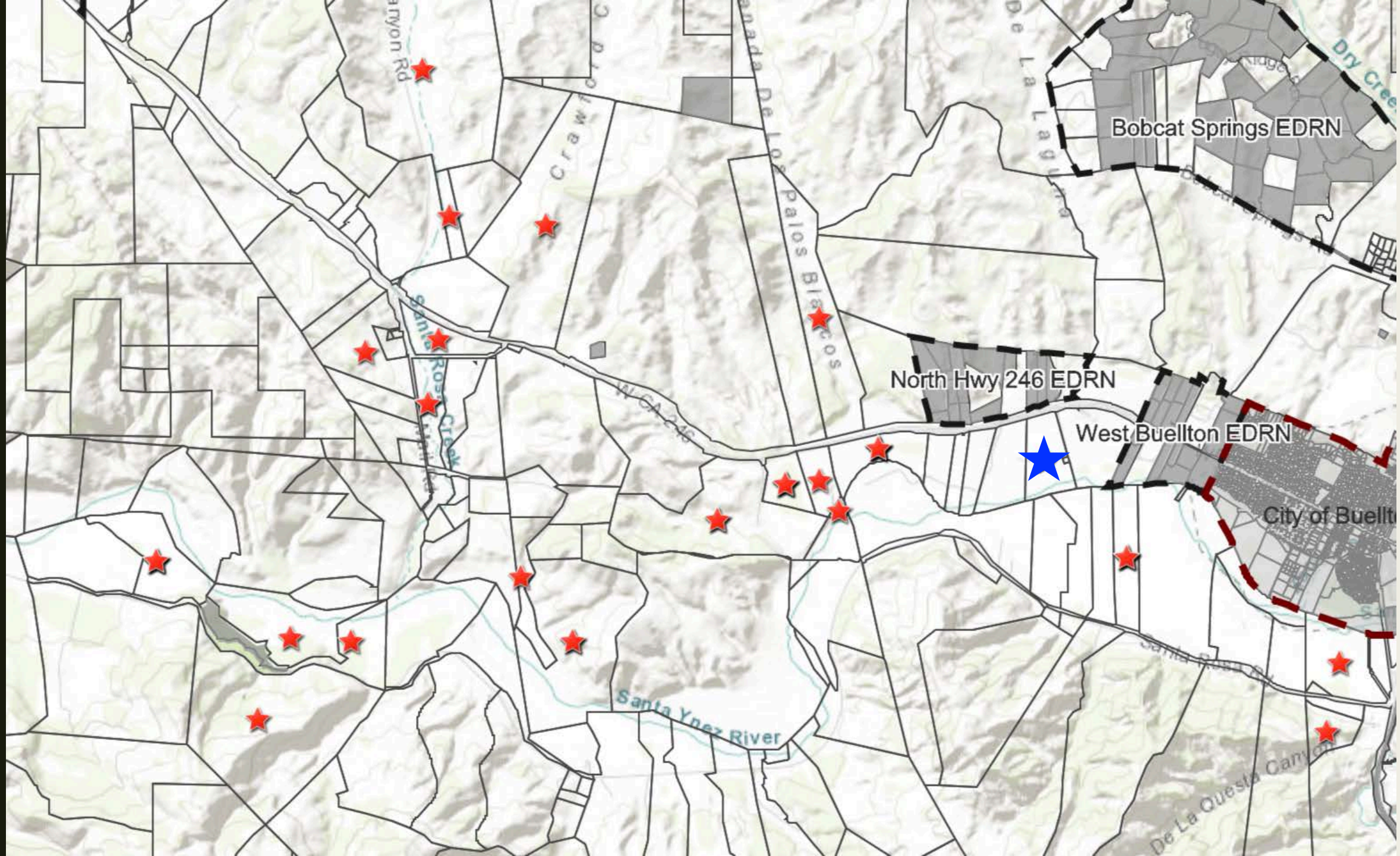


SBCRC APPEAL  
BUSY BEE'S ORGANICS, INC.  
CANNABIS CULTIVATION  
(OUTDOOR)

19APL-00000-00031

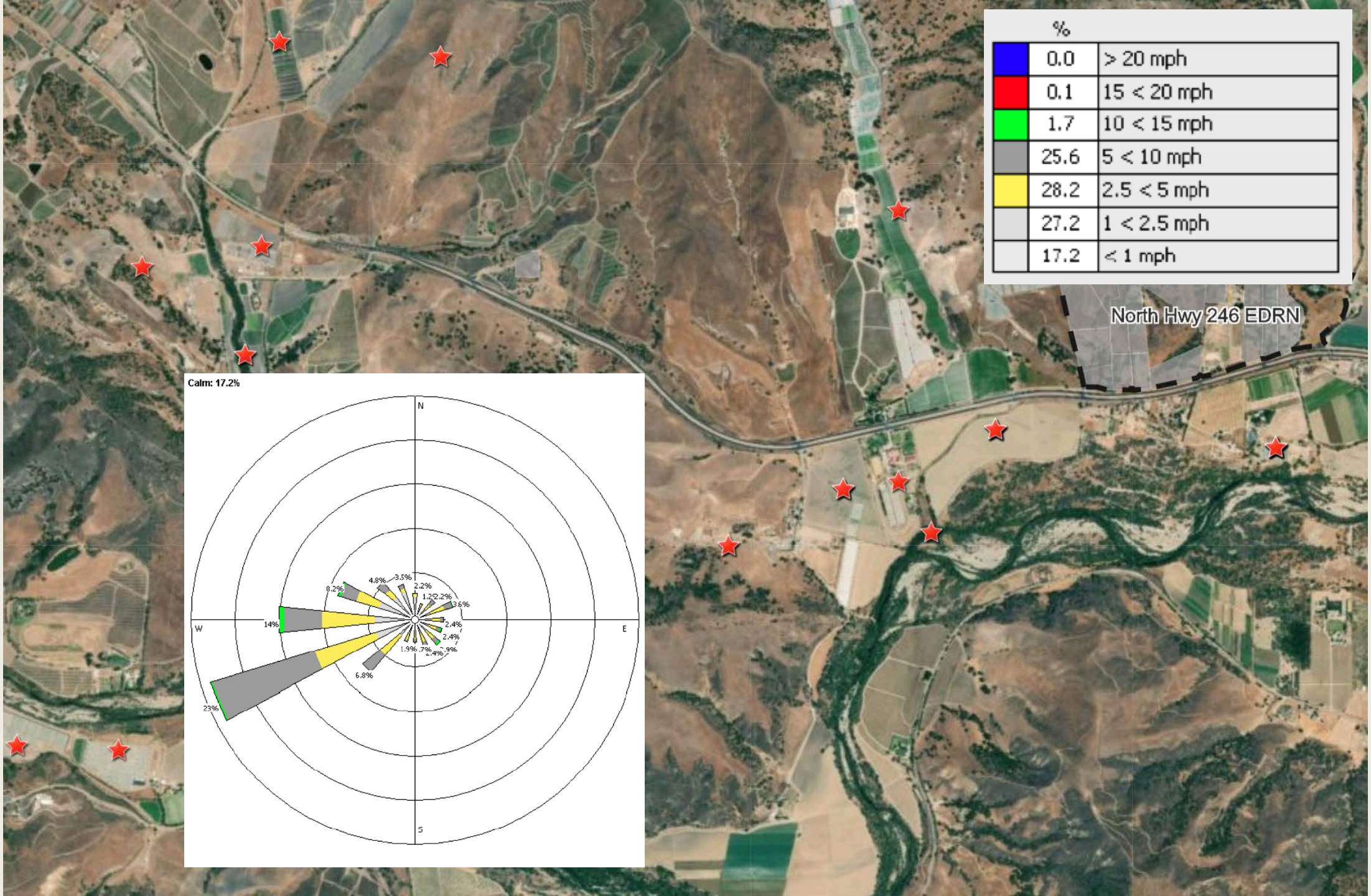
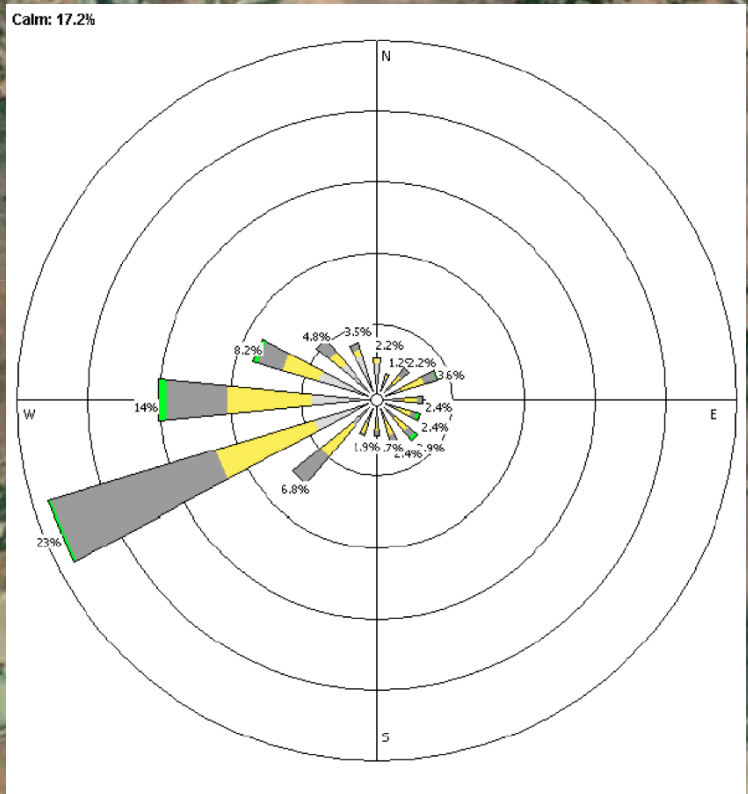






%	
0.0	> 20 mph
0.1	15 < 20 mph
1.7	10 < 15 mph
25.6	5 < 10 mph
28.2	2.5 < 5 mph
27.2	1 < 2.5 mph
17.2	< 1 mph

North Hwy 246 EDRN



# Permit Summary

- Planning Commission approved Land Use Permit (LUP) allowing 18 acres of outdoor cannabis cultivation on 62.45-acre AG-II zoned parcel. **Applicant appeals and requests revision to 22 acres.**
- Planning Commission reduced hoops from 800,000 square feet to 217,800 (or 5 acres) on the lower parcel areas only.
- Planning Commission added 100-foot buffers on the western and eastern borders to **attempt to avoid ag conflicts.**
- Meager Landscaping: trees and shrubs along Highway 246 but **trees are deciduous.**
- Harvests: Planning Commission approved 2 harvests per year, as applied for by Applicant (not “staggered” as promised in Odor Plan). **Applicant appeals and requests revision to 3 harvests per year and questions their own definition of staggered harvests.**

# Project Significance

Today will set a precedent for future projects:

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

# Key Cannabis Permit Issues

- Permit runs with the land: The permit is a permanent entitlement that does not run with the operator; is a permanent land use entitlement that is WILL NOT BE REVOKED IF THE ASSOCIATED BUSINESS LICENSE IS REVOKED OR NOT RENEWED
- No term limits apply unless imposed by the Board. Owners can create a vested right to continue the project forever, even if the ordinance changes or new technologies can reduce impacts.
- Operators are only bound by the four corners of the permit: Assertions about operations that are not enumerated as a Project condition are not binding or enforceable
- Unenforceable and Illusory odor abatement plan: Mitigation on AG-II parcels is now feasible after amendments to the County's Right to Farm Ordinance, can require more robust measures
- Expansion of the legal nonconforming cannabis cultivation violates County ordinance, but the County's practice is to ignore the violation and validate the use without penalty.

# Board Discretion

- This Project permit is **discretionary**
- Board has Discretion to Impose Conditions reasonably related to Project Impacts:
  - **Limit Permit to Three years** – so that revised ordinance will be implemented swiftly and needed to review unknown agricultural impacts that will be better known when terpene study is complete
  - **Limit Size of Grow to 15% of Parcel Size (9.4 acres) and Require PC's Buffers**
  - **Require Enforceable Odor Control** – proposed plan requires “continuous nuisance” before ANY supplemental odor abatement measures are required

**With Project-level Environmental Review, basis for additional conditions will be established**



# CEQA Requires Project-Level Review

- Board must comply with CEQA in all decisions - Here: Program EIR + CEQA Checklist
- Board must order additional, project-level environmental review where:
  - *Substantial changes* have occurred, or *New information*, which was not known and could not have been known at the time the PEIR was certified as complete, is available, showing:
    - 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.
- Board determination not to order project-level environmental review is reviewed under the “**fair argument**” test. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307)
  - “if there is substantial evidence in the record that the later project may *arguably* have a significant adverse effect on the environment which was not examined in the prior program EIR, *doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence.*”

# CEQA Requires Project-Level Review

- Board must comply with CEQA in all decisions - Here: Program EIR + CEQA Checklist
- 2017 Program EIR Analyzed known issues, unable to avoid or mitigate six direct significant impacts and four cumulative impacts, adopting Overriding Considerations
- Subsequent Use of PEIR – ONLY IF PROJECT’S IMPACTS WERE ANALYZED IN PEIR
- Board must order additional, project-level environmental review if:
  - **Substantial changes** have occurred which result in:
    - 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.
  - **New information**, which was not known and could not have been known at the time the PEIR was certified as complete, is available.

# APAC Review of Compatibility

- PEIR assumed APAC would review cannabis applications for compatibility with adjacent agricultural crops
- PEIR and Board relied on this compatibility review to address potentially significant impacts to agriculture
- APAC compatibility review is the only means identified to address ag conflicts:
  - *...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.*

# Uniform Rules: Principles of Compatibility

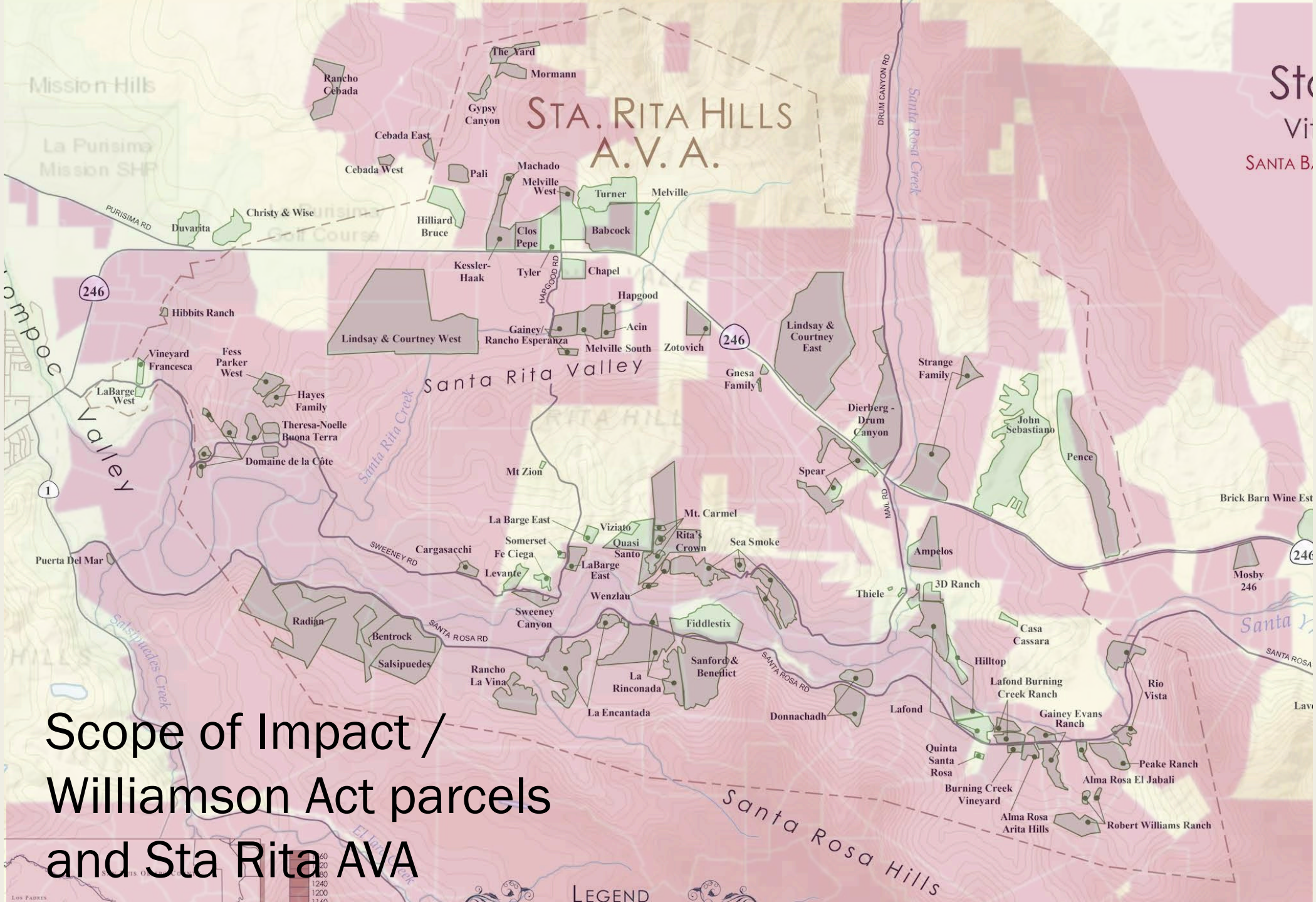
Compatible use must not do any of the following... on other contracted parcels:

1. significantly compromise the long-term productive agricultural capability
2. significantly displace or impair current or reasonably foreseeable agricultural operations
3. 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

# Amendments to Uniform Rules & State Law

- **February 6, 2018:** PEIR certified; Uniform Rules do not allow cannabis activities
  - PEIR assumed Uniform Rules treat cannabis as a “compatible use”
  - Compatible uses are allowed on contracted lands if consistent with the Uniform Rules’ “principles of compatibility”
- **March 20, 2018:** BOS amends the Uniform Rules to allow cannabis activities on contracted lands
  - APAC and County staff recommendations were that cannabis be a “compatible use” (covered in PEIR)
  - Amendment defined cannabis cultivation as agriculture and an allowed “principal use”
  - Staff report makes clear only “compatible use” options are covered by the PEIR
- **January 1, 2020:** Amendment to Williamson Act to REQUIRE cannabis be treated as compatible use
- **Result:**
  - APAC is not reviewing applications for cannabis cultivation for compatibility with adjacent agriculture
  - Minimum production requirements for principal uses require that an applicant to increase cultivation to comply with Uniform Rules, increasing impacts and conflict
  - Uniform Rules run afoul of State law



Sta  
Vi  
SANTA B.

Scope of Impact /  
Williamson Act parcels  
and Sta Rita AVA

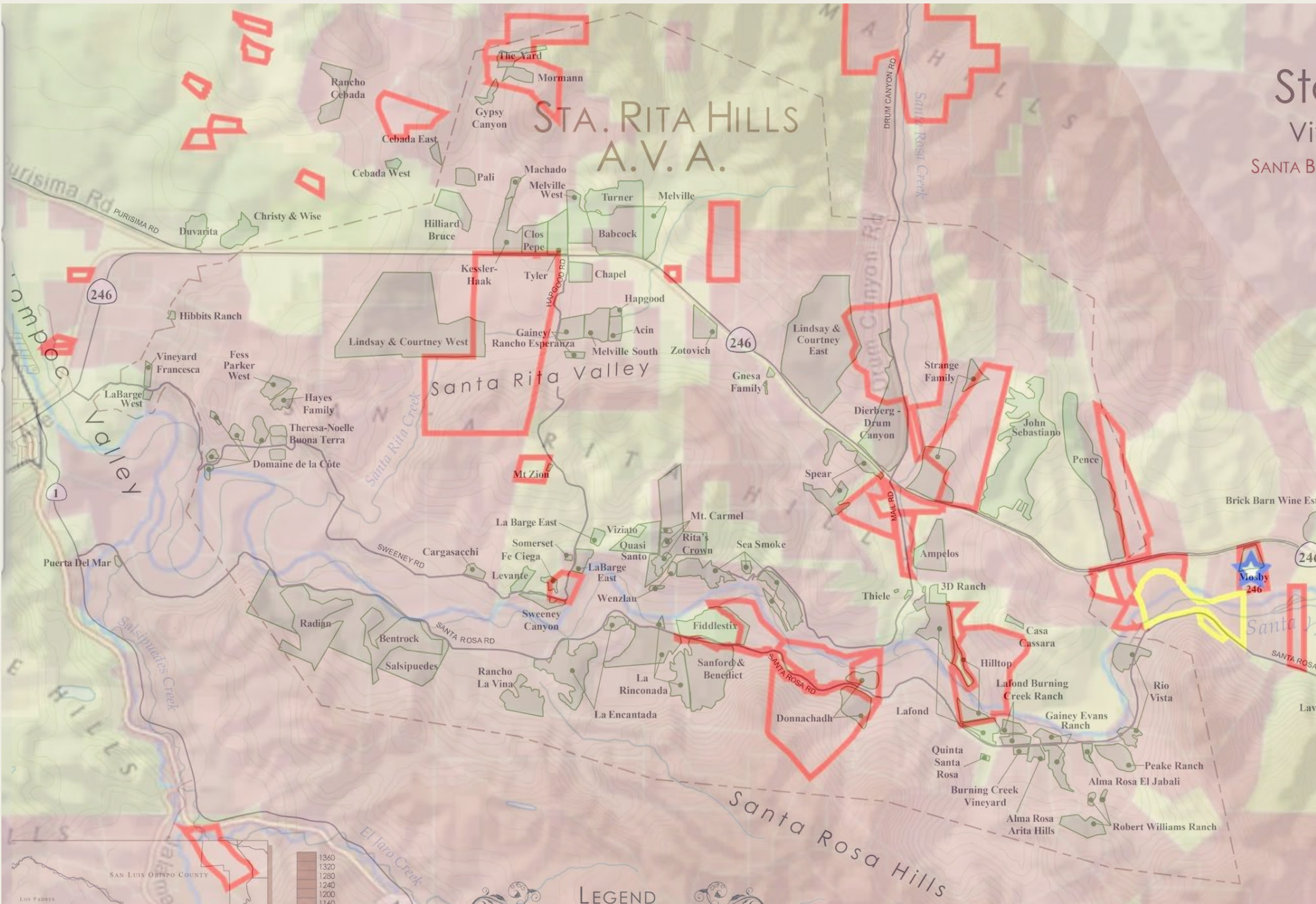
LEGEND

Sta  
Vi  
SANTA B.

# STA. RITA HILLS A.V.A.

Santa Rita valley

Santa Rosa Hills



SAN LUIS OBISPO COUNTY

LEGEND



# Newly Discovered, Project-specific Impacts to Agriculture Not Addressed in PEIR

## Pesticide conflict

- Conflict between cannabis and legacy agriculture over use of pesticides.
- Even legally-applied pesticides can migrate and contaminate cannabis, creating millions of dollars in liability
- Crop management companies refuse to treat farms near cannabis
- Viability of legacy agriculture is threatened

Substantial Evidence: Numerous documented episodes, Grower Shipper Association comments, and Ag Advisory Committee letter

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





**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 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.

# Newly Discovered, Project-specific Impacts to Agriculture Not Addressed in PEIR

## Terpene Migration

- Cannabis Terpenes detected in Santa Barbara County Grapes
- Studies demonstrate airborne pathway
- Santa Barbara County Wine Industry Brand threatened
- Study needed to quantify Impact

Evidence: UC Davis Professor Anita Oberholster Letter

UNIVERSITY OF CALIFORNIA, DAVIS

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SANTA BARBARA • SANTA CRUZ

COLLEGE OF AGRICULTURAL AND ENVIRONMENTAL SCIENCES  
AGRICULTURAL EXPERIMENT STATION  
COOPERATIVE EXTENSION  
DEPARTMENT OF VITICULTURE AND ENOLOGY  
TELEPHONE: (530) 752-0380  
FAX: (530) 752-0382

ONE SHIELDS AVENUE  
DAVIS, CALIFORNIA 95616-8749

“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.** 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.”

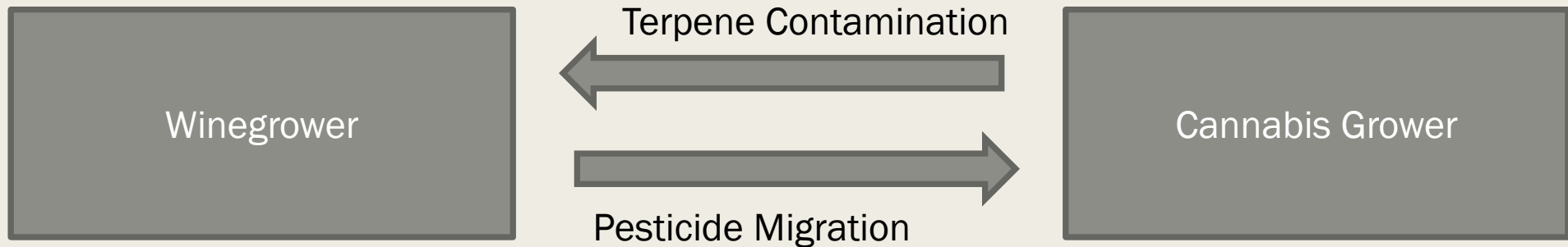
Dr. Anita Oberholster  
Faculty Member  
UC Davis Dept. of viticulture and Enology

# Terpene Migration & Taint

- Wine grapes are sensitive to surrounding air quality and absorb volatile phenols in the air
- Research shows negative impacts to wine grapes from other sources of terpenes:
  - *Eucalyptus trees* → terpenes called “1-8, cineole”
  - *Smoke from fires* → volatile phenols from thermal degradation of lignin in wood
  - *Artemisia verlotiorum* → eucalyptol
  - *Monterey cypress* → *α-pinene*
- What we know:
  - Certain plants emit volatile phenols that travel in the air and are absorbed by grape clusters
  - Thresholds exist where negative impressions are associated with the eucalyptus terpenes and smoke taint
  - Wines are typically defective
- Impacts:
  - Cannabis cultivation generates high volumes of terpenes which travel in the air
  - Wine grapes grown nearby absorb terpenes
  - Wine with excessive levels of certain terpenes is “Tainted”, impacting the County Brand
  - **Loss of agricultural viability for wine industry**

# Land Use Incompatibility is a CEQA Impact

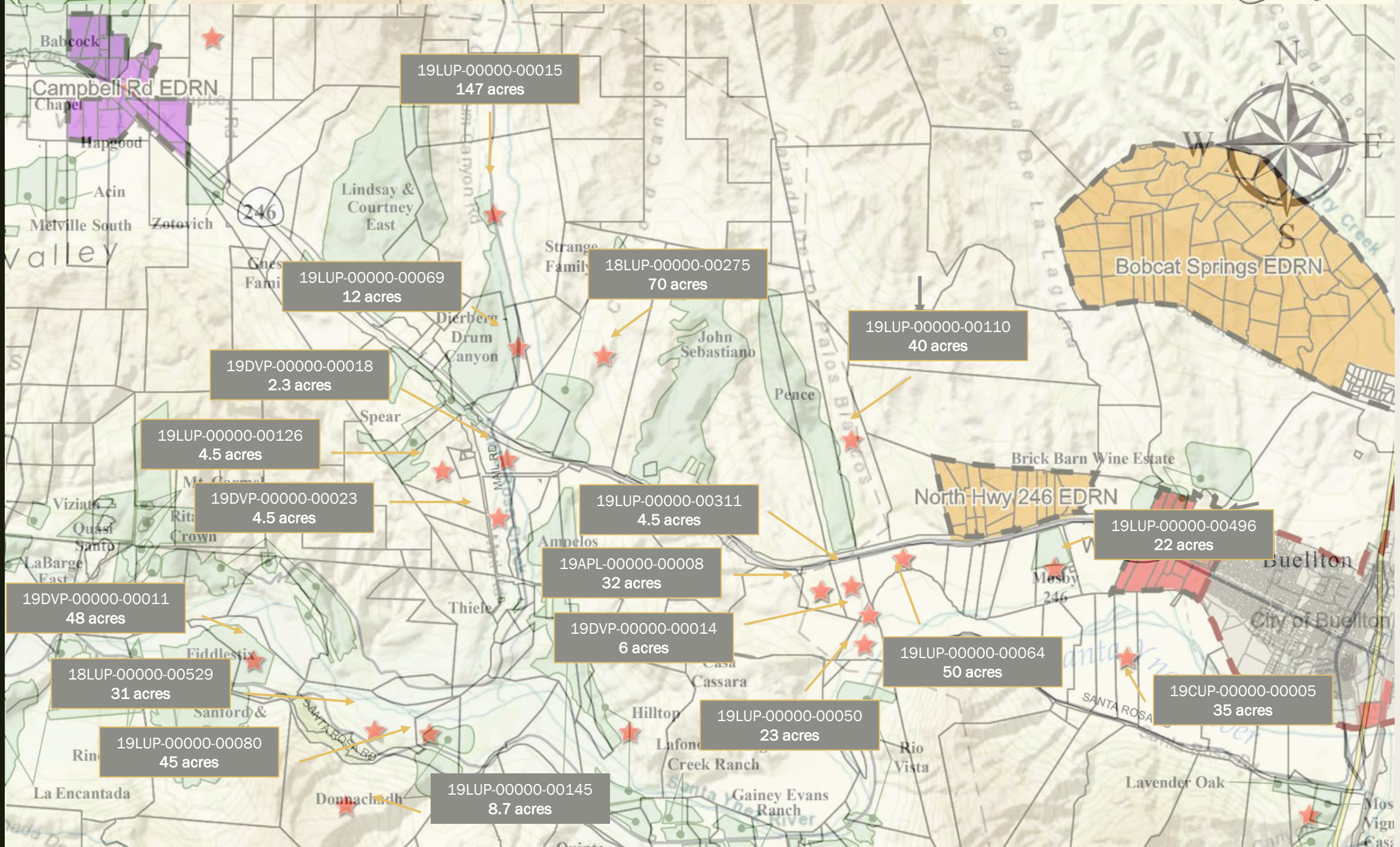
## Key Land Use Conflict



CEQA's environmental review process is an **informational tool**, to help decisionmakers **understand the environmental consequences of decisions**, and prevent stubborn problems from being swept under the rug..

# Cumulative Impacts

- 19 pending outdoor cannabis cultivation projects in the Santa Rita Valley area
- Average 30 acres each
- Total 610 acres of outdoor cannabis cultivation, or 39% of Santa Barbara County's 1,575 acres cannabis production cap
- 55% of the total 1,100 acres of cannabis estimated as needed to supply the entire State of California
- PEIR does not analyze or examine cumulative impact of this proliferation of cannabis cultivation projects in AG-II zones between Buellton and Lompoc along Highway 246, within the Santa Rita Hills American Viticultural Area and a scenic corridor that is considered the gateway to the Valley
  - *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*
  - *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*



19LUP-00000-00015  
147 acres

19LUP-00000-00069  
12 acres

19DVP-00000-00018  
2.3 acres

19LUP-00000-00126  
4.5 acres

19DVP-00000-00023  
4.5 acres

18LUP-00000-00275  
70 acres

19LUP-00000-00110  
40 acres

19LUP-00000-00311  
4.5 acres

19DVP-00000-00011  
48 acres

19APL-00000-00008  
32 acres

19DVP-00000-00014  
6 acres

19LUP-00000-00064  
50 acres

18LUP-00000-00529  
31 acres

19LUP-00000-00050  
23 acres

19LUP-00000-00080  
45 acres

19LUP-00000-00145  
8.7 acres

19LUP-00000-00496  
22 acres

19CUP-00000-00005  
35 acres

# CEQA Checklist is Flawed & Ignores Newly Discovered Impacts

- To determine if site-specific operations were covered in the PEIR, CEQA Checklists must:

*Evaluate the site and activity to determine if the impacts were considered in the EIR. 15168(c)(4)*

- ***INSTEAD the Project-level CEQA Checklists just:***

Asks whether several PEIR Mitigation Measures are applicable and fails to evaluate Project-specific impacts



# Checklist Ignores Many Project Impacts

<b>Agricultural Resources</b>		
MM AG-1. Cannabis Cultivation Prerequisite Ancillary Use Licenses	LUDC §§ 35.42.075.D.3 and -4	Does the proposed project include ancillary cannabis uses (e.g., manufacturing of cannabis products)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Article II § 35-144U.C.2.a and -3.a	If the proposed project includes ancillary cannabis uses, does the proposed project comply with the minimum cultivation requirements to allow ancillary cannabis uses? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
MM AG-2. New Structure Avoidance of Prime Soils	LUDC § 35.42.075.D.1.b	Does the proposed project site have prime soils located on it? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Article II § 35-144U.C.1.b	Does the proposed project involve structural development? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If the proposed project involves structural development, are the structures sited and designed to avoid prime soils? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A

# SYVCP Visual Resources (Gateway Parcels)

- ❖ PEIR Did Not Analyze Community Plan Policy conformity
- ❖ The Project does not conform to SYVCP Visual Resources Standards or policies for Gateway Parcels, which both precludes a finding of General Plan conformity and constitutes a significant CEQA impact (*Pocket Protectors*)

- 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.

## ***NOT CREATE HEDGEROWS***

- 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.

## ***NOT CREATE MASSIVE HEDGES***

- 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.

## ***NEED INCREASED SETBACKS AND STEPPED LANDSCAPING***

# Agricultural Element of General Plan

- 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.
- THIS PERMIT jeopardizes the continuation of agriculture as major viable production industry:
  - *Evidence: PCAs that won't spray farms because outdoor cannabis has zero pesticide tolerance, including farms within a mile of the Project*
  - *Evidence: Wine Grapes absorb cannabis terpenes and affect flavor, and Santa Barbara County's Wine Brand is disparaged if this cannabis cultivation proceeds in the middle of the Sta Rita Appellation without knowing Terpene Taint will NOT occur*
- These Conditions do not allow this agricultural expansion at this site

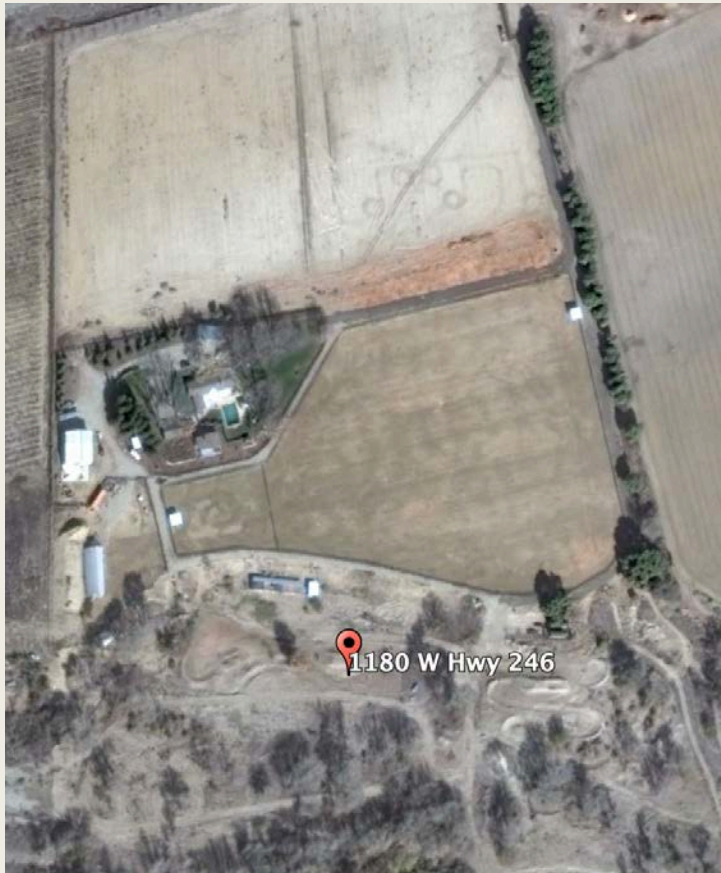
***Grower-Shipper Ass'n:* “All evidence suggests that cannabis is not similarly situated to agricultural crops, and thee differences are driving severe conflicts.**

# Project is not in Compliance with All Laws

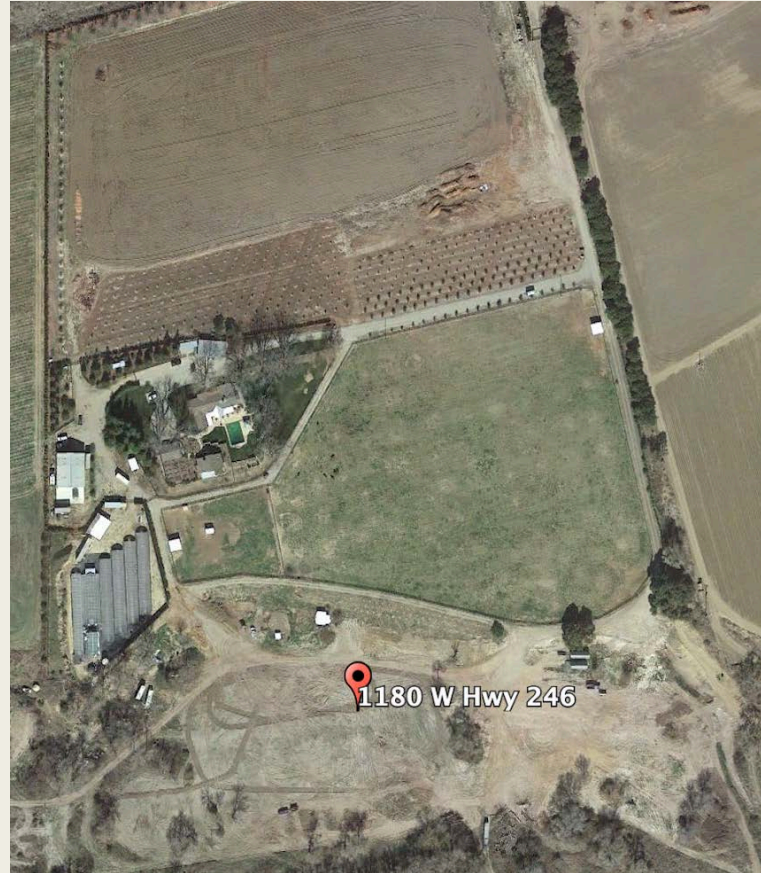
- Property NOT in compliance with LUDC due to expansions of legal nonconforming uses
- LUDC only authorized continuation of nonconforming medicinal grows that were established as of January 19, 2016
- Expansion of nonconforming uses is flatly prohibited – per LUDC, Art. X and *Hansen Brothers case*
- Applicant’s Affidavit: December 27, 2017 – operating a legal nonconforming medicinal cultivation site continuously “since on or before January 19, 2016”.
- Applicant’s Registry Data:
  - *May 15, 2017, less than 99 plants*
  - *Total current canopy: 10,350 sq. ft.*
  - *Future canopy 4500 sq. ft.*

# Improper Expansion of nonconforming Use

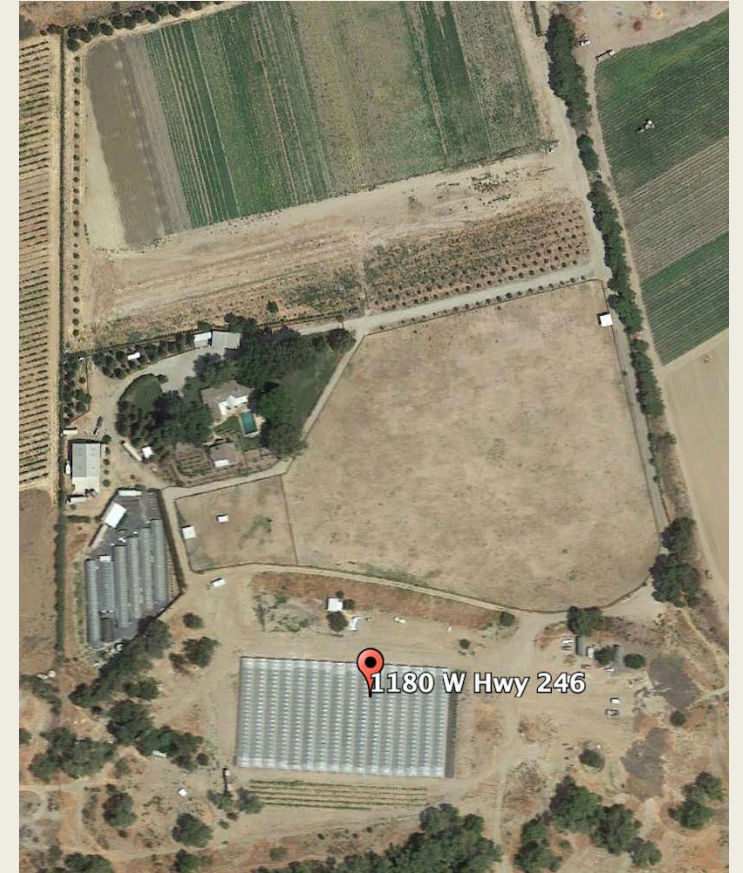
Dec, 2015  
1 hoop house



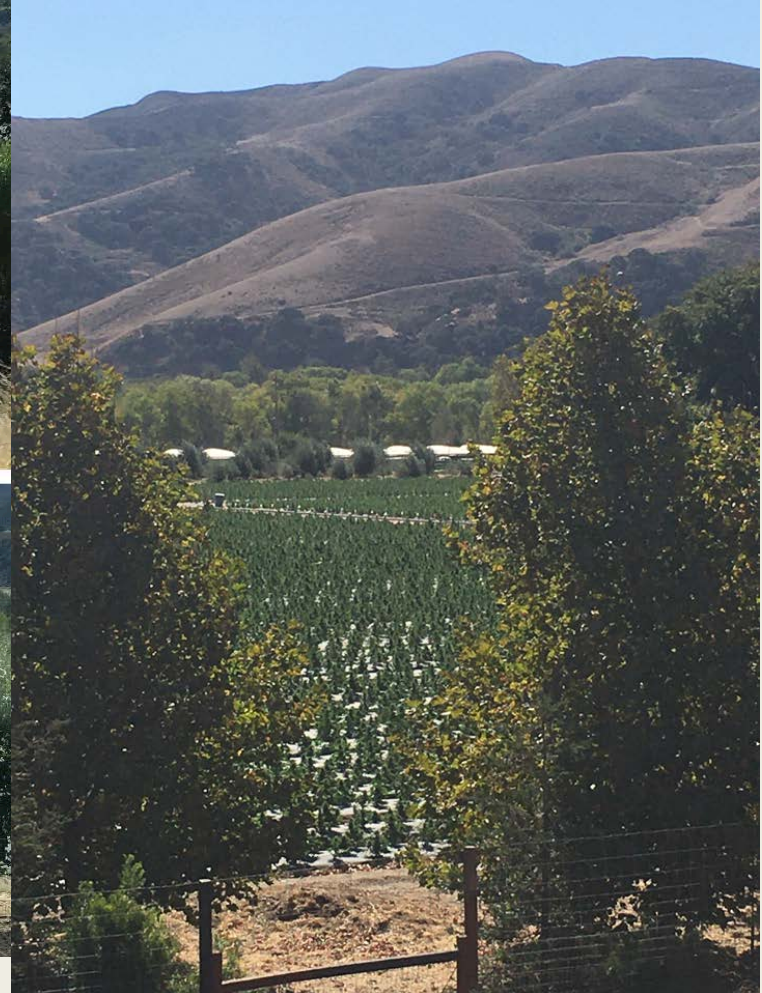
Feb, 2018  
6 greenhouses



Aug, 2018  
6 greenhouses and 16 hoop houses



# Nonconforming use expanded to field by Hwy 246



\*\*Photo taken from PC Staff Report

# Summary – Basis for Project Denial

## CEQA requires project-level review document

- PEIR has gaps from changed circumstances (Uniform Rules, severity of impacts from project clustering, severity of incompatibility)
- PEIR has gaps from new information (terpene taint)
- Checklist does not have project-specific analysis – silent on Uniform Rules, pesticide conflicts, and terpene taint
- *Substantial evidence* supports a *fair argument* that the Project may result in significant adverse environmental effects not examined in the PEIR

## Project does not conform to the General Plan or SYVCP

- Conflicts with surrounding agriculture
- Visual impacts in conflict with SYVCP Visual Standards
- Significant revisions are needed
- Major reduction in size and scale

## Project is not in conformance with all laws

- Expansion of legal nonconforming use

# Summary – Basis for Additional Conditions

## **Reduce Project to 9.4 acres**

- Reasonable allocation of cap
- Reduces potential to cause terpene taint
- Provides necessary buffers and setbacks
- Minimizes agricultural conflicts and *may* withstand Uniform Rules compatibility review

## **Limit permit to three years**

- Enables future review to address conflicts
- Ensures revised ordinance terms will apply
- Prevents claims of Vested Rights

## **Require Enforceable Odor Control**

- Require Applicant to develop and submit revised enforceable Odor Abatement Plan