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Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
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**Re: Trigueiro Appeal of G&K Cannabis Processing Building;
Case Nos. 19CUP-00000-00062, 20AMD-00000-00003, and
19CDP-00000-00157;
Board of Supervisors Hearing Date: March 1, 2022;
Agenda Item No. 5**

Dear Chair Hartmann and Honorable Supervisors:

This office represents the project applicant G&K Farms. The applicant seeks authorization for construction of a new 25,418-square-foot, 25-foot-tall cannabis processing building on a 14.66-acre parcel zoned AG-I-10 ("Project"). The parcel is located at 3561 Foothill Road (APN 005-280-040), in the Toro Canyon Community Plan area. The proposed new building will be used for the storage, drying, trimming, and packaging of cannabis grown both on and off the property. The building will be a state-of-the-art, purpose-built facility, designed and engineered with a negative pressure HVAC system to be air-tight for the purpose of capturing and controlling cannabis odors.

The parcel is situated to the south of Foothill Road surrounded on three sides (west, east and south) by extensively developed greenhouse properties. The parcel is currently developed with five existing greenhouses permitted under the original Development Plan (Case No. 82-DP-30). In addition, there is one existing warehouse on the parcel, permitted under a modification to the Development Plan (Case No. 86-M-4). The total existing development on the site amounts to 379,757 square feet. Of this, 356,070 square feet is dedicated to cannabis cultivation as approved by Coastal Development Permit, Case No. 18CDP-00000-00077.

The proposed new 25,418-square-foot processing building will be located in same general location as the sixth greenhouse that was previously approved for the site under the

original Development Plan No. 82-DP-30. The proposed new building will be surrounded by large greenhouses to the north, south, and west and has a similar size, bulk, and scale as the adjacent greenhouses. The proposed building will increase the total on-site development to 405,175 square feet, however, this number is well within the originally permitted 415,380 square feet authorized for the site pursuant to Development Plan No. 82-DP-30.

The proposed Project will not have any effect on the size or intensity of existing cannabis operations in the Carpinteria Valley. Instead, the Project will provide a much needed state-of-the-art processing facility, eliminating the requirement that “wet” cannabis flower be transported long distances to be dried, trimmed, and packaged outside the County’s jurisdictional boundaries. The proposed new building will be a sealed structure, designed and engineered with carbon filtration odor scrubbers to capture and treat odors within the building before air is released to the outside environment. The building will be the first of its kind in the County, setting a new standard for processing buildings County-wide.

The proposed new processing building was reviewed by the Zoning Administrator (“ZA”) and approved on November 16, 2020. The Project was found to be in compliance with all applicable policies and standards set forth in the Comprehensive Plan, Toro Canyon Plan, Coastal Land Use Plan, and Coastal Zoning Ordinance (Article II), including Section 35-144U. Appellant Sarah Trigueiro filed a timely appeal of the ZA’s approval to the Planning Commission. In response to her appeal, and to address Ms. Trigueiro’s concerns related to odor, G&K revised its proposed Odor Abatement Plan (“OAP”) to incorporate a number of upgrades improving the overall efficacy of the proposed odor control system, including air curtains on all exterior doorways and the negative pressure HVAC system. On June 9, 2021, the Planning Commission reviewed the Project, including the applicant’s revised OAP, and approved the Project, denying Ms. Trigueiro’s appeal pursuant to a 4-1 vote.

I. Summary of Ms. Trigueiro’s Current Appeal

The main thrust of Ms. Trigueiro’s current appeal is that the Project is incompatible with rural residential character of the Carpinteria Valley, and inconsistent with the Comprehensive Plan, Toro Canyon Plan, Coastal Land Use Plan, and Coastal Zoning Ordinance. Appellant asserts the negative impacts of approving the Project include but are not limited to the following: damage to the rural residential character of the area; significant air quality and odor issues; negative impact to property values; health, safety and crime issues; traffic and parking congestion; significant incompatible use issues with local food farmers; and damage to the area’s reputation as a quiet and uniquely charming beach town.

Appellant’s criticisms of the Project are not unique or novel, but instead complaints regarding the policy decisions your Board made when it adopted the Cannabis Land Use

Ordinance and Licensing Program (“Cannabis Program”). The issues Ms. Trigueiro raises are quality of life issues your Board has heard time and time again in the context of prior project appeals challenging the adequacy of the environmental review conducted pursuant to the Programmatic Environmental Impact Report (“PEIR”). The negative impacts appellant complains about regarding odors, traffic, noise and loss of prime soils were determined by your Board to be significant and unavoidable, despite the implementation of feasible mitigation measures. Her additional concerns regarding energy consumption, cumulative demands on the power grid, negative effects on aesthetic and visual resources, and negative effects on biological resources, were determined to be significant, but capable of mitigation. Your Board considered and weighed these impacts, and made a policy determination based on substantial evidence, that the Cannabis Program, despite its environmental risks, had overriding benefits which outweighed the risks.

What is novel about Ms. Trigueiro’s current appeal is that she frames her criticisms, not as challenges to the adequacy of the environmental review conducted in the PEIR, but instead as reasons why the Project is inconsistent with the policies, goals and standards set forth in the Comprehensive Plan, Toro Canyon Plan, and Coastal Land Use Plan. As an attorney, Ms. Trigueiro is keenly aware that the time limits for challenging the PEIR and the findings made by your Board when it adopted the Cannabis Program have long-since passed. She is also aware that on May 25, 2021, Santa Barbara County Superior Court Judge Thomas P. Anderle roundly denied a Petition for a Writ of Mandate filed by the Coalition for Responsible Cannabis (“Coalition”) challenging your Board’s approval of the Busy Bee Organics cannabis land use permit. (*Santa Barbara Coalition for Responsible Cannabis v. County of Santa Barbara, et al*, Case No. 20CV01736.) At the heart of the Coalition’s claims was a criticism of the adequacy of the PEIR’s conclusions, including P&D’s checklist approach to determining if and when further environmental review might be required. Judge Anderle denied all of the Coalition’s claims, including the Coalition’s request that the court direct the County to conduct site-specific environmental review regarding Busy Bee’s cannabis operation. Judge Anderle’s decision focused in large part on the untimeliness of the Coalition’s claims, specifically the fact the Coalition was late to the game in terms of challenging the PEIR’s adequacy.

As a consequence, we are seeing Ms. Trigueiro, who was not a participant in the proceedings leading up to adoption of the Cannabis Program and certification of the PEIR, pivot away from challenging the adequacy of the environmental review conducted, and shift her emphasis more toward alleged Project inconsistencies with the Comprehensive Plan, Toro Canyon Plan, Coastal Land Use Plan, and Coastal Zoning Ordinance. However, her arguments remain fundamentally unchanged from the CEQA arguments she presented to the Planning Commission in June 2021. Her criticisms at their core center around assertions that County decision-makers have not properly considered and weighed the site-specific and cumulative impacts of the proposed Project on nearby residential communities.

The inconsistencies cited by the Appellant include the policies regarding availability of services, circulation, water resources, biological resources, noise, visual resources, and agricultural resources, as well as the AG-I zone district, Carpinteria Agricultural Overlay, and the Cannabis Regulations. Each of these alleged inconsistencies was addressed in detail by staff, in its report to the Planning Commission dated April 27, 2021, prepared in advance of the June 9, 2021 Planning Commission hearing. Moreover, the PEIR itself examined the consistency of the Cannabis Program with the goals and policies established in the County's plans and ordinances, and overall found the Program to be consistent. Impact LU-2 of the PEIR (Section 3.9. pp. 3.9-47 and 3.9-48) specifically addressed quality of life impacts, and found that cannabis cultivation, including processing activities, could result in adverse quality of life effects to existing communities due to increases in odor, traffic, noise, or other physical environmental impacts.

The PEIR, in discussing Impact LU-2, found that quality of life impacts were likely to be experienced by existing residential communities as a result of nearby cannabis cultivation and related licensing activities (e.g., processing, transportation, and distribution). While cannabis cultivation can be both an indoor and outdoor use, it can generate a distinct odor that can potentially cause impacts on neighboring properties, thereby resulting in compatibility issues. Nearby residents may perceive a change in the quality of life if they were to experience an ongoing and notable difference in odor, and/or an increase in traffic- and noise-related issues due to cannabis cultivation activities. Residents may also perceive a change in neighborhood character, particularly if the activities are known to be associated with other nuisances (e.g., increased loitering, litter), theft, or crime. Similar to other agricultural crop harvesting cycles, with industry harvests generally occurring 3 to 5 times per year, cannabis activities may also result in temporary increases of traffic and limited parking at cannabis cultivation sites during harvesting and product batching. The PEIR stated in particular that residents had expressed concerns regarding crime, population increases, increased traffic, parking, odors, and noise, and resulting decreased home values, in areas near cannabis operations during the scoping period for the PEIR. (See PEIR discussion of LU-2, pp. 3.9-47 and 3.9-48.) Despite these identified risks, your Board found the Cannabis Program to be consistent with the goals and policies established in the County's plans and ordinances.

Appellant's attempt to repurpose the same fundamental arguments regarding PEIR inadequacy as reasons why the Project is inconsistent with County policies and standards does not negate the effort County decision-makers put into identifying significant impacts, weighing them, and making policy determinations regarding the Project based on substantial evidence. The record in this case is comprised of the countless proceedings, hearings and public comment that went into certification of the PEIR and adoption of the Cannabis Program, proceedings in which Ms. Trigueiro notably did not participate. The record is also comprised of substantial evidence presented in appeal hearings on other nearby Carpinteria cannabis cultivation projects, most importantly your Board's de novo review of the CDP for the parcel in question (Case No. 18CDP-00000-00077) which

approved cannabis cultivation in the five existing onsite greenhouses. In addition, the record is comprised of the separate hearings and corresponding approvals of the proposed processing building granted by the ZA and Planning Commission. The extensive record in this case makes amply clear the fact that each of the issues Ms. Trigueiro raises in her current appeal are issues that County decision-makers have adequately considered and addressed. Substantial evidence supports a finding that the proposed Project is consistent with the policies, goals and standards set forth in the Comprehensive Plan, Toro Canyon Plan, Coastal Land Use Plan, and Article II Coastal Zoning Ordinance.

II. Major Issue Areas Asserted by Ms. Trigueiro in Her Appeal

1. Improperly Narrow Standard of Review

Appellant criticizes the County for limiting its review to the Project at hand (i.e., the proposed processing building), and being unwilling to reopen the approval of the cultivation CDP (Case No. 18CDP-00000-00077) which permitted the cultivation of cannabis in five of the existing greenhouses located on the parcel. Appellant asserts that, by taking an artificially narrow view of its own authority, the County has effectively handcuffed itself and failed to consider the not only the negative effects resulting from the density of cultivation that is occurring both at the site and in the surrounding area, but also the cumulative impacts that render the proposed processing building fundamentally incompatible with the rural residential character of the Carpinteria Valley.

The fact County decision-makers have been unwilling to reopen the cultivation CDP and impose new conditions on an existing project does not mean the County has failed to consider site density, the density of cannabis cultivation projects in the surrounding area, or cumulative impacts of the proposed Project. To the contrary, both the ZA and Planning Commission found the Project to be within the scope of the PEIR and the effects of the proposed Project were examined in the PEIR. Density of cannabis projects in the Carpinteria area, and the negative effects attributable thereto, was an issue specifically addressed in the PEIR. (See, for example, PEIR discussion at pp. 2-22 and 3-6.) The applicant has a vested right to continue its cultivation operations in compliance with approved permit requirements. The time period for Ms. Trigueiro to challenge the CDP approval has long-since passed. County decision-makers have been correct in refusing, as part of the proposed Project, to reopen the CDP approval and impose new conditions on the existing cultivation project.

2. Incompatibility with Rural Residential Character

Appellant argues the area in the vicinity of the Project has unique rural charm, and the addition of a processing warehouse building, which is an industrial type operation, will “mar and efface” the character of the area, furthering the already-existing damage done by greenhouses in the area.

Appellant's argument is an interesting one, for she acknowledges the extensive greenhouse development that already exists in the area, and the fact the area has unique rural charm, despite the existence of the greenhouse development. She seems to ignore the fact that the site in question is surrounded on three sides (west, east and south) by extensively developed greenhouse properties. She also seems to ignore the fact that the site itself is developed with five greenhouses, and one warehouse, totaling 379,757 square feet of existing "industrial" type development on the site. The proposed new 25,418-square-foot, 25-foot-tall cannabis processing building will be surrounded by large greenhouses to the north, south, and west and has a similar size, bulk, and scale as the adjacent greenhouses. Surely the addition of a new processing building, situated amongst and between the existing buildings on the site, will not have any significant or profound effect on the existing character of the surrounding area.

3. Inadequacy of Public Services and Resources

Ms. Triguero asserts in her appeal letter that there are not adequate public or private services and resources available to serve the proposed Project, particularly with regard to electrical supply, roadway capacity, water use, and fire protection.

Appellant argues that the Project, in conjunction with other cannabis operations close by and in the broader Carpinteria Valley, will use more electricity than is available given the aging and already inadequate power grid. She argues the addition of up to 50 more employees to serve the processing warehouse will give rise to traffic impacts that will not be adequately mitigated by the level of vanpooling proposed. She argues adequate consideration has not been given to the cumulative impact that high-density commercial cannabis activities, including this Project, will have on local groundwater supplies. She argues it is possible that illegal extraction activities could occur on the site, without the knowledge of County authorities or even the operator, and these activities pose an incredibly high-risk of fire. She argues the Project will put the safety of the neighborhood at significant risk due to criminals targeting the site because it is a building that processes and stores cannabis.

Markedly absent from Ms. Trigueiro's appeal letter is any substantial evidence to support her assertions regarding the inadequacy of public services and resources. Substantial evidence is information that is relevant and material, and that it is sufficiently reliable to have solid evidentiary value. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative. (See CEQA Guideline, 14 CCR § 15384(a) and (b); see also Public Resources Code §§ 21080(e) and 21082.2(c), and 14 CCR §§ 15064(f)(5).) Ms. Trigueiro provides nothing in the way of reliable evidence, information or facts to support her claim that the proposed Project will impose burdens on public services and resources that cannot be adequately met. In the absence of substantial evidence, her assertions constitute nothing more than speculation and conjecture.

Irrespective, the PEIR did in fact consider the impacts to the electrical grid, and specifically considered the electricity usage in the Carpinteria Valley area. It anticipated that there may be significant increases of electricity demand in the County, but also noted that demand increase on service providers would be negligible. The PEIR noted that site specific projects could result in increased demand for new energy resources (Impact UE-2), and mitigation measures were proposed. These mitigation measures were incorporated into County ordinances and include energy conservation best management practices (MM UE-2a), participation in renewable energy choice program (MM UE-2b), and green building standards (MM UE-2c).

In addition, the PEIR identified three impacts related to transportation and traffic including cumulative impacts. The PEIR determined that all three impacts related to traffic would be significant and unavoidable even with the implementation of mitigation measures. Two mitigation measures were identified to reduce Impacts TRA-1 and TRA-2 to the extent feasible, by requiring (i) the preparation of a Site Transportation Demand Management Plan (STDMP) to reduce vehicle travel and the associated pollution (MM AQ-3), and (ii) the payment of transportation impact fees (MM TRA-1). These mitigation measures were incorporated in County ordinances as development standards and have been applied to the proposed Project. Ms. Trigueiro has not offered any reliable evidence, information or facts to support her claim that mitigation of traffic-related impacts will be inadequate.

4. Preservation of Prime Agricultural Soils

Ms. Trigueiro asserts the Project is inconsistent with Coastal Land Use Plan policies intended to enhance the continuation of agriculture as a viable production industry in Santa Barbara County and the preservation of prime agricultural soils.

The PEIR identified three impacts related to agricultural resources including cumulative impacts. One such impact, specifically Impact AG-2, determined that cumulative cannabis-related development would potentially result in the loss of prime agricultural soils. The PEIR determined that Impact AG-2 would be significant and unavoidable even with implementation of mitigation measures. Your Board adopted a Statement of Overriding Considerations in specific recognition of this fact. The Statement reflects a reasoned decision made by your Board that the environmental risks identified in the PEIR were “acceptable” and could be tolerated in light of the Program benefits. (14 CCR § 15043.)

That said, the Project proposes to modify the approved Development Plan (Case No. 82-DP-30) and replace an approved greenhouse with a processing building - an allowable use within the AG-I zone district. As such, the Project is consistent with policies that encourage the agricultural viability of land within the County because the proposed cannabis processing building will support and expand the existing cannabis operation

onsite by storing, drying, trimming, and packaging the agricultural products grown on the property, as well as other agricultural products that are brought to the property from off-site cannabis cultivators. Furthermore, while the applicant has a vested right under 82-DP-30 to develop the sixth greenhouse approved by the Development Plan, the applicant proposes to build a structure that is smaller in scale and footprint in its place. As such, there are no new impacts to prime soils that were not previously vested under 82-DP-30. Finally, the only area of the property that is not designated prime soils is a narrow section that is partially within the riparian environmentally sensitive habitat, and therefore the proposed building cannot feasibly be relocated to not impact prime soils. A finding of consistency Coastal Land Use Plan policies is thus supported by substantial evidence.

5. Negative Impacts to Human Health and Biological Resources Related To Cannabis VOCs and Vapor Phase Odor Control Systems

Ms. Trigueiro asserts the Project will have significant impacts on air quality given emissions (both cannabis VOCs and vapor phase system odor control chemicals), and thus will compound the already significant air quality health-risk and odor problems being experienced by local residents. She argues the PEIR did not adequately examine impacts on air quality or provide sufficient mitigation. She argues that even with carbon filtration, there is no way for the Project to control odors 100%. And she argues that the Byers vapor phase system poses significant unknown public health and environmental risks.

Ms. Trigueiro has not offered any substantial evidence identifying any potential chronic health risks associated with inhalation of cannabis biogenic VOCs. As clarified by staff in its report to the Planning Commission dated April 27, 2021, all living things emit biogenic VOCs, and therefore, biogenic VOCs are ubiquitous. Biogenic VOCs produced by plants are involved in plant growth development, reproduction and defense. Cannabis plants primarily produce a kind of biogenic VOC called monoterpenes, which are aromatic oils that provide cannabis varieties with distinctive flavors like citrus, berry, mint, and pine. They are the same kind of terpenes that are found in other plants such as roses, orange trees, rosemary, and pine trees.

Ms. Trigueiro relies to a large extent on a letter written by Patricia A. Holden, Ph.D, dated June 4, 2019. In the letter, Ms. Holden states that “*Cannabis* terpenes, like other biogenic terpenes, have the potential to be precursors of ground level ozone, which is regarded by the U.S. Environmental Protection Agency (U.S. EPA) as a serious human health threat.” On this basis, Ms. Holden recommended your Board adopt specific air quality mitigation measures, and a systematic scientific basis for determining health and environmental impacts. Importantly, however, Ms. Holden stopped short of asserting that widespread approval of cannabis cultivation projects would lead to a significant increase in the formation of ground-level ozone over and above the pre-existing baseline.

Ms. Holden is a professor at the UCSB Bren School of Environmental Science & Management, however, her background is not in the field of air quality or air pollution. Nor is there anything in her letter to suggest she has particular knowledge, background or experience in the air quality issues surrounding cannabis. As such, Ms. Holden's letter does not constitute substantial evidence of a potential environmental effect, nor does the information she offer render the PEIR inadequate for purposes of approving site-specific cannabis projects. A careful review of the PEIR reveals that the effect of cannabis operations on ground-level ozone formation was an issue thoroughly analyzed and addressed in the PEIR. VOCs and terpenes were discussed in the PEIR and considered contributing factors to Class I air quality impacts. (PEIR, Section 3.3.2.6, p. 3.3-7.) (PEIR, Section 3.3.2.5, p. 3.3-6.) The PEIR identified residential areas and neighborhoods as sensitive receptors, and examined the impact of air pollution from cannabis operations on residents and business that serve the public. (PEIR, Section 3.3.2.2, p.3.3-2 to 3.3-3.) In addition, the PEIR discussed links between cannabis terpenes and possible adverse health effects on sensitive receptors. (PEIR, Section 3.3.2.2, p.3.3-2.) (PEIR, Impact AQ-5, p. 3.3-22.) For these reasons, among others, the PEIR found that implementation of the Cannabis Program, including approval of site-specific cultivation projects, would result in significant and unavoidable (Class I) impacts to air quality, despite the application of feasible mitigation measures.

Appellant claims that the Byers System is unsound from an engineering perspective, and because it may not control 100% of all odors generated at the site, it cannot be considered effective mitigation. However, mitigation measures are not required to be 100% effective. CEQA requires only that mitigation measures be designed to *minimize* significant environmental impacts, not that they be eliminated. (Public Resources Code § 21100(b)(3); 14 CCR § 15126.4(a)(1).) As such, CEQA does not require your Board to find vapor-phase odor abatement systems to be 100% effective in controlling all odors generated at project sites.

Nevertheless, there is ample evidence in the administrative record supporting the efficacy of vapor-phase odor abatement systems. In Appendix-F, *Cannabis Odor Control*, the PEIR described vapor-phase systems at length. Your Board is entitled to rely on the PEIR's conclusion regarding the effectiveness of vapor-phase odor abatement systems in determining these systems are a feasible approach to minimizing significant impacts related to odor.

Brief mention should be made of Ms. Trigueiro's speculation that Ecosorb, the proprietary odor neutralizing formula used in the Byers System, will bio-accumulate and cause negative effects on human, animal and plant health. There are no known potential adverse human health effects associated with use of Ecosorb in the vapor phase system. None of the ingredients in the product are considered toxic air contaminants (TACs) as identified by the State of California. As pointed out in the staff report to the Planning Commission dated April 27, 2011, a Screening Health Assessment, conducted by an

independent scientific research and consulting firm, concluded that use of the product in a vapor-phase system would not be expected to pose public health concerns. In June 2019, the Santa Barbara County Air Pollution Control District (APCD) contacted OMI Industries, the manufacturer of Ecosorb, requesting information to determine if the chemicals used in the odor neutralization formula contain toxic air contaminants. OMI was comfortable forwarding to APCD both the confidential and redacted formulation information for Ecosorb. APCD confirmed that none of the ingredients in Ecosorb are considered TACs. A confirming email was forwarded by Aeron Arlin Genet, Air Pollution Control Officer for Santa Barbara County APCD, to County P&D on July 8, 2019.

In summary, there are no known potential adverse human health effects associated with biogenic volatile organic compounds (VOCs), or the Ecosorb used in the vapor-phase systems. Nor are there any known adverse effects on Environmentally Sensitive Habitat (ESH) associated with the vapor-phase system, and it is not considered harmful to aquatic organisms or to cause long-term adverse effects in the environment. Ms. Trigueiro has not offered any substantial evidence to the contrary. In the absence of substantial evidence, Ms. Trigueiro's assertions regarding adverse effects on human health and biological resources constitute nothing more than speculation and conjecture.

III. Conclusion

The proposed Project is consistent with all applicable policies of the Comprehensive Plan, Coastal Land Use Plan, and Toro Canyon Plan related to services, agriculture, biological resources, water resources, noise, and visual resources. The proposed Project is also consistent with all applicable development standards of Article II, the Coastal Zoning Ordinance, including requirements of the Carpinteria Agricultural Overlay District, and requirements related to cannabis cultivation and processing. Section 15168(c) of the State CEQA Guidelines allows the County to approve a site-specific project as being within the scope of the Cannabis Program covered by the PEIR, if the County finds, pursuant to Section 15162, that no new environmental document is required. Staff completed the State CEQA Guidelines 15168(c)(4) Checklist and determined that all of the environmental impacts of the proposed Project would be within the scope of the PEIR. For these reasons, G&K respectfully requests that your Board deny Ms. Trigueiro's appeal and approve its proposed processing building Project.

Very truly yours,

HOLLISTER & BRACE

By 

Peter L. Candy