



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 8701 Santa Rosa Road, Buellton, CA 93427

ASSESSOR PARCEL NUMBER: 083-180-007

Are there previous permits/applications? no yes numbers: _____
(include permit# & lot # if tract)

Is this appeal (potentially) related to cannabis activities? no yes

Are there previous environmental (CEQA) documents? no yes numbers: _____

1. Appellant: Santa Barbara Coalition for Responsible Cannabis Phone: _____ FAX: _____

Mailing Address: 133 De La Guerra St. #164, Santa Barbara, CA 93101 E-mail: info@sbcountycoalition.com
Street City State Zip

2. Owner: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

3. Agent: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

4. Attorney: Law Offices of Courtney Taylor & Marc Chytilo Phone: (805) 682-0585 FAX: _____

Mailing Address: P.O. Box 92233, Santa Barbara, CA 93190 E-mail me@courtneyetaylor.com
Street City State Zip marc@lomcsb.com

COUNTY USE ONLY

Case Number: _____ Companion Case Number: _____
Supervisory District: _____ Submittal Date: _____
Applicable Zoning Ordinance: _____ Receipt Number: _____
Project Planner: _____ Accepted for Processing _____
Zoning Designation: _____ Comp. Plan Designation _____

RECEIVED
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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Central Coast Agriculture, LLC Cannabis Operation

Case No. 19CUP-00000-00005, 19DVP-00000-00010

Date of Action January 13, 2021

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

See Attached.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See Attached.

Specific conditions imposed which I wish to appeal are (if applicable):

- a.

- b.

- c.

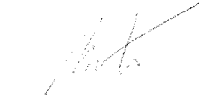
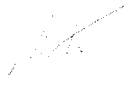
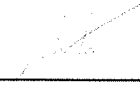
- d.

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

	Law Office of Marc Chytilo	1/25/2021
Print name and sign – Firm		Date
	Law Office of Marc Chytilo	1/25/2021
Print name and sign – Preparer of this form		Date
Print name and sign – Applicant		Date
	Law Office of Marc Chytilo	1/25/2021
Print name and sign – Agent		Date
Print name and sign	Landowner	Date

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ENVIRONMENTAL LAW

January 25, 2021

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

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

**RE: Appeal of Planning Commission Approval
Central Coast Agriculture, LLC (19CUP-00000-00005; 19DVP-00000-00010)**

Chair Nelson and Honorable Supervisors:

Please accept this appeal of the Planning Commission's approval of the above-referenced permits for the Central Coast Agriculture, LLC outdoor cannabis cultivation and processing operation located at 8701 Santa Rosa Road in Buellton ("Project"). This appeal is filed on behalf of the Santa Barbara Coalition for Responsible Cannabis ("Coalition").

The Coalition is an aggrieved party to this permit. It is a community-based advocacy organization seeking to promote the development of a cannabis industry in Santa Barbara County that respects surrounding land uses and existing businesses. Its members live and operate various business within the vicinity of the Project, and are concerned about the enforceability of permit conditions to address odor impacts of the Project to adjacent land uses, including in residential areas nearby and within the City of Buellton, and a failure of the County to comply with the California Environmental Quality Act ("CEQA").

The Planning Commission approved the Project, but in its deliberations cited issues with the Project's onsite as-built storage containers and their ability to make the CUP and DVP Findings related to compatibility of the Project with surrounding areas and its impact to the comfort and convenience of the neighbors. Citing a history of odor problems from cannabis operations and close project proximity, the City of Buellton asked that monitoring conditions be added to the Conditional Use Permit to allow identification among odor sources, of which several more are planned nearby.

The Coalition appeared numerous times during the Planning Commission proceedings, offering detailed and substantive suggested revisions to the project's Odor Abatement Plan, a fraction of which were adopted. The Coalition attempted several times to engage with the operator, who was nonresponsive and needlessly provoked this appeal. The Project's conditions and Odor Abatement Plan remain fundamentally inadequate to ensure that odor will not travel beyond the property line and lacks the basic odor monitoring required of other cannabis cultivation operations to demonstrate they are not responsible for an odor episode in their

vicinity. Without odor monitoring and a commitment to not cause odor beyond their property lines, the operator is enabling a “whack a mole” response to odor episodes: blame someone else.

In addition to the lack of substantial evidence to support the Findings of approval for both the Conditional Use Permit and Development Plan, a new project-level environmental document is required for this Project because (among other things) Board-initiated amendments to the County’s Uniform Rules after PEIR for the County’s Cannabis Ordinance (“PEIR”) certification gutted protections for neighboring agricultural operations that the PEIR expressly relied on to reduce impacts to agriculture. In fact, the PEIR did not address the negative impacts odors have on tourism or adjacent agriculture, specifically how cannabis odors would negatively impact tourism and the long-term impacts agricultural crop conflicts would have on agricultural viability in the region.

Deficient Odor Abatement Plan

Odor Impacts of Cultivation and Processing Activities

Outdoor cultivation generates odors while plants are in their flowering phase, increasing in intensity through harvest. These sites are generally undertaking multiple harvests annually using short-cycle varieties and methods, and pose conflicts with surrounding agriculture and with downwind developed areas. The PEIR asserted that odor impacts would be mitigated by Odor Abatement Plans (MM AQ-5) that are supposed to **“ensure that odors are ... generally confined within the cannabis activity site property.”** [PEIR 3.3-24] This is consistent with proposed conditions Air Pollution Control District’s (“APCD”) submitted for the Project.

The PEIR purported to exempt cannabis activity on AG-II lands from odor requirements due to a plainly erroneous reliance on “the innate need for protection of agricultural land”. (PEIR 3.3-24) There is no such “innate need” to grow cannabis without odor control in areas subject to the Santa Ynez Valley Community Plan (SYVCP) since the SYVCP imposes an odor control requirement independently, regardless of their AG-II status. Further, the County has rejected Right to Farm status for cannabis operations, eviscerating the now fully-discredited contention that cannabis operations in AG-II zoned areas cannot or should not be subject to odor control plan requirements and operational standards. Finally, LUDC § 35.42.075.C.6 imposes the Odor Abatement Plan requirement when a CUP is required in AG-II zones.

The PEIR also relied on the assumption that any incompatibilities between land uses would be reviewed by the County's Agricultural Preserve Advisory Committee ("APAC") on a case-by-case basis. Neither of these are true today. After the PEIR was certified, the Right to Farm Act protections were removed for cannabis making odor mitigation legally feasible in AG-II zones (like all other counties with legal recreational cannabis programs have done), and amendments to the Uniform Rules have removed APAC's review of projects for compatibility with adjacent land uses. These factors require supplemental CEQA review of the Project to address site-specific impacts to adjacent land uses, and specifically enhanced implementation of odor abatement measures and ongoing verification that odor control measures are actually working.

With regarding the Project conditions, a key concern is the County's complete failure to reconcile its own Condition of Approval #11 regarding the Project's Odor Abatement Plan ("OAP") in both the CUP and DVP, with the APCD conditions for the Project regarding odor. Specifically, Condition of Approval #11 for the permit states: "The Odor Abatement Plan must prevent odors from being experienced within *residential zones* as determined by the Director." This Condition, while consistent with the LUDC, is inconsistent with the language and intent of Condition #1 from APCD, ignores Santa Ynez Valley Community Plan policy requirements, and leaves the public unclear as to which areas are "determined by the Director" as zones in which odors shall not be experienced. Specifically, Condition #1 from the APCD expressly states that the odor abatement strategies shall be implemented as laid out in a comprehensive odor abatement plan to ensure that cannabis odors are not detected by nearby residential areas or sensitive receptors. The APCD's condition is not limited to residential "zones" only, a critical distinction on agriculturally zoned lands where a home is allowed by right and crucial for the adjacent West Buellton Existing Developed Rural Neighborhood ("EDRN"), which is zoned AG-I-5. The Board's guidance and direction on this critical distinction is needed to ensure that any and all residential "areas", including agriculturally-zoned EDRNs as well as sensitive receptors will not be required to experience detectable cannabis odors for protracted periods and at any time of the day and night.

The Conditions of Approval must be revised to reconcile APCD's requirements and to make clear odors shall not be experienced in any residential areas, regardless of their technical zoning. The Board should further direct the County to establish the location of these "zones", to ensure the Conditions of Approval regarding odor are clearly enforceable.

The APCD requires that the OAP assure that the Project's odors will not impact any sensitive receptors. See APCD Letter Condition # 1. Staff has not specifically included the APCD conditions into the Project's conditions. See APCD Letter 7/9/20, page 2, at page 38 of Attachment B, Conditions. The CUP Conditions to purport to incorporate by reference of "compliance with [APCD's letter]" in CUP Condition #38, however is vague and probably unenforceable, as these are "Recommended Conditions." Notably, some of these "Recommended" Conditions achieve the dignity of express Conditions to the CUP (e.g., emergency generators) but others, such as the prohibition of exposure to sensitive receptors, which are not identified on any maps or assessed in any way, have been omitted.

Additionally, the OAP does not satisfy with requirements of SYVCP Policy LUG-SYV-8: **The public shall be protected from air emissions and odors that could jeopardize health and welfare.**

DevStd LUG-SYV-8.11 provides: **Future applicants for wineries or other odor generators, based on the nature of the operations (Scope and Content of Air Quality Sections in Environmental Documents, July 2007) shall develop and implement an Odor Abatement Plan (OAP). The OAP shall include the following:**

- Name and telephone number of contact person(s) responsible for logging and responding to winery odor complaints;
- 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;
- 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);
- Description of potential methods for reducing odors, including minimizing potential add-on air pollution control equipment; and
- Contingency measures to curtail emissions in the event of a continuous public nuisance.

The plan shall be prepared prior to issuance of grading permits. Planning and Development shall review the OAP prior to issuance of grading permits.

The CCA OAP is a grab-bag of different documents, including an addendum that alternately repeats and revises various portions to the original OAP, unexplained Standard Operating Procedures (SOPs) describing internal operations that are not clearly stated to be binding parts of the Odor Abatement Plan itself, and several disconnected other studies. There is no stated reason why a single OAP was not required by staff, allowing the confusing and contradictory amalgam of Addenda and other random documents to represent the OAP.

The OAP itself is vague in various respects, and lacks a number of the mandatory elements (e.g., the OAP does not specify the contact person other than “someone on staff” whose contact information “will be provided to the County”; insufficient protocols for responses to odor complaints; lacks contingency measures). It purports to adopt an “adaptive management” **initial** response to odor episodes, while other growers define specific steps to investigating, confirming and responding to an odor episode, with adaptive management being a **last resort** when the planned-for responses are ineffective. The OAP does not even explain what is meant by the term adaptive management, reflecting lip service as opposed to a substantive Odor Abatement Plan competent to ensure that odor will not be detected offsite, as would be required to ensure that the Project will not jeopardize the health and welfare of downwind farms, vineyards and residents, as required by LUG-SYV-8.

Illegally Expanded Uses

Abuse of Article X

This operation represents one of the most flagrant abuses of Article X of the County Code in the County from the unpermitted expansion of operations beyond what existed in January 2016. The Board should direct the applicant to produce site-specific evidence to refute the photos that establish a prima facie case of an illegal expansion of its cannabis operations. The burden of proof is on the applicant as the party asserting a right to a nonconforming use to establish the lawful and continuing existence and scope of the use at the time of the enactment of the ordinance, here as of January 19, 2016. See *Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804. Without such evidence, County decision makers cannot find the property complies with all applicable laws, and the Planning and Development Department's failure to apply sanctions applicable to all other applicants with unpermitted development – double the planning fees – rewards the applicant's illegal conduct that has scarred the Santa Ynez Valley with a sea of hoop houses and either caused or enabled others to cause odorous nuisances observed on Highway 101 and in the City of Buellton. There is simply no legal justification provided whatsoever explaining how the applicant legally expanded its non-conforming uses because no such legal justification exists. The County's conduct amounts to a gift of public funds with significant economic benefit to the applicant's rogue behavior.

The applicant has illegally installed extensive structural development and utility infrastructure on the site, without the benefit of permits, planning process compliance, or code inspections. These wanton illegal acts have prejudiced the surrounding community with extensive impacts, caused significant economic damage to the region's wine industry and emboldened copycat operators to buck the system and expand illegally despite the limitations on both non-confirming uses and for expansion of legal non-confirming uses.

Medical cannabis operations that were legal on January 19, 2016 are allowed to continue with the same size and type of operation until they receive entitlements, including a business license, for an expanded operation. This is "black letter" law for which there is no applicable exception. LUDC § 35-1003 provides that operators of non-conforming cultivation sites "may continue to operate their **same existing** nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the operator continues to manage the cultivation location in compliance with the requirements of article X, state law, and . . . LUDC § 35.101.020."

Nonconforming uses may not be expanded under local and state law. LUDC § 35.101.020.B.3 states: "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 that the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use."

The County is without discretion to unilaterally waive the express requirements of its zoning ordinance and allow the expansion of a nonconforming use. *Point San Pedro Road*

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Coalition v. County of Marin (2019) 33 Cal.App.5th 1074, 1083-1084 (County “is bound by the terms of the ordinance until the ordinance is amended through proper legislative procedure.”) The adoption of the cannabis ordinance did not authorize the applicant to commence expansion of its cannabis operation – the Board left Article X intact, including the prohibition against expansions that occupied a greater area of land. Cannabis expansions conducted before permits are issued, including issuance of a business license, are defined as a public nuisance by Article X. (“Any act or practice contrary to the provisions of this article shall be and the same is hereby declared unlawful and a public nuisance.” Art. X, § 35-1004.A.1.) As such, the applicant’s past expansions constitute public nuisances *per se* that cannot be corrected after the fact, and any further cannabis cultivation beyond the narrow scope of actual use on or before January 19, 2016 is not allowable until they receive full County approvals and survive any legal challenge.

Abatement against nuisances may be pursued by the County under Article X itself, or by an affected individual. *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540. Penalties of \$25,000 per violation and injunctive relief are authorized. Art. X., § 35-1004.B.1. Although § 35-1005 was repealed by the Board in adopting the cannabis ordinance, it left intact § 35-1004 declaring operations without permits to be nuisances and imposing penalties. Thus, the applicant’s expanded non-conforming use constitutes an actionable nuisance *per se* unless and until they receive complete entitlements, including appeals and issuance of a business license, to operate the expanded cannabis facility. See *Urgent Care Medical Services v Pasadena* (2018) 21 Cal.App.5th 1086. Passage of Proposition 64 does not allow cultivation of cannabis to proceed unless and until authorized by local government authorities, which has not occurred until the applicant receives both their land use entitlements and business license. *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078, 1081, citing Health and Safety Code §§ 11358-11359. As such, the Planning Commission cannot make the finding that the project is in compliance with all applicable laws and must deny the project, or make its approval conditional on gaining such compliance and prohibit any interim cultivation in the areas of expansion, including by prohibiting operation of the unpermitted storage containers.

Until all permits and licenses are approved and issued, the applicant may not cultivate cannabis on the expanded area, cultivate recreational cannabis or maintain 55 unpermitted cannabis storage containers on the site.

“Existing” Features are Illegally Expanded Uses; Visual Impacts

The evidence to support the Commission’s Findings of compatibility (See Finding 2.1.5 and 2.1.7) is that many of Project features are “existing” and thus the Project is compatible with surrounding uses. The Board should note that these “existing” features do not obviate the County’s duty to review all elements of the Project in order to find it compatible with the surrounding areas – in fact, the only reason such features are “existing” (and thus their impacts mostly ignored by the draft language supporting the Findings) is because applicant illegally expanded its nonconforming use well-beyond what was existing in January 2016. The enclosed aerial photos clearly depict the systematic expansion of cultivation activities on the parcel between December 28, 2015 and October 2019.



The Commission’s 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.

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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, if it even existed, 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.

Further, the extent of the development proposed for this Project, whether existing or not as of any hearing dates regarding this Project, is clearly not compatible and subordinate to the rural and scenic character of the area. One only needs to drive Santa Rosa Road or review aerial



photography of the area to see how clearly out of step the extent of this development is with the surrounding area. Your Commission must ensure the visual impacts of the project are adequately mitigated.

For reasons stated herein, the Board cannot make Findings to approve this project as proposed. The project's expansion beyond its legal nonconforming footprint renders your Commission unable to make Findings 2.1.6 and 2.2.6, as the parcel does not currently comply with the LUDC's limitations on expansion of legal nonconforming uses.

Inadequate Site Transportation and Demand Management Plan

The Site transportation demand management plan lacks specificity, an internal review process and performance standards to actually demonstrate achieving trip diversion. As compared to other cannabis cultivation sites and those of other larger employers in the county seeking a CUP, , it is inadequate and must be strengthened to support findings.

The Coalition has previously submitted written materials objecting to the County's permit review process, reliance on the PEIR and incomplete CEQA Checklist for this specific project, Williamson Act compliance, incompatibilities with nearby agricultural operations, including wineries operating tasting areas, inconsistencies with the General Plan, including the Agricultural Element and the Santa Ynez Valley Community Plan and identifying various other legal defects and technical inadequacies. Those remain significant issues, however, the need to improve the effectiveness of the applicant's Odor Abatement Plan is urgent and the implications of the applicant's overt expansion of a nonconforming use without waiting for the County's permits have widespread consequences, and should be the immediate focus of the Commission's direction for this project.

Failure to Comply with CEQA

The Santa Barbara County's Programmatic Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program ("PEIR") states: "In accordance with the State CEQA Guidelines Section 15168(c), if subsequent cannabis site development would have effects that were not examined in the EIR, further CEQA review would be required to determine site-specific impacts, determined on a case-by-case basis, and in accordance with the use permit or development plan process applicable to the subject site."¹ As will be discussed, the Project and surrounding projects will have significant direct and cumulative impacts to agricultural resources and land use compatibility that were not reviewed in the PEIR or by staff prior to approval of the Project. Thus, additional CEQA review of this Project is clearly required.

Specifically, as explained in more detail below, the Project presents four 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 now known significant and more severe impacts of pesticide migration on the future viability of legacy agriculture near the Project;
- (3) extent and severity of the land use incompatibility with adjacent agriculture, including critical, supportive uses such as tasting rooms; and

¹ PEIR Volume 1, p. 1-5.

(4) the severity of cumulative impacts of concentration of cannabis projects west of Buellton without any odor control requirements, including from the new potentially significant impact of terpene taint on wine grapes grown nearby.

In addition, and importantly for this project in particular, changes to the County's Right to Farm Act now make odor mitigation on AG-II zones and this Project feasible.

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 substantial evidence and law.

1. Scope of the County's Discretion and Applicability of CEQA

The Conditional Use Permit and Development Plan required for the Project are discretionary permits which require strict compliance with CEQA and gives the County broad authority and discretion to review and condition the Project, or deny the Project entirely. In addition, because the Project is a later activity approved under the PEIR, the Project is undeniably subject to CEQA per Guidelines section 15168 (c).

Here, as a discretionary permit, the County must exercise its judgment and deliberate when deciding whether to approve, disapprove, or require modifications to this Project. This includes requiring now-feasible mitigation measures to control odor and reduce significant land use impacts caused by odor on AG-II zoned parcels like the Project site. The County's discretion under the ordinance is broad, since the Cannabis Ordinance establishes the "minimum land use requirements" for cannabis cultivation. The County 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

2. 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, the County is barred from approving this Project until such CEQA review has been completed.

Later activities approved under a Program EIR "must be examined in light of the program EIR to determine whether an additional environmental document must be prepared", and "if a later activity would have effects that were not examined in the program EIR, the County must prepare a new Initial Study leading to either an EIR or Negative Declaration."² Unfortunately here, the County did not undertake an adequate analysis to determine whether an additional

² CEQA Guidelines § 15168 (c)

environmental document must be prepared, and failed to consider substantial evidence of new and substantially more severe impacts resulting from changed circumstances and new information requiring subsequent environmental review.

Subsequent environmental review is required for later activities approved under the Program where substantial evidence shows the conditions of CEQA Guidelines section 15162 are met, including:

Substantial changes have occurred which result in new significant environmental effects of a substantial increase in the severity of previously identified significant effects.³

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.⁴

Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion . . . that the project may have a significant effect on the environment”.⁵ The following specifically constitute substantial evidence:

Expert opinion if supported by facts, even if not based on specific observations as to the site under review.⁶ Where such expert opinions clash, the County should require preparation of a tiered EIR.⁷

Relevant personal observations of area residents on nontechnical subjects.⁸

Specifically, as explained in more detail below, substantial evidence supports a conclusion that the Project may cause new and substantially more severe impacts that require substantive and meaningful review and mitigation. There is no substantial evidence in the record supporting a conclusion that the four impacts listed above and respective mitigation were examined in the cannabis PEIR. By law, the County 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.

³ Cal. Pub. Resources Code at § 21166(b); CEQA Guidelines § 15162(a) (1-2).

⁴ *Id.* at § 21166(c); CEQA Guidelines § 15162(a) (3)

⁵ CEQA Guidelines § 15384.

⁶ *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).

⁷ *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).

⁸ *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.

For the reasons explained above and further detailed below, the Coalition respectfully requests that the County deny the Project or direct the Applicant and County staff to undertake appropriate environmental review under CEQA.⁹ With such action, we request the County provide direction to staff that all cannabis projects require site-specific CEQA review of the five key impacts and new feasible mitigation identified in this letter.

3. 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 including the Coalition’s members, 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 Staff Report prepared for the October 20, 2020 hearing asserts that staff “determined that all of the environmental impacts of the Proposed Project were within the scope of the project covered by the PEIR for the Cannabis Land Use Ordinance and Licensing Program.” (County Letter p. 8.) 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, there is substantial evidence that the 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 County must direct additional environmental review or deny the Project¹⁰.

Additionally, the County’s process for reviewing subsequent activities in the Cannabis program including this Project is legally inadequate, and constitutes a pattern and practice of violating CEQA. The Staff Report 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. CEQA Framework for Review of Later Activities Approved under the PEIR

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

⁹ 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).

¹⁰ CEQA does not apply to projects which a public agency rejects or disapproves. (CEQA Guidelines § 15270 (a).)

review is necessary. (CEQA Guidelines¹¹ § 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).)

Guidelines § 15162 identifies the circumstances under which subsequent environmental review is required including where “substantial evidence in light of the whole record” shows “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).)

“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

¹¹ 14 CCR 15000 et seq.

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, and that previously infeasible mitigation is now feasible. By contrast there is no substantial evidence in the record supporting a conclusion that these impacts and mitigation were examined in the cannabis PEIR. For this reason, the County cannot approve this Project without additional project-specific review and mitigation for significant avoidable impacts.

b. Changes to the County’s Uniform Rules Triggers Additional Environmental Review

Since the PEIR’s certification, the County 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 County that the adopted amendment was not covered in the PEIR). The Uniform Rules amendment leads to new and substantially more severe impacts to agriculture, including from the Project specifically. Accordingly, the County 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, both principal and secondary uses are allowed *provided* the use in each case 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 all proposed projects.

(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 of Supervisors Staff Report, attached hereto as Exhibit 1.) Staff’s Report 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 Staff Report 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,¹² and voted 4-1 (Wolf voting no) to define cannabis cultivation as agricultural production for purposes of the Uniform Rules.

(Board Action available at:

¹² 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 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.

<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=3378208&GUID=6426E34B-B1E5-4D20-B838-A00AF393EF44&Options=&Search=>)

There is one significant consequence of the Board's decision that affect cannabis projects proposed on contracted land that were not considered in the PEIR. 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. This represents 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 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 Staff Report states that APAC reviewed the Project on April 15, 2019, and determined, after mandating increased Project cannabis acreage, that it was consistent with the Uniform Rules which include the Principles of Compatibility. (Staff Report, pp. 10-11.) However, APAC did not review the proposed cultivation for compatibility with adjacent agriculture, including issues concerning terpene taint and pesticide migration. (Staff Report, Attachment K, APAC Minutes 4/15/19, 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.¹³ First, where "[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report."¹⁴ 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."¹⁵ 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."¹⁶ 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 this project, and potentially most other later projects.

(3) Substantial Evidence of New and Substantially Increased Impacts to
Agriculture from the 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.¹⁷ Due to the change in circumstances resulting from the Board's post-PEIR amendment to the Uniform Rules, the Project's proposed cannabis cultivation was not reviewed by APAC for compatibility with the Williamson Act contracts held by adjacent landowners.¹⁸ Any indication by County staff that this review occurred is incorrect – Counsel for COALITION 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

¹³ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317.

¹⁴ Cal. Pub. Resources Code, § 21166(a).

¹⁵ *Id.* at § 21166(b).

¹⁶ *Id.* at § 21166(c).

¹⁷ CEQA Appendix G § II (b, e); PEIR pp. 3.2-18.

¹⁸ See GIS map of Williamson Act parcel, available at:

<https://sbcblueprint.databasin.org/maps/new#datasets=293bb2006edc4c8986d6b564d4502527>

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"). See Exhibits 3 and 4.

c. New Information on Terpene Taint Triggers Additional Environmental Review

A new potentially significant impact associated with terpenes from cannabis grown in close proximity to wine grapes has been identified, and in this case, may primarily implicate cumulative impacts of this operation. 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 grapes 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.

An evaluation of the PEIR 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".¹⁹ 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

¹⁹ <https://hightimes.com/news/california-businessman-believes-the-smell-of-marijuana-hurts-wine-grapes/>

taint.”²⁰ 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.²¹

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.

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 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

²⁰ <https://www.foodandwine.com/wine/wine-grapes-marijuana-odor-lawsuit-oregon>

²¹ 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 Project reports plant density of 10,000 to 12,000 plants per acre.

terpenes (Staff Report for Santa Rita Valley Ag. Cannabis Cultivation Appeal (3/10/20)²², p. 9). Further, a letter submitted by the County's Ag Advisory Committee (AAC) urges the Board to continue these Projects 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.)

d. New Information on the Agricultural Impact of Pesticide Migration Triggers Additional Environmental Review

We have 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 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.²³ 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.²⁴ 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.²⁵ The Staff Report does not address this issue at all.

The seminal case on the issue of pesticide drift, *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.*²⁶ 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

²² Available at: <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=4387318&GUID=198F6748-DE28-44EB-B82F-C7C46A3CA7C2&Options=&Search=>

²³ See PEIR, pp. 3.2-19-3.2-23.

²⁴ *Id.* at pp. 3.2-24-25.

²⁵ See page 36 of Staff Report from October 2, 2019 Planning Commission hearing.

²⁶ *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502

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.

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 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*"²⁷ 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.²⁸ In various interviews with Scott Van Der Kar, an avocado grower in the Carpinteria foothills, Mr. Van Der Kar explains that many

²⁷ *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).

²⁸ 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.

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.²⁹ 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.

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.”³⁰ 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 around Buellton 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 and its includes the area where the project is located.³¹ 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.³² 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.³³

²⁹ 16 CFR 42, § 5719, p. 108.

³⁰ CEQA Guidelines, Appendix G, § II.

³¹ See GIS map at <https://sbc-gis.maps.arcgis.com/apps/PublicInformation/index.html?webmap=7d8f1e27f37340248b654363d1569e1f>.

³² Thostenson, A, et al. 2017. *Air Temperature Inversions Causes, Characteristics and Potential Effects on Pesticide Spray Drift*. North Dakota State University.

³³ 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.³⁴ 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.”³⁵

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. 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.

e. Substantially Increased Land Use Incompatibility Impacts Triggers Additional Environmental Review

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.³⁶ 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.

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

³⁴ 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.

³⁵ *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>

³⁶ *Santa Barbara County’s Environmental Thresholds and Guidance Manual*, p. 118; PEIR, p. 3.9-32.

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 protecting the public from odors, requiring the new development will be compatible with adjacent agricultural lands and preserving and protecting lands designated for agriculture. 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, and compare to SYVCP. Thus Project inconsistencies with Santa Ynez Valley Community Plan Goals and Policies represent potentially significant impacts 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.

f. New and Substantially Increased Cumulative Impacts of Project Clusters Trigger Additional Environmental Review

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.³⁷ 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).)

The Project is the furthest east of a cluster of seventeen (17) outdoor cannabis cultivation projects in various stages of approval, averaging 34 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.³⁸ These seventeen projects total 570 acres of outdoor cannabis cultivation, or 36% of Santa Barbara County’s 1,575 acres cannabis production cap. This is 52% of the total 1,100 acres of cannabis generally accepted as the acreage 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 Santa Rosa Road, within the Sta. Rita Hills American Viticultural

³⁷ 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.”

³⁸ See <https://www.pressdemocrat.com/news/9711880-181/sonoma-county-begins-to-process?sba=AAS>.

Area and a scenic corridor that is considered the gateway to the Valley. Further, the majority of the land in the Sta. Rita Hills American Viticultural Area and other areas where cannabis projects are proposed are both subject to and surrounded by other lands subject to Williamson Act contracts, implicating the CEQA issues discussed previously with regard to the Uniform Rules and conflicts with State law. Finally, the concentration of cannabis operations and their odors in the Sta. Rita Hills American Viticultural Area threatens the economic viability of vineyards, wineries and tasting facilities in this area. The concentration of cannabis operations increases the potential for Terpene Taint of wine grapes, and pesticide use conflicts.

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 Staff Report 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.

g. 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. The impacts from terpene drift, the conflicts with traditional agriculture, and the changes in the Uniform Rules are not discussed at all in the CEQA Checklist.

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

The CEQA Guidelines direct that, "[w]here the later activities involve site specific operations, the agency should use a written checklist or similar device **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.**" 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,³⁹ that an initial study is required, and if not, to disclose data or evidence supporting their findings.⁴⁰

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.⁴¹ 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."⁴² This establishes a "low threshold" for when a public agency must prepare a tiered EIR.⁴³ 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."⁴⁴

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.⁴⁵ 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.⁴⁶ 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

³⁹ *Sierra Club, supra*, 6 Cal.App.4th at 1319.

⁴⁰ *Citizens Ass'n for Sensible Dev., supra*, 172 CA3d at 171.

⁴¹ Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code, § 21168.

⁴² *Sierra Club, supra*, 6 Cal.App.4th at 1319 (emphasis added).

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ 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."

⁴⁶ *Ibid.*

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.

h. **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 Santa Rosa Road. The Project is located adjacent to an EDRN, is near the 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:

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.

i. 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	Orlando et al, 2000

Terpene	Secondary Toxin	Action	
		Major irritants	

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⁴⁷ 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](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

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 use “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.

4. 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 Overlay 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,

monoterpenes. *Journal of Geophysical Research, Papers on Atmospheric Chemistry*. Volume 104, Issue D11 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>

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)

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 deny the Project, as it cannot make the following finding:

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 Santa Rosa Road as a “scenic rural road”. The SYVCP states that these roads “provide unapparelled views of [the Valley] scenery.” The Project site is on Santa Rosa Road, and project elements are located very close to the viewsheds of this road. Based on the foregoing, the SYVCP makes it clear that any development of Santa Rosa Road must be compatible with the existing setting and does not detract from the rural aesthetic of the Valley.

To ensure special protection of the aesthetic resources, including these scenic rural roads, 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) and the County’s scope of review 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 County, 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 County 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. CBAR did not 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, particularly in light of the multiple projects sited for cannabis cultivation along Santa Rosa Road. The proliferation of the landscaping required to screen cannabis cultivation clustered along Santa Rosa Road (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.

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

Further, the Project (including the Landscape Plan, 55 shipping containers 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 22 acres 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. The Coalition 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 Santa Rosa Road, site design, or alternative colors or locations for the hoop structures (including prohibiting hoop structures from being visible at any time from Santa Rosa Road).

In addition, the Project exposes the public to air emissions and odors in violation of SYVCP Policy LUG-SYV-8, as noted supra. The Project threatens the viability of existing agriculture and undermines protection and preservation of Santa Ynez Valley' agricultural lands. Policy LUA-SYV-2. The Project is not compatible with adjacent agricultural lands, due to the actual and potential conflicts with adjacent and nearby agricultural operations in Williamson Act Preserves. Policy LUA-SYV-3.

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.⁴⁸

The County's Comprehensive Plan *Scenic Highway Element* contains preservation measures for eligible scenic routes.⁴⁹ 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 *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.⁵⁰ In addition 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.⁵¹

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".⁵² 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.⁵³

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%). Santa Rosa Road was found to be a "moderately scenic" corridor⁵⁴ which should be "should be treated with care if development is permitted".⁵⁵

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

⁴⁸ CPC Attachment I, January 10, 2018, page 12.

⁴⁹ County of Santa Barbara 2009a

⁵⁰ Open Space Element, Adopted 1979, Republished 2009 at p. 16.

⁵¹ *Id.* at 38.

⁵² *Id.* at 22.

⁵³ *Id.* at 22.

⁵⁴ *Id.* at Table 3.

⁵⁵ *Id.* at 42.

“clear image of the city’s identity”.⁵⁶ 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 Santa Rosa Road) that should be subject to heightened review prior to approving development on parcels in this area.

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.

5. 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 Project must be 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. Thus, this finding cannot be made.

⁵⁶ *Id.* at 42.

a. Scope of Legal Nonconforming Status

The operative date under Article 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 (See cover letter) and evidence obtained by Appellant, the site was limited to existing buildings and six small greenhouse tents in November 2015. In a letter from Gary Nemetz, CFO of Blue Ribbon Farms LLC (Applicant's landlord), it states that from July 2015 through October 2015 no rent was charged because Applicant was merely cleaning and making the *buildings* usable for cannabis growth.

Starting November 2015, rent was collected only for these buildings and greenhouses because the cannabis operation started in those areas only. It was not until January 2016 that lease for fields began because the land grading had presumably begun.

Further, there is no definitive indication that any of the purchases or photos in 2015 produced by the Applicant to the County to substantiate cannabis cultivation was occurring onsite are relevant to the property itself. In fact, the evidence submitted was duplicated for both this Project and Applicant's other project located at 5654 Santa Rosa Road.

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.⁵⁷ 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,⁵⁸ 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.”⁵⁹ The scope of the claimed legal nonconforming use was not, and still has not been investigated. Based on photographs obtained by our offices, it appears Applicant's current cultivation significantly exceeds the scope of any possible claim to legal nonconforming use.

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

⁵⁷ 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)”.

⁵⁸ *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 552.

⁵⁹ *Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804.

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ordinance.⁶⁰ 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.⁶¹ 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.⁶² Courts have declined to extend this doctrine in cases of agricultural uses.⁶³

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*⁶⁴, 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 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

⁶⁰ 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

⁶¹ See *McCaslin v Monterey Park* (1958, 2d Dist) 163 Cal App 2d 339, 329 P2d 522.

⁶² "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.

⁶³ 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.)

⁶⁴ *San Diego County v. McClurken* (1951) 37 Cal.2d 683, 690.

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 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 effectuated.

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.

6. Project Final Conditions Do Not Integrate APCD Conditions

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].)

Here, Condition of Approval #11 for the permit states: “The Odor Abatement Plan must prevent odors from being experienced within *residential zones* as determined by the Director.” This Condition, while consistent with the LUDC, is inconsistent with the language and intent of Condition #1 from APCD and leaves the public unclear as to which areas are “determined by the Director” as zones in which odors shall not be experienced. Specifically, Condition #1 from the APCD expressly states that the odor abatement strategies shall be implemented as laid out in a comprehensive odor abatement plan to ensure that cannabis odors are not detected by nearby residential areas or sensitive receptors. This condition is not with regard to residential “zones” only. It includes any and all residential “areas” as well as sensitive receptors.

The Conditions of Approval must be revised to reconcile APCD’s requirements and to make clear odors shall not be experienced in any residential areas, regardless of their technical zoning. The Commission should further direct the County to establish the location of these “zones”, to ensure the Conditions of Approval regarding odor are clearly enforceable.

7. Lack of Evidence to Support Findings

The Board lacks evidence to make Findings 2.1.1 and 2.2.1 that the site is adequate, due to evidence of odor drift into the City of Buellton, out to Highway 101, along Santa Rosa Road, and in the West Buellton EDRN. Its shape precludes adequate buffers, and the site’s visibility from scenic vantage points (including Highway 246 and Santa Rosa Road) make the hoop houses, shipping containers and processing building visually intrusive and incompatible with the surrounding lands.

The Board lacks evidence to make Finding 2.1.2 that significant environmental impacts are mitigated to the maximum extent feasible. The absence of any CEQA review and reliance on the flawed Checklist preclude this finding, in light of evidence of land use incompatibility, visual impacts, odor impacts, inconsistency with applicable standards adopted to protect the environment, including the General and Community Plans.

The Board lacks evidence to make Finding 2.1.5 that the project will not be detrimental to the comfort, convenience, general welfare health and safety of the neighborhood and is compatible with the surrounding area. The Project is visually intrusive and incompatible with the scenic quality of the surrounding area, will generate odors that are demonstrably detrimental to the comfort, welfare, health and safety of the adjoining neighborhood EDRN and City of Buellton; and creates conflicts with nearby agriculture by placing an odor generator at the start of the Santa Rosa Road wine tasting tour. The finding that the Deodorizer is downwind of the cultivation area is without evidence for that portion of each day when the winds are not blowing from the west.

The Board lacks evidence to make Finding 2.1.6 due to the flagrant expansion of an unpermitted Non-Conforming Use and installation and utility connections of dozens of shipping containers without permits.

The Board lacks evidence to make Findings 2.1.7 and 2.2.7 of compatibility with the scenic character of the area because 52 shipping containers, hoop houses, security lighting and fencing, and processing building are not compatible with and subordinate to the rural and scenic character of the area.

The Board's Findings must trace the analytic route connecting the facts with the findings themselves. Given the significant inconsistencies with the Land Use and Development Code, Santa Ynez Valley Community Plan and General Plan, and incompatibilities due to odor and the project characteristics, these Findings cannot be made and the project should be rejected, with instructions to return with a smaller scale project that is suited to the site.

8. Summary and Conclusion

After investing millions in building residences, neighborhoods, and local businesses, the community faces what could be (and is perceived by many in these communities to be) a threat to their quality of life due to inadequate application of odor mitigation measures. Similarly, non-cannabis farmers' existence is threatened by 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 compatibility 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 than 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, approval of the 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 deny the Project.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



By: Marc Chytilo
Attorneys for Appellants

LAW OFFICE OF COURTNEY TAYLOR, APC



Courtney Taylor
Attorneys for Appellants

Exhibits:

Exhibit 1: Board of Supervisors Staff Report, Cannabis Ordinance, Williamson Act Uniform Rules Amendments (3/20/18)

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

Exhibit 3: Santa Barbara County Agricultural Advisory Committee letter, March 6, 2020

Exhibit 4: Grower Shipper Association letter, March 6, 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 Glenn S. Russell, Ph.D., Director, Planning and Development
Director(s) (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

Exhibit 2

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

COLLEGE OF AGRICULTURAL AND ENVIRONMENTAL SCIENCES
AGRICULTURAL EXPERIMENT STATION
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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, C₁₀ compounds, and sesquiterpenes, C₁₅ 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 10⁶ order difference between the cannabis terpene concentration and terpene odor detection levels. Research has shown terpene emission rates of up to 8.7 µgC 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 Vizuet (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 than those determined for *Eucalyptus* trees. The Vizuet 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

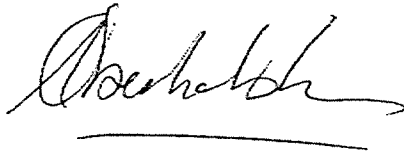
Investigations into the potential impact of *Cannabis* emitted terpenes on winegrapes are complex due to the significant impact of the environment on diffusion of volatile organic compounds. Distance of diffusion will depend on the concentration at the source, as well as environmental conditions. Approximately 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,

A handwritten signature in black ink, appearing to read "Anita Oberholster", with a horizontal line underneath it.

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.

Capone, et.al., 2011. Evolution and occurrence of 1,8-cineole (eucalyptol) in Australian wine. *J. Agric. Food Chem.* 59, 953–959.

Capone et al., 2012. Vineyard and Fermentation Studies To Elucidate the Origin of 1,8-Cineole in Australian Red Wine. *J. Agric. Food Chem.* 60, 2281-2287.

Capone 2017. Trees and vines: can different types of local vegetation contribute to wine flavour? *Technical Review* 229, 7-10. https://www.awri.com.au/wp-content/uploads/2011/07/Technical_Review_Issue_229_Capone.pdf

Carrau et al., 2008. Terpenoids in grapes and wines: Origin and micrometabolism during the vinification process. *Nat. Prod. Comm.* 3 (4), 577-592.

Kennison et al., 2009. Effect of timing and duration of grapevine exposure to smoke on the composition and sensory properties of wine. *Aust. J. Grape Wine Res.* 15, 228-237.

Krstic et al., 2015. Review of smoke taint in wine: smoke-derived volatile phenols and their glycosidic metabolites in grapes and vines as biomarkers for smoke exposure and their role in the sensory perception of smoke taint. *Aust. J. Grape Wine Res.* 21, 537-553.

Poitou et al., 2017. 1,8-Cineole in French Red Wines: Evidence for a Contribution Related to Its Various Origins. *J. Agric. Food Chem.* 65, 383-393.

Stonebridge Research Group™ LLC. December 2015. *The Economic Impact of Santa Barbara's County's Wine and Grapes*, 2013.

Vizueté, December 6, 2019. Final Report. Estimated emissions, concentrations, and deposition of monoterpenes from an outdoor Cannabis farm.

Wang et al., 2019. Leaf enclosure measurements for determining volatile organic compound emission capacity from Cannabis spp. *Atmos. Environ.* 199, 80-87.

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

Exhibit 3



COUNTY OF SANTA BARBARA AGRICULTURAL ADVISORY COMMITTEE

January 17th, 2020

County of Santa Barbara
Planning Commission
123 Anapamu Street
Santa Barbara, CA 93101

RE: January 22 Hearing on Cannabis Zoning Ordinance Amendments

Dear Chair Bridley and Planning Commission Members:

At the Agricultural Advisory Committee (AAC) meeting on January 9, the Committee had continued discussions regarding issues surrounding cannabis cultivation in Santa Barbara County. The discussion reflected the fact that the agricultural community has a variety of viewpoints on the issue, both negative and positive. AAC would like to articulate that there are multiple points of view from the different commodity groups on AAC and that there are differing concerns in regards to the cultivation of cannabis, and that because these issues are complex and therefore don't lend themselves well to short written summaries, we would welcome the opportunity to discuss them with you in person.

Therefore, AAC continues to offer to hold a joint Planning Commission and AAC meeting or workshop to further discuss cannabis cultivation in the County and provide the Planning Commission assistance in any way we can.

Thank you for your thoughtful consideration of these comments and engagement on this complex issue.

Paul Van Leer, Chair

Committee Members

Bradley Miles
Ron Caird
Sharyne Merritt
AJ Cisney
Randy Sharer
Carrie Jordan
Claire Wineman
Paul Van Leer, Chair
June Van Wingerden
Tyler Thomas
Andy Mills, Vice Chair
Chrissy Allen

Representing

1st District Supervisor, Das Williams
2nd District Supervisor, Gregg Hart
3rd District Supervisor, Joan Hartmann
4th District Supervisor, Peter Adam
5th District Supervisor, Steve Lavagnino, Chair
California Women for Agriculture
Grower-Shipper Association of SB and SLO Counties
Santa Barbara County Farm Bureau
Santa Barbara Flower & Nursery Growers' Association
Santa Barbara Vintners
Santa Barbara County Cattlemen's Assn.
California Strawberry Commission

Exhibit 4



2
1/22/20

January 16, 2020

County of Santa Barbara
Planning Commission

JAN 16 2020

S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

Re: January 22, 2020 Santa Barbara County Planning Commission Agenda Item #2—Cannabis Zoning Ordinance Amendments

Dear Chair Bridley and Planning Commissioners:

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 Planning Commission's consideration of potential revisions to the Cannabis Zoning Ordinance. Our Board of Directors voted unanimously to submit this comment letter.

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 not 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, President

SANTA BARBARA COALITION FOR RESPONSIBLE CANNABIS, INCORPORATED
PO BOX 278
SANTA BARBARA, CA 93102-0278

90-8578/3222

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DATE 1-25-2021

PAY TO THE ORDER OF COUNTY OF SANTA BARBARA \$ 701.06
SEVEN HUNDRED ONE & 00/100 DOLLARS

PACIFIC PREMIER BANK
1035 STATE ST.
SANTA BARBARA, CA 93101
1-805-978-4422

Paul C. Ekst M

MEMO

3 2 2 2 8 5 7 8 1 8 0 0 0 9 4 8 9 8 0 1 7 7

SPECIALTY BLUE



COUNTY OF SANTA BARBARA

X 2143723

COB

Department

Date 1/25/21

Received from Santa Barbara Coalition for Responsible Cannabis

In Payment of 8701 Santa Rosa Road, Buellton land-use appeal

Seven Hundred One and 00/100 Dollars \$ 701.06

Received original of the above numbered receipt

CREDIT CARD	
CASH	
CHECK	<input checked="" type="checkbox"/>

>147

NIA SIGNATURE OF PAYOR

177

A. Ramirez AUTHORIZED SIGNATURE