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March 13, 2020

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, California 93101

By email to sbcob@co.santa-barbara.ca.us

RE: Busy Bee's Organics Cannabis Cultivation Project
19APL-000000-00031
March 17, 2020

Chair Hart and Honorable Supervisors,

Our offices represents Santa Barbara Coalition for Responsible Cannabis (SBCRC) , Appellant in this matter. Appellant requests that the Board find the Busy Bee Organics, Inc. project – 19LUP-00000-00496 Cannabis Development Project ("Project" or "Proposed Project") was erroneously processed as a Land Use Permit, and should be processed as a Conditional Use Permit (CUP). Discussed below, processing the Project as a Land Use Permit (LUP) does not comply with the letter or spirit of the Cannabis Ordinance, Board of Supervisors deliberations on this topic in early 2018, nor the Programmatic Environmental Impact Report (PEIR) for the Cannabis Ordinance, all of which intended that cannabis cultivation projects near Existing Developed Rural Neighborhoods (EDRNs) be processed as CUPs.

Even if the Board determines the Project was properly processed as a Land Use Permit however, the Board cannot make findings required by law for its approval including CEQA findings that no new environmental document is required for the Project, and LUP findings that the Project complies with applicable provisions of the Comprehensive Plan including the Santa Ynez Valley Community Plan (SYVCP) and that the subject property is in compliance with all laws and not subject to an open zoning violation.

The PEIR identifies 12 significant and unavoidable adverse environmental impacts associated with implementation of the Cannabis Ordinance for which the Board of Supervisors approved a Statement of Overriding Considerations, including in the areas of agricultural resources, air quality and greenhouse gases, noise, and transportation. Mitigation measures proposed for these Class I impacts largely consist of conditions that would apply to individual cannabis permits to reduce the impact "to the extent feasible". This approach violates CEQA's mandate to avoid or substantially lessen all significant environmental impacts, as was recently determined in the California courts. Specifically, in *King & Gardiner Farms, LLC v. County of Kern*, 2020 Cal.App, LEXIS 161, the 5th District Court of Appeals considered a similar approach taken in an EIR for an ordinance governing future oil and gas activities, including whether CEQA compliance is achieved by a mitigation measure that requires a permit applicant to reduce or offset (i.e., mitigate) a particular environmental impact *to the extent feasible.* The King Court determined that allowing that approach to mitigating the impacts of the ordinance would

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undermine CEQA's purpose of "systematically identifying … feasible mitigation measures which will avoid or substantially lessen such significant effects" (*Id.* at p. 60.) The Court further found that adopting a Statement of Overriding Considerations could not cure the EIR's failure to identify specific and effective mitigation. (*Id.* at p. 85.) While the time to challenge the Cannabis Ordinance's PEIR's adequacy has passed, this decision underscores how the County's failure to conduct project-level review and instead rely on the PEIR and a CEQA Checklist undermines CEQA's substantive mandates to reduce and avoid impacts, and infects the approval of individual cannabis projects, including the Busy Bee Project.

Discussed below, a new project-level environmental document is required because (among other things) Board-initiated amendments to the County's Uniform Rules after PEIR certification gutted protections for neighboring agricultural operations like Appellant's that the PEIR expressly relied on to reduce impacts to agriculture. Additionally, in this case, the Uniform Rules amendments had the perverse effect of requiring the Applicant to cultivate *more* cannabis than initially proposed, exacerbating impacts to neighboring properties and agricultural operations and limiting the Board's ability to condition the Project to reduce acreage, increase setbacks, or take other similar otherwise feasible actions to mitigate this Project's impacts.

Also discussed below, the Project is clearly inconsistent with specific goals, policies, and standards set forth in the Comprehensive Plan and SYVCP regarding protections of critical viewsheds and agricultural resources. Additionally, there are major compliance issues with respect to the subject property including the illegal expansion in scope of a legal nonconforming use, and the existence of an unresolved zoning violation with respect to that illegal expansion. For all these reasons, the Board cannot make the findings of approval that are required to approve the Project.

Key Cannabis Issues

This Project sets a precedent countywide, and likely statewide:

Cannabis projects, like this Project, present unique and complex legal and practical issues. This Project has numerous elements that are of first impression for the Board:

- The second cannabis project in the County to be heard by the Board
- The first such cannabis project on an AG-II zoned parcel
- The first such project subject to the County's Uniform Rules for Agricultural Preserves
- The first such cannabis project adjacent to an EDRN
- The first such project located in the Santa Ynez Valley Community Plan and upwind of the City of Buellton

The significance of these facts cannot be understated in light of a clear trend by the Planning Commission, County staff, and cannabis project applicants to look to prior approved projects for guidance on acceptable scope, standards, and conditions for cannabis projects in Santa Barbara County. It has become common for subsequent projects to refer to prior project approvals (and chiefly this specific Project) to find commonalities to support a similar approval, and recent news

media confirms all eyes are on Santa Barbara County so it is not hyperbole to state the County's approvals have statewide significance. As such, clear precedent will be set with this appeal vis-à-vis future cannabis projects in AG-II zones and beyond. Of note, there are nineteen (19) pending cannabis projects in the Santa Rita Valley area, all of which we anticipate County staff will review in light of the direction you give during this appeal hearing.

The permit is a permanent entitlement that does not run with the operator:

The Board must recognize that the future cannabis industry will operate differently than is proposed based on today's limited science and basic technologies. New tools will be developed to assess, quantify and overcome the challenges presented by this new industry, and the County needs to protect its ability in the future to revise operational standards to use new technologies and best harmonize the industry with the interests and needs of surrounding and downwind communities. Under the current ordinance, the Applicant will claim vested rights to continue the permitted operations, even when better pollution control measures are developed and shown to be feasible, once the science of impact assessment advances and after the County's ordinance is amended. Limiting the term of the Project establishes clear expectations for the Applicant and preserves the County's ability to require more effective control technologies at the permit renewal step, narrowing the Applicant's claim of vested rights.

To address this issue, the Board should limit the Project's permit to a short and specific term, such as 3 years, and require the Applicant renew their permit to address changed circumstances and incorporate new technologies. The renewal process could allow the Applicant would reserve the cultivation acreage they were previously approved for, but be required to meet any new requirements, utilize the latest proven technology to control their emissions, and manage their operations to avoid and overcome land use incompatibility problems. At this moment, it is most important that the Project - as one of the first generation of cannabis permits - be limited in time and require reapplication and renewal within 3 years to ensure the best science and most efficient and effective technology is used. In addition, it may prove to be the case that outdoor cannabis cultivation is simply not compatible with adjacent land uses including traditional agriculture including viticulture, and the County should preserve its ability to in the future, designate areas where cannabis cannot be grown. Granting a permanent entitlement to continue cannabis operations within the Santa Rita AVA, in a location that for all practical purposes is adjacent to an EDRN, will hamstring the County's ability to protect these areas.

It is a common practice to limit the term of land use permits in California, and to require reapplication and renewal based on future and changed conditions. In fact, the County has other uses that require renewal. This proposed limited duration permit and renewal process for commercial cannabis use permits is similar to the LUDC's requirements for LUPs for Homestays articulated in §35.42.193.E1[1], as well as MCUPs for trailers (§35.42.260.G.3). The rationale for

[1] E. Renewal of permit [Homestays].

1. A Land Use Permit issued for a Homestay shall only be valid for one year commencing upon the effective date of the Land Use Permit, except as provided below in Subsection 3.
2. The owner or long-term tenant shall submit an application to renew the Land Use Permit to the

requiring a permit renewal process for a Homestay LUP was: S[hort] T[erm] R[ental]s located in the area that would be subject to the…annual renewal with the approval of a LUP. This process will allow staff to monitor the use and give neighbors potential recourse through the permit renewal process."[2] The same rationale applies to cannabis cultivation permits.

Additionally, a number of other jurisdictions limit the duration of cannabis permits specifically, including (among others) Los Angeles County (1 year)[3], Alameda (2 years)[4], San Luis Obispo (5 years)[5] and include renewal opportunities.

Assertions by Applicant about operations that are not enumerated as a Project condition are not binding or enforceable upon Applicant or *future operators*:

The Applicant asserts that it will be a responsible operator and must operate in an already heavily regulated industry. While all this could be true, land use permits issued by the County run with the land, not the operator – they are perpetual entitlements. Any promises or assurances made by the Applicant that are not specified in the conditions of approval are unenforceable as to this Applicant and future operators and owners of the parcel. The limitation on permit duration would provide an opportunity to reassess if the permit's conditions are insufficient to avoid impacts to nearby agricultural operations or other nearby land uses. The annual business licensing process does not address this issue, as a business license can be revoked or not renewed, but the site will retain its underlying entitlement for another operator to utilize. This issue further supports the Board imposing a term limit on the land use permit, as ownership of the parcel may have changed since permit approval and the site's cannabis operations (and attendant impacts) likely will have changed significantly.

Department for review and approval on an annual basis as directed below.
a. The renewal application shall be processed pursuant to the requirements set forth in Section 35.82.110 (Land Use Permits).
b. The Land Use Permit application for the initial renewal and any subsequent renewal shall be submitted no later than 30 days prior to the expiration of the previous Land Use Permit.
3. If the approval of a Land Use Permit for the renewal of a Land Use Permit for a Homestay has been appealed, then the validity of the Land Use Permit shall be extended until processing of the appeal(s) has been completed.

[2] Board Letter p. 5 (10/3/2017).

[3] LA County Cannabis Ordinance §§ 8.04.1310.D and 8.04.1315, available at https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT8COPRBUWARE_DIV1PUHELI_CH8.04PUHELI_PT7COCAAC.

[4] Alameda County Cannabis Ordinance §§ 6.106.030.c and 6.106.130, available at https://library.municode.com/ca/alameda_county/codes/code_of_ordinances?nodeId=TIT6HESA_CH6.106CACU

[5] 22.40.050(B)(2)…All land use permits issued for cannabis cultivation shall expire in five years from the approval date. Within a twelve (12) month period prior to expiration, the applicant may request the land use permit be renewed for an additional five-year period." Available at: https://www.slocounty.ca.gov/getattachment/6d93f812-df15-4203-b033-7d802c5c9cf0/Inland-Land-Use-Ordinance-(Title-22).aspx

Expansion of the legal nonconforming cannabis cultivation violates County ordinance but the County's practice is to ignore the violation and validate the use:

Busy Bee and many other cannabis cultivation projects pending at the County involve a situation where the scope of the medical cannabis operation as of January 2016 was vastly smaller than it is today. The County's regulations are clear that any expansion in a legal nonconforming use is a violation of the ordinance, as well as State law, and in order to approve a Land Use Permit the County decisionmaker must find that the property is in compliance with all laws, regulations and rules pertaining to uses . . . and any applicable provisions of the Development code, and any applicable zoning violation enforcement fees have been paid. Here, there was a reported zoning violation concerning the significant expansion in the nonconforming cannabis cultivation that pre-dated the initial LUP approval.

The Land Use and Development Code (LUDC) at § 35.101.010.B establishes that the County's intent concerning nonconforming uses is to "Prevent nonconforming uses and structures from being enlarged, expanded, or extended." § 35.101.020.B prohibits any expansion of a nonconforming use of land: "No existing nonconforming use of land outside structures, or not involving structures, shall be enlarged, extended, or increased to occupy a greater area of land than was occupied at the time the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use."

Appellant raised the issue of the Planning Commission's inability to make the finding that no violation existed on the property, and yet County staff insisted that approval of the LUP for the proposed use validated the expanded use such that the zoning violation was rectified. The Staff Report and Findings ignore LUDC requirements for assessing fees and penalties for permits seeking to validate unpermitted uses. This approach incentivizes bad actors to unlawfully expand their operations, then procure land use entitlements for the expanded use without repercussion. This practice is inconsistent with how other zoning violations and expansions of legal nonconforming uses are treated by the County, the intent of the Cannabis Ordinance, and State law.

Scope of Board's Discretion and Applicability of CEQA

The Land Use Permit required for the Project is a discretionary permit which requires strict compliance with CEQA and gives the Board has broad authority and discretion to review and condition the Project, or deny the Project entirely.

Here, as a discretionary permit, the Board must exercise its judgment and deliberate when deciding whether to approve, disapprove, or require modifications to this Project. The Board's discretion under the ordinance is broad, since the Cannabis Ordinance establishes the "minimum land use requirements" for cannabis cultivation. The Board has the authority and obligation to impose such other requirements needed "to protect public health, safety and welfare, enact strong and effective regulatory and enforcement controls, . . . and minimize adverse impacts on people, communities and the environment". § 35.42.075.A.1.

CEQA *Requires* Project-Specific Environmental Review, the Absence of Which Mandates Denial

As will be discussed, the Project and surrounding projects will have significant direct and cumulative impacts to aesthetic and visual resources, agricultural resources, land use compatibility and air quality that were not adequately reviewed in the PEIR or by County staff prior to approval of the Project. Thus, additional CEQA review of this Project is clearly required. The Board, by law, is barred from approving this Project until such CEQA review has been completed if there is *substantial evidence* supporting a *fair argument* that either of the following are true:

> **Substantial changes** have occurred which result in new significant environmental effects of a substantial increase in the severity of previously identified significant effects.[6]
>
> **New information**, which was not known and could not have been known at the time the PEIR was certified as complete, is available, shows significant effects that were not examined by the PEIR, or the effects examined in the PEIR will be substantially more severe, or mitigation measures previously found not to be feasible would now be feasible.[7]

Substantial evidence may take many forms for the purposes of determining whether there is a *fair argument* that either the foregoing are true with regard to a project. The following constitute substantial evidence:

> **Expert opinion** if supported by facts, even if not based on specific observations as to the site under review.[8] Where such expert opinions clash, the County should require preparation of a tiered EIR.[9]
>
> **Relevant personal observations** of area residents on nontechnical subjects.[10]

When there is doubt or uncertainty as to whether there is *substantial evidence* supporting a *fair argument*, all doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, **notwithstanding the existence of contrary evidence**. CEQA provides

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[6] Cal. Pub. Resources Code at § 21166(b); CEQA Guidelines § 15162(a) (1-2).
[7] *Id.* at § 21166(c); CEQA Guidelines § 15162(a) (3)
[8] *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928, citing *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1398–1399 & fn. 10).
[9] *Sierra Club v. County of Sonoma*, 6 Cal.App.4th at 1322; *see also Pocket Protectors,* 124 Cal.App.4th at 928, citing Guidelines, § 15064 (g).
[10] *Pocket Protectors,* 124 Cal.App.4th at 928, citing *Ocean View Estates Homeowners Ass'n Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.

that the Board merely need enough relevant information and reasonable inferences that a *fair argument* can be made to support a conclusion, even though other conclusions might also be reached.[11] Specifically, as explained in more detail below, the Busy Bee Project presents five impacts that require substantive and meaningful review and mitigation:

(1) changed circumstances with respect to the County's Uniform Rules for Agricultural Preserves leading to new and substantially more severe impacts to agriculture;

(2) the new potentially significant impact of terpene taint on wine grapes grown nearby;

(3) the now known significant and more severe impacts of pesticide migration on the future viability of legacy agriculture near the Project;

(4) extent and severity of the land use incompatibility with adjacent agriculture; and

(5) the severity of cumulative impacts of concentration of cannabis projects west of Buellton.

By law, the Board must seek review and resolution of these issues through use of the CEQA review process *prior to* approval of the Project. It cannot proceed with Project approval in any form without this information in hand to make reasoned and informed decisions, supported by fact and law.

For the reasons explained above and further detailed below, Appellant respectfully requests that the Board uphold SBCRC's appeal, and either deny the Project or direct the Applicant and County staff to undertake appropriate environmental review under CEQA.[12] With such action, we request the Board provide direction to staff that all cannabis projects require site-specific CEQA review of the five key impacts presented in this appeal.

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1. Approval of the Project Violates CEQA

The Program EIR for the County's Cannabis Ordinance (PEIR or Program EIR) was prepared in 2017 and certified February 6, 2018, when the legal cannabis industry was in its infancy, and the range and severity of environmental impacts resulting from commercial cannabis activities was not well understood. Since then, County residents and businesses

[11] CEQA Guidelines, § 15384 (a).
[12] CEQA Guidelines § 15126.4(a)(1)(D); see generally, *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986 (new mitigation measures that entail potentially significant impacts should be considered in environmental review document).

including Appellants have experienced first-hand just how impactful these operations are, and have testified at numerous public hearings identifying specific and substantial evidence documenting new information of new and substantially more severe impacts than disclosed and analyzed in the PEIR. Despite this, the County has continued to rely on the defective and inadequate "CEQA Checklist" to establish that individual cannabis projects are within the scope of the PEIR and that no additional environmental review is required.

The Board Letter prepared for this appeal asserts that the "PEIR that analyzed the environmental impacts of the Cannabis Program constitutes adequate environmental review for the Busy Bee's Organics, Inc. Cannabis Cultivation project." (Board Letter p. 12.) The record however does not support this assertion, due to the existence of changed circumstances and new information showing that the Project's impacts will be substantially more severe than shown in the PEIR. Discussed below and in our previously submitted appeal materials, there is substantial evidence supporting a fair argument that the Busy Bee Project specifically will have one or more impacts that are either new or substantially more severe than those examined in the PEIR, and accordingly, the Board must direct additional environmental review or deny the Project[13].

Additionally, described at length in our previously submitted appeal materials, the County's process for reviewing subsequent activities in the Cannabis program including the Busy Bee Project is legally inadequate, and constitutes a pattern and practice of violating CEQA. The Board Letter does not even directly address this claim. We request that the Board direct immediate changes to the County's process for evaluating the environmental impact of commercial cannabis projects to ensure that it complies with CEQA and that the significant impacts of cannabis operations are fully disclosed to the public and decisionmakers and mitigated.

a. Additional Environmental Review Is Required

i. Applicable Standard of Review

After a Program EIR has been prepared, subsequent activities in the program like this Project must be examined in light of the PEIR to determine whether additional environmental review is necessary. (CEQA Guidelines[14] § 15168 (c).) In order to approve the Project as being within the scope of the project covered by the Program EIR, the County is required to find that pursuant to CEQA Section 15162, no new effects could occur or no new mitigation measures would be required. (Id. subd. (2).) Conversely, if the Project would have effects that were not examined in the Program EIR, a new Initial Study would need to be prepared specifically for this Project, leading to either an EIR or a Negative Declaration. (Id. subd. (3.)

[13] CEQA does not apply to projects which a public agency rejects or disapproves. (CEQA Guidelines § 15270 (a).)
[14] 14 CCR 15000 et seq.

Guidelines § 15162 identifies the circumstances under which subsequent environmental review is required including where "substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects." (CEQA Guidelines § 15162 (a)(1-2); Pub. Res. Code § 21166 (a-b).) Subsequent environmental review is also required if new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the previous EIR was certified (here the Program EIR on February 6, 2018), shows that a) the project will have one or more significant effects not discussed in the previous EIR or negative declaration; b) Significant effects previously examined will be substantially more severe than shown in the previous EIR; c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines § 15162 (a)(3); Pub. Res. Code § 21166 (c).)

An agency's determination regarding whether a subsequent activity is covered by a program EIR is subject to the "fair argument" test which establishes a "low threshold for an agency's determination whether to prepare a new EIR on a later new project which follows certification of a program or plan EIR." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1319.) Specifically, "if there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, ***notwithstanding the existence of contrary evidence***." (*Id.* (emphasis added).)

"Substantial evidence . . . means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384 (a).) "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Id.* at subd. (b); Pub. Res. Code § 21080 (e)(1).) Expert opinion if supported by facts, even if not based on specific observations as to the site under review, constitutes substantial evidence supporting a fair argument. (*The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928, citing *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1398–1399 & fn. 10).) Where such expert opinions clash, the County should require preparation of a tiered EIR. (*Sierra Club v. County of Sonoma*, 6 Cal.App.4th at 1322; *see also Pocket Protectors,* 124 Cal.App.4th at 928, citing Guidelines, § 15064 (g).

The fact-based opinions of agency staff and decisionmakers, stemming from experience in their respective fields, are also considered substantial evidence for a fair argument. (*Pocket*

Protectors, 124 Cal.App.4th at 932; *Stanislaus Audubon Society,* 33 Cal. App. 4th at 155 (probable impacts recognized by the planning department and at least one member of the planning commission, based on professional opinion and consideration of other development projects, constituted substantial evidence supporting a fair argument that the project would have significant growth inducing impacts).) Moreover, "[r]elevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors,* 124 Cal.App.4th at 928, citing *Ocean View Estates Homeowners Ass'n Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.) Additionally, "[i]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR." (*Pocket Protectors,* 124 Cal.App.4th at 930; Guidelines, App. G, § IX (b).)

Discussed below, there is substantial evidence – both already in the record, and additional substantial evidence submitted with this letter – that the Project may have significant adverse effects on the environment that were not examined in the prior Program EIR. For this reason, the Board cannot approve this Project without a project-specific environmental impact report (*see Sierra Club v. County of Sonoma*, 6 Cal.App.4th 1307).

ii. Changes to the County's Uniform Rules Triggers Additional Environmental Review

Since the PEIR's certification, the Board has amended the County's Uniform Rules to change the way cannabis is treated on parcels subject to Agricultural Preserve contracts. This amendment is at odds with the PEIR, and with prior recommendations of County staff and APAC (which recommendations were based on clear direction from staff to the Board that the adopted amendment was not covered in the PEIR). Further, as a recent California Farm Bureau letter to the County recently pointed out, the Uniform Rules amendment is now squarely at odds with State law. The Uniform Rules amendment leads to new and substantially more severe impacts to agriculture, including from the Busy Bee project specifically. Accordingly, the Board cannot rely on the PEIR and must perform project-level review, and additionally must revise the Uniform Rules to achieve compliance with State law.

(1) California Land Conservation Act of 1965 and Santa Barbara County's Uniform Rules for Agricultural Preserves

The California Land Conservation Act of 1965, also known as the Williamson Act, enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value.

The Department of Conservation assists all levels of government and landowners in the interpretation of the Williamson Act related government code. The Department also researches, publishes, and disseminates information regarding the policies, purposes, procedures, and

administration of the Williamson Act according to government code. Participating counties and cities are required to establish their own rules and regulations regarding implementation of the Williamson Act within their jurisdiction. These rules include, *inter alia*, which uses are deemed agricultural production versus those that are deemed secondary uses.

Santa Barbara County implemented an Agricultural Preserve Program to support the long term conservation of agricultural and open space lands. The program enrolls land in Agricultural Preserve contracts whereby the land is restricted to agricultural, open space, or recreational uses in exchange for reduced property tax assessments. The Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones (referred to as "Uniform Rules") are the set of rules the County uses to implement the Agricultural Preserve program. The Uniform Rules define eligibility requirements and qualifying uses that each participating landowner must follow in order to receive a reduced property tax assessment under the Williamson Act.

Land enrolled in the Agricultural Preserve Program is to be used principally for commercial agricultural production. However, the County recognizes that it may be appropriate to allow secondary uses on contracted land that are either incidental to, or supportive of, the agricultural operation on the property. In Santa Barbara County, these secondary uses are called "compatible uses" and are only allowed on contracted lands *provided* the use is consistent with the Uniform Rules' "principles of compatibility" as follows:

> *1. The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.*
>
> *2. The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.*
>
> *3. The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use. In evaluating compatibility the Board of Supervisors shall consider the impacts on non-contracted lands in the agricultural preserve or preserves.*

(Uniform Rules p. 25, § 2-2.1.)

The County's Agricultural Preserve Advisory Committee ("APAC") is responsible for administering the County's Agricultural Preserve Program and the Uniform Rules. Its duties include reviewing applications and making recommendations for creating agricultural preserves, entering new contracts, making revisions to existing preserves or contracts, termination of

contracts and disestablishing preserves. In conjunction with these duties, the APAC is responsible for monitoring and enforcement of the Agricultural Preserve Program, including by conducting the foregoing compatibility review for proposed projects where the proposed use is deemed "compatible" under the Uniform Rules.

(2) Amendments to the County's Uniform Rules for Agricultural Preserves Trigger Further CEQA Review

On March 20, 2018, the County Board of Supervisors amended the County's Uniform Rules to allow cannabis activities on Williamson Act contracted lands and define cannabis cultivation as "agricultural production" on lands subject to Agricultural Preserve contracts.

The Board's decision to amend the Uniform Rules to define cannabis cultivation as "agricultural production" on lands subject to Agricultural Preserve contracts was at odds with the recommendation of the APAC and the recommendation of County staff that cannabis be considered a "compatible" use, and was expressly stated by County staff to have not been covered by the PEIR. (*See* 3/20/18 Board Letter, attached hereto as Exhibit 1.) Staff's Board Letter at page 6 specifically states in the "Environmental Review" section that the option ultimately adopted by the Board was not adequately covered by the PEIR:

> *Both options [APAC and County staff recommendations to classify cannabis cultivation as a compatible use] described in this Board Letter and shown in the attached Uniform Rules amendments (Attachments 2 and 3) are adequately covered by the Program EIR.*
>
> County staff cautioned against the Board's definition, stating:
>
> Cannabis is Defined as Agriculture and Allowed as a Principle Use – Under this scenario, cannabis cultivation would be defined as an agricultural use and its production would be used to meet the eligibility requirements for a Williamson Act contract. Such an approach would likely raise concerns regarding "Right to Farm" protections that may affect the County's ability to mitigate impacts from cannabis (e.g., odor abatement measures). General public concerns have also been raised regarding the potential government subsidy of cannabis activities that would occur under this option.

The Board disregarded staff's admonishment, including staff's determination that additional CEQA analysis would be required for the Board's chosen amendment,[15] and voted 4-1 (Wolf

[15] Staff Report at p. 3: "Given the Board's direction on these issues to date, as well as input from the public, agricultural industry, and cannabis industry, staff recommends that the Board focus its consideration on the following two options—APAC's recommendation and an alternative P&D staff recommendation [that cannabis cultivation be a compatible use]." Staff returned with revised findings on May 1, 2018, however, the findings adopted by the Board did not support

voting no) to define cannabis cultivation as agricultural production for purposes of the Uniform Rules. (Board Action available at: https://santabarbara.legistar.com/LegislationDetail.aspx?ID=3378208&GUID=6426E34B-B1E5-4D20-B838-A00AF393EF44&Options=&Search=.)

There are at least two practical consequences of the Board's decision that affect cannabis projects proposed on contracted land that were not considered in the PEIR. First, because cannabis is treated as agricultural production, APAC does not review applications for cannabis cultivation to assess whether they are compatible with agriculture occurring on other contracted lands as expressly assumed and relied on in the PEIR's environmental analysis. Applicant's appeal letter at page 2 confirms this issue by stating, in part: "At their last hearing on the project, the Planning Commission reduced the project's cannabis cultivation area from 22 acres to 18 acres. The problem with this reduction is that the County's Uniform Rules for Agricultural Preserves require that this property, which is contracted under the Agricultural Preserve Program and contains prime soils, must maintain 50 percent of the premises (minus area that is considered a sensitive resource or other constraint) in commercial agricultural production. This equates to 22 acres for the Busy Bee's Organics property, which is why the LUP was originally approved for 22 acres of cultivation. Given that the primary commercial crop will be cannabis, it will be extremely challenging to commercially farm something other than cannabis at this property to make up the 4-acre difference and remain in conformance with the County's Uniform Rules."

Second, the minimum production requirements in the Uniform Rules for agricultural production uses can require that an applicant to grow *more* cannabis then they otherwise want to in order to stay in compliance with their Williamson Act contract. Given the Board's subsequent adoption of an acreage limit on cannabis countywide, the requirement to increase grow sizes on Williamson Act contracted lands will likely result in a concentration of larger grows in a smaller area for the first generation of permittees and a less equitable and distributed pattern of cultivation. These represent a substantial change in circumstances with potentially significant impacts.

When the PEIR was certified on February 6, 2018 the County Uniform Rules did not allow cannabis activities. (PEIR p. 3.9-30.) While the PEIR assumed that the Uniform Rules would be amended to allow cannabis activities in some form, the options being considered at the time all assumed that cannabis would be considered a "compatible" use. (*See* Exhibit 1; PEIR p. 2-1 and "Alternative 2" p. 4-34) The PEIR's analysis relied on the expectation that APAC would review cannabis applications to ensure their compatibility with adjacent agricultural crops, and

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that the amendment was covered by the PEIR. The findings reference, among others, the following references to Uniform Rules amendments: "The Project may also allow for the possible adoption of amendments to the County Uniform Rules for Agricultural Preserves and Farmland Security Zones, to recognize cannabis cultivation as a compatible agricultural use." See PEIR p. 2-1. The findings also referenced an important statement in the PEIR: "The following rules apply to the proposed Project: [compatibility principles]." See PEIR p. 3.2-13. Uniform Rules only in the context of cannabis cultivation as a compatible use are referenced.

expressly relied on this compatibility review to address potentially significant impacts to agriculture. Specifically, the PEIR's analysis of Impact AG-1 provides:

> The APAC evaluates the compatibility of uses on an Agricultural Preserve on a case-by-case basis, and the uses are subject to development standards and requirements in County zoning ordinances. . . . Additionally, land use compatibility with adjacent agricultural crops would be ensured by APAC review which ensures compatibility with agricultural uses, and cannabis activities would not conflict with properties that are subject to Williamson Act contracts. For instance, due to extensive testing requirements for cannabis products, it is a benefit for cannabis cultivators to be located further away from agricultural operations which utilize potentially hazardous pesticides, such as grape and strawberry harvesters.

(PEIR p. 3.2-20.) This provision for APAC compatibility review is the only means identified in the PEIR that purports address conflicts between neighboring agricultural operations including the effects of pesticide use. Now that it is no longer occurring by virtue of the Uniform Rules change to treat cannabis as "agricultural production", there is no support whatsoever for the claim that the PEIR analyzed the Cannabis Ordinance's potential to introduce incompatible agricultural uses, and further environmental review is plainly required. The Board Letter states that APAC reviewed the Busy Bee Project, and determined, after mandating increased Project cannabis acreage, that it was consistent with the Uniform Rules which include the Principles of Compatibility. (Board Letter, pp. 13-14.) However, APAC did <u>not</u> review the proposed cultivation for compatibility with adjacent agriculture, including issues concerning terpene taint and pesticide migration. (Board Letter, Attachment 14, APAC Minutes 1/11/19, Item 7.)

Furthermore, the PEIR did not anticipate and thus evaluate the impacts if cannabis would be defined as an allowed "compatible" use and thus included in the minimum production requirements in the Uniform Rules. The PEIR could not and did not analyze the impacts of this new classification either to existing agriculture generally or to Williamson Act contracted lands specifically. And the PEIR could not and did not analyze the effect of the changed definition on the County's ability to mitigate the impacts of individual cannabis cultivation projects.

The Uniform Rules amendment defining cannabis cultivation as an allowed, qualifying agricultural use exempt from any odor control and without limitations on the size of grows per parcel undermines the PEIR's adequacy and triggers CEQA's subsequent environmental review requirements.

CEQA Guidelines § 15162 require an assessment of whether there are changed circumstances necessitating supplemental environmental review before approving a later project. When an agency has prepared an EIR for a project, it must prepare a subsequent, independent project EIR for later projects in three circumstances.[16] First, where "[s]ubstantial changes are

[16] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317.

proposed in the project which will require major revisions of the environmental impact report."[17] Second, where "[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report."[18] And third, when "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available."[19] The PEIR was certified on February 6, 2018. Since the adoption of the PEIR, substantial changes have occurred with respect to the circumstances under which the County's cannabis ordinance operates with respect to Agricultural Preserve contracts and new information relevant to the County's cannabis ordinance and compatibility of projects processed under such ordinance has become available. Under these circumstances, the County must prepare a stand-alone Project EIR for the Busy Bee cannabis project, and potentially most other later projects.

(3) Substantial Evidence of New and Substantially Increased Impacts to Agriculture from the Busy Bee Project Resulting from the Uniform Rules Change

Under CEQA's Appendix G and the PEIR, a Project results in potentially significant impacts to agriculture where the Project conflicts with existing zoning for agricultural use, or a Williamson Act contract, or results in the conversion of farmland to non-agricultural use.[20] Due to the change in circumstances resulting from the Board's post-PEIR amendment to the Uniform Rules, the Busy Bee project's proposed cannabis cultivation was not reviewed by APAC for compatibility with the Williamson Act contracts held by adjacent landowners (many contracts in place for 50+ years) including Mosby Vineyards (Agricultural Preserve Contract 77AP007), row crops farmed on the parcel of Sharyne Merritt (former Appellant of the Project, Agricultural Preserve Contract 03AP027), Valley Compost (Agricultural Preserve Contract 70AP103), orchards directly to the south of the Project (Agricultural Preserve Contract 69AP052), and Lafond Vineyard (Agricultural Preserve Contract 69AP075).[21] Any indicatation by County staff that this review occurred is incorrect – Counsel for SBCRC has listened to the audio recordings in full and this review absolutely did not occur for the proposed cannabis cultivation. Agricultural conflicts that would be addressed through APAC compatibility review but for the change, including a legal threat over continued pesticide application on adjacent crops (discussed below) have already occurred. See also the March 6, 2020 letters from the Grower Shipper Association (reporting the experience of their members reflecting cannabis' incompatibility with organic and conventional Central Coast agriculture) and Santa Barbara County Agricultural Advisory Committee (asking for delay in Board action pending ordinance revisions and if not, imposition of additional Project conditions "to address predictable conflicts that have arisen in many situations in the County").

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[17] Cal. Pub. Resources Code, § 21166(a).
[18] *Id.* at § 21166(b).
[19] *Id.* at § 21166(c).
[20] CEQA Appendix G § II (b, e); PEIR pp. 3.2-18.
[21] See GIS map of Williamson Act parcel, available at:
https://sbcblueprint.databasin.org/maps/new#datasets=293bb2006edc4c8986d6b564d4502527

Moreover, the applicant initially proposed approximately 18 acres of outdoor cannabis cultivation.[22] However, as a direct result of the change to the Uniform Rules, APAC voted to revise the project description to increase the planted acreage to 22 acres in order to find the Project consistent with the amended Uniform Rules and to meet ongoing eligibility requirements. (Id.) As referenced above, the Applicant confirms this is the result of Uniform Rules requirements. This increase in acreage increases emissions, traffic, employees and facilities, and brings cultivated cannabis into closer proximity with neighboring properties, substantially increasing land use conflicts including conflicts between agricultural land users and jeopardizing the viability of traditional agriculture including nearby vineyards.

(4) Amendments to the California Land Conservation Act of 1965 Require the County to Amend its Uniform Rules to Comport with State Law

On January 1, 2020, Senate Bill 527 was enacted by amending Sections 51201 and 51231 of the Government Code, relating to local government and the Williamson Act. SB527 and enacting legislation provides that commercial cultivation of cannabis may constitute a "compatible use" on contracted or noncontracted lands within an agricultural preserve. By omission, SB527 does not allow cannabis to be treated as agricultural production. The bill expressly stated that the enacted provisions are declaratory statements of existing law. With this clarification of State law, the adopted language in the County's Uniform Rules to treat cannabis as "agricultural production" is plainly impermissible and jeopardizes the County's Williamson Act Program.

This change is consistent with how cannabis is treated pursuant to existing State law. For example, cannabis is not an agricultural commodity under the Food and Agricultural Code and Government Code. Proposition 64 and subsequently, Business & Professions Code Section 26069(a), specify that cannabis is an agricultural commodity only for the purposes of the BPC regulations. If cannabis were treated as an agricultural commodity under any other circumstances, including Food and Agricultural Code or Government Code, all of the existing requirements for agricultural commodities would apply to cannabis, which they do not.[23] Most notably, cannabis has a State licensing structure that operates on an annual basis – no other agricultural commodity has annual licensing requirements. This is a similar legal framework that is applied to timber, which also is not an agricultural commodity under State law and is subject to its own statutory framework pursuant to the California Timberland Productivity Act of 1982.[24]

The definition of "agricultural use" under the Williamson Act[25] is predicated on the use furthering the production of an "agricultural commodity"[26]. As discussed, *infra*, cannabis is not

[22] Board Letter, Attachment 14, APAC Minutes 1/11/19, Item 7
[23] See California laws governing seeds, nursery licensing, and produce dealers and handlers.
[24] See Gov. Code Section 51100 et. al.
[25] Gov. Code Section 51201(b)
[26] Gov. Code Section 51201(a)

an agricultural commodity under State law and thus it cannot be included as "agricultural production" under the Williamson Act. SB527 makes this designation clear. Local jurisdictions do not have discretion to the deviate from the determination of which crops are agricultural commodities and which are not.

Based on the foregoing, it is clear State law requires cannabis be treated as a "compatible" use subject to the compatibility principles described above. The County's Uniform Rules violate the Williamson Act and may not be relied upon in approving the Project. Further, the County's Uniform Rules must be amended to authorize cannabis as a compatible use to comport with State law or risk intervention from the Department of Conservation.

iii. New Information on Terpene Taint Triggers Additional Environmental Review

In our appeal, we identified a new potentially significant impact associated with terpenes from cannabis grown in close proximity to wine grapes, such as Appellant's vineyard which is less than ½ mile from the proposed Project. Specifically, concentrated air-borne terpenes released by cannabis plants in low wind conditions and during inversions (that are common in the Project vicinity) have been shown, in testing conducted in Santa Barbara County, to be absorbed by gapes on the vine. It has been established in other studies that some wines produced from grapes that have absorbed sufficient concentrations of airborne terpenes that are common in cannabis suffer from a detectable "taint". Terpene taint of Santa Barbara County wines has the potential to adversely affect the reputation of Santa Barbara County for winegrowing, undermining the wine industry and jeopardizing this established, existing agricultural product. This newly discovered issue was not examined in the PEIR. Discussed below, under these circumstances there is sufficient substantial evidence to support a fair argument that the Project may result in taint to wine grapes grown nearby and by extension, impugn the quality and marketability of Santa Barbara County wines.

The Board Letter claims "PEIR analyzed terpenes as Biogenic Volatile Organic Compounds (BVOCs) in the context of odor impacts in the Air Quality Section (8-8) and concluded that impacts are unavoidably significant." (Board Letter, p. 13.) An evaluation of the PEIR however reveals that the issue of terpene taint on wine was not even so much as mentioned, let alone "examined" either in the air quality context or elsewhere in the document. (CEQA Guidelines § 15168 (c)(3) ("if the Project would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.")) The PEIR's discussion of agricultural impacts including incompatibility of agricultural uses (*see* Impact AG-1, PEIR pp. 3.2-19 -3.2-21) is silent on this issue. Similarly, the PEIR's discussion of cannabis VOCs and terpenes (*see* PEIR Vol. II (Response to Comments), p. 8-8) is silent on potential impacts to the quality of Santa Barbara County wines and the wine industry. Only recently have researchers documented evidence of terpene taint.

Significant new information regarding the potential impact of cannabis terpenes on wine grapes has become available. At the time the PEIR was certified, the only publication regarding the issue of terpene tainting wine grapes was a HighTimes article describing statements made by

the Lodi Chamber of Commerce CEO at the prior week's meeting of the San Joaquin Board of Supervisors that "[if t]he odor travels, it could permeate grape skins and render the wine deficient, causing it to lose value," as "next-level nonsense".[27] However, in 2019 Food and Wine magazine reported that an Oregon vineyard has been allowed to move forward with a lawsuit against a nearby marijuana business, claiming their operation caused at least one customer to fear their grapes would have unwanted notes of cannabis. Instead of "smoke taint," call it "smoking taint."[28] Since then, there has been considerable development of this issue including with respect to the science behind how cannabis terpenes may impact wine grapes. An October 28, 2019 letter by Dr. Anita Oberholster of the Department of Viticulture and Enology at UC Davis describes how common cannabis terpenes associated with other plants have been demonstrated to affect wine quality, and how existing research can be used to analogize and draw conclusions regarding the potential impacts of cannabis terpenes and essential oils [from odor abatement systems] on wine grapes. A December 6, 2019 report by Dr. William Vizuete of Pacific Environmental Analytics, LLC, *Estimated emissions, concentrations, and deposition of monoterpenes from an outdoor Cannabis farm*, evaluated emission rates of cannabis monoterpenes including 1,8-cineole, beta-myrcene, alpha-terpinene, and terpinolene from an outdoor cultivation site, and establishes that the cannabis monoterpenes can migrate to and be absorbed in nearby grapes. [29]

In addition to her October 28, 2019 letter, Dr. Oberholster prepared an additional letter dated March 3, 2020, submitted herewith, in which she opines: "[i]t is and continues to be my opinion that the concentration of proposed and existing cannabis facilities in close proximity to and upwind of winegrape-producing vineyards in the Santa Ynez Valley, have a reasonable potential to alter the terpene composition of grapes grown in adjacent vineyards. Changes in winegrape terpene composition and concentration could potentially change wine characteristics and result in wines considered tainted. If wines are tainted, it will have an adverse effect on the reputation and marketability of these wines and thus the viability of the wine industry in Santa Barbara County." (Exhibit 2, p. 1.) Dr. Oberholster also disputes Dr. Vizuete's conclusion that that terpenes from outdoor cannabis cultivation are unlikely to exceed threshold levels for grape taint, asserting the incorrect odor detection thresholds were used. (Id., pp. 4-5.) In addition, there are inaccuracies in the Air Quality Modeling Study utilized in the Vizuete study that further undermines its conclusions and increase the likelihood that terpenes released from cannabis cultivation projects in the Project area will be deposited on and absorbed by nearby wine grapes including at a nearby winery.[30]

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[27] https://hightimes.com/news/california-businessman-believes-the-smell-of-marijuana-hurts-wine-grapes/

[28] https://www.foodandwine.com/wine/wine-grapes-marijuana-odor-lawsuit-oregon

[29] Dr. Vizuete's report on the proposed Hacienda project makes a number of assumptions that render it's claimed conclusions both highly unreliable and inapplicable to the instant project. Dr. Vizueta conflated the concentrations of one terpene observed in grapes grown downwind of a cannabis grow with a threshold of significance, and further assumed planting density of 2,000 plants per acre, whereas the Busy Bee project reports plant density of 10,000 to 12,000 plants per acre.

[30] Exhibit 3, Underwood Report for West Coast Farms Cannabis Development (11/4/19)

While the research necessary to quantify open field cannabis terpene emissions rates, grape absorption rates, and the magnitude of terpene exposure required for wine taint upon locally-produced grapes has not been completed, there is substantial evidence that wine quality can be affected by exposure to airborne terpenes from cannabis cultivation. Substantial evidence in the record includes the fact-based expert opinion of Dr. Oberholster, and testing results in Santa Barbara County, each of which establish that terpene migration is occurring and that terpenes can cause wine taint. This substantial evidence supports a fair argument that the Project *may* result in terpene taint to nearby wine grapes, leading to a significant incompatibility between these two agricultural land uses. Evidence of this impact is far from speculation, and is being taken seriously by the Agricultural Commissioner, who is currently investigating funding sources for, and researchers who are qualified to conduct, a study if wine grapes can absorb cannabis terpenes (Board Letter for Santa Rita Valley Ag. Cannabis Cultivation Appeal (3/10/20)[31], p. 9). Further, a letter submitted by the County's Ag Advisory Committee (AAC) for this appeal urges the Board to continue the appeals the Busy Bee Project specifically until the Planning Commission and Board resolves amendments to the Cannabis Zoning Ordinance, including amendments intended to address this very issue of terpene taint. These expert opinions constitute substantial evidence supporting a fair argument of a potentially significant impact and thus cross the threshold of mandating additional environmental review for this project.

Research on cannabis generally has been limited in the United States, and the effects of cannabis on adjacent crops, including crops with sensitive characteristics like grapes, has also been limited. (10/28/19 Oberholster Letter, p. 2.) Dr. Oberholster opined that the "lack of evidence-based information on the potential impacts of the cannabis industry on established vineyards ***is a risk to the future viability of the grape and wine industry in Santa Barbara County*** and other counties that have or may adopt regulations allowing outdoor cannabis cultivation and/or odor abatement systems that use vaporized essential oils sited near vineyards." (10/28/19 Oberholster letter, p. 2 (emphasis added).) While the absence of evidence in the record on a particular issue does not automatically give rise to a fair argument that a project may have a significant effect on the environment, "[d]eficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom,* 202 Cal. App. 3d at 311.)

iv. <u>New Information on the Agricultural Impact of Pesticide Migration Triggers Additional Environmental Review</u>

In our appeal we identified a new potentially significant impact to agriculture resulting from the conflict experienced between traditional agriculture and cannabis cultivation with respect to pesticide migration that the PEIR did not examine. Specifically, the PEIR failed to examine how agricultural resources will be impacted by the relationship between low cannabis

[31] Available at: https://santabarbara.legistar.com/LegislationDetail.aspx?ID=4387318&GUID=198F6748-DE28-44EB-B82F-C7C46A3CA7C2&Options=&Search=

testing thresholds and inevitable drift, and how drift, volatilization and migration in this area will impact adjacent agricultural land and result in the loss of agricultural land uses from non-viability.[32] In addition, because the PEIR does not examine or analyze this impact, it also fails to provide mitigation for the likely loss of agricultural land.[33] This fact has been recognized by the County, including its Agricultural Commissioner's office. The Agricultural Commissioner's office convened a working group to review and analyze this exact issue and which was unable to develop a solution.[34]

The Board Letter attempts to rebut this claim on several fronts. First, it asserts pesticide drift is not allowed under pesticide use regulations and claims "that adjacent agricultural operations may still use other application methods that would minimize or eliminate the potential for drift." (Board letter p. 13.) However, the seminal case on the issue of pesticide drift, *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.*[35] clearly establishes that not all drift is illegal, including volatilization and air dispersal, but all drift gives affected parties tort claims that are not barred by pesticide statutes. The facts of *Jacobs* are directly analogous to the cannabis cultivation context. In *Jacobs*, the defendant sprayed pesticides which volatilized and moved in the fog to plaintiff neighbor's organic herb crops of rosemary, dill, and cilantro which, like cannabis, have a zero tolerance threshold established by the Environmental Protection Agency (EPA. The agricultural commissioner found the defendant had applied pesticides in accordance with law. The defendant then voluntarily switched materials (and used a drift retardant) and told their herb-growing neighbor each time they sprayed; however, materials still drifted and agricultural commissioner again found no violations. Plaintiff sued defendant, alleging that pesticides defendant applied to fields near plaintiff's farm migrated to plaintiff's land, contaminated plaintiff's herb crop, and rendered the crop unmarketable. Plaintiff ultimately won on theories of negligence, trespass, and nuisance. As part of a preliminary injunction, defendant agreed not to apply the subject pesticides on two fields closest to plaintiff's fields, leaving a 1.5-mile buffer zone surrounding plaintiff's crop.

Second, the Board Letter claims that the "use of pesticides and insecticides by non-cannabis cultivation and the accompanying regulatory framework was the same at the time the PEIR was prepared and certified …[and] is not new information that triggers environmental review." (Board Letter, p. 13.) At the time the PEIR was prepared and certified, the extent of the potential conflict was not known. This conflict arose when local pesticide applicators were threatened by cannabis growers, and based on those threats of monetary damages, refused to apply the pest control materials to agricultural operations located near cannabis grows. The PEIR's agricultural impact analysis barely touches on the issue, stating merely "due to extensive testing requirements for cannabis products, it is a benefit for cannabis cultivators to be located further away from agricultural operations which utilize potentially hazardous pesticides, such as grape and strawberry harvesters." (PEIR p. 3.2-20.) Rather, it is recent reports and publications

[32] See PEIR, pp. 3.2-19-3.2-23.
[33] *Id.* at pp. 3.2-24-25.
[34] See page 36 of Staff Report from October 2, 2019 Planning Commission hearing.
[35] *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502

that have identified this as a significant issue. For example, an article published in Environmental Health Perspectives in April 2019 entitled, "*Into the Weeds: Regulating Pesticides in Cannabis*"[36] revealed:

> Outdoor cannabis crops can become contaminated with pesticides that the growers never actually applied—sometimes at levels high enough to trigger a failed test. Chen of Sonoma Lab Works says that such cross-contamination is not just a theoretical scenario; he's seen it happen to his own customers in California. "Several streams of unintentional contamination that are common to farmers are overspray from neighboring acres due to factors such as wind or recycled water," he says. "When working with such small concentrations, there are dozens of avenues of contamination."

Additionally, since the PEIR's certification, evidence has come forward that pesticide applicators (used for decades and necessary for economically productive avocado production) have refused to apply materials to either conventional or organic avocado crops due to incompatibility with nearby cannabis cultivation operations in Carpinteria.[37] In various interviews with Scott Van Der Kar, an avocado grower in the Carpinteria foothills, Mr. Van Der Kar explains that many Oxnard-based pest control companies that treat the avocado crop would no longer spray the insecticides that work best on avocados, for fear of contaminating cannabis crops with the slightest trace of residue and getting sued. Thresholds for cannabis are as little as one microgram per gram, or 0.1 part per million. [38]

In fact, the conflict has manifested already between Busy Bee and one of its farming neighbors. Specifically, one of Busy Bee's farming neighbors had their pest control applicator threatened by Busy Bee's lawyer for using materials essential to their agricultural production,[39] actions that have been repeated by cannabis growers in various parts of the County.[40] Other farmers in Santa Barbara County, in at least two instances, have lost crops after switching to other less effective pest management products to reduce potential liability from the legal application of pesticides.

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[36] *Environmental Health Perspectives* is a monthly journal of environmental health research and news published with support from the National Institute of Environmental Health Sciences, one of the 27 institutes and centers of the National Institutes of Health (NIH).

[37] See e.g. Burns, M. May 9, 2019. *Avocado and Cannabis Growers Struggle over Insecticides*. Santa Barbara Independent. Burns, M. Burns, M. May 10, 2019. *The unintended consequences of cannabis: Can avocado and marijuana growers peacefully coexist?* KEYT. May 23, 2019. *Commercial Sprayers Pull Out of Carpinteria Deal with Cannabis Operators*. Noozhawk.

[38] 16 CFR 42, § 5719, p. 108.

[39] Letter from Amy Steinfeld to Nutrien Ag Solutions, May 28, 2019.

[40] Most such reports are not disclosed publicly but known to the County through the Agricultural Commissioner's office which investigates many of these episodes.

Second, the Board Letter asserts that "the issue of pesticide drift is an important issue, but would not be considered an environmental impact from the project." (Board Letter, p. 8.) However, under CEQA, a potentially significant impact to the environment occurs where a project may "convert prime farmland, unique farmland, or farmland of statewide importance to non-agricultural use," "conflict with existing zoning for agricultural use," or "involve other changes in the existing environment which, due to their location or nature, could individually or cumulatively result in the conversion of farmland to non-agricultural use."[41] Here, substantial evidence supports a fair argument that the occurrence of drift that is lawful under the pesticide regulations, in conjunction with the prohibition on pesticides or insecticides in cannabis, including most commonly used organically-certified pesticides, will likely result in the conversion of farmland to non-agricultural uses when conventional agriculture becomes impossible or uneconomical. Legacy farmers cannot even use most certified organic pest control agents near cannabis, as these are prohibited in the cannabis product. Paradoxically, these lands rendered unsuitable for agricultural use due to cannabis will also be unsuited for residential uses due to cannabis' proximity as well.

This issue is exacerbated in the area between Buellton and Lompoc along Highway 246 and near the Project site because of an early morning inversion specific to this area. The inversion was identified in the PEIR, and the air basin where the inversion occurs is further supported by the County Fire Department's Burn Permit Zone map, which identifies the "Santa Ynez Valley air basin zone" and indicates an air basin overlays the Santa Ynez Valley from Highway 246 just west of the Project, east to Lake Cachuma.[42] During an inversion, as the air temperature increases above the soil surface and the coldest, densest air is at the surface. Its density steadily decreases with increasing height. The result is a very stable stratification of air that limits vertical air motion. When an applicator introduces spray droplets into very stable air (as during an inversion), the smaller droplets fall slowly and may float along with the air for long distances.[43] Temperature inversions are favorable to long distance pesticide migration. With the cool, humid conditions found during a temperature inversion, small droplets can remain suspended above the sprayed area for a long time. Just as morning fog slowly moves into lower elevations, the concentrated cloud of droplets can move down slope with the layer of cool air and cause damage or contamination for miles. Sloped areas are not the only concern during temperature inversions. As winds pick up, suspended droplets can be carried great distances from level application sites as well.[44]

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[41] CEQA Guidelines, Appendix G, § II.
[42] See GIS map at https://sbc-gis.maps.arcgis.com/apps/PublicInformation/index.html?webmap=7d8f1e27f37340248b654363d1569e1f.
[43] Thostenson, A, et al. 2017. *Air Temperature Inversions Causes, Characteristics and Potential Effects on Pesticide Spray Drift*. North Dakota State University.
[44] NC State University NSF Center for Integrated Pest Management. *Pesticide Drift*. https://pesticidestewardship.org/pesticide-drift

The impacts of inversion were factors in the previously referenced *Jacobs* case, which made clear that pesticides lifted from target crops and moved with fog are not necessarily the result of illegal pesticide applications. A 2001 study by Texas A&M University researchers shows that pesticides can volatilize into the gaseous state and be transported over long distances fairly rapidly through wind and rain.[45] A U.S. Geological Survey report reached similar conclusions, finding, "After they are applied, many pesticides volatilize into the lower atmosphere, a process that can continue for days, weeks, or months after the application, depending on the compound. In addition, pesticides can become airborne attached to wind-blown dust."[46]

Due to the inevitable occurrence of drift, the morning inversion, and the immense potential liability and economic damages to conventional agriculture for accidental migration onto nearby cultivated cannabis, farmers and vintners in the vicinity of the Project will be precluded from utilizing pesticides and insecticides essential to their farming and agricultural practices. A number of pesticide applicators have declined to continue to provide services for farmers and vintners located near cannabis cultivation sites for fear of liability for damage to cannabis crops nearby, including with respect to the Busy Bee operation specifically [see Steinfeld letter, above discussion]. As a result, it will not be viable to maintain any agriculture that utilizes pesticides or insecticides in the vicinity of cannabis operations. Further, there are specific impacts to cannabis cultivation sited near vineyards and tasting rooms, which will also be amplified by air basin inversion. Both vineyards and tasting rooms are treated by the County and related agencies as supportive agricultural uses; such uses are also impacted by the odors from unmitigated cannabis cultivation which interfere with wine tasting and thus threaten the largest source of income for most local vintners.

v. Land Use Incompatibility

According to the Santa Barbara County's Environmental Thresholds and Guidance Manual, and the PEIR, a project may have significant land use and planning impacts if it is incompatible with a surrounding neighborhood.[47] Discussed above, the Project is incompatible with surrounding agriculture due to issues with migration and pesticide contamination of cannabis crops, as well as cannabis terpene contamination of wine grapes. Explained above, new information revealed these potentially significant impacts after the PEIR was certified.

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[45] Wade, T., et al. 2001. *Atmospheric Deposition of PAH, PCB and Organochlorine Pesticides to Corpus Christi Bay*. Texas A&M Geochemical and Environmental
Research Group. Presented at the National Atmospheric Deposition Program Committee Meeting.

[46] *USGS Releases Study on Toxic Rainfall in San Joaquin Valley.*
https://archive.usgs.gov/archive/sites/www.usgs.gov/newsroom/article.asp-ID=169.html

[47] *Santa Barbara County's Environmental Thresholds and Guidance Manual,* p. 118; PEIR, p. 3.9-32.

Additionally, projects that conflict with local policies or ordinances entail a potentially significant impact for which environmental review is required. CEQA Guidelines Appendix G, § IV (e); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 ("[I]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR.") Discussed above, the Project is subject to the with the goals, policies, and development standards of the SYVCP. While the PEIR considered policy consistency with policies in the County's General Plan elements, it did not undertake any Project consistency analysis with individual Community Plan Policies, including those of the Santa Ynez Valley Community Plan. See, Attachment 11 to 2/6/18 Board of Supervisors hearing, County Land Use and Policies Consistency Summary; PEIR3.1-8 to 3.1-10. Thus any potential inconsistency with the Santa Ynez Valley Community Plan represent a potentially significant impact that must be evaluated as part of the instant Project. See *Pocket Protectors*, *supra*. As noted *supra*, the County's CEQA Checklist only lists mitigation measures and has no policy consistency analysis.

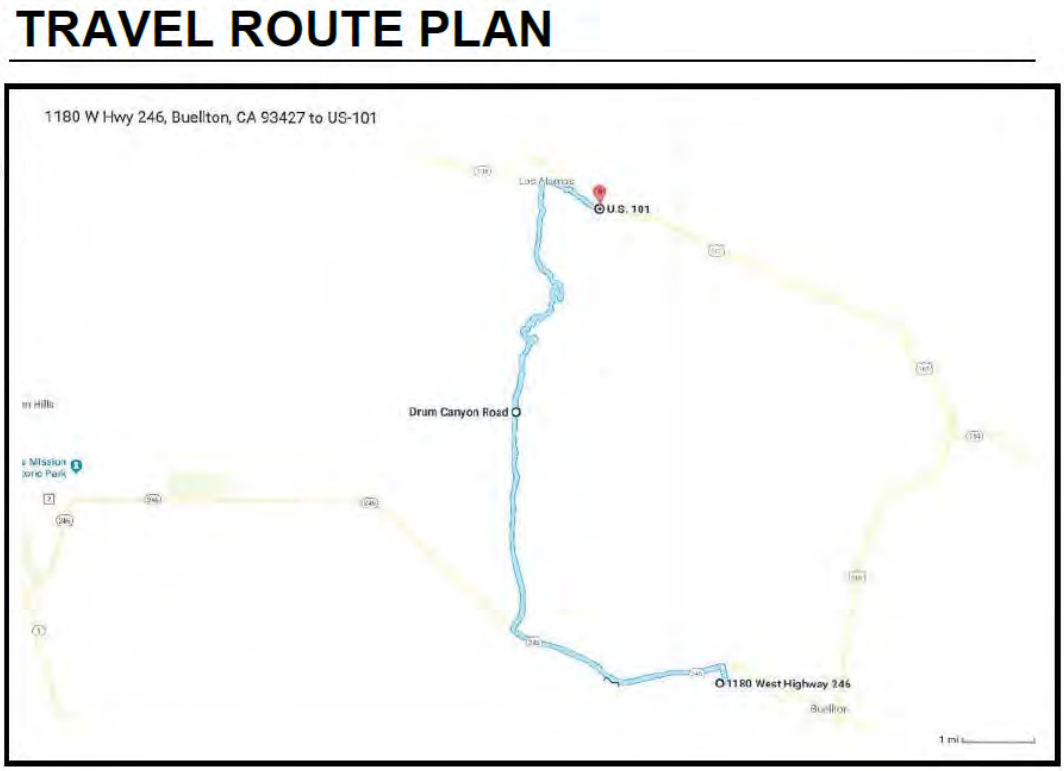
1. Traffic and Circulation Issues

a. <u>Site Transportation Management Plan Adequacy</u>

Section 35.42.075.D.1.j requires applicants to submit a Site Transportation Demand Management Plan that includes, at a minimum, the "lot locations, total number of employees, hours of operation, lot access and transportation routes, and trip origins and destinations."

The Applicant's Site Transportation Demand Management Plan (STDMP) is Sheet 104 to Attachment 13. This one page plan shows the entrance and basic site circulation features, but details are sparse and insufficient to describe this aspect of the project or the means to gauge its impact.

The substantive excerpts from the plan identifying the routing is this map:



The STMP is required to identify the trip origins and destinations for all Project trips but fails to provide critical trip origin and destination information. This includes shuttle destinations, particularly if a satellite parking area is used.

b. CEQA Analysis of Project Traffic on Drum Canyon Road is Required

The Project's addition of traffic to Drum Canyon Road triggers the County CEQA Threshold, necessitating project-level environmental review. Pursuant to the County's Environmental Thresholds for determining when a project would cause a potentially significant CEQA impact, a significant traffic impact would occur when the:

> Project adds traffic to a roadway that has design features (e.g., narrow width, road side ditches, sharp curves, poor sight distance, inadequate pavement structure) or receives use which would be incompatible with substantial increases in traffic (e.g. rural roads with use by farm equipment, livestock, horseback riding, or residential roads with heavy pedestrian or recreational use, etc.) that will become potential safety problems with the addition of project or cumulative traffic. Exceeding the roadway capacity designated in the Circulation Element may indicate the potential for the occurrence of the above impacts.

(Santa Barbara County Environmental Thresholds and Guidelines Manual pp. 143-144).

Drum Canyon Road has narrow widths, roadside ditches, sharp curves, poor sight distance, inadequate pavement structure, is steep and experiences extensive recreational bicycle traffic. It fails to meet basic roadway standards for the Project's uses.

While the PEIR generally noted there would be increases of traffic to rural roadways, it acknowledged "it would be too speculative in this programmatic EIR to estimate potential impacts to specific road segments or intersections." PEIR 3.12-28. The project now identifies rural Drum Canyon Road as its access for cultivation activities, per the STMP. Drum Canyon Road is also the access for a number of other proposed and permitted cannabis cultivation operations along Highway 246 (presumably to avoid use of Highway 246 as a roadway through an EDRN, discussed below). A traffic study is appropriate, once the Project's trip origins and destinations are identified, considering other cannabis-related use of this roadway.

Significantly, the primary transportation impact mitigation measure identified in the PEIR, Transportation Impact Fees, was stricken. These changed circumstances necessitate review of the project's traffic impacts.

c. Roadway Adequacy Findings Are Not Made or Supportable by Evidence

The Applicant's chosen routing for Project traffic – Drum Canyon Road – is a very poorly maintained road with unpaved sections, a number of single lane sections, steep, windy, with limited site distance and extensive recreational bicycle traffic that fails to meet basic roadway standards for the Project's uses. Consequently § 35.30.100.A Findings may not be made:

> **Adequacy of infrastructure required**. Issuance of a [ ] a Land Use Permit (Section 35.82.110) [ ] shall require that the review authority first find, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (e.g., water, sewer, roads) are available to serve a proposed development.

Administrative approvals must be accompanied by findings supporting the conclusion that all requirements for the approval have been satisfied. (*See Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 511). These required findings must support the approval, and substantial evidence in the record must support the findings. (*Id.*, Cal. Code Civ. Pro. § 1094.5). The Board's proposed Findings of Approval are inadequate in several respects, and an analysis of the proposed findings and the record demonstrates that the findings do not support an approval, and moreover that the findings are not supported by substantial evidence in the record. Findings are essential to "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga*, *supra*, 11 Cal. 3d at 515). Specifically, the proposed findings reference only use of Highway 246, while, according to the Project Description, the majority of the traffic impacts of the Project are to Drum Canyon Road.

LUDC § 35.30.100.A's requires that the County find that Drum Canyon Road provides adequate public or private services to serve the Project. This finding cannot be made as to roads when the roads used as the designated primary route for project traffic is in substandard condition, has sharp turning radii, narrow shoulders, steep hills, limited sight distances, unpaved sections and other design features that cause potential safety problems with the addition of Project and cumulative traffic. Drum Canyon Road is simply not properly designed to carry the type and quantity of traffic generated by the Project. For these reasons, the above finding cannot be made.

vi. Cumulative Impacts of Project Clusters

State CEQA Guidelines Section 15130 require that an agency analyze cumulative impacts in an EIR when the resulting impacts are "cumulatively considerable" and, therefore, potentially significant. Cumulative impacts refer to the combined effect of project impacts with the impacts of other past, present, and reasonably foreseeable future projects.[48] Generally, projects that are located within geographical proximity to each other (e.g., two or more projects utilizing the same roadways) have the potential to contribute to cumulative impacts to an environmental resource or issue area. The impacts of a project and related projects are considered "cumulatively considerable" when "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, § 15065(a)(3).)

Currently, there are nineteen (19) pending outdoor cannabis cultivation projects in the Santa Rita Valley area that are pending approval or that have been approved (and appealed), averaging 30 acres each. For context, Sonoma County has capped cannabis cultivation at 1 acre per parcel, with 88 growers currently operating, totaling 88 acres countywide. Note: the first project approved in Sonoma County is for 1 acre and was approved with 133 conditions the operator must follow and they must return to the board after two years to discuss how the smell is impacting neighbors.[49] These nineteen projects total 610 acres of outdoor cannabis cultivation, or 39% of Santa Barbara County's 1,575 acres cannabis production cap. This is 55% of the total 1,100 acres of cannabis estimated as needed to supply the entire State of California. The PEIR does not analyze or examine cumulative impact of this proliferation of cannabis cultivation projects in AG-II zones between Buellton and Lompoc along Highway 246, within the Santa

[48] CEQA Guidelines, § 15355 state: '"Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or several separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."

[49] See https://www.pressdemocrat.com/news/9711880-181/sonoma-county-begins-to-process?sba=AAS.

Rita Hills American Viticultural Area and a scenic corridor that is considered the gateway to the Valley. Further, the majority of the land in the Santa Rita Hills American Viticultural Area and other areas where cannabis projects are proposed are subject to Williamson Act contracts, implicating the CEQA issues discussed previously with regard to the Uniform Rules and conflicts with State law.

The Board Letter responds asserting that the "the analysis contained within the PEIR addresses the cumulative impacts that would be associated with the proposed project and the PEIR identifies the mitigation measures that would mitigate those impacts to the extent feasible." (Board Letter, p. 12.) However, as discussed at length in our previously submitted appeal materials, the PEIR did not anticipate either the number or size of the potential cultivation operations in this area, or the magnitude of their impact to visual impacts. Moreover, the Board Letter does not even claim that the PEIR identified or examined the potential cumulative impact to agriculture including from pesticide migration or terpene taint associated with this intensity of cannabis cultivation in this important wine producing region. Discussed above, new information revealed substantial evidence of these impacts, and accordingly additional environmental review is required.

b. The CEQA Checklist is Flawed

The County's CEQA analysis for cannabis activity permitting relies on and tiers from the PEIR. The PEIR specifically analyzed the effects of the Cannabis Ordinance, but included some potentially applicable project-specific analyses that could be used for later activities authorized by the Project (ordinance) such as site specific individual permits. The PEIR did not address all possible impacts, and the County's CEQA compliance relies on a subsequent analysis that is flawed due to improper use of the Checklist, new information and changed circumstances entailing new potentially significant impacts. Additional environmental review is necessary before the Board can properly consider the Project. Of note, the CEQA Checklist for the Project does not anywhere examine or address whether the new issues raised in this appeal were examined in the PEIR. The impacts from terpene drift, the conflicts with traditional agriculture, and the changes in the Uniform Rules are not discussed at all.

i. <u>The County's Checklist Fails to Address Project Impacts as Required by § 15168(c)(4)</u>

The CEQA Guidelines direct that, "[w]here the later activities involve site specific operations, the agency should use a written checklist or similar device **<u>to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered within the scope of the program EIR</u>**." Guidelines § 15168(c)(4) (emphasis added). CEQA clearly requires that the Checklist focus on the Project's site and specific activities. The County's CEQA Checklist fails to achieve this, and thus the reliance on the PEIR and tiering is defective.

The substantive elements of the CEQA Checklist provided by the County is found at § C.1 of the Checklist. This section, and the Checklist as a whole, is focused exclusively on whether specific mitigation measures or requirements of the PEIR are deemed to apply to the Project. This is the incorrect focus, which should be on the Project's impacts resulting from the site and specific operations. The CEQA Checklist does not demonstrate that County staff engaged in any substantive evaluation of the Project site or activity to determine whether the environmental effects of the Project were actually disclosed and evaluated in the PEIR. It contains no site-specific analysis, no data regarding site activity, and completely ignores many of the impacts associated with the Project that were not analyzed in the PEIR, as discussed elsewhere in this correspondence. This falls short of the requirement that a public agency must examine the later project in a detailed manner before determining that the later project does not require an EIR,[50] that an initial study is required, and if not, to disclose data or evidence supporting their findings.[51]

For example, regarding Aesthetics and Visual Resources, the Checklist ignores that the site is in a scenic area with open pastoral views across the Santa Ynez River plain, asking only "[i]s the proposed cannabis operation visible from a public viewing location?" The box is checked yes. "If so, does the proposed project include implementation of the required landscape and screening plan?" The box is checked yes and that is the entirety of the Checklist's treatment is the issue. There is no further evaluation of the site's aesthetic and visual features, or the impacts of the operations that serves to document "whether the environmental effects of the operation were within the scope of the program EIR." § 15168(c)(4). The same is true in "Attachment 1 – Additional Information for the Proposed Cannabis Activity CEQA Environmental Determination" to the CEQA Checklist. There is no substantive evaluation of the Visual Resources impact and the efficacy of the Landscape and Screening Plan to mitigate them. The focus exclusively on canned mitigation measures from the PEIR, and not the details about the site and activities for each of the impact categories, undermines the validity of the County's Checklists.

Further, the CEQA Checklist determinations are not supported by substantial evidence. Under CEQA, an agency's analysis and determinations must be supported by evidence in the record.[52] A public agency must prepare a tiered EIR if a project "may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR."[53] This establishes a "low threshold" for when a public agency must prepare a tiered EIR.[54] Any doubts "must be resolved in favor of environmental review and the agency must prepare a new tiered EIR" even if there is "contrary evidence."[55]

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[50] *Sierra Club, supra,* 6 Cal.App.4th at 1319.
[51] *Citizens Ass'n for Sensible Dev., supra,* 172 CA3d at 171.
[52] Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code, § 21168.
[53] *Sierra Club, supra,* 6 Cal.App.4th at 1319 (emphasis added).
[54] *Ibid.*
[55] *Ibid.*

As discussed below, there are numerous impending impacts associated with the Project that were not examined by the PEIR. For example, the checklist is silent regarding impacts to adjacent agricultural operations.[56] Agricultural resources are only referenced in connection with development on prime soils. As such, the County's determination that the Project does not "involve a project site with sensitive or unusual environmental characteristics or require unusual development activities which will result in a significant environmental impact that was not evaluated in the PEIR" is not supported by the evidence.[57] Under these circumstances, the agency's analysis is not supported by substantial evidence and, if adopted, would be subject to reversal by a reviewing court.

The CEQA Checklist does not comply with the requirements of CEQA. Consequently, at a minimum, the County must prepare an initial study and follow the conclusions indicated by that study prior to making any final environmental determination of or County approval of the Project. To do so, please direct this application back to the Planning and Development staff for a proper and comprehensive CEQA environmental determination.

We note that the County's practice of CEQA compliance in reliance on the defective and inadequate Checklist process represents a County-wide pattern and practice of evading CEQA for all cannabis entitlements. Project-level environmental review is plainly required by cannabis permits, and your Board should direct staff to employ a complete and adequate initial study process for each application for an entitlement for cannabis cultivation and/or processing activities.

c. Sensitive Receptors

The PEIR also did not identify residential areas and neighborhoods as sensitive receptors and thus did not examine the impact of air pollution from cannabis operations on residents and business that serve the public near Buellton, nearby EDRNs, or along Highway 246. The Project is located across Highway 246 from the North Highway 246 EDRN, approximately 2,000 feet from the West Buellton EDRN and Buellton city limits, and other nearby residences that are no part of a formalized EDRN. The PEIR references visitors to "outdoor facilities" as sensitive "users", but does not assess impacts to such users in the PEIR. The Project is just 40 feet from neighboring row crops. As explained by Professor Holden and a number of other scientific analyses, the emissions generated by the Project will have a significant impact on human health and safety, which will particularly harm sensitive receptors in residential areas.

The County's cannabis EIR defines sensitive receptors for air pollution impacts as follows:

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[56] The only reference is in Attachment 1, which makes only the statement: "For this particular Project, development would not be located on prime soils and processing activities would not occur within proximity to sensitive receptors. Therefore, the Proposed Project would not have impacts to agricultural resources or from noise."
[57] *Ibid.*

1.3.2.2 Sensitive Receptors

Individuals with **pre-existing health problems**, those who are **close to the emissions source**, or those who are **exposed to air pollutants for long periods of time** are considered more sensitive to air pollutants than others. Land uses such as **primary and secondary schools**, hospitals, and convalescent homes are considered to be relatively sensitive to poor air quality **because the very young, the old, and the infirm are more susceptible to respiratory infections and other air quality-related health problems** than the general public. **Residential land uses are considered sensitive to poor air quality** because people in residential areas are often at home for extended periods and are therefore subject to extended exposure to the type of air quality present at the residence. **Recreational land** uses offer individuals a location to exercise and are therefore considered moderately sensitive to air pollution. Vigorous exercise places a high demand on the human respiratory function and poor air quality could add potentially detrimental stresses to the respiratory function.

Santa Barbara County Cannabis PEIR, § 3.3.2.2 Sensitive Receptors (emphasis added).

Indeed, one of the stated Project Objectives in the PEIR is to:

"Limit potential for adverse impacts on **children** and **sensitive populations** by **ensuring compatibility of commercial cannabis activities with surrounding existing land uses**, including **residential neighborhoods, agricultural operations**, youth facilities, recreational amenities, and educational institutions."

Id., Project Objectives, § 2.3.2.

Santa Barbara County's CEQA air quality thresholds identify "sensitive receptors" as including children, elderly or acutely ill." CEQA Thresholds Chapter 5, § B. Courts have found similar definitions. In *Downtown Fresno Coal. V. City of Fresno* (2016) 2016 Cal. App. Unpub. LEXIS 5212, the Fifth Appellate District reviewed a Negative Declaration that assessed the impacts of air pollutants, including odor, on sensitive receptors as follows:

"Those who are sensitive to air pollution include children, the elderly, and persons with preexisting respiratory or cardiovascular illness. A sensitive receptor is considered to be a location where a sensitive individual could remain for 24 hours, such as residences, hospitals, or convalescent facilities. . . . [W]hen assessing the impact of pollutants with [one]-hour and [eight]-hour standards (such as carbon monoxide), commercial and/or industrial facilities would be considered sensitive receptors for those purposes.

Downtown Fresno, Slip. Op. at 39.

In *Downtown Fresno*, the court specifically noted the Negative Declaration's treatment of odors on sensitive receptors as follows:

"**Odors** [¶] . . . [¶]

> "Two situations create a potential for odor impact. The first occurs when a new odor source is located near an existing sensitive receptor. The second occurs when a new sensitive receptor locates near an existing source of odor. . . . [¶] . . . [¶]

Id., at p. 46-47.

See also *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 332 (""Sensitive receptors" include children.")

The Board should direct the preparation of a robust and complete air quality impact analysis assessing the likely location of sensitive receptors, including residences and locations where youthful, elderly and persons with compromised respiratory capacity are located and evaluate the Project's potentially significant impacts upon them.

d. Secondary toxins from cannabis terpene reactions in the atmosphere pose potential human health risks

Cannabis plants contain approximately 500 unique chemical components. Of these, some are biogenic volatile oil compounds (BVOCs) known as terpenes. Like many VOCs, many terpenes are typically not stable chemicals, and upon release to the environment, depending on the conditions, experience complex atmospheric chemical reactions at differing rates. Many of the secondary compounds that form when terpene reacts with ozone in the atmosphere or otherwise degrades have significant irritating and, in some cases, toxic properties. This is another area where the risk can be identified but not quantified without additional analysis, as would be addressed in an EIR.

Plants have evolved terpene compounds such as limonene, linalool, and pinene as protection, largely as a chemical defense against insects. However, it is often not the terpene itself that is toxic to the insect; rather, it is the metabolic oxidation of the terpene inside the body of the insect that chemically changes it into a toxic pesticide (Scalerandi, et. al, 2018). Similar effects are seen in the human environment, where these new compounds created by terpene oxidation are noted to be more irritating than the original terpene (Pommer, 2003).

Furthermore, the action of each terpene can be synergistically enhanced by the presence of additional terpenes, increasing and enhancing toxicity of the combination above the effect of one terpene alone (Scalerandi, et. al, 2018). This synergistic action of terpenes would certainly explain why plants such as cannabis have evolved such complex and diverse 'chemical cocktails' rather than rely on single chemical compounds.

Some of the most common terpenes present in cannabis are linalool, a- and b-pinene, terpinolene, d-limonene, myrcene (Mediavilla et al, 1997). Several of these compounds carry double-carbon bonds, noted to be especially susceptible to oxidation (Pommer, 2007). When oxidation occurs, these terpenes can produce a host of secondary chemicals harmful to human and environmental health, as noted in the table below:

Terpene	Secondary Toxin	Action	
Linalool	Hydroperoxide a-, b- unsaturated aldehyde	Sensitizer; contact allergens	Skold M et al. 2004 Api, et al, 2015
A-pinene	Pinonaldehyde Acetone Formaldehyde Formic Acid Hydroxyl radical Ozone	Atmospheric pollutants Major irritants Toxic substance	Atkinson and Arey,2003 Orlando et al, 2000
B-Pinene	Acetone Formaldehyde Formic acid	Atmospheric pollutants Toxic substance Major irritants	Orlando et al, 2000
Terpinolene	Aldehydic acid Acetone Formaldehyde	Atmospheric pollutants Major irritants Toxic substance	Ma and Marston, 2009 Orlando et al, 2000
d-Limonene	Acetone (R)-(-)-carvone Cis/trans isomers of (+)-limonene oxide	Atmospheric pollutant OSHA-listed hazardous material/solvent Potent allergen sensitizers	Karlberg, et al 1992 Reissell, et al, 1999
Myrcene	Acetone Formaldehyde Formic acid	Atmospheric pollutants Toxic substance Major irritants	Orlando et al, 2000

[58]

[58] Api, A.M., D. Belsito, S. Bhatia, M. Bruze, P. Calow, M.L. Dagli, W. Dekant, A.D. Fryer, L. Kromidas, S. La Cava, J.F. Lalko, A. Lapczynski, D.C. Liebler, Y. Miyachi, V.T. Politano, G. Ritacco, D. Salvito, J. Shen, T.W. Schultz, I.G. Sipes, B. Wall, D.K. Wilcox, 2015. RIFM fragrance ingredient safety assessment, Linalool, CAS registry number 78-70-6 http://dx.doi.org/10.1016/j.fct.2015.01.005

Atkinson R, Arey J. Gas-phase tropospheric chemistry of biogenic volatile organic compounds: A review. Atmos Environ. 2003; 37:197-219. http://dx.doi.org/10.1016/ S1352-2310(03)00391-1

European Collaborative Action, 2007. Urban air, indoor environment and human exposure. Report No. 26: Impact of Ozone-initiated Terpene Chemistry on Indoor Air Quality and Human Health. 2007.

Karlberg AT, Magnusson K, Nilsson U., 1992. Air oxidation of d-limonene (the citrus solvent) creates potent allergens. Contact Dermatitis. 1992 May;26(5):332-40.

Ma, Yan, and Marston, George, 2009. Formation of organic acids from the gas-phase ozonolysis of terpinolene. Physical Chemistry Chemical Physics, Issue 21.

Mediavilla, Vito and Simon Steinemann 1997. Essential oil of *Cannabis sativa* L. strains. *Journal of the International Hemp Association* 4(2): 80 - 82.

Orlando, John J., Noziere, Barbara, Tyndall, Geoffrey S., Orzechowska, Grażyna E., Paulson, Suzanne E., and Rudich, Yinon, 2000. Product studies of the OH- and ozone-initiated oxidation of some monoterpenes. Journal of Geophysical Research, VOl 105, No. D9, Pages 11,561 - 11,572.

Pathak RK, Salo K, Emanuelsson EU, et al. Influence of ozone and radical chemistry on limonene organic aerosol production and thermal characteristics. Environ Sci Technol. 2012;46:11660-69.

Pommer, Linda, 2003. Oxidation of terpenes in indoor environments, A study of influencing factors Doctoral dissertation, Environmental Chemistry Department of Chemistry Umeå University Umeå, Sweden
ISBN 91-7305-313-9

Reissell, Anni, Harry, Cheryl, Aschmann, Sara M., Atkinson, Roger, Arey, Janet, 1999. Formation of acetone from the OH radical- and O3-initiated reactions of a series of monoterpenes. Journal of Geophysical Research, Papers on Atmospheric Chemistry. Volume104, IssueD11 Pages 13869-13879. https://doi.org/10.1029/1999JD900198

Samburova, Vera, Mark McDaniel, Dave Campbell, Michael Wolf, William R. Stockwell & Andrey Khlystov (2019) Dominant volatile organic compounds (VOCs) measured at four Cannabis growing facilities: Pilot study results, Journal of the Air & Waste Management Association, 69:11, 1267-1276, DOI: 10.1080/10962247.2019.1654038

Scalerandi, Esteban, Guillermo A. Flores, Marcela Palacio, Maria Teresa Defagó, María Cecilia Carpinella, Graciela Valladares, Alberto Bertoni and Sara María Palacios, 2018. Understanding Synergistic Toxicity of Terpenes as Insecticides: Contribution of Metabolic Detoxification in Musca domestica. Front. Plant Sci., 30 October 2018 https://doi.org/10.3389/fpls.2018.01579

Some terpenes, when exposed to air, react chemically to generate ozone (Samburova, et al, 2019). Other terpenes present in cannabis react specifically with ozone to create these secondary toxins (European Collaborative Action, 2007; Pathak and Salo 2013; Pommer, 2003). In effect, an airborne mass of terpenes emitted from a large-scale cannabis grow and/or their processing facilities can become chemical feedback loops for the production of ozone and these secondary toxins. Since some of these secondary compounds are recognized as toxins, including formaldehyde and acrolein.

The County must "reasonable effort to substantively connect a project's air quality impacts to likely health consequences" (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 510 (citations omitted). Specifically, as the extent and nature of terpene emissions associated with large cannabis cultivation and processing operations become known, the health impacts of exposure of sensitive individuals to terpene successor chemicals must be analyzed in an environmental review document.

2. The Project Is Inconsistent with the Comprehensive Plan

A project that conflicts with the applicable Comprehensive Plan must be denied. *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815.

The Project is located within the Santa Ynez Valley Community Plan (SYVCP) and in a Design Control Overly area for visual resources protection. As such, the Project is subject to review for consistency with the SYVCP goals, policies, and development standards, including Design Control Overlay standards. SYVCP Policy LUG-SYV-1 makes clear that all Comprehensive Plan Elements and policies apply to the Santa Ynez Valley Planning Area, including the Project site, in addition to those specific policies, development standards and action items identified in the SYVCP.

a. Santa Ynez Valley Community Plan

The Project is inconsistent with numerous goals, policies, and development standards in the SYVCP, and must be either denied on these grounds or substantially modified to be found consistent. Any modifications made through Conditions of Approval must be enforceable mitigation and standards that are specific, precise, and enforceable by the County. If the Project cannot be feasibly modified to comport with the SYVCP, the Board on must uphold the appeal and deny the Project, as it cannot make the following finding:

Skold M et al., 2004. Contact Allergens Formed on Air Exposure of Linalool. Identification and Quantification of Primary and Secondary Oxidation Products and the Effect on Skin Sensitization. Chem Res Toxicol 17 (12): 1697-705 (2004)

> *The proposed development* ***conforms: To the applicable provisions of the Comprehensive Plan, including any applicable community or area plan*** *[including the SYVCP and Design Control Overlay]; and With the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots).*

The policy underlying the SYVCP is visual resource protection. Much like the scenic Coastal Zone, the Santa Ynez Valley Planning Area is recognized as a scenic area that deserves special and thoughtful consideration of any new development. The intent of the SYVCP is to ensure "a proper balance between development and visual resource protection", with the following general goals:

> **Protect prominent scenic viewsheds** from extensive structural development.
>
> Mitigate development that degrades scenic resources through **proper siting, design, landscaping, and/or screening, and use of colors and materials that are harmonious with the natural environment.**

The SYVCP further recognizes that:

> …land within the planning area is highly visible to residents and motorists because of topographic conditions and rural land uses. Due to their relative lack of development and **inherent natural beauty, many of these areas are particularly sensitive to physical alteration**. Visual impacts from grading and construction can be **severe if projects are not designed to be compatible with the existing landscape**.

The SYVCP defines areas along Highway 246 as the "gateway parcels", and this topic has been an important planning issue for Santa Barbara County.[59] These so called gateway parcels are considered important because they are: "focal points" for visitors and residents, provide vistas that establish the Santa Ynez Valley as a unique region, and thus ensure an "inviting and aesthetically pleasing entrance to the community". Further, the SYVCP states that the "most impressive views of the Valley can be seen from its points of entry along major highways"; the western entry to the Valley is from Highway 246. Visitors and residents traveling from the east, enter the Valley via Highway 246 and pass by the Project site. The Project site is currently the closest proposed to the western edge of the City of Buellton, and is squarely within this gateway.

Based on the foregoing, the SYVCP makes it clear that any development of Highway 246 deserves "special consideration" to ensure it is compatible with the existing setting and does not detract from the rural aesthetic of the Valley. Specific areas for heighted review are identified and enumerated, including the "inner-rural region to the west of the City of Buellton", which again, squarely includes the Project site.

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[59] Santa Ynez Valley Community Plan at p. 199.

To ensure special protection of the aesthetic resources, including these gateways, there is a Design Control Overlay applied to certain sections of the planning area, including the Project site. The intent of the Design Control Overlay is to "foster well designed and sited developments that **protect scenic qualities, property values, and neighborhood character**." The County relies on the various Boards of Architectural Review to ensure consistency with the Design Control Overlay's goals, policies, and standards.

The Project was reviewed by the Central Board of Architectural Review (CBAR) several months after this appeal was filed. Appellant remains unclear how the County previously exempted the Project from CBAR review until this appeal was filed. The muddled procedural posture of the Project, revised after approved, has confounded the design review process. Regardless, the County has confirmed the scope of the Board's review on appeal is *de novo* and includes review of CBAR's approval of the Project's design elements and consistency with Design Control Overlay standards.

CBAR, and the Board in this appeal, is required to review the following elements the Project:

- Height, bulk, scale and area coverage of buildings and structures and other site improvements.
- Colors and types of building materials and application.
- Physical and architectural relation with existing and proposed structures on the same site and in the immediately affected surrounding area.
- Site layout, orientation, and location of buildings, and relationship with open areas and topography.
- Height, materials, colors, and variations in boundary walls, fences, or screen planting.
- Location and type of existing and proposed landscaping.
- Appropriateness of sign design and exterior lighting to the site and surrounding area.

CBAR then must make the following required findings, *inter alia*, which the Board must also make in its *de novo* review:

- Overall building shapes, as well as parts of any structure (buildings, walls, fences, screens, towers or signs) are in proportion to and in scale with other existing or permitted structures on the same site and in the vicinity surrounding the property.
- There is a harmonious palette of colors.
- The project demonstrates a harmonious relationship with existing and proposed adjoining developments, avoiding excessive variety and monotonous repetition, but allowing similarity of style, if warranted.
- Site layout, orientation, and location of structures, buildings, and signs are in an appropriate and well-designed relationship to one another, and to the environmental qualities, open spaces and topography of the property.

- Adequate landscaping is provided in proportion to the project and the site with due regard to preservation of specimen and landmark trees, existing native vegetation, selection of planting which is appropriate to the project and its environment, and adequate provisions have been made for maintenance of all planting.
- There is harmony of material, color, and composition of all sides of a structure or buildings.

If the CBAR (and Board) cannot make these findings, then they must either continue the Project so that it can be revised, or deny the Project.

CBAR's review of the Project was inadequate. Despite extemporaneous objections from Appellant's counsel, CBAR refused to review, comment, or provide any opinion on any portion of the hoop structures proposed on the site. Pursuant to the Planning Director's determination of August 21, 2017, hoop structures are subject to County permitting and should be treated as "structures". As such, this determination in connection with the clear language that requires CBAR to review the height, bulk, scale, and colors of all structures on a project site, makes clear that CBAR (and thus the Board) must conduct design review the hoop structures. Just as a barn serves as an agricultural support structure and is subject to CBAR review, so is this Project including the hoop structures proposed.

Further, the standard mitigation measure for the visual and aesthetic impacts of this Project are inadequate in this special area, and do not account for the various findings and requirements of the SYVCP for gateway parcels, particularly in light of the multiple projects sited for cannabis cultivation along Highway 246. The proliferation of the landscaping required to screen cannabis cultivation clustered along Highway 246 (as required by mitigation "MM AV-1. Screening Requirements") will impair lines of sight of landscapes on this scenic route and significantly change the visual character of this important gateway to the Santa Ynez Valley. Importantly, Highway 246 is also elevated above the surrounding parcels, so any development or visual changes along Highway 246 are visible to drivers, including tourists who visit the Santa Ynez Valley for its viewsheds.

The Project is located directly on Highway 246, an identified scenic roadway, and thus the various elements of the Project (i.e. development of hoop structures, fencing, landscaping, and lighting) are also located along Highway 246. This results in impacts to this scenic corridor and merits heightened design consideration by the County.

The Landscape Plan for the Project proposes a mixture of various trees, relying heavily of deciduous trees that will shed their leaves in the fall. During these times, the Project hoop structures will be clearly visible from Highway 246. Such trees appear to be proposed in a line to create a hedge-like appearance, which is disproportionate to the surrounding landscaping as it will create a wall of trees dissimilar to surrounding landscaping. One-time vegetative screening is not effective or generally accepted to mitigate visual impacts to sensitive visual environments, therefore any reliance on vegetative screening must include a duty to maintain such screening for so long as the Project is operational, supported by a performance bond.

Further, the Project (including the Landscape Plan and proposed hoop structures) are inconsistent and do not conform to the following goals, policies, and development standards of the SYVCP:

> *GOAL VIS-SYV-1:* ***Protect the Rural/Agricultural Character*** *and Natural Features of the Planning Area,* ***Including Mountain Views, Scenic Corridors and Buffers, Prominent Valley Viewsheds****, and the Quality of the Nighttime Sky.*
>
> *Policy VIS-SYV-1: Development of property should* ***minimize impacts to open space views as seen from public roads and viewpoints and avoid destruction of significant visual resources****.*
>
> *DevStd VIS-SYV-1.1:* ***Development and grading shall be sited and designed to avoid or minimize scarring of the landscape*** *and minimize the bulk of structures visible from public viewing areas. Mitigation measures may be required, including but not limited to* ***increased setbacks, reduced structure size and height****, reductions in grading, extensive landscaping and proper siting of driveways, unless those measures would preclude reasonable use of the property or pose adverse public safety issues.*
>
> *DevStd VIS-SYV-1.9: The* ***design of future discretionary development shall, at minimum, include the components listed below****. The project's architectural guidelines shall be included as notes on the project plans.*
>
> *Roofing and Feature Color and Material. Development shall include* ***darker, earth tone colors*** *on structure roofing and other onsite features to* ***lessen potential visual contrast between the structures and the natural visual backdrop of the area****, as applicable. Natural-appearing building materials and* ***colors compatible with surrounding terrain (earth tones and non-reflective paints) shall be used on exterior surfaces of all structures****, including fences.*
>
> *Compatibility with Adjacent Uses.* ***The design, scale, and character of the project architecture shall be compatible with the scale of existing development adjacent to the site****, as applicable.*
>
> *DevStd LUA-SYV-3.1: New* ***non-agricultural development adjacent to agriculturally zoned property shall include appropriate buffers****, such as trees, shrubs, walls, and fences, to protect adjacent agricultural operations from potential conflicts and claims of nuisance. The* ***size and character of the buffers shall be determined through parcel-specific review on a case-by-case basis****.*

Due to the unnatural line of trees proposed, the deciduous nature of these trees, and the 800,000 hoop structures with white plastic covering almost the entire usable areas of the parcel, we have grave questions regarding the Project's consistency with these applicable SYVCP policies and

standards. Appellant implores your Board to direct staff to prepare a more complete consistency analysis of the Project with the SYVCP, including by recommending tools such as larger setbacks of Project elements from Highway 246, site design, or alternative colors or locations for the hoop structures (including prohibiting hoop structures from being visible at any time from Highway 246).

b. Comprehensive Plan

The Project is also inconsistent with various goals and policies of the County's Comprehensive Plan, namely those regarding Agriculture, Scenic Highway, Environmental Resource Management, and Open Space. As such, pursuant to *Pocket Protectors*, *supra*, substantial evidence supports a fair argument that the Project conflicts with policies that were adopted for the purpose of avoiding or mitigating an environmental effect.

The County's analysis of Comprehensive Plan consistencies of the ordinance found the ordinance could be found consistent with visual resources policies only through the following:

> All cannabis activities would be subject to development standards, as well as site-specific standards that may be required on a case-by-case basis. This review process would ensure all activities with structures proposed in rural regions are designed to be compatible with the natural environment. As a result, the Project would be consistent with this policy. All cannabis activities would be subject to development standards, as well as site-specific standards that may be required on a case-by-case basis. This review process would ensure all activities with structures proposed in rural regions are designed to be compatible with the natural environment. As a result, the Project would be consistent with this policy.[60]

The County's Comprehensive Plan *Scenic Highway Element* contains preservation measures for eligible scenic routes.[61] Such measures include the application of the Design Control Overlay District to require design review of structures or other development, additional grading and landscaping regulations, and control of outdoor signage. As stated previously, the Project is located in a Design Control Overlay District.

The Project is also inconsistent with the County's Comprehensive Plan. Namely, the *Environmental Resource Management Element (ERME)* identifies "Drum Canyon Road: Los Alamos-Lompoc-Buellton link" as scenic corridor where development should be subject to project plan review and imposition of specific conditions to preserve the integrity of the land and environment. The Project identifies Drum Canyon Road as the exclusive route for all Project traffic. Attachment 13, final Plan Set, TDM Page. The effect of a large volume of Project traffic

[60] CPC Attachment I, January 10, 2018, page 12.
[61] County of Santa Barbara 2009a

and its aesthetic and visual impacts were not reviewed by the County in light of it being located in a scenic corridor pursuant to the ERME.[62]

The *Open Space Element* also addressed the County's scenic corridors in order to ensure high quality scenic areas are preserved to retain the present quality of life and to ensure the future of the tourist sector of the economy.[63] In additional the locations and protections of scenic corridors, the Open Space Element assessed the scenic value of certain areas within the County, which it gauged by both the intrinsic beauty and in terms of the number of people who see the area. Sites visible from highways and close to urban centers have higher scenic value as a greater number of people see those areas. Specifically, highway travel gives residents and visitors the greatest exposure to the County's visual attributes.[64]

During the County's assessment of scenic value, the County determined that an distance of 2,000 feet on either side of a road or around an urban area "is the most important in the view of a person traveling through the area, or of a resident, because it usually is the portion of the vista most easily seen and remembered".[65] The County further determined that in addition to the importance of the 2,000-foot distance on either side of a road or around an urban area, an "extremely important aspect of scenic quality" is the backdrop of the urban areas, much of which is beyond the 2,000 feet studied.[66]

The results of the County's assessment found that only 10.6% of the County is classified as having "high scenic value", with the Santa Ynez Valley having the highest percentage of all the land classified in the high level (20.4%). Highway 246 was found to be a "moderately scenic" corridor[67] which should be "should be treated with care if development is permitted".[68]

The *Open Space Element* determined that urban perimeters (defined the perimeter zones surrounding developed areas) are visually important because they convey to arriving travelers a "clear image of the city's identity".[69] As such, the Element suggests that scenic areas and urban perimeters should be subjected to heightened design review before development permission is granted. The Project and all development associated with Project (e.g. fencing, landscaping, structural development) is within the area identified in the County's Comprehensive Plan as a scenic corridor with high scenic value (and are all entirely within the identified 2,000-foot area on the side of Highway 246) that should be subject to heightened review prior to approving development on parcels in this area.

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[62] Environmental Resource Management Element (ERME), Adopted 1980, Republished May 2009 at p. 10.
[63] Open Space Element, Adopted 1979, Republished 2009 at p. 16.
[64] *Id.* at 38.
[65] *Id.* at 22.
[66] *Id.* at 22.
[67] *Id.* at Table 3.
[68] *Id.* at 42.
[69] *Id.* at 42.

Lastly, the Project conflicts with the County's *Agricultural Element*. The Agricultural Element provides as its first goal:

> GOAL I. Santa Barbara County shall assure and enhance the continuation of agriculture as a major viable production industry in Santa Barbara Country. Agriculture shall be encouraged. Where conditions allow, (taking into account environmental impacts) expansion and intensification shall be supported.

The Project has and will conflict with nearby legacy agricultural operations from precluding the use of organic and conventional pesticides and causing terpene taint. The effect of these conflicts will be to undermine the viability of the wine industry as a production industry in Santa Barbara County.

The foregoing policies and standards were adopted to protect the environment. The Project's visual impacts clearly conflict with these policies and standards, the proposed Landscape Plan is inadequate to mitigate these conflicts, and the Project's impacts on adjacent agriculture (for the reasons discussed previously) clearly conflict with the primary goal of the County's Agricultural Element to ensure the viability of agriculture in the County, and thus the Board must either deny the Project or appropriately condition the Project until it conforms in all respects.

3. The Project Has Expanded Beyond its Legal Nonconforming Status

In addition to conformity with the Comprehensive Plan and SYVCP, the Board must make the following finding, or the appeal must be upheld and the Project denied:

> *The **subject property is in compliance with all laws, regulations, and rules pertaining to uses**, subdivisions, setbacks and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement fees and processing fees have been paid.*

As discussed, *infra*, the Applicant has exceeded its legal nonconforming status and the Project site is not in compliance with all laws, regulations, and rules pertaining to uses. There is also a pending zoning violation for the expanded cultivation (19ZEV-00000-00148 – see attached as Exhibit 4). Thus, this finding cannot be made.

a. Scope of Legal Nonconforming Status

The Applicant claims legal nonconforming status for this parcel pursuant to an affidavit executed by Sara Rotman on December 27, 2017. Exhibit 5. The operative date under Art. X of the Santa Barbara County Code is the existence and scope of cannabis activity on January 19, 2016. Based on Google Earth and Zoom Earth (NASA) photos over this time period (Exhibit 9), the site had nominal capacity for cultivated medical cannabis on January 19, 2016, limited to

what appears as a single small greenhouse in December 2015. By June 2017, 6 greenhouses were present on the site. This is supported by Ms. Rotman's submission to the County's cannabis registry on May 15, 2017 where she affirmed under penalty of perjury that the canopy size on the site was 10,350 square feet (per the "Most Recent Site" section of Applicant's registry submittal). Exhibit 6. Ms. Rotman also affirmed to the County that she only intended to grow 4,500 square feet of cannabis on the site in the future pursuant to a 3B "mixed-light" (i.e. indoor) license (per the "Anticipated Future Site" section of Applicant's registry submittal). It is unclear if Applicant intended to decrease the total square footage requested during the permitting process (from 10,350 to 4,500) or if the 4,500 square feet indicated on the cannabis registry was additional to the existing 10,350 square feet.

In August 2018 a new area was pioneered with hoop houses, more than doubling the area under cover.

Despite the numbers reported (and regardless of how they are interpreted), the County has to date, inexplicably, condoned the issuance of 320,000 square feet of outdoor cultivation licenses by providing local authorization to the California Department of Food and Agriculture (CDFA), which issues the State cultivation permits once authorization is received from the local county. Applicant is required to hold these CDFA permits in order to continue its legal nonconforming operations, but the mere issuance of these permits by CDFA does not somehow allow Applicant to expand cultivation beyond what the County allows as legal nonconforming.

Presumably, Applicant sought 320,000 square feet of cultivation permits from the CDFA because that square footage reflects Applicant's current scope of cultivation on the Project site. Such CDFA permits are required for Applicant to legally cultivate this square footage in compliance with State law. If Applicant intended to expand only after authorized by the County issuance of proposed land use entitlement, Applicant (like other projects that are not currently cultivating) would have applied for the CDFA permits after this Project was approved. Nothing precludes Applicant from applying for CDFA permits after Project approval – the CDFA does not cap the number of permits Applicant may be issued or the total number for the State. Further, merely driving along Highway 246 next to the Project site confirms cultivation to the northern property line, well beyond any original areas of cultivation on the Project site. It is patently clear based on substantial evidence that the Applicant has expanded to at least the square footage authorized by CDFA, well beyond what was claimed to be grown in 2017 and the scope of Applicant's legal nonconforming use.

By way of background on medical cannabis grows operating within the law at the time operations were recognized on this parcel, AB 266 was enacted in October 2015 and provides that a "Primary Caregiver" can have no more than 100 square feet of medical cannabis under cultivation, and not more than 500 square feet if they are the "Primary Caregiver" for up to 5 "Qualified Patients". AB 266 also allowed cities and counties to regulate medical cannabis cultivation so long as their ordinances were in place prior to March 1, 2016. As allowed by AB 266, the County adopted County Ordinance No. 15ORD -00000-00018 on January 19, 2016 which Ordinance limited the cultivation of medical cannabis to lots containing a legal residential

structure and only on a cultivation site which did not exceed 100 square feet by a "Primary Caregiver" on behalf of a "Qualified Patient." According to the *People v. Mentch*, 45 Cal.4th 274, 283 (2008), a "Primary Caregiver" is defined as an individual designated by the patient who: (1) consistently provided caregiving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana. Therefore, all legal cultivation of medical marijuana was limited to 100 square feet only.

The County's adult use cannabis zoning and licensing ordinances in February 2018 state that "existing legal" cannabis cultivation operations are "legal nonconforming uses". Based on County Ordinance No. 15ORD -00000-00018, any cultivation that exceeds 100 square feet cannot qualify for legal nonconforming status as any cultivation exceeding that threshold was never consistent with the State limits on the cultivation of medical cannabis nor was it consistent with County's 100 square foot cultivation limitation enacted in January 2016 which superseded the AB 266 limits when it was enacted.

b. Current Expansion of Legal Nonconforming Status

Santa Barbara County Ordinance No. 18ORD-00000-00001 passed on February 6, 2018 provides that operators of nonconforming medical marijuana cultivation locations that have submitted a complete application to permit their nonconforming site may continue to do so while their permit application is being processed, provided the cultivation site is managed in compliance with Article X, State law, and Santa Barbara County LUDC Section 35.101.020. The LUDC at Section 35.101.010.B provides that nonconforming uses are not to be enlarged, extended or expanded.[70] Further, California legal precedent has long held that "[i]ntensification or expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted,[71] and "[t]he burden of proof is on the party asserting a right to a nonconforming use to establish the lawful and continuing existence of the use at the time of the enactment of the ordinance."[72]

The veracity of the affidavit submitted by Applicant and the scope of the claimed legal nonconforming use was not, and still has not been investigated. However, Applicant's submission to the County's cannabis registry makes clear Applicant was growing and/or intended to grow between 10,350 square feet and 4,500 square feet of cannabis (it is unclear why Applicant's current cultivation is lower than the reported future cultivation). Thus, any legal nonconforming use should be limited to that footprint. Based on photographs obtained by Appellant, it appears Applicant's current cultivation significantly exceeds the scope of any possible claim to legal nonconforming use. Further, it is concerning that the County's PEIR

[70] Section 35.101.20.B.1 provides that "An existing nonconforming use may be extended throughout or relocated within an existing structure; provided no structural alterations are made except those required by law or ordinance (e.g. Building Code regulations)".
[71] *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 552.
[72] *Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804.

relied on an intent to cultivate 4,500 square feet of cannabis and the Applicant has now applied for 800,000 square feet – 177 times the canopy sized used to form the baseline[73] for the PEIR.

California courts have consistently and uniformly embraced the rule of law that a nonconforming use is limited to the area in use as of the date of the restrictive zoning ordinance.[74] California's only exception to this general rule is in case of a "diminishing asset", which would allow a nonconforming use to follow subsurface resources for which a physical intent to follow was manifested at the time of the first regulation.[75] This doctrine, however, is narrow and limited to certain uses where the nature of the initial nonconforming use, in the light of the character and adaptability to such use of the entire parcel, manifestly implies that the entire property was appropriated to such use prior to adoption of the restrictive zoning ordinance. Courts have applied this doctrine only to quarry and mining operations.[76] Courts have declined to extend this doctrine in cases of agricultural uses.[77]

Further, California courts have consistently held that a contemplated use of property does not confer a vested right to complete the contemplated use. The scope of the nonconforming use excepted from the restrictions imposed by the ordinance is limited to the area and scope of use at the time the property becomes subject to a zoning ordinance and not such owners plans regarding the future use of that property. In *San Diego County v. McClurken*[78], the court stated:

> "The purpose of the landowner in purchasing the property must yield to the public interest in the enforcement of a comprehensive zoning plan. *Wilkins v. City of San*

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[73] Appellant incorporates by reference as if included in their entirety the appeals and supporting materials for the Sta Rita Valley Farms (at page 16) and Westcoast Farms (at page 17) projects, including challenges to the baseline employed in the PEIR.

[74] See *Yuba City v Cherniavsky* (1931) 117 Cal App 568, 4 P2d 299, *Fontana v Atkinson* (1963, 4th Dist) 212 Cal App 2d 499, 28 Cal Rptr 25

[75] See *McCaslin v Monterey Park* (1958, 2d Dist) 163 Cal App 2d 339, 329 P2d 522.

[76] "It is because of the unique realities of gravel mining that most courts which have addressed the particular issue involved herein have recognized that quarrying constitutes the use of land as a 'diminishing asset.'…Consequently, these courts have been nearly unanimous in holding that quarrying, as a nonconforming use, cannot be limited to the land actually excavated at the time of enactment of the restrictive ordinance because to do so would, in effect, deprive the landowner of his use of the property as a quarry." *Hansen Brothers*, supra at 554. "Were the diminishing asset doctrine inapplicable, a mining enterprise would be required to immediately initiate mining on all areas of its property lest, under a subsequent zoning change, its right to further mining be extinguished." *Id.* at 559.

[77] See *City of Fontana v. Atkinson* (1963) 212 Cal.App.2d 499 (holding that the city could legally prohibit the owners of a dairy operation from extending the area used at the time of the adoption of the zoning ordinance. The court noted that the city zoning ordinance provided that no nonconforming use could be enlarged to occupy a greater area or moved to any portion of the area without the approval of the planning commission.)

[78] *San Diego County v. McClurken* (1951) 37 Cal.2d 683, 690.

> *Bernardino*, 29 Cal.2d 332, 337, 175 P.2d 542; *Acker v. Baldwin*, 18 Cal.2d 341, 344, 115 P.2d 455; *Sunny Slope Water Co. v. City of Pasadena*, 1 Cal.2d 87, 93-94, 33 P.2d 672; cf. *Skalko v. City of Sunnyvale*, 14 Cal.2d 213, 215, 93 P.2d 93. The intention to expand the business in the future does not give defendants the right to expand a nonconforming use. *Town of Ballerica v. Quinn*, 320 Mass. 687, 71 N.E.2d 235, 236; *Chayt v. Board of Zoning Appeals of Baltimore City*, 177 Md. 426, 9 A.2d 747, 750. The ordinance has made allowance for the continuance of non-conforming uses existent in 1942; it does not permit the enlargement of such uses as the owners find expansion desirable. It is immaterial that a property owner in an area zoned for residential purposes contemplated the maximum commercial utilization of his property previous to the zoning ordinance."

The Land Use and Development Code (LUDC) at § 35.101.010.B establishes that the County's intent concerning nonconforming uses is to "Prevent nonconforming uses and structures from being enlarged, expanded, or extended." § 35.101.020.B prohibits any expansion of a nonconforming use of land: "No existing nonconforming use of land outside structures, or not involving structures, shall be enlarged, extended, or increased to occupy a greater area of land than was occupied at the time the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use."

A second applicable section of the LUDC provides that: **"**A use lawfully existing without the approval of a discretionary permit that would be required by this Development Code, shall be deemed conforming only to the extent that it previously existed (e.g., maintain the same site area boundaries, hours of operation)." This authority is directly applicable to the instant situation – to the extent the applicant had established a legal nonconforming use to cultivate medical cannabis on January 19, 2016, any use beyond the boundaries of that use is de facto an illegally expanded use outside the scope of Applicant's legal nonconforming use.

As such, any expansion beyond the original footprint of medical marijuana cultivation on January 19, 2016 is impermissible and must be abated pending approval of Applicant's land use permit. The County is without authority to recognize a nonconforming use that expands beyond what was in place at the time the regulation became effective. *Hansen Brothers, supra.* 12 Cal. 4th at 564 *(*"the county lacks the power to waive or consent to violation of the zoning law.").

c. Effect of Affidavit and Expansion on Permit Approvals

The Board should direct staff to immediately require Applicant to provide substantial evidence that it was legally cultivating medical cannabis on or before January 19, 2016; substantial evidence demonstrating the scope of such use on that date, and demonstrate whether the cultivation activity has expanded since January 19, 2016. Such an investigation is necessary both: first, to determine whether the designation of Legal Nonconforming Use status was accurate, legally made, and is valid under California law. This is necessary in order for the Board to make the finding that the Project site is in compliance with all laws, regulations, and rules

pertaining to uses. Second, the investigation will avoid issuance of a land use entitlement for a use that could potentially never be effected.

All cannabis cultivators must be issued both a land use entitlement for cultivation, and a cannabis business license for the use. Section 50-17 of Article X, Chapter 50 of the Santa Barbara County Code provides certain grounds for denial of a cannabis business license. Such denial could occur after issuance of a land use entitlement for the same parcel and the same applicant. Section 50-17 provides, in part, that a cannabis business license,

"may be denied based on any of the following criteria:

a) Any grounds for denial listed in Section 22-55, 22-56 or 22-57 of the Santa Barbara County Code;

b) The Applicant has knowingly, willfully or negligently made a false statement of material fact or omitted a material fact from: The application for a cannabis business license; or Any prior affidavit to the County concerning cannabis, whether medical marijuana or non-medical marijuana…"

Section 22-55. states a license shall not issue a license to a business, occupation or activity has been, will be, or is apt to become, *inter alia*: a public nuisance, or in any way detrimental to the public interest.

Based on the foregoing, it is reasonably likely that Applicant may be denied a cannabis business license on any of the grounds discussed *supra*. It would be an absurdity to issue a land use entitlement to an applicant that potentially cannot effect the use granted in the approved land use entitlement. Further, the acreage cap implemented by the Board of Supervisors is governed by Article X, Chapter 35 and would against the principles of sound land use planning, and if nothing else problematic, if Applicant were issued a perpetual land use entitlement for the requested 800,000 square feet of cannabis cultivation, then was unable to obtain a business license or was issued a business license that was later revoked.

Either the land use entitlement duration needs to be tied to business license approval, annual renewal, and revocation to ensure the applicant's land use entitlement sunsets with the business license, or the Project must be evaluated objectively based solely on the various plans submitted in support of the application, and not in any way based on Applicant's character or representations made outside the four-corners of the application and permit. Those elements should be left to the business licensing process which allows for evaluation of an applicant's character and suitability to operate a cannabis business.

d. Sanctions Associated with Past Violations Are Not Imposed

LUDC § 35.108.070.D requires the assessment of administrative fees to recover the County's costs for the enforcement action. § 35.108.080 mandates the imposition of a processing fee penalty for "Any person who shall alter, construct, enlarge, erect, maintain, or move any structure, or institute a use for which a permit is required by this Development Code without first having obtained the permit, shall, if subsequently granted a permit for that structure or use, or any related structure or use on the property, first pay an additional penalty permit processing fee for after the fact authorization of development, in compliance with the Board's current Fee Resolution." The Applicant's 2016 medical cannabis cultivation operation has expanded grossly and the instant permit triggers the need to impose the LUDC's sanctions for after-the-fact permitting. The failure to do so is arbitrary and capricious.

4. The Ordinance Grants The County Authority to Minimize Adverse Project Impacts and Duty to Protect Public Health, Safety And Welfare

Staff has stated in hearings and in the conditions for this Project that the standards in the County's Cannabis Ordinance constitutes both the minimum and maximum requirements for each project – "Nothing more and nothing less" as declared by Planning and Development Department Director Lisa Plowman to the Planning Commission. This is an incorrect reading of the ordinance and the Board must admonish staff to exercise greater discretion to minimize all negative project impacts and to protect the public's health, safety and welfare.

By its own terms, Section 35.42.075.A.1 of the Land Use and Development Code "establish[es] minimum land use requirements for medicinal and adult use cannabis activities including cultivation." The section "establishes standards that are designed to protect the public health, safety, and welfare, enact strong and effective regulatory and enforcement controls, as a result of and in compliance with State law, protect neighborhood character, and minimize potential for negative impacts on people, communities, and the environment." (Emphasis added.)

The ordinance thus establishes that the standards contained therein are the minimum land use requirements, indicating that additional standards, requirements and restrictions may be imposed. The Planning and Development Department's review, and the Planning Director's approval are deeply flawed due to the failure to require even a complete Project Description, as well as by the failure to fully analyze the project and impose sufficient conditions to protect public health, safety and welfare as required by the zoning ordinance. As noted below, even the limited plans and conditions that the Director did approve fall seriously short of what is required.

5. Project Conditions Do Not Ensure Enforceable Mitigation

Mitigation required by the PEIR is not properly included in Project permit requirements, conditions, agreements, or other measures. Under these circumstances, the County will not ensure that mitigation is actually implemented and enforced. This is impermissible under CEQA.

An agency "shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures," and must have a monitoring program to ensure the implementation of mitigation. (Cal. Pub. Resources Code § 21081.6 (a) and (b).) "*The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded*." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261, Cal. Pub. Resources Code, § 21002.1(b) [emphasis in original].)

a. Site Transportation Demand Management Plan (STDMP)

If the Board approves the Project as proposed, it will fail to ensure enforceable mitigation for the Site Transportation Demand Management Plan (STDMP). The PEIR found that cannabis cultivation projects will have significant and unavoidable (Class I) impacts on air quality and could substantially contribute to air quality violations under the Clean Air Act.[79] As such, the PEIR requires that all cannabis cultivation projects include a STDMP to mitigate these air quality impacts.[80]

Planning and Development is required to determine that a site adheres to a STDMP before issuance of a permit and to conduct ongoing monitoring to ensure compliance with permit conditions.[81] The Conditions of Approval for the Project merely state that the applicant will demonstrate compliance by providing County staff with a copy of a rideshare service contract, or the County will conduct site inspections to verify trip reduction features are installed. There is no reference to how monitoring will occur (e.g. site visits at a set frequency by County staff, review by the traffic engineer that prepared the STDMP, annual self-reporting by the applicant). This does not ensure that the STDMP will be implemented property by Applicant.

The initial STDMP showed workers accessing the Project site through Highway 246, and thus through two EDRNs which would require a CUP. After direction from staff, the STDMP was revised to state that the Project will be accessed from Los Alamos via Drum Canyon to avoid travel through Highway 246 through two EDRNs. It is not clear how this requirement will be enforced after Project approval and merely appears to be an attempt by applicant to

[79] The federal Clean Air Act Amendments of 1970 (P.L. 91-604, Sec. 109) classifies areas that are considered to have air quality worse than the National Ambient Air Quality Standards (as defined therein) as "non-attainment areas." Nonattainment areas must have and implement a plan to meet the standard, or risk losing some forms of federal financial assistance. Currently, Santa Barbara County is in nonattainment for certain pollutants.
[80] See Table ES-1 of the PEIR which states in part: Impact AQ-3. Emissions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment.
[81] See page 3.3-24 of the PEIR.

circumvent the County's CUP process. It is also unclear how suited Drum Canyon Road may be for regular travel by Project workers, and the extent of the increased average daily trips of the Project. As noted supra, project traffic on Drum Canyon Road triggers the need for Project-specific CEQA analysis.

b. Odor Abatement Plan (OAP)

The SYVCP DevStd LUG-SYV-8.11 requires an Odor Abatement Plan (OAP) be submitted in connection with an application by "odor generators", based on the nature of the operations. This standard supports Policy LUG-SYV-8, which states: "The public shall be protected from air emissions and odors that could jeopardize health and welfare."

The OAP must include the following elements:

1. A name and telephone number of contact person(s) responsible for logging and responding to winery odor complaints;
2. Policy and procedure describing the actions to be taken when an odor complaint is received, including the training provided to the responsible party on how to respond to an odor complaint;
3. A description of potential odor sources (i.e. fermentation and aging processes and the resultant ethanol emissions; odors associated with a fast food restaurant may include cooking and grease aromas);
4. A description of potential methods for reducing odors, including minimizing potential add-on air pollution control equipment; and
5. Contingency measures to curtail emissions in the event of a continuous public nuisance.

The Project as approved on May 7, 2019 had a woefully inadequate OAP. The revised OAP was carefully revised by the Planning Commission during the appeal hearing on October 10, 2019, but even with such modifications, the conditions remain incompetent to monitor implementation of the OAP and ensure its efficacy. Further, the proposed revisions are now being challenged by the Applicant as untenable for their operations.

The Applicant contends that the Santa Ynez Valley Community Plan requirement of an Odor Abatement Plan is preempted by the County Cannabis Ordinance's exemption for AG-II lands, based on the flawed PEIR conclusions that have been mooted by new evidence, as discussed in the CEQA new information and changed circumstances sections of this letter. Odor Abatement Plan, Attachment K to the Planning Commission Staff Report, at p. 1.

The applicant cannot "pick and choose" what standards they choose to apply to. Under California law, there must be "vertical consistency" between any project and the General Plan. The Applicant's contention that the Odor Abatement Plan is a voluntary action, and implicitly that its vague and illusory elements represent an adequate program to actually mitigate the project's impacts, is incorrect and taints any approval. Endangered Habitats League, Inc., v.

County of Orange (2005) 131 Cal.App.4th 777. The absence of reference to this issue renders the findings inadequate. Topanga, supra.

The Odor Abatement Plan itself is inadequate. Odors from cannabis facilities are transient, and depend greatly on meteorological conditions. See Memo from TBS Systems to Marc Chytilo, March 13, 2020. The Odor Abatement Plan allows up to 72 hours to transpire before an industrial hygienist will confirm the odors, and if the odors are not apparent at that time, no further action will occur. As a practical matter, there are likely to be no verified odor complaints or actions taken, due to this metric. It is then unclear how the actions of Ms. Rotman to "take the time to walk through the various measures that have been identified to reduce odors" addresses an odor episode, and with whom and why "walking through" measures that are then-known to be ineffective achieves anything.

The "potential measures" that the operator proposes to take under the Odor Abatement Plan in the event of a confirmed odor episode are nothing more than their "traditional" standard operating procedures. Additional substantive measures are taken only in the event of a "continuous public nuisance," however at that point the impact of the facility has crossed a threshold of legal culpability and has not been required to take affirmative steps, other than "traditional" measures they are presumably already implementing, to actually remediate an odor episode.

Finally, the Odor Abatement Plan is predicated on inapplicable data and is thus unreliable, as explained by TBS Systems. (Id.) Consequently the Odor Abatement Plan is inadequate to actually address odor episodes and thus fails to meet basic standards of adequacy under the Santa Ynez Valley Community Plan.

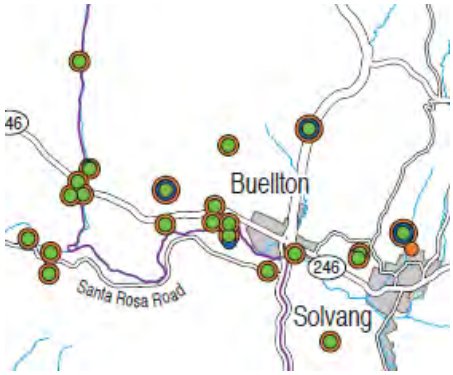
6. A Conditional Use Permit (CUP) is Required for this Project

Existing Developed Rural Neighborhoods (EDRNs) have special treatment through the County's General Plan, Community Plans and zoning ordinances. EDRNs are areas that have been developed historically with lots smaller than those found in surrounding areas. PEIR at 3.9-2. The residential uses in EDRNs are conducted in close proximity to surrounding larger parcels, so require additional scrutiny to achieve compatible land uses. In the Responses to Comments, the PEIR explains as follows:

> "The PEIR recognized this incompatibility issue, and recommended the requirement of a Conditional Use Permit for cannabis activity within an EDRN.
>
> To further address potential land use compatibility conflicts between existing rural residential neighborhood areas and expanded cannabis activities with commercial purposes, staff will recommend to the decision makers that the Project be modified to require heightened discretionary review for any planned cannabis activity within an EDRN.

> The primary locations with cannabis activity sites as indicated on Figure 2-2 affected by this mitigation measure would include properties in the vicinity of Tepusquet Road and Cebada Canyon Road, though other large holdings of EDRN occur within areas within Eastern Goleta Valley, Carpinteria, Santa Ynez and Buellton outskirts, and eastern Santa Maria. Under the modified Project, land use compatibility review would be part of the CUP process to address any public concern regarding the compatibility of commercial cannabis cultivation proximate to mixed residential, residential ranchette, and agricultural uses that occur within EDRN areas."
>
> PEIR, MCR-3, p. 8-11 (underlining added).

Figure 2-2 identifies the cluster of cannabis activities along 246, including parcels of land near the Project.



PEIR, figure 2-2.

In adopting the Cannabis Ordinance, the Board of Supervisors expressly recognized the incompatibilities between cannabis activities and EDRNs. In the final motions adopting the ordinance, the Board directed inclusion of language to address this issue:

> "Cultivation on properties on AG-II adjacent to an urban rural boundary line or Existing Developed Rural Neighborhood would require a CUP."

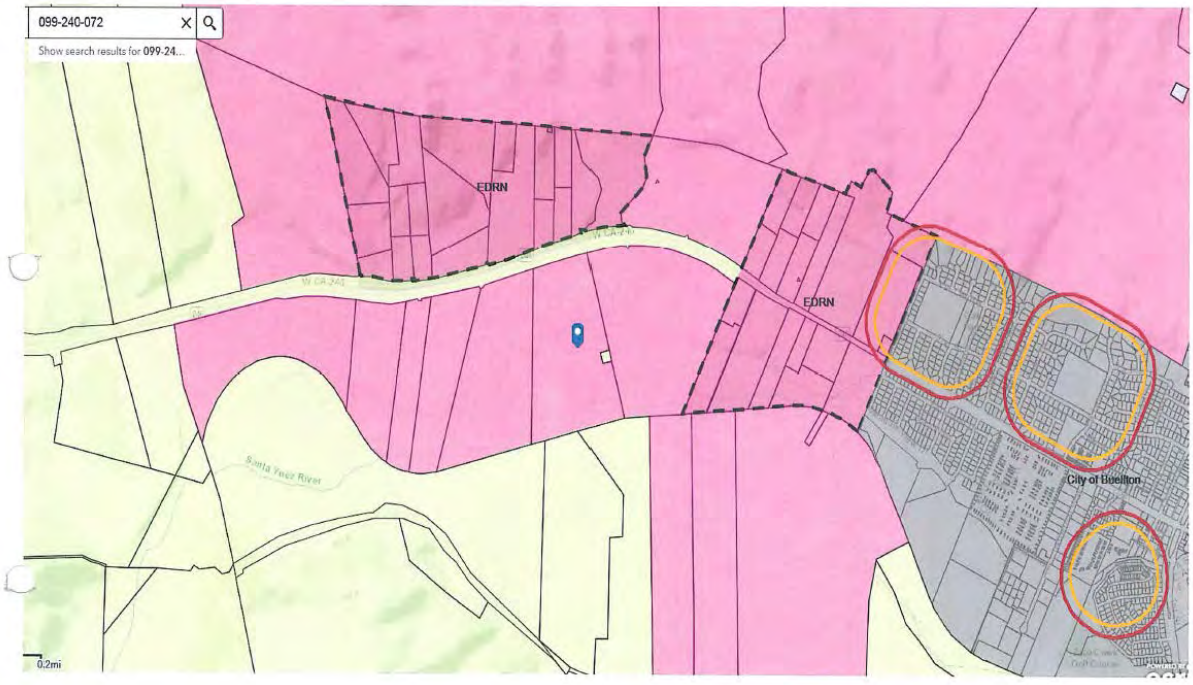
Exhibit 48 to the 2/6/18 BOS hearing.

The PEIR and the Board's actions each recognized that incompatibilities between cannabis activities and EDRNs necessitated additional considerations and review during the permitting and review process, specifically the requirement of a Conditional Use Permit and not a Land Use Permit. The PEIR specifically identified the "Buellton outskirts" as an area where this additional requirement was recommended, and further specified it in a map, Figure 2-2. The Board directed that properties "adjacent to an . . .Existing Developed Rural Neighborhood would require a CUP."

a. Highway 246 Does Not Defeat the CUP Requirement

The Applicant has argued that because the title to the land occupied by Highway 246 is owned by the State of California, the Project's cannabis operation is not "adjacent" to the EDRN located across the roadway, and thus the CUP requirement is inapplicable. This interpretation eviscerates the enhanced review processes deemed necessary by the PEIR and directed by the Board, and sets an adverse precedent throughout the County.

This interpretation conflicts with the initial identification of those areas subject to the CUP requirement:



CASE NOTES FROM INTAKE MEETING

TO: JACKIE/BRIANNA/SARA **DATE:** AUGUST 10, 2018

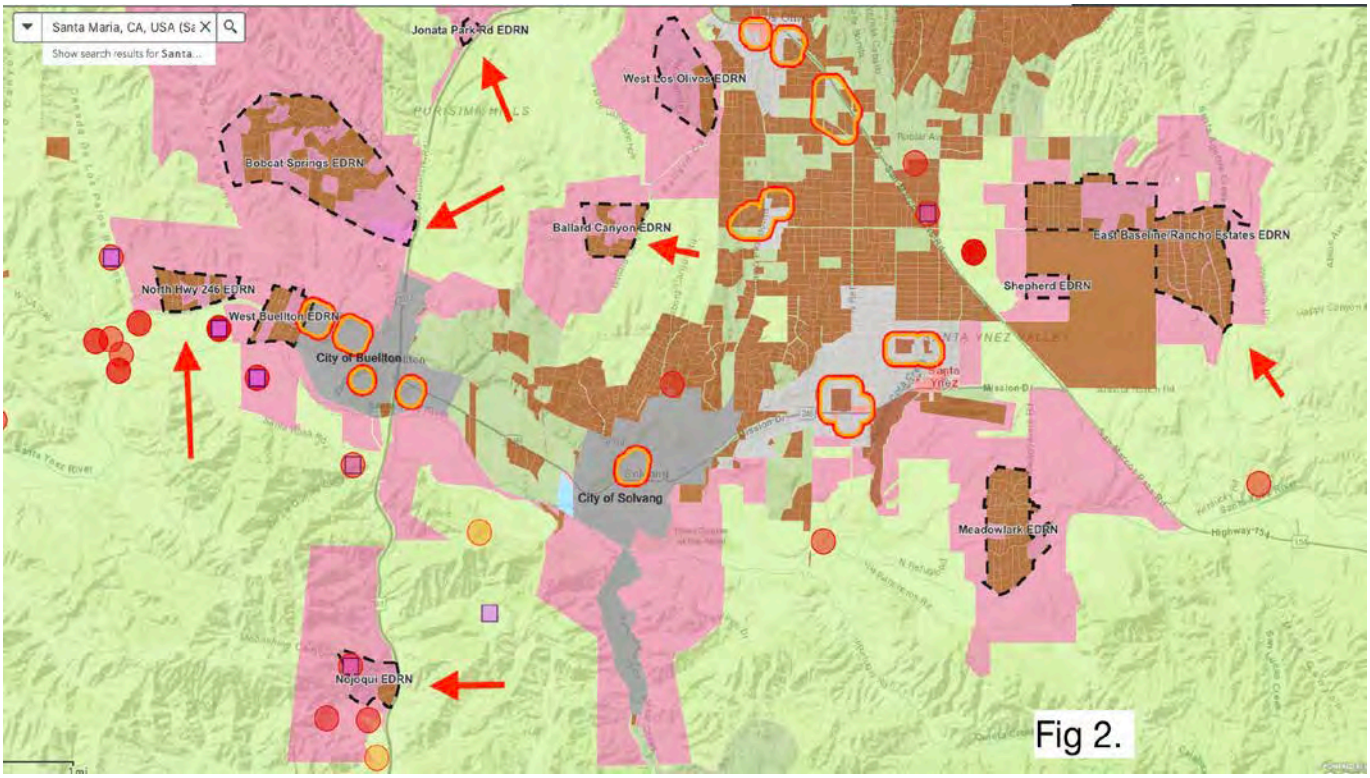
FROM: Kimberley

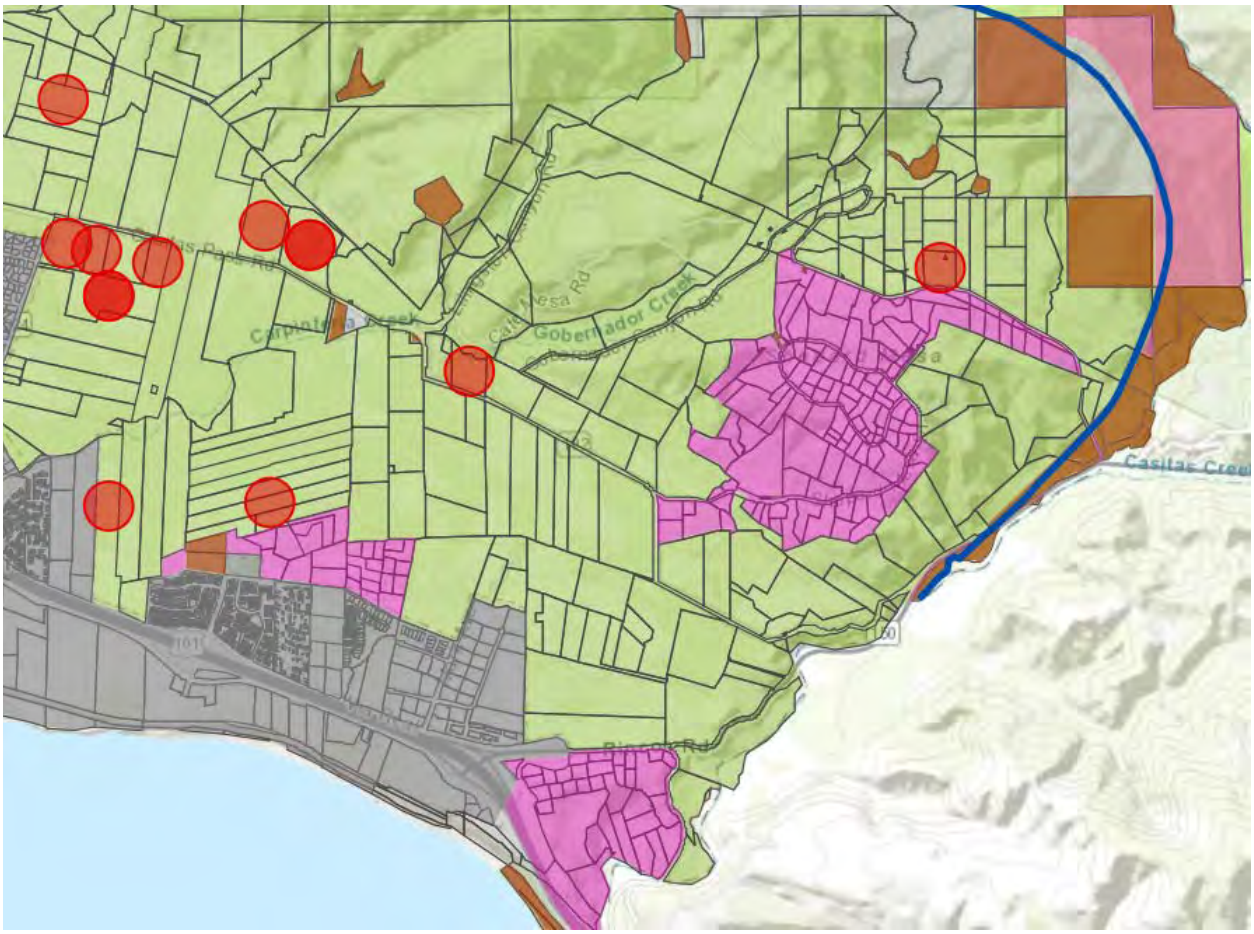
FOR: **18CNS-00000-00043**
BUSY BEE'S ORGANICS INC. - CANNABIS
1180 W HWY 246 8/10/18
BUELLTON **099-240-072**

Notes to Assigned Planner from Intake Meeting:

- **Email in file from Dan Klemann to owner/applicant re: "adjacent" to EDRN. Applicant believes CUP not required.**
- **My preliminary & very cursory review indicates that existing unpermitted hoop structures trigger Development Plan requirement. Applicant would like to discuss in further detail.**
- **Applicant stay informed on "hoop" amendments and advised of deadlines to obtain necessary permits**

This interpretation has significance throughout the county, from the Santa Ynez Valley: to Carpinteria:




Gobernador Creek
Casitas Creek

Staff apparently capitulated to the Applicant's demands and now has proposed, in the Staff Report, an interpretation holding that the existance of a roadway at the edge of an EDRN (a routine situation throughout the County) is sufficient to defeat the requirement of a Conditional Use Permit. See Staff Report at p. 8.

The Board should overturn this interpretation and direct the Applicant to apply for a Conditional Use Permit for the Project. The existance of the roadway does not eliminate the incompatability issues between cannabis activities and EDRNs that were identifed in the PEIR and repeated during the ordinance adoption process. "The County committed to ensuring that a legal cannabis industry should operate in a manner that minimizes or avoids impacts on surrounding communities and has designed the Project and analysis within the EIR to achieve this goal." PEIR Vol. II 1.54-2, p. 8-398 (emphasis added).

The CUP requirement was identified as one essential means to achieve that, and should not be discarded through sophistry.

b. A Conditional Use Permit is Appropriate for this Use

In comparing a Land Use Permit with a Conditional Use Permit, it is evident that the cannabis use in question adjacent to an EDRN requires a Conditional Use Permit. Whereas a Conditional Use Permit entails a process and findings for uses with "special character" or that may affect surrounding uses, the Land Use Permit looks more narrowly to the General Plan, zoning ordinance and other conditions established by the County.

The LUDC distinguishes a Land Use Permit from Conditional Use Permit in terms of their respective applications, purposes and findings.

35.82.110 - Land Use Permits

A. Purpose and intent. This Section establishes procedures and findings for the approval, issuance of, and effective time periods for, Land Use Permits. The intent of this Section is to ensure that development proposals are in compliance with the provisions of the Comprehensive Plan, including any applicable community or area plan, this Development Code, and any conditions established by the County.

35.82.060 - Conditional Use Permits

A. Purpose and intent. The purpose of this Section is to provide for uses that are essential or desirable but cannot be readily classified as allowed uses in individual zones by reason of their special character, uniqueness of size or scope, or possible effect on public facilities or surrounding uses. The intent of this provides for specific consideration of these uses.

Findings compared:

Findings required for Land Use Permit approval. A Land Use Permit application shall be approved or conditionally approved only if the Director first makes all of the following findings:

Findings for all Land Use Permits:

a. The proposed development conforms:
   (1) To the applicable provisions of the Comprehensive Plan including any applicable community or area plan; and
   (2) With the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots).

b. The proposed development is located on a legally created lot.

c. The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement and processing fees have been paid.

Findings required for all Conditional Use Permits:

a. The site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed;

b. Environmental impacts – that significant environmental impacts will be mitigated to the maximum extent feasible.

b. Streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.

c. There will be adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project.

d. The proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area.

e. The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan.

f. Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area.

Note that a Land Use Permit is also required for all conditionally permitted uses and thus the Land Use Permit findings must also be made under a CUP. § 35.82.060.G.2.

The approval of a use permit for cannabis activities adjacent to an EDRN specifically requires assurances of compatibility between the land uses. A Conditional Use Permit involves

a process and requires findings that address compatibility; the Land Use Permit does not. In light of the PEIR's acknowledgement of the need for enhanced procedures to achieve compatibility for cannabis activity near EDRNs, and the Board's endorsement of this goal, the Board should reject the argument that the presence of a roadway between a cannabis use and an EDRN defeats the adjacency of the parcels and direct the applicant to submit application for a Conditional Use Permit.

c. Highway 246 is the Sole Means of Access to the Project

Section 35.42.075.D.1.b. of the cannabis ordinance states:

> Cannabis cultivation within an Existing Developed Rural Neighborhood (EDRN). Cultivation sites located within an EDRN, or cultivation that requires the use of a roadway located within an EDRN as the sole means of access to the cultivation lot, shall require approval of a Conditional Use Permit by the Planning Commission and compliance with applicable standards.

First, Highway 246 is a roadway and is located within the EDRN. EDRN boundaries extend to the midline of Highway 246 and thus Highway 246 part of the EDRN. Second, Highway 246 is the sole means of access to the cultivation lot, or the Project site. Therefore, the Project is required to processed as a CUP under this provision of the LUDC as well.

Applicant has attempted to circumvent this requirement by submitting plans that show routes to the Project site from Los Alamos south through Drum Canyon Road to Highway 246 to avoid the EDRNs that would otherwise be passed through for access to the Project site. Appellant does not believe Applicant actually intends to avoid the EDRNs by using this route, particularly given that Applicant transports its products to the identified processing destinations in Santa Ana and Desert Hot Springs, both of which are south of the Project site. It seems unlikely that transport to southern regions would travel west on Highway 246, north on Drum Canyon Road to Los Alamos, then take Highway 101 south to their destination.

In a feedback letter to the Applicant dated April 4, 2019, the Project planner requested details on trip origins to and from the Project site, including how cannabis will be transported. The response letter from the Applicant's agent on April 12, 2019 showed a route direct from Highway 101 to Highway 246 east (a route that goes through the EDRNs west of Buellton), but stated in that submission that highways that cross through EDRNs do not trigger CUPs. The Project planner's notes confirm that the resubmitted plans from Applicant show a route that goes through the EDRNs west of Buellton, and also state that Applicant should resubmit plans showing a route that does not go through an EDRN. Applicant should not be permitted to avoid the CUP requirement for the Project by fabricating unrealistic trip origins to and from the Project site specifically to avoid processing the Project as a CUP.

For all of the above reasons, the appeal should be granted and the Applicant directed to apply for a Conditional Use Permit for this project.

7. Summary and Conclusion

As the first outdoor cannabis grow on AG-II areas adjacent to an EDRN, in the Santa Ynez Valley Community Plan area and upwind of the City of Buellton, the Board's careful and judicious review of this proposed Project is critical.

After investing millions in dozens of vineyards and wineries, the local wine community, along with many other agriculturalists, face what could be (and is perceived by many in these communities to be) a threat to their existence from two newly discovered issues that were NOT considered in the PEIR or by the Board in adopting the cannabis ordinance – terpene migration tainting wines and legal threats preventing use of even organic pesticides. The Ag Commissioner's unsuccessful invitational workshop process on pesticides demonstrated the difficulty of the latter problem, and its significance to Santa Barbara County's agricultural economy. There is consensus that an independent analysis of the terpene generation issue in Santa Barbara County is needed, but requires funding, cooperation and time. Each qualifies as a legitimate CEQA issue and provide a basis for the Board's denial of the project on CEQA grounds. The cannabis community will be watching the Board's action closely (as is the agricultural community). The Board should use this opportunity to establish that these projects cannot be approved until these issues are addressed, and while the technical studies are being completed and the environmental review process revised, the Board will have an opportunity to revise the ordinance to define more specific standards for siting and operation and enhance the project review process so each project receives the analysis and process to ensure it is right for the location, for the surrounding community and for the applicant.

Additionally, the County's amendment to the Uniform Rules subsequent to PEIR certification has a number of important implications for this Project and the County's Cannabis Program more broadly, both legal and practical. Specifically, the PEIR assumed that all cannabis projects would undergo a compatibility review process whereby APAC would assess each project's combability with adjacent agricultural operations. Thus, the impacts to legacy agriculture, including the issues identified in this letter, are completely ignored during the County's permitting process. Further, the minimum production requirements in the Uniform Rules require that an applicant to grow more cannabis then they otherwise want to in order to stay in compliance with their Williamson Act contract. Given the Board's adoption of an acreage limit on cannabis countywide, the requirement to increase grow sizes on Williamson Act contracted lands will likely result in a concentration of larger grows in a smaller area for the first generation of permittees and a less equitable and distributed pattern of cultivation. These represent a substantial change in circumstances with potentially significant, irreparable, and longstanding negative impacts to discrete areas of the County. The Board must act to amend its Uniform Rules to reclassify cannabis as a compatible – and *not* qualifying use – to ensure compatibility review as relied on by the PEIR and required by State law occurs.

For reasons stated herein, and in the materials submitted concurrently with our appeal, approval of the Busy Bee Project would violate CEQA and the Comprehensive Plan, and would

represent an abdication of the County's responsibility to protect the public health, safety, and welfare. Accordingly we urge the Board to uphold the appeal, and deny the Project.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

Marc Chytilo
Ana Citrin

LAW OFFICE OF COURTNEY TAYLOR, APC

Courtney Taylor

Exhibits:

Exhibit 1: Board Letter (3/20/18)

Exhibit 2: Oberholster Letter (3/3/2020)

Exhibit 3: Underwood Report for West Coast Farms Cannabis Development (11/4/19)

Exhibit 4: Applicant Zoning Violation, 19ZEV-00000-00148

Exhibit 5: Sara Rotman Affidavit (December 27, 2017)

Exhibit 6: Sara Rotman Cannabis Registry Entry

Exhibit 7: Santa Barbara County Agricultural Advisory Committee letter, March 6, 2020

Exhibit 8: Grower Shipper Association letter, March 6, 2020

Exhibit 9: Aerial Site Photos

Exhibit 10: California Farm Bureau to Santa Barbara County Planning Commission, January 17, 2020

EXHIBIT 1

BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name:	Planning & Development
Department No.:	053
For Agenda Of:	March 20, 2018
Placement:	Departmental
Estimated Time:	2 hours
Continued Item:	
If Yes, date from:	
Vote Required:	Majority

TO:	Board of Supervisors	
FROM:	Department Director(s)	Glenn S. Russell, Ph.D., Director, Planning and Development (805) 568-2085
	Contact Info:	Daniel T. Klemann, Deputy Director, Long Range Planning (805) 568-2072
SUBJECT:	Cannabis Amendments to the *Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones*	

County Counsel Concurrence
As to form: Yes

Other Concurrence:
As to form: N/A

Auditor-Controller Concurrence
As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

a) Consider options for amending the *Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones* (Uniform Rules) to address cannabis uses and development allowed pursuant to the Cannabis Land Use Ordinance and Licensing Program on lands subject to agricultural preserve contracts;

b) Make the required findings for approval of amendments to the Uniform Rules, including California Environmental Quality Act (CEQA) findings (Attachment 1);

c) Adopt a resolution (Case No. 17ORD-00000-00019) amending the Uniform Rules (Attachment 2); and

d) Determine for the purposes of CEQA that:

i. Approval of the amendments to the Uniform Rules (Case No. 17ORD-00000-00019) is within the scope of the Cannabis Land Use Ordinance and Licensing Program, and the Cannabis Land Use Ordinance and Licensing Program Final Programmatic Environmental Impact Report (PEIR) [Case No. 17EIR-00000-00003, State Clearinghouse No. 2017071016] (Attachment 4) adequately describes this activity for the purposes of CEQA.

ii. Pursuant to CEQA Guidelines section 15162(a), after considering the PEIR certified by the Board of Supervisors on February 6, 2018, that no subsequent EIR or Negative Declaration is required because: i) no substantial changes are proposed which require major revisions of the PEIR; ii) no substantial changes have occurred with respect to the circumstances under which the ordinance is undertaken which require major revisions of the PEIR; and iii) no new information of substantial importance concerning the ordinance's significant effects or mitigation measures, which was not known and could not have been known with the exercise of reasonable diligence at the time that the PEIR was certified, has been received.

Summary Text:

Pursuant to Government Code § 51231, the Board is the decision making body for amendments to the Uniform Rules regarding allowed uses on lands that are subject to agricultural preserve contracts. Based on this authority, at the February 6, 2018, hearing regarding the Cannabis Land Use Ordinance and Licensing Program, the Board directed staff to return on March 13, 2018 (later rescheduled for March 20, 2018) to present options to the Board regarding amendments to the Uniform Rules to allow certain cannabis land uses and development on lands that are subject to agricultural preserve contracts.

Two options for amending the Uniform Rules are discussed in detail below. The first is the recommendation of the Agricultural Preserve Advisory Committee (APAC), as shown in Attachment 3. The second is the P&D staff recommendation that was recently prepared after meeting with stakeholders, reviewing public comment letters, and reviewing the Uniform Rules in light of the Cannabis Land Use Ordinances adopted on February 6 and 27, 2018. Although the APAC recommendation is a feasible option to amending the Uniform Rules, P&D staff is recommending that the Board adopt a more permissive option due to certain unique features of cannabis cultivation that do not apply to other compatible uses set forth in the Uniform Rules.

An additional direction from the Board on February 6, 2018, was for staff to return for consideration of capping retail cannabis permits to eight with a maximum of two per district. Further direction was received from the Board on February 27, 2018, to add cultivation to the discussion on caps. This discussion is presented separately under the item for the Cannabis Business License Ordinance.

Discussion:

The County's Uniform Rules implement the Williamson Act locally by defining eligibility requirements and addressing compatible uses. Each participating landowner must comply with the Uniform Rules in order to be eligible for a reduced tax assessment for lands in contract (Revenue and Taxation Code § 421 *et seq.).* The Government Code sets forth principles that the Board must consider when determining which uses and development are compatible on lands that are subject to agricultural preserve contracts (Government Code § 51238.1). These principles are set forth in Attachment 5. Based on these principles, the Board has adopted both general compatibility guidelines and guidelines that currently apply to specific uses (e.g., guidelines that apply to agricultural preparation and processing facilities,

animal boarding and breeding facilities, recreational uses, and temporary filming and special events) (Uniform Rules, Uniform Rule 2).

Given the Board's decisions on February 6 and 27, 2018, to allow certain types of cannabis uses and development on agricultural lands (many of which are subject to agricultural preserve contracts), the Board should amend the Uniform Rules to provide clear guidance regarding under what conditions (if any) cannabis uses and development may be allowed on lands that are subject to agricultural preserve contracts. Cannabis is similar in certain ways to other uses that are currently considered to be either qualifying or compatible uses pursuant to the Uniform Rules. For example, cannabis cultivation involves the growing of plants similar to crop production that may count towards the minimum cultivation requirements of the Uniform Rules (Uniform Rule 1, § 1-2.3). Furthermore, similar to certain types of crop production, cannabis cultivation requires at least a minimal amount preparation (e.g., drying and trimming) of cannabis in the raw state for the market, which under circumstances may not compromise the viability of agricultural lands. Also, certain cannabis products (e.g., oils and food products) require processing beyond the raw state, similar to how certain agricultural commodities are processed for the market (e.g., processing of grapes into wine).

However, cannabis differs from many of the uses that are currently considered to be qualifying or compatible uses pursuant to the Uniform Rules. For example, cannabis is a highly regulated, illegal controlled substance under federal law, the cultivation of which presents security and law enforcement challenges that generally do not apply to other types of crop production. Cannabis cultivation also creates odors to which many are unaccustomed and find more objectionable than the odors produced from more conventional types of crop production.

In summary, there are both important similarities and distinctions between cannabis activities, on the one hand, and agricultural uses and compatible uses which are currently allowed on agricultural preserves, on the other hand. As such, there are a number of legislative policy options that are available to the Board with regard to the allowance of cannabis activities on lands that are subject to agricultural preserve contracts. Historically, the Board has valued and supported the Williamson Act provisions by designating numerous agricultural preserves in Santa Barbara County and implementing specific rules for their protection. With the recent cannabis regulations, the Board provided a structure to permit and regulate cannabis activities without giving cannabis cultivation a "right to farm" status. Given the Board's direction on these issues to date, as well as input from the public, agricultural industry, and cannabis industry, staff recommends that the Board focus its consideration on the following two options—APAC's recommendation and an alternative P&D staff recommendation. Additional approaches that have been considered are also listed below under *Other Considerations*. However, if the Board decides to pursue a different option, staff recommends that the Board direct staff to return to the Board at a later date with the necessary findings, resolution(s), etc., for the Board's consideration of adoption.

APAC Recommendation

In 2017 APAC reviewed the draft Cannabis Land Use Ordinance and Licensing Program and associated Draft EIR, to assess the Cannabis Land Use Ordinance and Licensing Program's consistency with the Uniform Rules. On August 11, 2017, November 3, 2017, and December 1, 2017, APAC held publicly noticed meetings at which it reviewed and considered the suitability of cannabis uses on lands that are subject to agricultural preserve contracts. On December 1, 2017, by unanimous vote, APAC

recommended that the Board adopt specific cannabis-related amendments to the Uniform Rules (Attachment 3). In summary, APAC recommended that the Board amend the Uniform Rules as follows:

1. Add definitions related to cannabis.
2. Specify that cannabis cultivation and ancillary facilities in support of cannabis cultivation are compatible—but not qualifying—uses on contracted land.
3. Specify that manufacturing (excluding extraction), retail sales, testing, and marketing of cannabis or cannabis products are prohibited on Williamson Act lands.
4. For contracts involving lands with prime and non-prime soils, specify that cannabis cultivation and ancillary facilities may be located within the designated development envelope and/or outside of the development envelope of a premises. However, the amount of land dedicated to cannabis cultivation and ancillary facilities that are located outside of the development envelope cannot exceed 5% of the premises or 5 acres, whichever is less.
5. Specify that processing, distribution, and manufacturing (extraction only) of cannabis from off-site sources is allowed, however it shall be limited to no more than 49 percent of the total volume of cannabis that is processed, distributed, and manufactured on the premises.
6. For contracts involving superprime lands, specify that all cannabis cultivation and ancillary facilities must be located within the designated development envelope.

APAC's recommendation is consistent with how certain compatible uses (e.g., agriculture preparation facilities, and processing of wine grapes) are currently addressed in the Uniform Rules. However, by taking the approach of setting limits on the amount of cannabis activity that can occur on Agricultural Preserves, it substantially limits the amount of area in the County that can support cannabis operations and it would potentially displace existing medicinal cannabis operations and facilities. Furthermore, given that cannabis cultivation is similar to crop production that counts toward the minimum cultivation requirements of certain agricultural preserve contracts, and would not involve the permanent conversion of farmlands, the Board may want to treat cannabis differently than other compatible uses in the Uniform Rules. Neither the final Cannabis Land Use Ordinances adopted on February 6 and 27, 2018, nor the P&D recommendation described below, have been presented to APAC. Thus, the Committee has not reviewed these issues since its December 1, 2017, meeting.

P&D Staff Recommendation

Since the APAC recommendation was finalized, stakeholders have argued that the recommendation is too restrictive. Many of the concerns are related to the acreage limits which would potentially displace existing medicinal cannabis cultivation and ancillary facilities, prevent consolidation of operations, and discourage vertical integration strategies on contracted lands. Staff considered these concerns in light of the goals of the Agricultural Preserve Program and keeping in mind the unique features of cannabis that warrant different regulations from those which apply generally to agriculture. Staff concurs with APAC that the optimal approach is to allow certain cannabis activities as compatible uses on lands that are subject agricultural preserve contracts; however, staff recommends that cannabis cultivation and ancillary facilities should not be subject to acreage limitations, provided that the property owner complies with the minimum cultivation of non-cannabis crops and/or grazing requirements that are set forth in the eligibility requirements, as well as the applicable contract. In summary, the P&D recommendation (Attachment 2) would:

1. Add definitions related to cannabis.
2. Specify that cannabis cultivation and ancillary facilities in support of cannabis cultivation are compatible —but not qualifying—uses on contracted land.
3. Specify that retail sales and marketing of cannabis or cannabis products are prohibited on Williamson Act lands.
4. Specify that processing, distribution, and manufacturing of cannabis from off-site sources is allowed, however it shall be limited to no more than 49 percent of the total volume of cannabis that is processed, distributed, and manufactured on the premises.

This alternative would maintain the current criteria for commercial agricultural production, clarify that cannabis cultivation does not count towards the minimum eligibility criteria for commercial agricultural production, yet afford a considerable degree of flexibility to conduct certain cannabis activities on lands that are subject to agricultural preserve contracts. In doing so, it would address many stakeholder concerns while staying largely consistent with APAC's recommendation, and would not undermine the principles of compatibility for agricultural preserve contracts.

Other Considerations

While the two options discussed in detail above appear to best balance the objectives of the Cannabis Land Use Ordinance and Licensing Program with the provisions of the Uniform Rules, other options have been evaluated by staff and discussed with stakeholders. Some of the options explored are listed below with a brief explanation as to why they were not preferable to the APAC and P&D staff recommendations.

1. Prohibit Cannabis on Agricultural Preserves – This option would disallow any cannabis activities on contracted lands. Thus, it would prevent any conflicts with the Uniform Rules and minimize any potential incompatible uses on contracted lands. However, it would (1) conflict with the objectives of the Cannabis Land Use Ordinance and Licensing Program, (2) potentially displace established medicinal cannabis operations, and (3) potentially result in a significant number of landowners filing for non-renewal, which could induce a loss of agricultural preserves in the County.

2. Limited Cultivation Only as Compatible Use – This option was evaluated in the PEIR as Alternative 2, which specified that up to 22,000 square feet of cannabis cultivation could be allowed as a compatible use on contracted lands, while ancillary uses such as manufacturing, testing, distribution, and sales would be incompatible. This would have similar consequences as stated for No. 1 above, and would not address stakeholder concerns regarding consolidation of operations and vertical integration.

3. Unlimited Cannabis Activities as Compatible Use – This approach would be the most permissive in favor of the cannabis industry and would specify that all permitted cannabis activities are compatible with the principal agricultural use of the land under contract. While this would address most industry concerns, the permitted cannabis uses would potentially conflict with the general compatibility guidelines in the Uniform Rules (Rule 2-1). In addition, the resulting Uniform Rules would be substantially less restrictive toward ancillary cannabis uses than toward

supportive agricultural uses such as development of preparation facilities, processing facilities, and retail operations (Section 2-2). A more comprehensive update to the Uniform Rules would be recommended in this case to achieve a balance of allowed uses.

4. Cannabis is Defined as Agriculture and Allowed as a Principle Use – Under this scenario, cannabis cultivation would be defined as an agricultural use and its production would be used to meet the eligibility requirements for a Williamson Act contract. Such an approach would likely raise concerns regarding "Right to Farm" protections that may affect the County's ability to mitigate impacts from cannabis (e.g., odor abatement measures). General public concerns have also been raised regarding the potential government subsidy of cannabis activities that would occur under this option.

Environmental Review

The Cannabis Land Use Ordinance and Licensing Program Final PEIR, (Attachment 4), was certified on February 6, 2018. Both options described in this Board Letter and shown in the attached Uniform Rules amendments (Attachments 2 and 3) are adequately covered by the Program EIR.

Fiscal Analysis

The fiscal impacts associated with the cannabis land use ordinances are described in the Board Letter dated February 6, 2018 (Attachment 6). No additional impacts would result from the changes proposed under this action (17ORD-00000-00019).

Attachments:

1. Findings for Approval
2. P&D Staff Recommended Board Resolution amending the Uniform Rules for Agricultural Preserves and Farmland Security Zones (Case No. 17ORD-00000-00019)
   Exhibit 1 – P&D Staff Recommended Amendments to the Uniform Rules
3. APAC Recommended Board Resolution amending the Uniform Rules for Agricultural Preserves and Farmland Security Zones (Case No. 17ORD-00000-00019)
   Exhibit 1 – APAC Staff Recommended Amendments to the Uniform Rules
4. Link to Final Program Environmental Impact Report and Revision Letter (Case No. 17EIR-00000-00003 and RV 01)
5. Government Code Provisions for Compatible Uses on Agricultural Preserves
6. Link to Board Agenda Letter for February 6, 2018
7. Maps Depicting Contracted Lands in Santa Barbara County

Authored by:

Mindy Fogg, Supervising Planner, 805-884-6848

UNIVERSITY OF CALIFORNIA, DAVIS

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COLLEGE OF AGRICULTURAL AND ENVIRONMENTAL SCIENCES
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ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8749

March 3, 2020

RE: Potential impact of terpene and odor neutralizer drift on grape and wine composition

Introduction

I am a faculty member in the Department of Viticulture and Enology at the University of California, Davis California. I have more than 15 years of experience in the field of grape and wine chemistry. My research is multidisciplinary and focusses on factors that impact grape and wine characters so that the winemaking processes could be tailored by individual winemakers to achieve the desired flavor and aroma profiles in the finished wine. Grape and wine-related research has allowed the industry to move beyond mere commercial acceptability to the production of intricately crafted fine wines. My research has a strong emphasis on the sensory evaluation of wines and has contributed to the body of work that has made descriptive analysis of wines a standard procedure for wine evaluation and has had the added benefit of making wines less intimidating for the consumer.

Currently, there are considerable concerns regarding the adverse effect that high concentrations of certain terpenes can have on wine flavor, including terpenes commonly emitted from cannabis plants. Some common cannabis terpenes are associated with other plants that have been demonstrated to adversely affect wine quality. It is and continues to be my opinion that the concentration of proposed and existing cannabis facilities in close proximity to and upwind of winegrape-producing vineyards in the Santa Ynez Valley, have a reasonable potential to alter the terpene composition of grapes grown in adjacent vineyards. These changes in winegrape terpene composition and concentration could potentially change wine characteristics and result in wines considered tainted. If wines are tainted, it will have an adverse effect on the reputation and marketability of these wines and thus the viability of the wine industry in Santa Barbara County.

The California grape and wine industry is a $31.9 billion dollar industry, with 637,000 acres of winegrapes planted. Based on a Stonebridge Research report published in December 2015, the Santa Barbara County wine industry has a $1.7 billion dollar economic impact on the region. Recent legislation adopted by the Santa Barbara County Board of Supervisors established regulations for the cultivation of recreational cannabis within the unincorporated regions of the Santa Barbara County. In part, these regulations permit outdoor cultivation of cannabis, including in regions where the primary agriculture are vineyards.

Santa Barbara County wine industry stakeholders have expressed concern regarding the potential impacts that outdoor cannabis cultivation may have on vineyards, winegrapes, and the resulting wines. Concerns focus on the extent that a concentration of terpenes emitted from outdoor cannabis cultivation and proposed odor abatement systems that utilize odor neutralizing essential oils (namely, the system marketed by Byers Scientific & Manufacturing) will be absorbed by winegrapes and ultimately impact resulting wine style and quality. Despite these changes in local policy regarding cannabis cultivation, the federal government continues to enforce restrictive policies and regulations on research into the impacts of marijuana (cannabis) on both health and public welfare. As a result, research on marijuana (cannabis) generally has been limited in the United States. The effects of cannabis on adjacent crops, including crops with sensitive characteristics like grapes, has also been limited, leaving grape and wine industry stakeholders and policy makers without the evidence they need to make sound decisions regarding the permitting of outdoor cannabis cultivation and odor abatement systems that utilize essential oils near vineyards and in designated American Viticultural Areas.

This lack of evidence-based information on the potential impacts of the cannabis industry on established vineyards creates a very real risk to the future viability of the grape and wine industry in Santa Barbara County and other counties that have or may adopt regulations allowing outdoor cannabis cultivation and/or odor abatement systems that use vaporized essential oils sited near vineyards. Santa Barbara County is currently considering permits for outdoor cannabis cultivation that rely upon vaporized essential oil odor abatement systems which individually and cumulatively could have potential significant impacts if sited near established vineyards. Until further research can be conducted, the wine industry and policymakers must rely on previously conducted research into how winegrapes react to volatile compounds from the atmosphere to draw conclusions about potential impacts of cannabis and essential oil vapors to existing vineyards and resulting wine quality.

Research has conclusively shown that winegrapes have porous skins and can absorb volatile compounds from the atmosphere. Well-known examples are volatile phenols from wildfire smoke (Kennison et al., 2009; Krstic et al., 2015) and Eucalyptol (1,8 cineole) from *Eucalyptus* trees (Capone et al., 2012). New research also indicates Eucalyptol absorption on to grapes from the invasive plant *Artemisia verlotiorum* (Poitou et al., 2017) and α-pinene absorption from nearby Monterey cypress (Capone 2017). Research has further shown that cannabis emits volatile terpenes into the atmosphere (Wang et al., 2019). As such, we may use this existing research to analogize and draw conclusions regarding the potential impacts of cannabis terpenes and essential oils on winegrapes. My conclusion, based on my background and familiarity with how winegrapes react to volatile phenols transmitted in air and what we know of terpenes such as 1,8-cineole and α-pinene, is that terpenes in the atmosphere will absorb on to grapes and, depending on the concentration and frequency of exposure, can potentially pose a threat to the grape and wine industry.

Known Impacts of Smoke Taint

Volatile phenols are naturally synthesized in winegrapes and are also released into wine during barrel aging, as toasting of the oak barrels will release the same compounds. However, when the amount of volatile phenols absorbed by the grape berry as well as vine leaves are excessive, this could result in an undesirable taint in the wine called “smoke taint”. This taint can greatly impact

the salability of the impacted winegrapes and can make the resulting wine unmarketable.

There is already a body of research that studied the impacts that wildfires have on wines produced with grapes that have been affected by wildfires. In the case of wildfires specifically, large amounts of volatile phenols are released into the air during the fires due to the thermal degradation of lignin in wood. When volatile phenols are emitted into the air and absorbed by the grape berry and vine leaves in sufficient quantities, this results in an undesirable effect called "smoke taint" in the wine. Smoke taint is characterized as a wine with excessive smoky aroma and an ashtray-like aftertaste. It is generally accepted as an undesirable characteristic of wines, rendering affected wines unsaleable.

It has been shown that the risk of smoke taint increases with repeated and continual exposure to the volatile phenols released from the thermal degradation of lignin in wood. These compounds are absorbed continually by the exposed grapes with each exposure and are stable within the grapes until harvest and processing when these compounds are released within the fermenting must (crushed grapes undergoing alcoholic fermentation). The grape and wine industry have been significantly impacted by smoke exposure in the last three years.

Based on the foregoing, there is significant evidence that winegrapes absorb volatile phenols emitted into the surrounding atmosphere, and such absorption has resulted in significant impacts to the characteristics of the resulting wines, including making such wines unsaleable.

Known Impacts of Eucalyptus Taint

In addition to the absorption of volatile phenols released during wildfires, winegrapes are known to absorb ambient terpenes. Terpenes are a large and diverse class of volatile organic compounds, produced by a variety of plants, including cannabis. They often have a strong odor and their function in the plant can be to protect the plant against herbivores or attract pollinators. Because these terpene compounds are volatile, at ambient temperature they can be released in the air (can evaporate from the plant oils where they are present) and travel with atmospheric conditions.

The most studied impact of terpene emissions on winegrapes and resulting wines is Eucalyptus taint, which is mainly caused by a terpene called 1,8-cineole or Eucalyptol. Capone and coworkers showed during a three-year vineyard study that the Eucalyptus taint in wine was not only caused by 1,8-cineole but also that this terpene originated from *Eucalyptus* trees nearby vineyards (Capone et al., 2012). Eucalyptus oils consist mostly of 1,8-cineole, although depending on the species this can vary from a 60% to 90% contribution. Eucalyptol in wine is described as a medicinal, camphoraceous, fresh/minty/cool character. In high concentrations this is seen as a "taint" as it overpowers the wines' other inherent characteristics and is not a winegrape varietal characteristic. Another study by Capone (Capone et al., 2011) showed that Eucalyptol can also be present in grape skins and MOG (materials other than grapes such as the stems and leaves) through absorption of the terpene in grapevine tissues. Eucalyptol, or 1,8-cineole, is present at significant concentrations in the emissions from some strains of cannabis. To clarify, this study found Eucalyptol concentrations above odor detection levels in wines which was caused by airborne transmission of terpenes and the absorption of such terpenes by both the winegrape berries and surrounding vine tissues from the air. This is separate from Capone's observations where *Eucalyptus* stems and leaves were present in the grapevine canopy and subsequently harvested

with the winegrapes which resulted in even higher levels of Eucalyptol in the resulting wines. More recently, Poitou et al. (2017) showed that green character observed in French Cabernet Sauvignon and Merlot wines was related to the absorption of 1,8-cineole from an invasive plant (*Artemisia verlotiurum*) present in some vineyards.

Terpenes present in wines have very low aroma detection threshold levels and ETS Laboratories determined that the aroma (odor) detection threshold level for California Merlot is 1.1 µg/L. Herve et al., (2003) reported a recognition threshold of 3.2 µg/L in red wine. Irrespective, these are detection threshold levels in the parts per billion range. In other words, very low levels of terpenes are detectable in wines and thus low levels of terpene absorption can potentially impact wine characteristics and thus wine quality.

The first part of the Capone study focused on making wines from grapes from two different vineyards harvested at set distances from the *Eucalyptus* trees. Their results clearly indicated a large impact due to distance from the terpene source, which in this case are the *Eucalyptus* trees. Above aroma threshold levels of 1,8-cineole were present in the wines made from grapes up to 50 meters from the *Eucalyptus* trees. An important fact to remember is that diffusion of volatile compounds depends on several factors including temperature, air pressure and movement. It will diffuse until the environment is in equilibrium. Thus, the distance of travel will depend on initial concentration as well as the listed environmental conditions which will be unique for each site.

In the Capone study, only two sites were utilized, which resulted in different levels of 1,8-cineole in the wines (9.5 – 15.5 µg/L). The study confirmed the airborne transfer of volatile organic compounds as found by other studies (Kennison et al., 2009). The study also showed that even higher concentrations of 1,8-cineole were present in winegrape stems and leaves, potentially due to their larger surface area or difference in exposure to the atmosphere or epidermis (outer layer of tissue in a plant). Thus MOG (material other than grapes, including winegrape stems and leaves that were exposed to and absorbed airborne terpenes) can also be a source of 1,8-cineole. This is particularly concerning due to labor costs and shortage which often necessitates the use of mechanical harvesters where more MOG are included.

Capone also found that *Eucalyptus* leaves and bark can lodge in the grapevines and be included during harvest which made a significant contribution to the 1,8-cineole composition of the wine when included in the must. However, even wines made from hand-picked grapes with no MOG or *Eucalyptus* leaves and/or bark, produced wines with above aroma threshold levels of 1,8- cineole if made from winegrapes grown within the first 50 meters from *Eucalyptus* trees. Including grape stems and some grape leaves (which, as described above, also were shown to absorb airborne terpenes), as will be normal during most fermentations, will result in even higher levels of 1,8-cineole.

This study confirmed that terpenes can become airborne and absorb on to other plant surfaces such as grape berries, leaves and stems, and that such absorption has resulted in significant impacts to the composition, quality, and flavor profiles of the resulting wines. Terpenes could potentially similar to smoke taint development, continually absorb on to grapes with continued exposure to terpenes. However, this needs to be investigated. New research by Capone (2017) showed that α-

pinene can also absorb on to grapes in close proximity to Monterey cypress trees and alter the sensory profiles of the wines.

Based on scientific evidence, it is reasonable to conclude that other terpenes present in cannabis will also absorb on to grapes. Absorption of external terpenes onto winegrapes can impact the character of the resulting wines.

Terpene Drift and Potential Impact

Cannabis plants are known for their strong smell due to high concentrations of a range of different terpenes. The chemotype, growing time, and canopy area effects the concentration of terpenes emitted into the air (mostly monoterpenes, C_{10} compounds, and sesquiterpenes, C_{15} compounds). Terpene concentrations in *Cannabis* plants are in the range of g/kg quantities, whereas the threshold levels of these compounds are in the µg/kg range (Aizpurua-Olaizola et al., 2016). This is a 10^6 order difference between the cannabis terpene concentration and terpene odor detection levels. Research has shown terpene emission rates of up to 8.7 $\mu gC\ g^{-1}\ hr^{-1}$ depending on the strain of *Cannabis spp* (Wang et al., 2019). Additionally, β-myrcene, eucalyptol and d-limonene were the most dominant terpenes in the emissions for the four strains evaluated. Other important terpenes in cannabis plants are α-pinene, β-pinene, linalool, α-terpineol, β-caryophyllene, hashishene, α-humulene and more. New terpenes are continually being identified in cannabis plants. A more recent report by Vizuete (2019) confirmed detectable emissions of terpene biogenic volatile organic compounds and that such emissions are dependent upon the strain of *Cannabis spp*.

Terpenes native to winegrapes are biosynthesized in winegrapes and can play an important role in the varietal character of a winegrape variety. Additionally, during the winemaking process, yeast and bacteria can also synthesize small amounts of terpenes (Carrau et al., 2016). The specific combination of terpenes present in winegrapes depends on the variety, but the total terpene levels will be in the order of µg/kg and µg/L amounts in winegrapes and wines respectively (Waterhouse et al., 2017). As evidenced by the studies of 1,8-cineole referenced above, it is clear that changing the level, relative ratio, and combination of terpenes within winegrapes and thus the resulting wines, could change the character of the wine significantly. Such changes could be a result of proximity to plants emitting 1,8-cineole, or other terpenes, including those emitted by *Cannabis* plants.

Furthermore, research into the effects of nearby *Eucalyptus* trees on winegrapes showed absorption by winegrapes at 1 µg/kg to 5 µg/kg levels of Eucalyptol, whereas initial preliminary data on winegrapes show increases of 200 µg/kg to 500 µg/kg of key cannabis terpenes in winegrapes grown close to *Cannabis* plants. This could indicate a much larger impact of cannabis then those determined for *Eucalyptus* trees. The Vizuete report (2019) erroneously used this preliminary data as threshold values, determining that with the calculated cannabis terpene emission levels, these thresholds will not be reached in grapes. Odor detection threshold values should be determined according to the ASTM (Designation E679 – 19) standard. The best estimate threshold value is the lowest level at which a consumer can consistently identify a sample spiked with the compound of interest as being different from another.

If one terpene or a combination of terpenes overpowers the wine (due to the introduction of foreign

terpenes), making it one-dimensional or imparting unpleasant characters to the wine, the wine may be considered tainted. Furthermore, absorption of terpenes on to the winegrapes may occur over the full growth period of the winegrapes, which is several months from pea size to maturity. However, it is currently not known whether terpenes, like volatile phenols, will have a build-up effect and should be investigated. With continued exposure, this means that there may be no specific high terpene period needed for potential impact on the winegrape's natural terpene composition.

Further research is needed to quantify cannabis-specific terpene emissions rates from *Cannabis* cultivation, as well as distance of diffusion and absorption on to winegrapes under different environmental conditions. In addition, kinetics and mechanism of absorption on to grapes need to be investigated as well as the impact thereof on the resulting wine character.

Potential Impact of Vaporized Essential Oils

The above is similarly concerning in light of the proposed odor neutralizing essential oils proposed by many of the *Cannabis* cultivation projects, namely the system installed by Byers Scientific & Manufacturing. Such systems emit vaporized essential oils into the air via piping that surrounds the perimeter of *Cannabis* cultivation sites. According to the manufacturer's materials, the efficacy of such systems is predicated on the vapors traveling in the air and making contact in the airstream with the odor compounds emitted from *Cannabis*. Upon contact, the odor molecules are "neutralized". In order for such vapors to make contact with odor compounds, the vapors are pushed through small holes in the perimeter piping away from the *Cannabis* cultivation areas and toward areas that may be negatively affected by malodors, namely neighboring properties.

Essential oils mainly contain terpenes and in reality 'neutralization' is masking of unpleasant smelling terpenes by releasing more pleasant-smelling terpenes. Thus, in effect even more terpenes will be present in the atmosphere surrounding grapes which can potentially absorb and alter the character of the grapes and thus the resulting wines.

Complexity of a Proposed Study

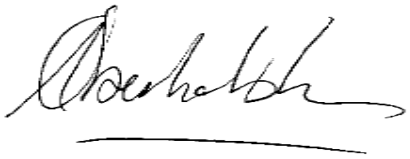
Investigations into the potential impact of *Cannabis* emitted terpenes on winegrapes are complex due to the significant impact of the environment on diffusion of volatile organic compounds. Distance of diffusion will depend on the concentration at the source, as well as environmental conditions. Approximately 80 different terpenes have been identified in different cannabis strains while there are approximately 50 different terpenes in winegrapes. First the presence of atmospheric terpenes at set distances from *Cannabis* cultivation needs to be shown as well as their absorption on to different grape tissues. The impact thereof will be evaluated by producing wines using standard experimental procedures, made from grapes harvested at set distances from *Cannabis* cultivation. These wines will be analyzed both sensorially and chemically to determine their terpene profiles and its relation to sensory characteristics of the wine. Additionally, best estimate thresholds of the identified cannabis terpenes should be determined. However, as compound expression is impacted by the matrix (wine) including other terpenes present, this can become very complex. Marker compounds with their detection threshold levels and their consumer rejection levels should be determined to establish risk analysis. However, due to potential synergistic impacts, this is a very complex process.

Conclusion

Based on the foregoing analysis using the research available to date on the impacts of airborne volatile compounds on winegrapes, outdoor *Cannabis* cultivation could have a potentially significant impact on the terpene composition of winegrapes grown near such *Cannabis* cultivation sites. This impact is even more likely when *Cannabis* is grown on large scale (either as a single project or multiple projects clustered together) with a large canopy area that is collectively emitting *Cannabis* terpenes into the air in regions where vineyards are in close proximity. The impact will be further exacerbated if the proposed Byers systems are used and proactively emit odor neutralizing essential oils into the air, directed toward such vineyards.

Changes to the terpene composition of winegrapes has been shown to impact resulting wine quality in prior studies of 1,8-cineole and now α-pinene. In light of the cultural significance and economic impact of the wine industry in California, it is important that care be taken to avoid adverse impacts while research seeks to provide objective metrics for allowable concentrations of high volatile organic compound releasing plants cultivated close to high quality wine grapes.

Submitted by,



Anita Oberholster, PhD
Associate Cooperative Extension Specialist
Enology Department of Viticulture and Enology
University of California, Davis California, 95616

Reference list:

Aizpurua-Olaizola et al., 2016. Evolution of the Cannabinoid and Terpene Content during the Growth of Cannabis sativa Plants from Different Chemotypes. J. Nat. Prod. 79, 324-331.

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Waterhouse et al., 2016. Understanding Wine Chemistry. West Sussex, UK: Wiley.

EXHIBIT 3

Technical & Business Systems
environmental research associates
25570 Rye Canyon Road Unit J • Valencia, California 91355 • (661)-294-1103 fax (661)-294-0236

Date: 4 November 2019

To: Santa Barbara County Planning Commission

From: Kenneth H. Underwood, Ph.D., C.C.M
T&B Systems, Valencia CA

Subject: West Coast Farms Cannabis Development

I have been retained by the Law Offices of Marc Chytilo, APC to provide comments on the meteorological data submitted by SESPE Consulting, Inc. as part of their odor study for West Coast Farms.

I am a Ph.D. meteorologist with a specialty in atmospheric boundary layer dynamics and thermodynamics. I have over 40 years of experience in the commercial, research and academic communities. I have designed commercial instrumentation specifically for the study of atmospheric boundary layer turbulent process including wind profiles. I have provided consulting services to NASA for the characterization of the turbulent boundary layer to quantitatively study the impact of sonic booms in the vicinity of airports. NASA continues to use this instrument network design in their on going sonic boom studies. Currently, I am working with the US EPA to develop quality control methodologies and guidelines for the installation, operation and data collection for laser based ceilometers that are designed to monitor the height of the atmospheric boundary layer. I am also an adjunct instructor at Antelope Valley College for which I developed and teach a junior level course entitled “atmospheric thermodynamics and dynamics” as part of AVC’s four year program on aircraft manufacturing technology. I am a member of the American Meteorological Society, a Certified Consulting Meteorologist (#466) and have served on several AMS committees during the past 40 years.

I was provided with a copy of the SESPE memorandum dated 5 August 2019. I was asked to review the “Quantitative analysis of the Surface and Profile Meteorological data obtained from Lakes Environmental” section of the memorandum.

The Lake Environment analysis utilized a data set derived from the following sources:

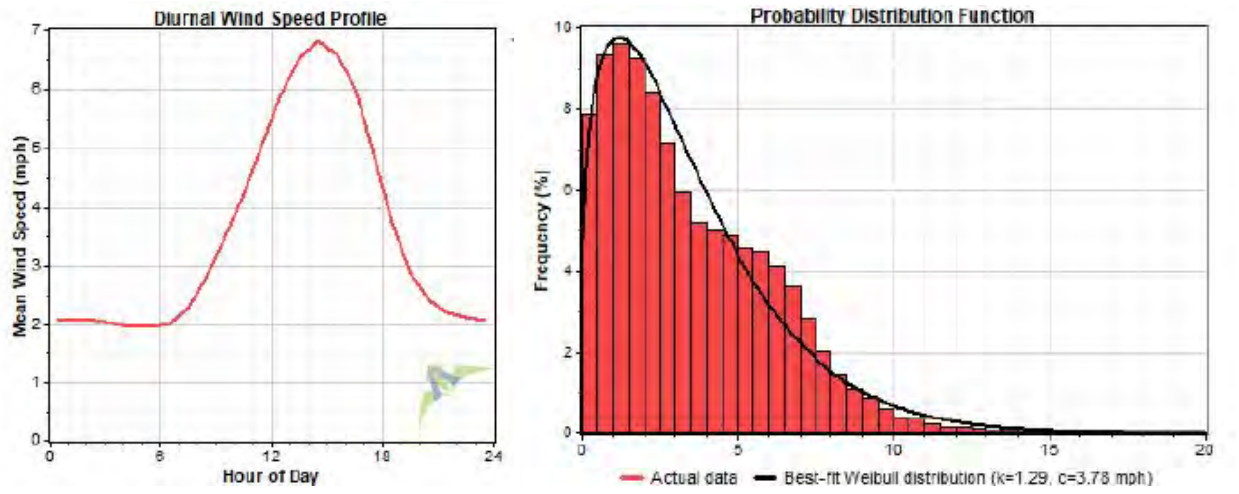
1. ASOS wind data were also obtained from Santa Maria ASOS data;
2. VAFB upper air soundings;
3. USGS Terrain and surface moisture data were used to introduce terrain adjustments for the Buellton, CA area;

These data sets were combined using the Lakes Environmental pre-processor that utilizes EPA guidelines to provide the input data to the AERMOD dispersion model. These data are assumed to be representative of the local Buellton meteorology can be used to drive dispersion modeling efforts.

This AEROMOD model is a stationary Gaussian dispersion model that is most often applied in simple terrain situations but may not be applicable to complex terrain conditions such as those in the Buellton vicinity.

In situations such as this, it is desirable to have data sets more representative of the local meteorology especially since this is a situation where a local source could significantly impact the local community. In cases such as this, the EPA normally requires a monitoring plan according to the Prevention of Significant Deterioration (PSD) for the new source. There is no such requirement in this case but it is still prudent to consider as much as possible the local meteorological conditions.

The proposed source is a surface based area source. As such its impact is intimately related to the local meteorology and in particular the diurnal changes to the meteorological conditions. Data obtained from a vineyard in the Sta Rita Hills in the vicinity of the Pence Vineyard are plotted below:

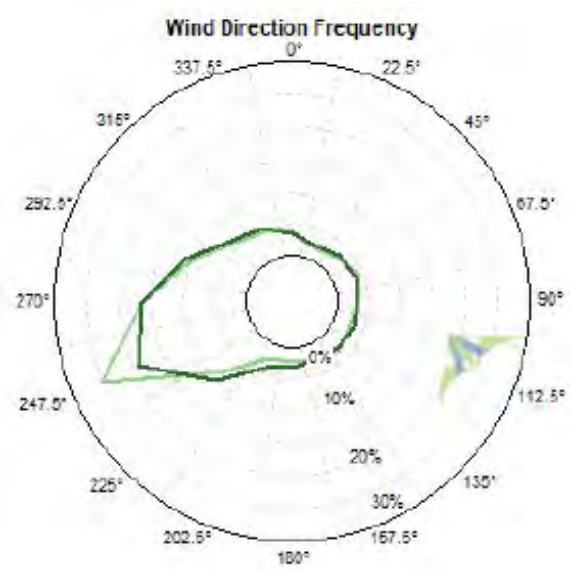


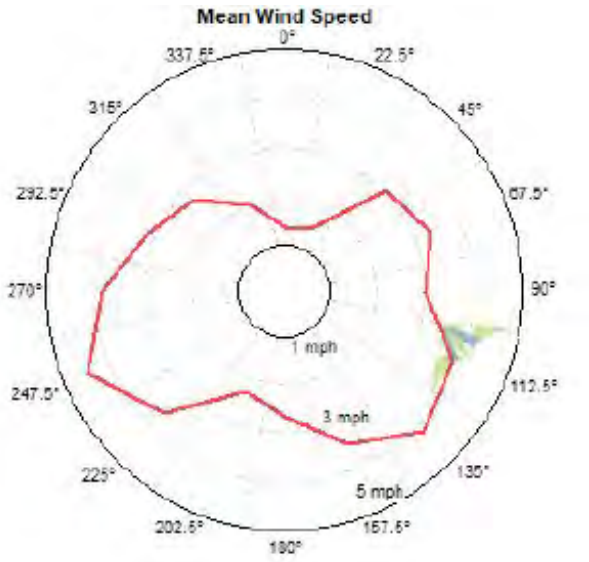
The figure to the left is the average diurnal change to the wind speed plotted as a function of the time of day. The lower wind speeds are in the morning during with the local atmosphere is stable and often disconnect by this stability from the regional and synoptic wind patterns. It is during this time of day that odors fluxed from the proposed acerage will collect around and above the area source. The graph to the right is the frequency distribution of wind speeds over the entire period. It clearly demonstrates that more than 15% of the time, the winds are below 1 mile per hour exceeding the 0.51% calm conditions in the Lakes Environmental report.

It is important to also note that the higher wind speeds later in the morning are the result of solar driven mixing of the upper level winds to the surface through the thermally driven mixing process. Driven by

thermal mixing means that it is quite likely that the accumulated surface odors could be mixed upward and downwind as part of the transition dynamics from a stable atmosphere to the afternoon neutral or unstable atmospheric conditions. This type of process could result in a fumigation condition as it possibly mixes the elevated residual odors downward and could enhancing their impact on the local area.

Another feature of these local data are presented in the following wind roses:





These data are complimentary to the wind data presented earlier. This data was collected at a vineyard in the Santa Rita Hills AVA located on Mail Road, approximately 4 miles WSW of the Pence Vineyard, the wind direction frequency is seen to be a maximum from the WSW direction with an average or mean wind speed of 3 mph about 30% of the time from that same WSE direction.

In support of these observations, I am also including a short power point (pdf) summary of the Santa Ynez ASOS measurements. These measurements which cover the time period of 01 July 1992 to 14 January 2019. The ASOS stations are installed and maintained by the FAA.

In summary,

1. The percentage of calm wind conditions is on the order of at least 20% - 30% for these data sources. Calm winds enable greater concentrations of ground-level odor and terpenes, and so the Applicant's conclusion, based on their assumption of greater winds, is flawed; and
2. The predominant surface level wind directions are WSW at the site near the Pence Vineyard and West with a significant percentage from the WSW direction for the ASOS data set. The

difference in observed wind directions from those assumed by the applicant is significant to the odor and other pollution emitted from the site.

The importance of a local data set for this situation because of the terrain and the potential impact to the local community cannot be overstated.

COUNTY OF SANTA BARBARA

Planning and Development

www.sbcountyplanning.org

Permit History by Parcel

Parcel Number 099-240-072

Printed on March 13, 2020 at 5:45 am

Reference Address	*Legal Description*	*Acreage*
1180 HWY 246, BUELLTON	76AP019	62.45

Supervisorial District: 3

Zoning: AG-II-40

Parcel Geographical Data

Ag Preserve Contract: 76AP019

BAR Jurisdiction: All or portion within Central BAR

California Natural Diversity Database: Check CNDDB - May Apply

Comprehensive Plan: AC

Creeks: Check Hydro and Wetland layers - May Exist

Critical Habitat: Check Critical Habitat Overlays - May Apply

Design Control Overlay: All or part within Design Control Overlay

Flood Hazard: Check Flood Hazard Overlay - May Apply

High Fire Hazard Area: All or portion Within High Fire Hazard Area

HMA: All or portion within the Santa Ynez HMA

Home Exemption Value: 7000.00

Latitude: 34.619774

Longitude: -120.226056

Military Notification Buffers: All or part within Military Notification Buffer(s)

Personal Value: 0.00

Plan Area: All or portion Within Santa Ynez Valley Plan Area

Prime Farmland: Check Important Farmland Layer for Prime Farmland

Rural: All or portion within Rural Area

Rural Region: All or portion within Santa Ynez Valley Rural Region

Tax Rate Area: 057007

Use Code: 4533

Year Built: 1975

Special Districts and Other Information of Interest (derived from the Tax Rate Area number):

BUELLTON UNION ELEM. SCHOOL
ALLAN HANCOCK JT(40,42,56) COMM. COLLEGE
OAK HILL CEMETERY
CO-ORIGINAL AREA FLOOD CONTROL
SANTA BARBARA COUNTY FIRE PROTECTION
SANTA BARBARA COUNTY WATER AGENCY
SANTA YNEZ VALLEY UNION HIGH SCHOOL
SANTA BARBARA COASTAL MOSQ & VECTOR CONTRL
SANTA YNEZ RIVER WATER CONSV.
CO-SANTA YNEZ ZONE NO. 01 FLOOD CONTROL
AREA NO. 32 COUNTY SERVICE
CACHUMA JT(15,40,42) RESOURCE CONSV.

Accela Cases

Case Number	Dept.	Filed	Planner	Project Name	Status
02LUP-00000-00153	P	2/8/2002	BW	STEWART AGRICULTURAL EQUIPMENT BARN	Closed
06LUP-00000-00579	P	6/21/2006	JB	STEWART EQUIPMENT SHED	Closed
06ELE-00000-00475	B	12/5/2006	AH	STEWART ELECT FOR WELL 12/5/06	Closed
08ZEV-00000-00025	E	2/11/2008	BW	STEWART UNPERMITTED MOTOR CROSS	Closed
17CNP-00000-00983	B	9/11/2017	LH	ROTMAN ELECTRICAL SERVICE	Closed
18CNS-00000-00043	P	8/10/2018	SM	BUSY BEE'S ORGANICS, INC. - CANNABIS CONSULTATIOI	Closed
18LUP-00000-00496	P	11/21/2018	SM	BUSY BEES ORGANICS INC. - CANNABIS CULTIVATON	Appeal Filed
19ELE-00000-00105	B	3/13/2019	MM	ROTMAN AG WELL SERVICE	Issued
19BAR-00000-00071	P	4/16/2019	LG	BUSY BEES ORGANICS INC. - AGRICULTURAL STRUCTUF	Closed
19AGP-00000-00007	P	4/17/2019	GB	Busy Bee Organics Inc. Agricultural Preserve Assumption Con	In Review

Accela Cases

continued ...

Case Number	Dept.	Filed	Planner	Project Name	Status
19ZEV-00000-00148	E	4/29/2019	AM	ROTMAN UNPEMRITTED CANNABIS CULTIVATION	In Review
19LUP-00000-00188	P	5/8/2019	GB	BUSY BEE'S ORGANICS INC. - AGRICULTURAL BUILDINGS	Closed
19APL-00000-00012	P	5/17/2019	GB	BUSY BEES ORGANICS INC. - CANNABIS CULTIVATON AF	Closed
19APL-00000-00030	P	11/18/2019	SP	BUSY BEES ORGANICS INC. APPEAL	Hearing Pending
19APL-00000-00031	P	11/18/2019	SP	BUSY BEES ORGANICS INC. APPEAL	In Review

P = Planning; B = Building; E = Enforcement; F = Fire Dept; PW = Public Works

LIX Building Cases

Application Number	Type	Description	Issuance Date	Action Date	Status	Misc.
80067	R	GAR/ADD	03/27/79	03/10/82	F	
*65555	R	SFD	09/20/76	02/12/79	F	
248720	R	GR	12/10/93	00/00/00	A	
255695	R	CONVERT	01/25/96	00/00/00	A	
255723	R	SP/INSP	09/05/95	09/08/95	F	
255977	R	REROOF	02/15/96	11/11/96	F	
256928	R	POOL	07/11/96	00/00/00	A	
259033	R	RESTUCCO	10/28/96	01/26/01	F	

LIX Planning Cases

Application Number	Description	Issuance Date	Action Date	Status	Planner
76-AP-019		11/11/11	00/00/00		
76-RZ-031		11/11/11	00/00/00		
87-LUN-968	BARN ONLY	09/10/87	09/10/87	A	FET
93-GR -151	EROSION	12/22/93	04/29/94	A	SR
95-LUN-327	EMP DWELLG	07/27/95	08/17/95	A	BAW
96-LUS-253	POOL	05/22/96	05/22/96	A	JM
98-LUN-518	EQUIP BARN	10/13/98	10/26/98	IS	BAW

EXHIBIT 5

BUSY BEE'S
ORGANICS

Affidavit for County Letter for Temporary State Licensing for Medical Marijuana Cultivation Locations in Compliance with Santa Barbara County Code

State of California
County of Santa Barbara

I, Sara R Rotman, am requesting a letter from the County of Santa Barbara on behalf of Busy Bee's Organics related to my medical marijuana cultivation site. I hereby swear, certify and affirm that:

- I am operating a medical marijuana cultivation site (hereinafter Site) located at 1180 West Highway 246 Buellton, CA 93427. Assessors parcel number 099-240-072 that is a legal nonconforming cultivation site in conformance with Santa Barbara County Code § 35-1003.A.2 as the Site has been operated in compliance with State law continuously since on or before January 19, 2016;

- I have not received a final Notice of Determination for the Operation at this location or on this property indicating a zoning violation;

- I did participate in the County's Cannabis Operations Registry.

I certify (or declare) under penalty of perjury under the laws of State of California that the foregoing is true and correct and that Affidavit was executed this 27th day of Decenber, 2017.

Sara R Rotman
Busy Bee's Organics
1180 West Highway 246 Buellton, CA 93427

Attachments:
(1) Busy Bee's Organics EIN
(2) Busy Bee's Organics Sellers Permit
(3) Filed Busy Bee's Organics UNA
(3) NOTE: Site is owned and operated by Sara R Rotman.

EXHIBIT 6

Cannabis Registry Form Data

Form Information		Registrant Identification Information										Cultivation History								
																		Future		
timestamp	identifier	First Name	Last Name	Address 1	Address 2	City	Sate	Zip	Phone 1	Phone 2	Email 1	Prior cultivation	Current cultivation	Cultivation Address 1	Cultivation APN 1	Cultivation Date 1	How many plants	Total canopy SqFt	Total canopy SqFt	Checked to agree
5/20/2017 12:57:41 PM	DD0EE0298C	Sara	Rotman	85 West Highway 246	#231	Buellton	CA	93427	917-886-7989	(310) 566-4388	sara@tresososranch.com	Yes	Yes	1180 west highway 246 buellton ca, 93427	099-240-072	May 15, 2017	0-99	10350	4500	TRUE

EXHIBIT 7

Public Comment

LATE DIST

#3

COUNTY OF SANTA BARBARA
AGRICULTURAL ADVISORY COMMITTEE

March 6th, 2020

Hon. Gregg Hart
Santa Barbara County Board Of Supervisors
105 East Anapamu St.
Santa Barbara, CA 93101

RE: March 10th Cannabis Cultivation Appeal Case # 19APL00000-00032

Dear Chair Hart and Honorable Members of the Board

On March 5, the Ag Advisory Committee (AAC) discussed the Board's upcoming consideration of several precedential projects related to cannabis land use. The AAC voted 8-1 to submit the following letter.

The AAC urges the Board of Supervisors to continue the appeals of Santa Barbara West Coast Farms, Santa Rita Valley Ag, and Busy Bee Organics until the Planning Commission and Board of Supervisors resolve amendments to the Cannabis Zoning Ordinance.

If this is not possible, we urge the Board to consider applying the following conditions to the above permits to address predictable conflicts that have arisen in many situations in the County.

1. Require release from liability for legally applied crop management materials, tools, and practices

2. Prohibit detectable offsite odor

3. Apply limits on term of the land use permits

We appreciate the Board's consideration of our comments and Concerns in addressing predictable land use conflicts between cannabis and agriculture.

Sincerely,

Paul Van Leer, Chair

Committee Members	Representing
Bradley Miles	1st District Supervisor, Das Williams
Ron Caird	2nd District Supervisor, Gregg Hart, Chair
Sharyne Merritt	3rd District Supervisor, Joan Hartmann
AJ Cisney	4th District Supervisor, Peter Adam
Randy Sharer	5th District Supervisor, Steve Lavagnino
Carrie Jordan	California Women for Agriculture
Claire Wineman	Grower-Shipper Association of SB and SLO Counties
Paul Van Leer, Chair	Santa Barbara County Farm Bureau
June Van Wingerden	Santa Barbara Flower & Nursery Growers' Association
Tyler Thomas, Vice Chair	Santa Barbara Vintners
Bill Giorgi, *Alternate*	Santa Barbara County Cattlemen's Assn.
Chrissy Allen	California Strawberry Commission

EXHIBIT 8

Public Comment

LATE DIST

#3

Grower Shipper ASSOCIATION
of Santa Barbara and San Luis Obispo Counties

March 6, 2020

County of Santa Barbara
Board of Supervisors

Re: Upcoming Appeals of Cannabis Cultivation Projects, including March 10, 2020 Item #D3, Santa Rita Valley Ag., Inc. Cannabis Cultivation Appeal; March 17, 2020, Busy Bee Organics, Inc.; and March 24, 2020 Santa Barbara West Coast Farms

Dear Chair Hart and Supervisors:

The Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties represents over 170 growers, shippers, farm labor contractors, and supporting agribusinesses. Our members grow diverse field and nursery crops such as broccoli, strawberries, wine grapes, vegetable transplants, flowers, and tree fruit. We appreciate the opportunity to comment on the Board's consideration of projects related to cannabis cultivation in the County and have participated in the Planning Commission proceedings and Agricultural Advisory Committee (AAC) meetings on this important topic.

The Association advocates for thoughtful policy that anticipates and minimizes predictable land use conflicts. Our members have experienced similar conflicts with both hemp and cannabis (marijuana). Both hemp and cannabis cultivation have been the source of significant conflict with established Central Coast agriculture.

Based on the best information we have available and the extent of conflict that our members and others in the agricultural community have experienced in trying to grow near hemp and cannabis, we do not believe that hemp or cannabis cultivation is compatible with organic or conventional Central Coast agriculture.

Our Board of Directors and members have engaged in extensive, focused discussions since August. These extensive discussions and the experience of our members growing in close proximity to hemp and cannabis through a full production cycle have better informed our current policy position. Our policy position has evolved as we have become better informed on the specifics of hemp and cannabis cultivation, end uses, regulatory context, and experience of nearby agricultural operations. The Association believes in the value of a diverse, vibrant, and robust agricultural economy and communities and we support different types of Central Coast agriculture. We further believe that innovation and adaptation is essential to support agriculture and allow for future generations to continue to be viable in domestic agriculture in the face of increasing challenges related to labor, water, market, and the cumulative effect of regulatory and economic pressures. For these reasons we are open to opportunities that complement and secure a future for agriculture on the Central Coast and are mindful of the potential precedential implications of policy decisions. **However, based on the experience of our members operating in real-world Central Coast conditions, all evidence suggests that cannabis is <u>not</u> similarly situated to agricultural crops and these differences are driving severe conflicts.**

Hemp and cannabis are fundamentally different from other agricultural crops. Unlike any other crop, hemp and cannabis have demonstrated that it is virtually impossible to farm next to even when exercising best management practices in a manner consistent with proper and accepted customs and standards and local, State, and Federal rules and regulations.

Our members have reported conflicts with neighbors growing both hemp and/or cannabis in a variety of crops and locations in Santa Barbara and San Luis Obispo Counties. The conflicts that our members have experienced are not isolated to one particular location, individual, or crop type. Although there are some limited locations that have not generated conflict, the majority of our members operating near hemp and/or cannabis have experienced significant and acrimonious conflict. The types of conflict include disputes over normal cultivation activities, such as land cultivation, application of plant protection materials, application of fertilizers, and threatened litigation; other conflicts have included harvest crews reporting concerns from strong odors sometimes several miles away. Crop types that have been embroiled in conflicts have included broccoli, wine grapes, avocado orchards, and citrus orchards. Local businesses and community members that have been impacted by this conflict include farmers, harvesters, rural residents, shippers, custom machine operators, materials applicators, and farm labor contractors. Given the great extent and diversity of intrinsic conflicts, we restate that these experiences of conflict are not isolated events and should give pause to the future of hemp and cannabis cultivation on the Central Coast.

Although the significance of advocating for regulations weighs heavily on our Association, we cannot remain silent in the face of continued increases in the number of members whose ability to exercise best management practices is crippled by their proximity to hemp or cannabis cultivation.

Until we have evidence to the contrary we urge a conservative approach be exercised to maintain the viability of the established, diverse agriculture and a future for food crops on the Central Coast. Examples of policy and information gaps include broader State and Federal licensing of plant protection materials for hemp or cannabis cultivation and better understanding of odor concerns. We further believe that addressing liability protection for agriculturalists exercising best agricultural practices and their right to farm is a key component for compatibility between hemp or cannabis and other agricultural food crops.

In light of this information we urge you to consider the widespread and significant conflicts that hemp and cannabis cultivation have generated on the Central Coast demonstrating their incompatibility with existing food crops in Santa Barbara County.

Sincerely,

Claire Wineman

Claire Wineman, President

Exhibit 9, Site Photographs over time

December 2015

May 2016

August 2016

October 2016

June 2017

February 2018

August 2018

March 2019

EXHIBIT 10

CALIFORNIA FARM BUREAU FEDERATION
GOVERNMENTAL AFFAIRS DIVISION
1127 11TH STREET, SUITE 626, SACRAMENTO, CA 95814 · PHONE (916) 446-4647

January 17, 2020

Planning Commission
County of Santa Barbara
Betteravia Government Center
511 East Lakeside Parkway
Santa Maria, CA 93455

RECEIVED
JAN 17 2020
S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

2
1/22/20

RE: Special Hearing; Agenda Item VII (2)

Dear Planning Commissioners:

On behalf of the California Farm Bureau Federation (Farm Bureau), we respectfully submit the following comment regarding Agenda Item VII (2): Cannabis Zoning Ordinance Amendments, slated to be heard on January 22, 2020. Farm Bureau is a non-governmental, non-profit, voluntary organization representing nearly 40,000 members, many of them from the County of Santa Barbara, who strive to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau would like to preface this comment with the understanding that it does not advocate for or against cannabis operations or policies governing cannabis cultivation. We encourage our county Farm Bureaus to take individualized positions, based on their jurisdictions' approaches and unique county characteristics. However, Farm Bureau does advocate on issues wherein which proposed policies, particularly related to the implementation of the California Land Conservation Act of 1965 ("Williamson Act"), will have a deleterious effect on agricultural commodities and/or are contrary to State laws, regulations and the guiding principles of the Williamson Act.

Under the existing "Uniform Rules for Agricultural Preserves and Farmland Security Zones" for Santa Barbara County, commercial cannabis cultivation is considered an agriculture or "qualifying use" under the Williamson Act. Farm Bureau would like to respectfully inform the Planning Commission and associated County staff to newly amended California statute, Government Code §51231(b), which, in reference to use designation, states:

> "51231. (a) For the purposes of this chapter, the board or council, by resolution, shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing, and processing requests to establish agricultural preserves. Rules related to compatible uses shall be consistent with the provisions of Section 51238.1. Those rules shall be applied uniformly throughout the preserve...
> *(b) The rules adopted pursuant to this section may provide that commercial cultivation of cannabis in accordance with Division 10 (commencing with Section 26000) of the Business and Professions Code may constitute a compatible use on contracted or noncontracted lands."*[1]

It is significant to note, subdivision (b) in Section 15231 did not constitute a change to State law, but rather a declaratory statement of the existing requirements of Counties. As explicitly referenced, in the process of adopting rules governing agricultural preserves, cannabis cultivation may only be deemed a "compatible" not "agricultural" or qualifying use on contracted or noncontracted lands.

[1] Senate Bill 527 (Caballero, Chapter 273, Statutes of 2019)

Therefore, it has come to our attention that the current Santa Barbara County "Uniform Rules for Agricultural Preserves and Farmland Security Zones" are not compliant with existing law. The California Department of Conservation, in accordance with §51206 of the Government code, is empowered to assist local jurisdictions in proper interpretation and application of the law. Therefore, in consideration of Agenda Item VII (2), Farm Bureau implores the Commission to redress this previous error and consult with the Department of Conservation, as necessary, to allow for the appropriate application of the explicit State standard. We also encourage the County of Santa Barbara's Uniform Rules be compliant with the California Environmental Quality Act and that the County conduct a complete compatibility review of all non-agricultural, compatible activities on contracted lands.[2]

Thank you for the opportunity to share our perspective. If you have questions or comments, please feel free to reach out to the California Farm Bureau at 916-446-4647.

Sincerely,

Taylor Roschen
Director of Land Use and Commodities
California Farm Bureau Federation

[2] Article 2.5 (commencing with §51230) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code