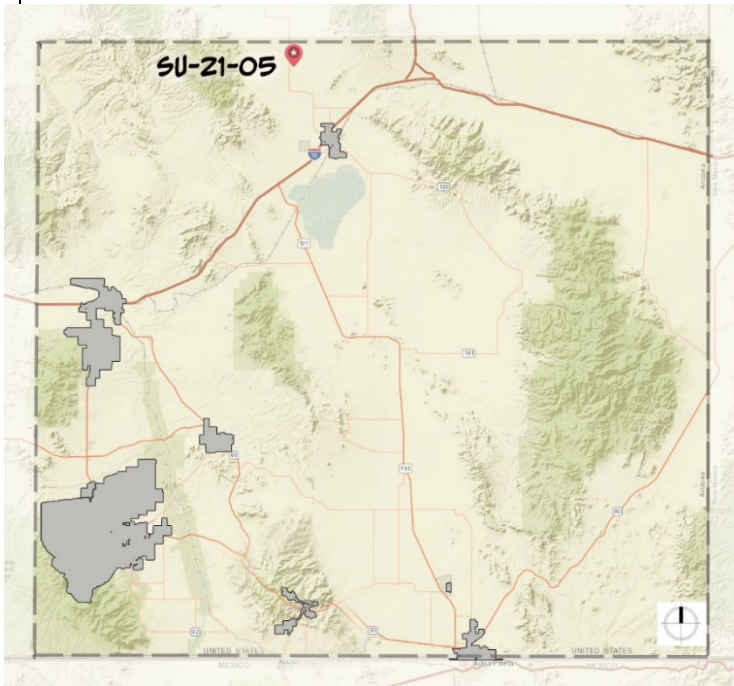
April 20, 2021



Public Programs...Personal Service

COCHISE COUNTY **SU-21-000005 Background**

- SU-21-000005 was a request to allow the construction of a medical marijuana cultivation and infusion facility
- The subject property (201-17-002E) is 318 acres and has historically been in agricultural use. The location is on Ft Grant Rd approximately 10 miles NW of Willcox



COCHISE COUNTY **Evaluation Criteria Analysis Special Use**

There are 10 factors used to evaluate all **special use** proposals. As submitted, the application:

- Complies: 6 factors
- Complies with conditions: 2 factors (Site Development Standards, Hazardous Materials)
- Partial compliance: 1 factor (Zoning district purpose compliance)
- Does not comply: 1 factor (Off-Site Impacts)

The Special Use was approved by the Planning and Zoning Commission by a vote of 5-2 on March 10, 2021.



COCHISE COUNTY **Evaluation Criteria Analysis Appeal**

There are two requirements the Board must consider to evaluate all **appeals of special uses** proposals.

1. All reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.
2. Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.



COCHISE COUNTY **Appellant Claims**

The appellant represents the landowner directly adjacent, to the south. This parcel is an active marijuana cultivation facility, with some outdoor grow. The appellant states the following in their appeal application:

- 1. The Pharm has been a good community partner.*
- 2. The proposed use is a nuisance. Insufficient separation can lead to cross-contamination, transfer of pests and disease.*
- 3. Project breadth and impact are largely unknown. Specifically, the appellant has concerns regarding traffic, water conservation, floodplain/drainage.*
- 4. Previous track record of applicant.*



COCHISE COUNTY **Appellant Claims – Staff Analysis**

- 1. The Pharm has been a good community partner. The proposed use presents an economic threat to the Pharm's continued operation.*
- The commission factors into account physical off-site impacts (dust, smoke, noise, odor, lights, or storm water run-off) for all special uses
 - All off-site impacts currently included in the Zoning Regulations were discussed
 - The commission assigned several conditions intended to mitigate off-site impacts
 - The decision was not erroneous, arbitrary, capricious, or an abuse of discretion



COCHISE COUNTY **Appellant Claims – Staff Analysis**

2. *The proposed use is a nuisance. Insufficient separation can lead to cross-contamination, transfer of pests and disease.*
 - Separation of uses is addressed by setback requirements of the Zoning Regulations. The application meets or exceeds all current, relevant setback requirements
 - Whether larger setbacks are required to address the issue of cross-contamination and transfer of pests is a broader, Countywide, policy issue that is beyond the scope of the Planning and Zoning Commission's quasi-judicial authority
 - The decision was not erroneous, arbitrary, capricious, or an abuse of discretion



COCHISE COUNTY **Appellant Claims – Staff Analysis**

3. *Project breadth and impact are largely unknown. Specifically, the appellant has concerns regarding traffic, water conservation, floodplain/drainage.*
- The applicant met the zoning requirements for a special use concept plan submittal
 - Additional information/analysis/studies will be required for any future permitting/construction. Additional improvements may be necessary to address site specific issues
 - The commission correctly applied the level of analysis that is appropriate for a SUA, and consequently their ruling, was not erroneous, arbitrary, capricious, or an abuse of discretion



COCHISE COUNTY **Appellant Claims – Staff Analysis**

4. *Previous track record of applicant.*

- A special use is a permit that applies to property
- Whomever submits for an application/plan for future permitting will be required to follow all zoning regulations, building code requirements, as well as the additional conditions imposed by the commission
- As it is not required by zoning, or even customary for the commission to investigate the applicant or their track record, the SUA ruling was not erroneous, arbitrary, capricious, or an abuse of discretion



COCHISE COUNTY **Factors In Favor of the Appeal**

1. The appellant has proved the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion. (Board shall state an example for record).
2. The SUA applicant did not adequately comply with section 1716.02 (applicable factors for and against a proposed special use) of the Zoning Regulations. (Board shall state an example for record).



COCHISE COUNTY **Factors In Favor of an Appeal Denial**

1. The appellant has not proved the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.
2. The appellant has not provided a written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission, that suggests a modification or reversal of the Commission's decision is warranted.
3. It would overturn a 5-2 decision by the Planning and Zoning Commission, the board that is designated to consider all special use authorizations.



Recommendation

*Based on the Factors in Favor of An Appeal Denial, Staff recommends **Denial** of the Appeal (SUA-21-01), thereby upholding the Planning and Zoning Commission's Approval of SU-21-000005, with the original Conditions of Approval.*



Sample Motions

*Madame Chairman, I move to **approve** Docket SUA-21-01, overturning the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of the Appeal constituting Findings of Fact.*

*Madame Chairman, I move to **deny** Docket SUA-21-01, upholding the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of an Appeal Denial constituting Findings of Fact.*

