

BIEN NACIDO VINEYARDS ET AL.  
APPEAL OF CANNA RIOS, LLC  
CANNABIS CULTIVATION (OUTDOOR)

21APL-00000-00027



# Appellant Story: Bien Nacido Vineyards

- ▶ *The Ranch:*
  - ▶ 3,200-acre in Santa Maria Valley AVA
  - ▶ Purchased in 1969 and planted vines in the 1970s
  - ▶ Millers are 5th generation farming family
- ▶ *The Vineyard:*
  - ▶ Top 24 Vineyards in the World - *Wine & Spirits*
  - ▶ Top 10 Vineyard in the World- *Wine Enthusiast*
  - ▶ Top 5 California Vineyards - *Wall Street Journal*
  - ▶ Sell winegrapes to third parties with approx. 40+ buyers and is the most designated vineyard in the world
- ▶ *Farming: Double Certified Sustainable Farming*
  - ▶ S.I.P. (Sustainability in Practice)
  - ▶ CCSW (Certified CA Sustainable Winegrowing)
- ▶ *The Winery:*
  - ▶ Established BACT for control of fermentation emissions from winemaking
  - ▶ Estate tasting room is opening in 2022, and has been approved since 2014

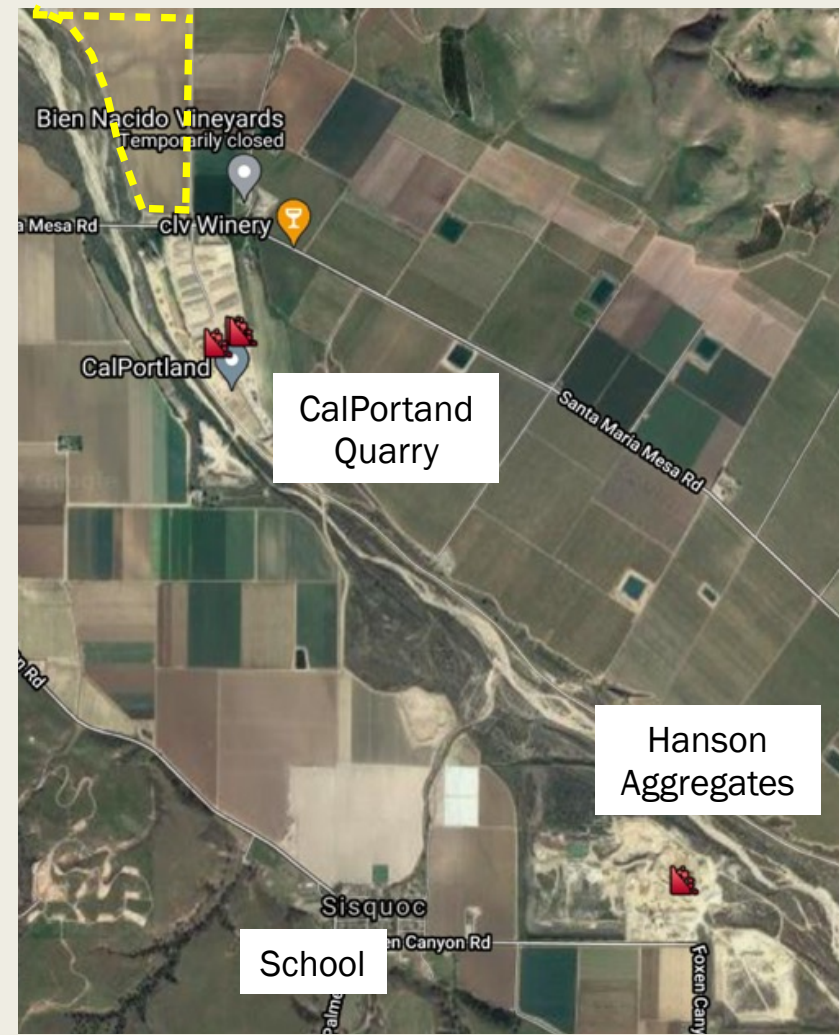






# Vicinity Maps

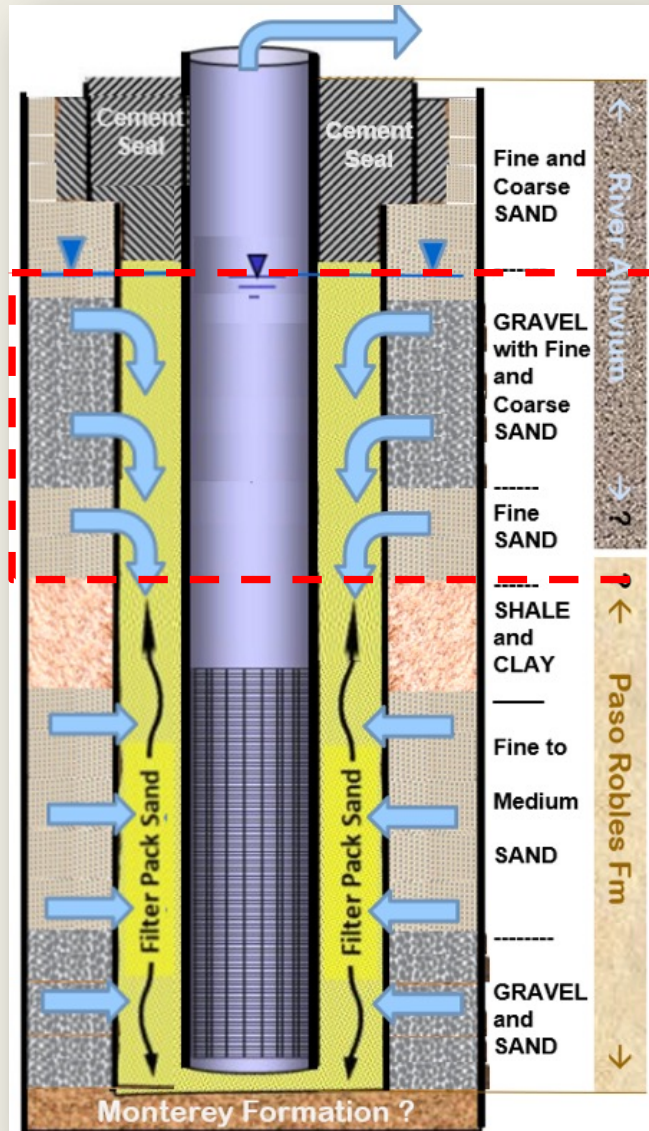
- ▶ 750 feet from the Bien Nacido tasting room
- ▶ 900 feet from Miller's office
- ▶ 4 onsite family residences – closest residence 1,000' directly downwind
- ▶ 2 onsite wineries
- ▶ Across road from CalPortland quarry
- ▶ Upwind from Hanson Aggregates facility
- ▶ < 2 miles from Blochman school downwind



# Key Project Issues

1. Unpermitted Surface Water Diversion for Cannabis
2. Failure to Analyze Project Air Quality Impacts
3. Permits are Required for Compost and Waste Areas
4. Failure to Properly Calculate Project Emissions in  
Transportation Demand Management Plan
5. Odor Control is Required for Project Trimming Activities
6. Unpermitted Berm Construction

# Surface Water Diversion



LUP Finding: Project has “adequate public or private services and resources (e.g., water, sewer, roads) are available to serve the proposed development.”

SWRCB has adopted the forbearance limitations on surface water diversions (including subterranean flows): “Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from **April 1 through October 31** of each calendar year.”

Highly permeable alluvium layers above the shale-clay layers (in red) are hydraulically connected to the deeper well intake screen via the well filter pack sand (in yellow).

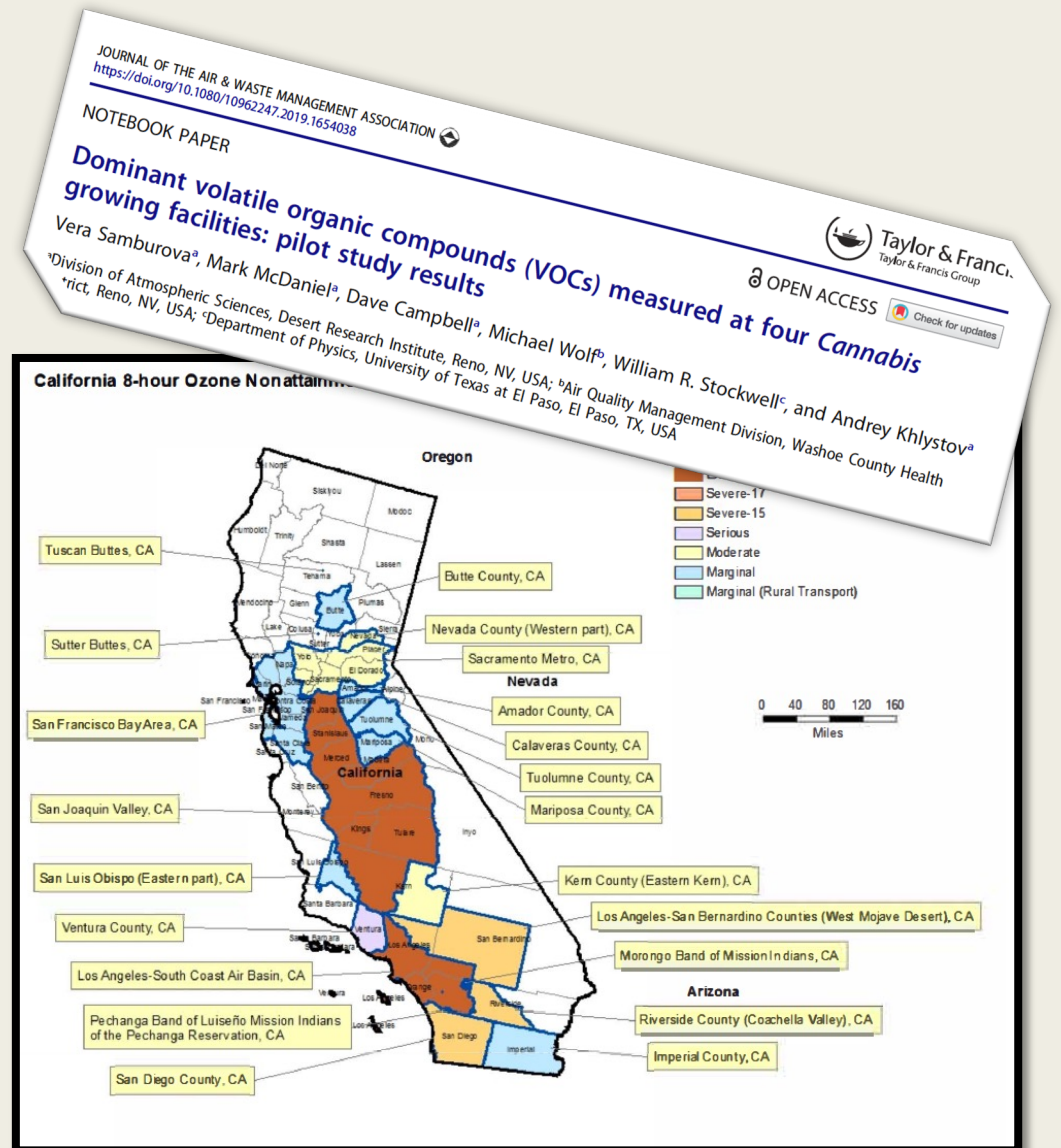
The alluvial sediments with connected groundwater can deliver approximately 70% of the total 169.7 gpm well flow, or as much as 119 gpm.

Project proposes water use of 105.6 AF, or 34,409,860 gallons. With 24,086,902 gallons likely pulling from surface waters.

There is no analysis to refute our expert’s findings or otherwise support that this LUP Finding can be made. Substantial evidence supports conclusion that there will be inadequate water supply for 48 acres of cannabis from the proposed well.

# Air Quality Impacts

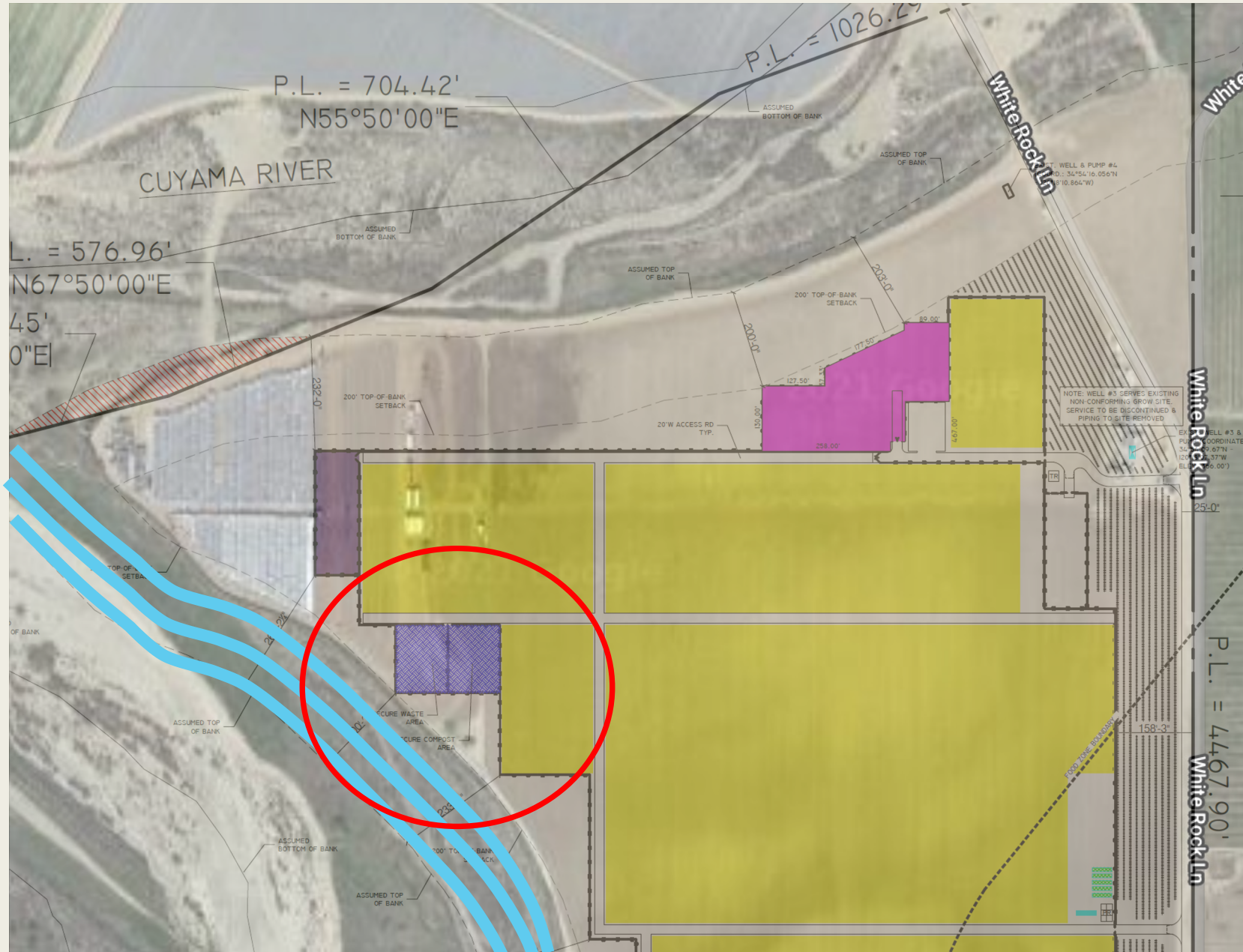
- New information now available that shows that the Project's air quality impacts will be significantly greater and more severe than considered by the PEIR:
  - *Scientific studies have been published since February 2018 indicating that biogenic VOC emissions from commercial cannabis cultivation contribute to ozone and other air pollution*
  - *The portion of San Luis Obispo County lying at the northern boundary of the Project site has been designated nonattainment for the more stringent 2015 National Ambient Air Quality Standard ("NAAQS") for ozone under the Clean Air Act*
  - *California Air Resources Board ("CARB") recently downgraded Santa Barbara County's designation for the state ozone standard from "attainment" to "nonattainment"*



This new research and the changes in ozone designations demand further environmental review to understand the role that biogenic VOCs from the Project will have on ozone pollution and on violations of state and federal ozone standards, both within Santa Barbara County and elsewhere.



# Compost and Waste Areas



# Compost and Waste Areas

Without any plans, it is impossible for the County to determine whether or to what extent regulations of composting operations and protection of endangered species apply to the compost and waste area.

## Permit Requirements

- No analysis of compliance with:
  - Cannabis General Order
  - Compost General Order
  - LUDC – Compliance with Chapter 15B (Development along Watercourses) and Chapter 17 (Solid Waste Services)
- Clean Water Act – NPDES required to discharge pollutants

## Inadequate Biological Resources Assessment

- Federally protected steelhead in the Santa Maria River
- No analysis of the potential for material from compost and waste storage area to reach the Santa Maria River and/or cause harm to steelhead
- No evidence that the BRA considers October 2021 changes to the Project

## Emissions Require APCD Permits

- Ag exemptions do not apply; non-ag sources are only exempt from APCD permitting requirements if they emit <1 ton of emissions per year
- Compost will emit 3.54 tons per year of VOCs and 0.04 tons per year of ammonia (NH<sub>3</sub>)
- Exceeds both BACT and Offset requirement thresholds in APCD's New Source Review Rule 802

# Project Trimming and Trucking Activities

Transportation Demand Management Plan (TDMP) fails to consider emissions from the following trips generated by the Project: transportation of harvested material offsite and hauling of green-waste offsite.

## ■ Harvested Material:

- *Hauled to King City, 600 one-way trips per harvest and 1,200 one-way trips per year. TDMP assumes 2 truck trips per day during harvest (60 days) = 120 trips per year*
- *+ 50 daily one-way employee trips during harvest, exceeds CEQA Significance Threshold of 110 average daily trips*

## ■ Green-Waste:

- *184,800 pounds (337 cubic yards) of green-waste per year; Removal 9 large (40 cubic yard) waste roll-off bins per year*
- *Large compost area suggest trimming onsite, and composting of stems, stalks, and fan leaves – Less trips, but “trimming” onsite triggers BACT requirements in LUDC*



# Unpermitted Berm Construction



# Cuyama River Permit History

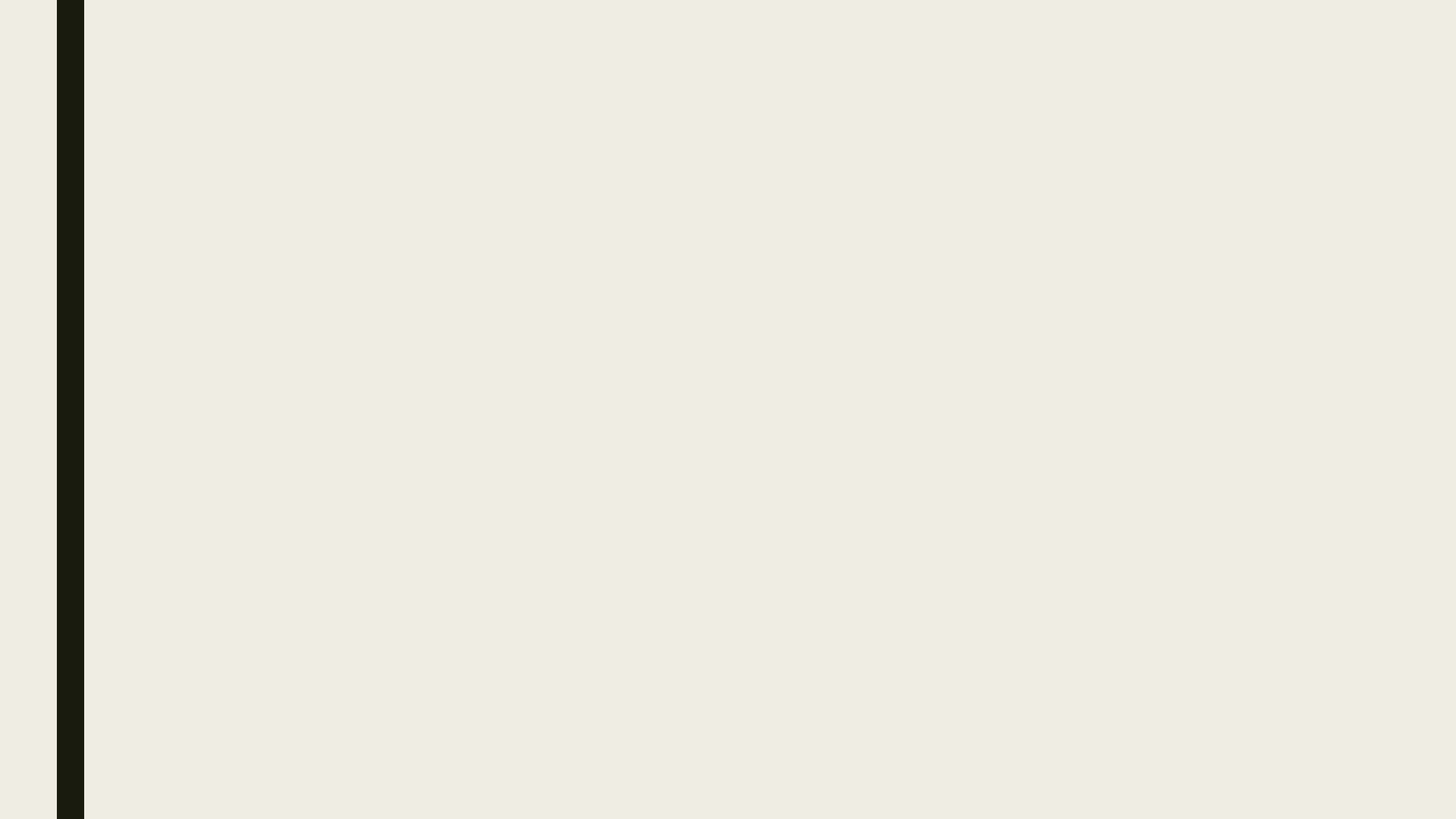


- 1998 – El Niño storm flooding requires releases from Twitchell Dam, resulting in destruction of bridge and in-river crossings
- April 1, 1998 – USACE issues emergency permits to restore river in 4 areas, none include the Project’s berm construction or in-river crossing
- July 27, 2021 - USACE response confirms no permit history for Project parcel for any river diversion or in-river crossing
- November 30, 2021 - USACE response confirms 4 sites identified in 1998 permit, all upstream from unpermitted berm
- The construction of berm is (1) a violation of the Rivers and Harbors Act and (2) a continuing violation if the berm and crossing are still in place.

Regardless of the history or timing of the construction of the berm, each week’s continuance of any the obstruction is deemed a separate offense by law notwithstanding who or when the berm was constructed. 33 USC 403a.

# Legal Basis for Project Denial

- CEQA Finding Cannot be Made (Finding 1.1)
  - *Site-specific air quality impacts not reviewed in PEIR, rendering cumulative air quality impacts more severe*
  - *Compost operations adjacent to Sisquoc River not reviewed in PEIR*
- LUP Findings Cannot be Made (Finding 2.1.1 & 2.1.2)
  - *Inadequate water supply due to surface water diversion*
  - *TDMP significantly understates daily trip generation due to harvest and green-waste hauling, likely exceeds CEQA Significance Threshold*
  - *Compost area runoff and berm construction render project not in compliance with all laws: Clean Air Act, Rivers and Harbors Act, Clean Water Act, ESH, SWRCB Cannabis Policy § 1.18, SWRCB Compost General Order*
  - *Emissions from compost and waste operations require Authority to Construct and Permit to Operate per SBCAPCD Rule 202(D)(7)*



# Environmental Review is Required

- “Tiering” means “the coverage of general matters and environmental effects in an [PEIR] prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate ... the discussion in any prior [PEIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [PEIR].” CEQA section 21068.5
  - *Impacts which can be mitigated or were not analyzed in the PEIR must be reviewed*
- “Where a prior [PEIR] has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered [EIR], except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided ... as a result of the prior [PEIR], or (2) examined at a sufficient level of detail in the prior [PEIR] to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.” CEQA section 21094(a)
  - *None of the air quality impacts from cannabis BVOCs or compost runoff at this site were mitigated in the PEIR, or examined at all*
- The Court of Appeal, while invalidating a CEQA section that allowed agencies to conclude effects were adequately addressed in a PEIR stated: “[A]n agency ... could adopt one statement of overriding consideration for a prior, more general [P]EIR, and then avoid future political accountability by approving later, more specific projects with significant unavoidable impacts pursuant to the prior [P]EIR and statement of overriding considerations.”
  - *The PEIR level Statement of Overriding Considerations does not prevent mitigation of impacts or review of project-specific effects not analyzed in the PEIR.*



- Board Letter: Statement of Overriding Considerations was adopted for all air quality impacts

### **Air Quality and Greenhouse Gas Emissions**

Impacts: The EIR identified significant project-specific and cumulative impacts related to air quality and greenhouse gas emissions from future cannabis activities that would be permitted if the Project is approved. Specifically, the EIR identified the following adverse and unavoidable effects: inconsistency with the Clean Air Plan (Impact AQ-1), traffic generated emissions (Impact AQ-3), inconsistency with the Energy and Climate Action Plan (Impact AQ-4), and exposure of sensitive receptors to objectionable odors (Impact AQ-5).

Cannabis activities may result in the generation of air pollutants through the use of heavy equipment, tilling operations, waste burning, operation of gasoline- or diesel-fuel equipment such as generators and well pumps, vehicle trips to and from a licensed cannabis site by employees and customers, and truck trips to and from a site by vendors and transporters. While it is impossible to precisely predict

Operational emissions would occur due to the increased mobile emissions generated by vehicle trips from employees and customers of new or expanded cannabis activities sites, as well as from the transportation of cannabis products to and from these sites. Operational emissions would also be produced from electrical equipment used in cannabis activities. However, since many cannabis

- Board Letter: BVOCs and terpenes were discussed in the PEIR and considered in the air quality analysis
  - *VOCs are only mentioned 7 times in the PEIR, all in the context of emissions from carbon-based fuels*
- Board Letter: Fluctuations in attainment classifications are not new information, and PEIR's conclusion regarding air quality impacts did not hinge on air quality classifications
  - *Misstates our argument: the PEIR did not even consider attainment classifications in adjacent counties or changes to those classifications*